INDISSOLUBLE MARRIAGE:
A REPLY TO KENNETH HIMES AND JAMES CORIDEN

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The article is a reply to one by Kenneth Himes and James Coriden published in our September 2004 issue. Except for minor sylistic changes, the article is published as it was received.

IT IS NOT PLAUSIBLE in the face of the data to assert that the present teaching of marital indissolubility is a matter to be considered as definitive dogma or definitive doctrine." So argue Kenneth Himes and James Coriden (hereafter HC) in "The Indissolubility of Marriage: Reasons to Reconsider."[1] They "offer several considerations that suggest the teaching on indissolubility ought to be revised in order to admit of exceptions even in cases of *ratum et consummatum* unions."[2]

However, the Catholic Church's teaching that all such marriages are indissoluble is either true or false. If true, it cannot be changed; if false, the Church should correct it. Although HC do not say so, their arguments, if sound, show that the Church errs in having taught and teaching that every *ratum et consummatum* marriage is indissoluble. With respect to that teaching, they say: "It is presumptuous to think that . . . substantive revision is now impossible."[3]

At the risk of seeming presumptuous, we will argue that substantive revision is indeed impossible. We will (1) criticize HC's main argument for

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[1] Kenneth R. Himes and James A. Coriden, "The Indissolubility of Marriage: Reasons to Reconsider," *Theological Studies* 65 (2004) 453–99, at 465. Hereafter we call the authors and their article "HC."

[2] HC 465.　　　　　　　　　　　　　　　[3] HC 478.

dissolubility; (2) explain why consent to a covenantal, consummated marriage is irrevocable; (3) treat Pauline doctrine on indissolubility; (4) treat evangelical doctrine on indissolubility; and (5) argue that Catholic doctrine on indissolubility is definitive.

HC'S MAIN ARGUMENT FOR DISSOLUBILITY

The first sentence of HC's article reads: "Marital breakdown is a common experience in our culture."[4] HC's "marital breakdown" minimally refers to what happened to divorced Catholics who "remarried."[5]

If Marriages Break Down, Can the Bond Remain?

HC assert that Vatican II places marriage in a modern context and regards it as "'an intimate partnership of life and love' entered into by means of a covenant (not contract) in which the 'partners mutually surrender themselves to each other.'"[6] This view, they suggest, stems from modern Romanticism.[7]

For HC, marriage differs from other human relationships; the marriage vow "points toward lifelong commitment."[8] In discussing "the limits of commitments,"[9] however, HC consider reasons for breaking a dinner engagement. They note that some reasons justify reneging on such agreements, and observe that although marriage vows are far more important than promises to keep dinner dates, "the pattern of making a commitment through free consent and then breaking it is similar."[10]

HC say Vatican II "employed covenantal (*foedus*) language" and "moved away from the legal language of the indissolubility of the *bond*."[11] They hold that the couple's love brings about the bond: "The personal relationship of love creates a moral bond obliging the couple to be faithful

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[4] HC 453.
[5] See HC 453–55. We use "divorce" to refer to that dissolution of marriages that we regard as impossible unless the context makes it clear, as it does here, that the word is used in a different sense.
[6] HC 481; internal quotations from *Gaudium et spes* no. 48.
[7] "The Catholic view of marriage has been recast in recent times. According to Schillebeeckx, the roots of that rethinking in the West go back to when Romanticism emerged in the late stages of the Enlightenment as a reaction to the rationalism of its earlier phase. Sexuality came to be seen as an expression of interpersonal love and such interpersonal and mutual love 'began to be valued as the very essence of marriage'" (HC 480; internal quotation from Edward Schillebeeckx, "Christian Marriage and the Reality of Complete Marital Breakdown," in *Catholic Divorce: The Deception of Annulments*, ed. Pierre Hegy and Joseph Martos [New York: Continuum, 2000] 82–107, at 90).
[8] HC 489.   [9] HC 488.
[10] HC 489.   [11] HC 459.

to each other in their stated commitment to self-giving."[12] The mutual obligations of spouses originate in their commitment: the marriage bond "creates 'a *moral ought* inherent in the marriage union.' That 'ought' is the moral obligation to keep one's promises, to follow through on one's commitments."[13] These commitments mean "yielding to another a *claim* over ourselves—a claim to be and do what we have promised."[14] HC hold that the couple's "love binds them morally, their wedding binds them civilly, and their sacramental participation binds them religiously."[15] They say that only the couple themselves can break the moral bond, and suggest that when they have done so, the legal and religious residue of their marriage is dissoluble.[16]

HC claim that the Church's matrimonial law "has enshrined a view of marriage as being about the bond, not about the human relationship, as if the two are separable: one ceases to exist and the other continues." They think that approach presupposed "the contractual model of marriage for this did not require an intimate partnership of life." They say: "In a covenantal model of marriage, it is difficult to see how a bond endures absent a true marital relationship."[17]

In discussing the reality of the bond of marriage, HC assert: "Over the years the human matrix of marriage has been variously described, but at Vatican II it was characterized as the intimate sharing of life in a loving partnership." They then ask a rhetorical question: "If that relationship between the spouses has broken down in a total and irretrievable manner then to what is indissolubility attached?" They say that "the answer according to present teaching is the bond of marriage." Then they ask: "But what is this bond? Can it exist apart from the human reality of the spousal covenant?"[18]

In beginning to answer those questions, HC claim: "The bond is the bond of marital love and if the marriage relationship has ended the bond has ended."[19] Later, they conclude: "If the bond does not exist there is nothing left to which the trait or character of indissolubility may be said to adhere."[20] HC's argument can be summarized: If a marriage breaks down completely, there remains nothing that can have the property of

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[12] HC 487 n. 105.
[13] HC 487; internal quotation from Richard McCormick, *The Critical Calling: Reflections on Moral Dilemmas since Vatican II* (Washington: Georgetown University, 1989) 248.
[14] HC 486, quoting Margaret Farley, "Divorce and Remarriage: A Moral Perspective," in *Commitment to Partnership: Explorations of the Theology of Marriage*, ed. William Roberts (New York: Paulist, 1987) 107–27, at 114.
[15] HC 487 n. 105.
[16] See HC 487 nn. 105, 106.
[17] HC 486.
[18] HC 485.
[19] HC 486.
[20] HC 490.

indissolubility; but marriages can and sometimes do break down completely, and whatever then remains of them is dissoluble. Therefore, marriage is dissoluble.

Does Pre-Tridentine Tradition Support HC's View?

In building their case, HC make several general observations relevant to tradition. They note that "the language of 'indissolubility' related to marriage is not biblical."[21] However, *homoousios* and *hypostasis* are not biblical, yet dogmas employing such language articulate revealed truths. HC also point out that "there was no systematic law regulating marriage in the early Church."[22] Church law, however, develops gradually, and its early absence does not suggest that marriage was considered dissoluble. Rather, the treatment of remarriage when church law developed shows that it codified the Christian community's conviction that marriage is indissoluble.

HC say that Christians married "according to the laws and customs of the society in which they lived."[23] But even if Christians adopted their societies' practices in marrying, it does not follow that they adopted their societies' understanding of marriage as dissoluble, and HC provide no evidence that they did. They also observe that "'the initial interventions of the Church in the marriage of Christians were firstly of a pastoral nature.' The concern was to remind a couple of their obligation to fidelity and that divorce was to be rejected."[24] However, the fact that the Church initially intervened with pastoral support to help couples remain faithful hardly shows that it considered marriage dissoluble.

Rather than surveying the Church's whole tradition regarding marriage, HC propose "to point out elements within the Church's tradition that raise questions about the present teaching on indissolubility."[25] They begin with Basil of Caesarea and John Chrysostom who, they claim, "made judgments that some second marriages were permitted after a divorce."[26] However, after an extensive analysis of the texts used to support the claim that Basil considered some consummated, sacramental marriages dissoluble, Henri Crouzel concludes: "One established and certain fact remains: one cannot affirm that St. Basil, in his canonical letters, permits the divorced husband to contract a second marriage, licit and legitimate before the Church, during the lifetime of his wife."[27]

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[21] HC 457.   [22] HC 471.
[23] Ibid.
[24] Ibid.; internal quotation from Roch Pagé, "Marriage: Sacrament of Love or Sacrament of Bond?" *Studia canonica* 34 (2000) 5–21, at 9.
[25] HC 470.   [26] HC 471.
[27] Henri Crouzel, *L'Église primitive face au divorce: Du premier au cinquième siècle* (Paris: Beauchesne, 1971) 147 (all translations, unless otherwise indicated, are

With respect to Chrysostom, HC immediately modify their claim: "It is less certain he permitted remarriage but he clearly endorsed the idea of divorce, seeing adultery as cause for dissolution of a marriage."[28] In fact, Chrysostom did not permit remarriage. Paul Palmer notes that Chrysostom "speaks of a marriage as 'already dissolved' by adultery on the part of the wife, making the husband a partner to her crime if he continues relations with her. And yet Chrysostom does not draw the conclusion that the injured husband may marry again."[29] Crouzel observes that Chrysostom "nowhere explicitly says that he who justifiably sends his wife away is able to marry, and all the texts commenting on the passages about dismissal constantly affirm the contrary."[30]

HC note that in the seventh and eighth centuries, some penitential books "allowed for divorce and remarriage in a variety of difficult situations."[31] But penitential books are not magisterial documents. Antoine Villien reports that the magisterial texts of this period either absolutely exclude divorce or exclude remarriage as long as the other spouse lives "are legion."[32] And even though Theodore's penitential, one of the two HC mention, contradicted church teaching on marital indissolubility, Theodore presided over a synod that affirmed it.[33]

HC also say: "In the eighth century Gregory II advised Boniface that in dealing with a man whose wife was no longer well enough to engage in

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ours). Crouzel is quoting Fulbert Cayré, "Le divorce au IVe siècle dans la loi civile et les canons de saint Basile," *Échos d'Orient* 19 (1920) 295–321, at 319. Crouzel agrees with Cayré that the misinterpretation of Basil resulted from misunderstanding his acceptance of milder canonical penances for some who attempted remarriage than for others who committed adultery (see 137–47). After analyzing Basil's most commonly cited text, George Hayward Joyce—an author HC recommend (see 470 n. 55)—also concludes that it "affords no ground whatever for thinking that St. Basil tolerated divorce and remarriage" (*Christian Marriage: An Historical and Doctrinal Study,* 2nd ed. [London: Sheed & Ward, 1948] 327; see 324–28).

[28] HC 471.

[29] Paul F. Palmer, S.J., "Christian Marriage: Contract or Covenant?" *Theological Studies* 33 (1972) 617–65, at 627 n. 19; see also Joyce, *Christian Marriage* 329–30.

[30] *L'Église primitive* 203. Crouzel provides an in-depth analysis of Chrysostom's treatment of marriage (see 177–204) and cogently answers an argument that fallaciously infers from Chrysostom's silence that he approved divorce and remarriage (see 215–16).

[31] HC 474.

[32] "Divorce," *Dictionnaire de théologie catholique* (Paris: 1899–1950), vol. 4, part 2, cols. 1455–78, at 1466.

[33] See Joyce, *Christian Marriage* 340–43; for the historical context of the abuses see 331–61. Villien points out that various councils, including Chalon (813), made pronouncements against these penitentials precisely because they did not uphold marital indissolubility. The Council of Paris (829) ordered the defective booklets to be burned (see "Divorce" col. 1468).

sexual intercourse it was permissible for him to remarry as long as he did not neglect to provide material support for his first wife."[34] But HC merely assume that the wife was *no longer* able to have intercourse. Villien notes that the issue may have been "antecedent impotence" on the wife's part, in which case "the text does not pose any difficulty."[35]

Finally, HC say that at neither Lyons II nor the Council of Florence "was the indissolubility of marriage treated as irreversible or definitive teaching by the attendees."[36] At neither council, however, was the Catholic Church's teaching on indissolubility treated as reversible.[37] The issue was not addressed by Florence before reunion with the Greeks was effected; but afterward Pope Eugenius IV "summoned the Greek bishops, who were still in the city and informed them that divorce was one of the points in Greek practice which must be corrected."[38] Moreover, Florence's "Decree for the Armenians" taught that one of the goods of matrimony is "the indissolubility [*indivisibilitas*] of marriage, since it signifies the indivisible union of Christ and the church. Although separation of bed is lawful on account of fornication [adultery], it is not lawful to contract another marriage, since the bond of a legitimately contracted marriage is perpetual."[39]

Does Vatican II Support HC's View?

Vatican II's teaching on marriage in *Gaudium et spes* begins: "The covenant, or irrevocable personal consent, of marriage sets up an intimate sharing of married life and love as instituted by the Creator and regulated by God's laws."[40] HC quote part of that sentence, but they omit the

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[34] HC 474.

[35] "Divorce" col. 1467. Joyce points out that because "we do not possess St. Boniface's letter, the precise terms of the enquiry must be a matter of conjecture" (*Christian Marriage* 333).

[36] HC 463.

[37] See HC's source: Theodore Mackin, *Divorce and Remarriage* (New York: Paulist, 1984) 374–77.

[38] Joyce, *Christian Marriage* 390. Although the bishops responded that they lacked the authority to concede the issue and defended their practice with respect to divorce, Joyce explains: "There was certainly no intention on the part of the Holy See to condone so grave an error" (ibid.).

[39] In *Decrees of the Ecumenical Councils*, 2 vols., ed. Norman P. Tanner [Washington: Georgetown University, 1990] 1:550). Hereafter we call this work "Tanner." The passage quoted makes it clear that Florence's *indivisibilitas* excludes remarriage just as *indissolubilitas* does; indeed Tanner translates *indivisibilitas* as "indissolubility."

[40] "Intima communitas vitae et amoris coniugalis, a creatore condita suisque legibus instructa, foedere coniugii seu irrevocabili consensu personali instauratur" (*Gaudium et spes* [December 7, 1965] no. 48; Tanner 2:1100).

complete sentence's reaffirmation of the truth that marriage is divinely instituted and regulated.[41]

HC begin their treatment of the council's teaching on marriage by stating that *Gaudium et spes*

contains Vatican II's most serious and extensive teaching on marriage. It changed the definition of marriage . . . and employed covenantal (*foedus*) language rather than contractual terms to describe it. It affirmed the indissolubility of marriage, but it based it on the marital covenant, the intimate union of persons and activities, the mutual giving of the two persons as well as the good of their children. Here it is their *union* which is called indissoluble (no. 48). In the next section it is *married love* which is indissolubly faithful (no. 49). And finally, in the section on the fruitfulness of marriage (no. 50) we are reminded that *marriage* retains its indissolubility, even when it is childless. The council, while affirming the life-long permanence of marriage moved away from the legal language of the indissolubility of the *bond*.[42]

To the paragraph's final sentence, which suggests that the indissolubility of the bond is a legal notion, HC attach a footnote: "In the Decree on the Apostolate of the Laity (October 28 [sic], 1965), no. 11 there is a passing reference to laypersons' duty 'to manifest and prove by their lives the indissolubility and sanctity of the bond of marriage.'"[43]

Even if that reference were only a passing one, Vatican II hardly would have called the laity to bear witness to something it regarded as a mere legal notion. The reference clearly shows that the council held the indissoluble bond of marriage to be a sacred reality—one among the many divinely revealed realities to which it called the faithful to bear witness. In fact, moreover, this reference is not a passing one. It occurs in the Decree's treatment of marriage and family life as a field of apostolate, and in a sentence that identifies duties proper to that field.[44]

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[41] "The intimate partnership of married life and love . . . is rooted in the conjugal covenant [*foedus coniugale*] of irrevocable personal consent" (HC 481 n. 87). That abridged quotation supports HC's statement: "This personal consent, that is irrevocable, creates a covenant." HC's omission of "has been established by the Creator and qualified by His laws" indicates that, in their view, the Creator is irrelevant to the formation of the marital covenant. Even in treating marriage in the pristine state of creation, HC focus on the spouses' action: "Originally, God wanted male and female to fashion a union, one flesh" (HC 467).

[42] HC 459.   [43] HC 459 n. 16.

[44] "What was always a duty of married people is now a very important part of their apostolate: to manifest and prove by their lives the indissolubility and sanctity of the bond of marriage (*indissolubilitatem et sanctitatem vinculi matrimonialis*)" (Tanner 2:989). The Decree, promulgated on November 18, 1965, was approved by 2,340 votes, with only 2 opposed (see Ferdinand Klostermann, "Decree on the Apostolate of the Laity: History of the Text," in *Commentary on the Documents of Vatican II*, 5 vols., ed. Herbert Vorgrimler [New York: Herder & Herder, 1968] 3:273, 301–2). In approving *Gaudium et spes* on December 7, 1965, the Council

Since HC claim that Vatican II supports their view that marriage is dissoluble, they must account for the council's statements about irrevocability and indissolubility. They start doing so with their brief interpretations of *Gaudium et spes* nos. 48, 49, and 50. A closer reading of those passages reveals that they do not support HC's thesis. Indeed, the first and third falsify it.

After beginning with irrevocable personal consent (no. 48), Vatican II immediately explains what makes consent irrevocable: "The human action in which spouses give themselves to each other and accept each other results in an institution which is stable by divine ordinance and also in the eyes of society. This sacred bond [*hoc vinculum sacrum*] . . . does not depend on human decision. It is God who is the author of marriage."[45] Thus, *pace* HC, the council here refers explicitly to the bond (*vinculum*), which, being covenantal (*sacrum*), was formed not only by the spouses but by God.

As for HC's claim, "In the next section it is *married love* which is indissolubly faithful (no. 49),"[46] Vatican II, describing a virtue to articulate a moral norm, teaches that the spouses' love should share in their marriage's indissolubility—that is, be perseveringly faithful: "This love sincerely confirmed by mutual fidelity, and made especially sacrosanct by the sacrament of Christ, is indissolubly faithful physically and mentally in prosperity and adversity, and is therefore far removed from all adultery and divorce."[47] Informed by virtue, as it should be, the couple's covenantal love will be as lasting as the covenant itself.

Finally, the fact that Vatican II calls marriage indissoluble, rather than the bond (*Gaudium et spes* no. 50), does not mean that the council is merely exhorting spouses to strive for permanence. That interpretation is precluded by the article's final paragraph, which shows that even childless couples should share and foster their conjugal love precisely because marriage is indissoluble: "The very nature of an unbreakable [*indissolubilis*] covenant between persons and the good of the offspring [if any] also demand that the mutual love of the partners should be rightly expressed and should develop and mature."[48]

In fact, HC reject Vatican II's teaching that the spouses' union is established by "the covenant, or irrevocable personal consent, of marriage." After mentioning the Church's "present" teaching—the bond of marriage, once formed, "is a reality, henceforth irrevocable"[49]—HC

Fathers surely neither forgot nor set aside something to which 19 days earlier they had called the faithful to bear witness.

45 Tanner 2:1100.   46 HC 459.
47 Tanner 2:1102.   48 Tanner 2:1103.
49 "According to present teaching the bond of marriage is forged through 'the free human act of the spouses and their consummation of the marriage, is a reality, henceforth irrevocable'" (HC 489; internal quotation from *Catechism* no. 1640).

ask: "But is it really irrevocable? What is it about this promise that makes its binding force absolute?" They aver that "one act at the time of the wedding is incapable of carrying the weight of an irrevocable commitment" and that "the self-gift of a person is best seen as a process of decisions and acts." Although HC hold that those giving consent aspire "to a total and final self-gift that is the proper goal for marriage," they deny that "an irrevocable promise absolutely occurs once and for all at the moment of ritualized consent."[50]

In a subsequent discussion of the significance of the sacrament, HC, after referring to *Gaudium et spes* nos. 48 and 49,[51] claim that, according to Vatican II, indissolubility is "the achievement of Christians whose love is strengthened by the grace of the sacrament," not a characteristic of "a bond unrelated to the actual status of the human relationship and impervious to the human volition of the couple."[52] That claim, however, contradicts the council's express statement: "This sacred bond . . . does not depend on human decision [*non ex humano arbitrio pendet*]."[53]

WHY CONSENT TO COVENANTAL MARRIAGE IS IRREVOCABLE

HC suppose that, in preferring the language of covenant to that of contract, Vatican II redefined marriage. However, the council did not contradict anything the Church previously taught about the nature of marriage or its essential properties.[54]

However, the context from which HC extract the quotation makes it clear that marriage is a divinely guaranteed, indissoluble covenant: "Thus *the marriage bond* has been established by God himself in such a way that a marriage concluded and consummated between baptized persons can never be dissolved. This bond, which results from the free human act of the spouses and their consummation of the marriage, is a reality, henceforth irrevocable, and gives rise to a covenant guaranteed by God's fidelity" (*Catechism* no. 1640).

[50] HC 489.   [51] See HC 496 n. 126.

[52] HC 496.

[53] Tanner 2:1100. Commenting on Vatican II's concept of irrevocable consent, Bernhard Häring writes: "The objective meaning of matrimonial consent is an acceptance of marriage as a community of love; if, therefore, love becomes extinct, the partners have to do everything to re-learn it. In any case, *Gaudim et spes*, part 2, chapter 1 repeatedly makes it clear that merely emotional love is not what is meant. What is in question is a community, the purpose and nature of which is not subject to man's arbitrary discretion. That is expressed in the words 'established by the Creator and endowed with its own (intrinsic) laws.'" By contrast, Häring observes, "People nowadays think of a contract as an agreement whose content can be determined by the contracting parties themselves and which can later be revoked by mutual consent" ("Part II, Chapter 1: Fostering the Nobility of Marriage and the Family," in *Commentary on the Documents of Vatican II* 5:225–45, at 232).

[54] For instance, HC's contrast between covenant and contract is unsound: "Covenant, however, was not used by the Council to exclude altogether the presence of

Commitment or Consent?

HC hold that the marital relationship "is more than friendship,"[55] and that marital consent is more than the commitment of ordinary friendships.[56] But for HC, the spouses' relationship is essentially similar to that of ordinary friendships. People meet, experience affection, begin making promises, and eventually become deeply committed. For HC, marital consent works similarly. It is a commitment, motivated by love, which, like the promises friends make, is revocable. So, HC object: "In no other area of human promise-making does the Catholic tradition hold the irrevocability of human commitment,"[57] and consider it "not only wrong, but impossible to put aside the obligations arising from the vows which the individual entered."[58] But as we will now explain, HC misunderstand "irrevocable consent."

The meaning of Vatican II's expression becomes clear when one considers the two distinct elements under "Consent" in the *Rite of Marriage*: the couple's "taking" and "promising." "Taking" is their choice of each other as spouses ("I, N., take you, N., to be my wife [husband]"). "Promising" is their commitment to fulfill their marital responsibilities ("I promise to be true to you"). One can call the first "sheer consent" and the second "commitment."[59] HC treat consent as if it were only a commitment. Then, since commitments can be revoked, they assume that spouses experience complete marital breakdown when, after breaking other promises, they finally revoke their basic commitment.

The Church, however, does not teach that the couple's mutual promises are indissoluble; it teaches that their conjugal union, initiated by sheer consent and consummation, is indissoluble. HC overlook "sheer consent." Moreover, marriage is not the only case in which consent with bodily performance brings about an unbreakable union. In baptism, the volitions

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contractual elements in the marital promises (the more can contain the less), but the Council wanted the strictly legal elements to be incorporated into a sacred context" (Ladislas Örsy, *Marriage in Canon Law: Texts and Comments, Reflections and Questions* [Wilmington, Del.: Michael Glazier, 1988] 50).

[55] HC 481.

[56] "The marriage vow certainly points toward lifelong commitment, the person making the vow aspires to a total and final self-gift that is the proper goal for marriage" (HC 489). While HC do not mention polyamorous, polygamous, or homosexual "marriages," their notion of marriage could be exploited to support the view that, provided the parties undertake to share their whole lives together, such relationships are "covenantal" marriages.

[57] HC 489.   [58] HC 490.

[59] *The Rites of the Catholic Church as Revised by Decree of the Second Vatican Council* . . . , 2 vols. (New York: Pueblo, 1976) 1:541; the alternative form approved for the United States expresses "sheer consent" by "I, N., take you, N. . . . until death do us part" and "commitment" by "for better, for worse . . ." (541–42).

and behaviors of Jesus baptizing and those being baptized unite them indissolubly with him. Even if the baptized reject the faith, they remain Christ's members.[60]

Indissoluble Personal Communion

In using covenantal language about marriage, Vatican II was not adopting a modern romantic conception but restoring an ancient religious one.[61] Even pagans sometimes made a covenant: "a solemn agreement between nations, peoples, or individuals, effecting a relationship that is binding and inviolable."[62] Covenants deal with people, not things. As witness and guarantor, covenants have God (or the gods), not just a human authority. Covenants can be violated but not broken, and are forever, not just for a time. Covenants are sacred, not secular.[63]

After God rescued the Israelites from Egypt, he offered Moses a covenant and told him what he would expect of the people. Moses conveyed God's proposal to them, and they consented: "All the words which the Lord has spoken we will do" (Exod 24:3).[64] Moses then offered sacrifices; the blood was "poured on the altar, representing Yahweh, and sprinkled on the covenanters, thus establishing a blood relationship or kinship of sorts between God and His people."[65] With God's proposal accepted and the covenant brought to life by blood, Moses and the other leaders "beheld God, and ate and drank" (Exod 24:11; see 9–11). By thus initiating their life together, God and Israel fully constituted the Sinai covenant.[66]

In and through Jesus, God offers a covenant to humankind. Jesus tells people what the Father expects of them and, by always doing the Father's will, leads his disciples in consenting to God's proposal. Those who receive Jesus' gospel join their consent to his by their act of baptismal faith. In obeying the Father, Jesus freely accepts death and offers his own blood to bring the new covenant to life. When the baptized participate in the

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[60] See *Catechism* no. 1272.

[61] See Palmer, "Christian Marriage" 617–39.

[62] Ibid. 618.   [63] See ibid. 618, 639.

[64] All quotations from Scripture (unless within another quotation) are from the RSV, Catholic ed.

[65] Palmer, "Christian Marriage" 654; see Exod 24:5–8.

[66] Beginning with Hosea, several prophets "described Yahweh's covenant with Israel in terms of human marriage," and in Malachi, about three centuries after Hosea, "the word 'covenant' is applied directly to marriage among the Israelites." Malachi "finds in the infidelity of the individual Israelite towards his wife the reason for Yahweh's refusal to accept the sacrifices which are offered to Him. 'It is because Yahweh stands as witness between you and your wife, the wife with whom you have broken faith, even though she is your wife by covenant. . . . For I hate divorce, says Yahweh, the God of Israel' (2:14–15)" (Palmer, "Christian Marriage" 620–21). Thus, divorce is abhorrent to God precisely because marriage is covenantal.

Eucharist and receive First Communion, they are fully incorporated into the fellowship of the new covenant and begin sharing in its common life. Not only by eating and drinking in God's presence but also by eating the body and drinking the blood of God made man, Christians become members of his very body, the Church his Bride, which is united with him by an indissoluble bond.[67]

What does it mean to be "united by a bond"? The expression can have various, somewhat different meanings. It might bring to mind prisoners chained together. Being extrinsic to them, the chain can neither join them in personal communion nor unite them indissolubly. It is easily removed. When Michelangelo applied paint to plaster, the two things bonded of themselves so that, without any extrinsic bond and without their passing away, they became a fresco. In that single new reality, paint and plaster are indissolubly united, and only their destruction can destroy the fresco. But the indissoluble union of paint and plaster is not personal communion. Since hands are intrinsic to persons, handholding can unite a couple in personal communion, but not indissolubly. No matter how warmly the couple clasp hands, each one's hand is easily withdrawn and withheld when affection cools.

By contrast, indissoluble personal communion is covenantal. The new covenant between God and humankind, for example, does not unite the two parties by anything extrinsic to them or by their actions alone, but by Jesus, the one person who is both God and man. In bonding with one another, Jesus and his members, without losing anything of their true selves, become a single new reality, the Mystical Body, which is destined to be transformed into the definitive kingdom. So, as members of Jesus, those who inherit the kingdom will live forever in immediate and indissoluble personal communion with God.

Jesus' Teaching on Indissolubility

Marriage, too, is an indissoluble covenant, as Jesus, without using those words, shows when asked whether divorce is ever "lawful."[68] He begins his argument by recalling the constitution of marriage as God created it ("Have you not read that he who made them from the beginning made them male and female, and said, 'For this reason a man shall leave his

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[67] See ibid. 654.
[68] Whereas Malachi made it clear that divorce is abhorrent to God because marriage is covenantal (2:13–16), Jesus reveals that covenantal marriage's property of indissolubility is what makes divorce abhorrent. The consistency of the Mosaic concession with the indissolubility of the marital covenant is treated in the text accompanying nn. 89–100 below; the consistency of the *porneia* phrases with indissolubility is treated in the text accompanying nn. 117–24 above.

father and mother and be joined to his wife, and the two shall become one flesh?'"). He then draws a first conclusion: the two are one flesh ("So they are no longer two but one flesh").[69] From it he draws a further conclusion: the couple's union, being brought about by God, is sacred and inviolable, so that divorce *should not* be lawful ("What therefore God has joined together, let not man put asunder"). To the objection that Moses allowed divorce, Jesus responds that marriages had fallen short of God's plan ("But from the beginning it was not so"). He formally asserts ("I say to you") that any attempt to dissolve a divinely established marital union *inevitably* fails ("Whoever divorces his wife,[70] except for unchastity, and marries another, commits adultery; and he who marries a divorced woman, commits adultery") (Mt 19:3–9; see 5:31–32, Mk 10:2–12, Lk 16:18).[71]

Jesus' argument can be theologically explicated.[72] Since God created male and female human beings, for whom it is "not good" to "be alone" (Gen 2:18), marriage is naturally good. That goodness leads men and women to choose to share in it (consent to marriage) at the cost of separation from their families of origin. As husband and wife, they cleave to each

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[69] The RSV translation omits "flesh" but supplies a note: "Greek *one flesh*."

[70] "Before Christ could restore marriage to covenant status, he had to restore to woman the marital rights which had been denied her. Hence the revolutionary character, at least for Jewish society, of Jesus' statement as recorded by Mark: 'Whoever divorces his wife and marries another commits adultery against her' (10:11)" (Palmer, "Christian Marriage" 623). Still, in warning against divorce, Jesus focuses on men, because divorcing was generally done by husbands, not wives.

[71] Recent, well-regarded exegesis of Mt 19:3–9 confirms the judgment that Jesus absolutely or unqualifiedly excluded divorce. Joseph A. Fitzmyer observes: "What is striking in the modern study of the Gospels and of the divorce passages in particular is the number of commentators who trace back to Jesus in some form or other a prohibition of divorce, and usually in an absolute form. If the sort of analysis in which I have engaged above has any validity, it leads one to the conclusion of the absolute prohibition of it as coming from Jesus himself. When one hears today of commentators analyzing Gospel texts with the principles of form criticism or redaction criticism, one more or less expects to learn from them some more radical or even 'liberating' interpretation. But in this case it has not worked that way. Judged form-critically, the NT divorce texts yield as the most primitive form of the prohibition one that is absolute or unqualified" ("The Matthean Divorce Texts and Some New Palestinian Evidence," *Theological Studies* 37 [1976] 197–226, at 223–24). A non-Catholic scholar, Ulrich Luz, provides a close reading of the structure and content of Mt 19:3–9 with which our interpretation agrees (see *Matthew 8–20: A Commentary,* trans. James E. Crouch [Minneapolis, Minn.: Augsburg Fortress, 2001] 486–94). Luz, however, as a theologian considering the passage's "Meaning for Today," argues that the New Testament as a whole authorizes the Christian churches to allow divorce (see 494–96).

[72] Although the parallel passage in Mk 10:2–12 differs in some important respects from Mt 19:3–9, the elements covered by this theological explication are the same.

other (consummate their marriage), and thus bond and become no longer
two but one flesh (the bond is intrinsic, so that, while they remain distinct,
they are a single new reality). That oneness, as something really new,
can be brought about only by the Creator, and once it has been brought
about, it is not subject to human decision; so divorce should not be
attempted (the intrinsic union is not a mere contract, but a covenant).
When a couple whose union is covenantal try to break apart and remarry,
they cannot really do so (the covenantal bond, which *is* the God-given
union of the spouses themselves, can be dissolved only by death). They
end in adultery.

Consummation and What It Does

HC assert: "Consummation denotes the completion of something or
bringing something to fulfillment," and ask whether one can plausibly
identify the first act of coitus after consent "as the definitive completion of
the marital covenant of total self-giving."[73] That identification, they say,
was logical on the contractual understanding of marriage as an exchange of
sexual rights, since "the deal was sealed upon the first exercise of the
right,"[74] but on the covenantal understanding of marriage as a consortium
of intimacy lived out over time, first coitus is less clearly "an appropriate
symbol of consummation."[75]

HC's "symbol of consummation" is misleading. In the Church's teaching
and jurisprudence, the initial act of conjugal intercourse does not symbolize
consummation but constitutes it. The special significance of that act is not
that it seals a deal by the first exercise of a right. Rather, the first act of
marital intercourse completes the spouses' contribution to the *coming-
to-be* of their two-in-one-flesh covenantal union.

Although the couple's mutual consent is their volitional self-giving
that initiates marital communion, that consent, as John Paul II teaches,
signifies the reality that fully comes into being only through consummation.
Consent, he explains, is of itself

merely the sign of the coming into being of marriage. And the coming into being
of marriage is distinguished from its consummation to the extent that
without this consummation the marriage is not yet constituted in its full
reality. The fact that a marriage is juridically contracted but not consummated
(*ratum—non consummatum*) corresponds to the fact that it has not been fully
constituted as a marriage. Indeed the very words "I take you as my wife—my
husband" refer not only to a determinate reality, but they can be fulfilled only by
means of conjugal intercourse. This reality (conjugal intercourse) has moreover
been determined from the very beginning by institution of the Creator: "Therefore

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[73] HC 484.   [74] HC 483.
[75] HC 484.

a man leaves his father and his mother and cleaves to his wife, and they become one flesh" (cf. Gn 2:24).[76]

The quotation from Genesis grounds Jesus' statement that attempted remarriage after divorce is adulterous. Plainly, then, he was referring to attempts to remarry after the two become one flesh: until the spouses consummate their marriage through that first act of marital intercourse, they have not yet been joined by God in such a way that nothing but death can separate them. Thus, the Church's practice of treating unconsummated marriages as dissoluble is consistent with Jesus' teaching.

Overlooking that significance of the first act of conjugal intercourse, HC regard consummation not as the coming-to-be of the marital union but as the perfection of the marital relationship. If, however, as HC assume, that relationship is similar to friendship, its perfection is elusive. Friendships wax and wane, and are never perfect. On HC's view, then, even spouses themselves would never know that their marriage was consummated.[77]

Marriage—Covenantal or Merely Contractual?

Vatican II's statement—"The covenant, or irrevocable personal consent, of marriage sets up an intimate sharing of married life and love as instituted by the creator"[78]—encapsulates the truth that consent to marriage as God designed it is covenantal consent, and that a bride and groom who consummate their covenant by becoming one in marital intercourse are united indissolubly by God. The indissoluble bond of marriage is nothing but that covenantal union. Not a mere legal notion, the bond *is* the couple, considered as no longer two but one.

Yet HC treat the bond of marriage as ontologically similar to bonds created by activities like sharing dinner together, insist that it is "nothing more nor less than a human relationship,"[79] and assume that it "inheres in the human persons who make up the relationship."[80] Invoking "traditional Scholastic philosophy" to support their view, they interpret *relation* as an accident in the Aristotelian sense, and conclude: "So, when the Church speaks of the reality of the marriage bond it must mean the reality of a

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[76] General Audience (January 5, 1983) no. 2, *Insegnamenti di Giovanni Paolo II*, vol. 6, part 1 (Vatican City: Libreria Editrice Vaticana, 1983) 42; *L'Osservatore Romano*, Engl. ed., January 3–10, 1983, p. 7.

[77] Thus one might say: When spouses stay together until death, their marriage was consummated; when they permanently separate, their marriage was never consummated.

[78] Tanner 2:1100.   [79] HC 485–86.

[80] HC 485.

man and woman who have given an entire orientation to their lives by pledging that they will live together as husband and wife."[81]

Unfortunately, Scholastic philosophy based on Aristotle's logic and metaphysics had no room for covenantal union. To reduce the covenantal bond between Christ and his Church to the distinct accidents of relation inhering in each of them would be to defend dissolubility at the cost of denying the reality of that union. To make a similar reduction of the covenantal bond between spouses is to deny the reality of marriage.[82] Moreover, this defense of dissolubility presupposes a misconception of divine and human persons as Aristotelian individual substances, whose separateness cannot be transcended even by unions of love brought about by God.

If marriage were merely a contract, HC's rejection of indissolubility would make sense, for, as Häring notes, people understand that a contract can "be revoked by mutual consent."[83] But Catholic couples "contracting" marriage always understood that only death could terminate it. Whether or not they used the word "covenant" or enjoyed a romantic relationship, their understanding of marriage was truly covenantal.[84]

In sum, for HC, marriage differs from other human relationships: it is an intimate partnership of life and meant to be permanent. But HC regard the moral bond as essentially the same in marriage as in friendship. From the moral point of view, therefore, marriages come to be and pass away as friendships do. Thus, marital relationships can totally break down and, when they do, there remains only a dissoluble residue. For that notion of marriage, HC claim to find support in Vatican II's teaching. In fact, however, in treating marriage as a covenant, the council restates in scriptural language and significantly develops the traditional teaching that the marital union is brought about not only by the spouses but also by God, and is therefore indissoluble. But in HC's account of the marital "covenant,"

[81] HC 485; HC's argument relies on and quotes from Michael Lawler, "Blessed Are Spouses Who Love, For Their Marriages Will be Permanent: A Theology of the Bonds in Marriage," *Jurist* 55 (1995) 218–42, at 221.

[82] John Paul II writes: "*Marriage 'is' indissoluble:* this property expresses a dimension of its objective being, it is not a mere subjective fact. Consequently, the good of indissolubility is the good of marriage itself; and the lack of understanding of its indissoluble character constitutes the lack of understanding of the essence of marriage" (*Address to the Roman Rota* January 28, 2002 no. 4, emphasis original, http://www.vatican.va/holy_father/john_paul_ii/speeches/2002/january/documents/hf_jp-ii_spe_20020128_roman-rota_en.html, accessed December 18, 2010).

[83] See above, n. 53.

[84] "While canonists and theologians were discussing marriage in terms of contract, Christian people were getting married in a covenant liturgy, in which they exchanged their vows, expressed their love, and took each other for better or for worse until death should separate them" (Palmer, "Christian Marriage" 639).

romantic love replaces Vatican II's "irrevocable personal consent." Reducing consent to commitment, ignoring the significance of consummation, and disregarding God's role in the genesis of covenantal union, HC logically but fallaciously argue for the dissolubility even of *ratum et consummatum* marriages.

PAULINE DOCTRINE ON INDISSOLUBILITY

St. Paul knows and hands on Jesus' teaching about divorce: "To the married I give charge, not I but the Lord, that the wife should not separate from her husband (but if she does, let her remain single or else be reconciled to her husband)—and that the husband should not divorce his wife" (1 Cor 7:10–11). Right after reporting this teaching, Paul offers his own advice, not the Lord's: Christians should not divorce unbelieving spouses who are willing to live with them, and those unbelieving spouses are consecrated by the marriage (see 1 Cor 7:12–14). Paul adds: "But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace" (1 Cor 7:15).

Does Paul Depart from Evangelical Doctrine?

HC deny that Paul's advice to Christians married to nonbelievers depends on a difference between those marriages and the marriages of Christian couples. They also deny that Paul's advice provides "a basis for the Church's different treatment of sacramental and nonsacramental marriages." They say: "For Paul the marriage before conversion is as lasting as the marriage after conversion as long as the partners have the right disposition." HC claim: "It is not the marriage that changed but the partners. The so-called Pauline Privilege whereby a distinction is made regarding nonsacramental marriages is a decision by the later Church not the Apostle to the Gentiles."[85] They point out that various popes in modern times, beginning with Paul III in 1537, approved divorce and remarriage in situations that differed from the one the apostle Paul dealt with. They assert: "It is evident that Catholic teaching on indissolubility has been adapted to permit papal dissolutions of any marriage that is not sacramental."[86]

HC also adopt a Scripture scholar's view: "Paul's theological basis for approving the exception to the teaching of Jesus is rooted in 'his understanding of the total Christ event. He allows for divorce (and presumably remarriage) in those situations where disharmony and absence of faith destroy that union where sanctification is to occur.'"[87] This view implies

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[85] HC 469.   [86] HC 476; also see 474–77, esp. 475 n. 70.
[87] HC 469 n. 51; internal quotation from John Donahue, "Divorce—New Testament Perspectives," in *Marriage Studies: Reflections in Canon Law and Theology*,

that Paul's justification for saying the believing spouse is not bound is that a marriage has so "completely broken down" that it cannot contribute to the couple's sanctification. HC suggest that the same reason could justify the Church's treating other marriages in the same way: "Perhaps the Pauline Privilege is not the narrow exception addressing only that of a Christian conversion following a prebaptism marriage but the situation of a marriage that cannot witness to the fruits of life in Christ. Thus, a marriage in which one partner is truly abusive, and where there is no reasonable hope for change, permits the abused partner to divorce in order to experience Christ's gifts of peace and freedom."[88]

HC's interpretation of Paul's teaching on marriage and divorce is not plausible. They virtually ignore the first part—which he has from the Lord and hands on to all the Corinthian faithful—which makes it clear that remarriage is excluded. They then interpret the second part of Paul's teaching without reference to the first. The second part, however, is either consistent with the first part or not. Paul hardly intended to give advice inconsistent with the Lord's teaching that he had just conveyed. Moreover, it would have been pointless for Paul to convey what he received from the Lord, if he intended to give personal advice inconsistent with it and applicable to everyone. Indeed, if Paul could have said "the brother or sister is not bound" to everyone whose marriage is "completely broken down," then he, being compassionate and creative, would himself have given that advice to all such Corinthians. But he did not.

Pace HC, therefore, Paul's personal advice was based on some difference he perceived between the marriages of Christian couples and marriages involving a nonbelieving spouse, and the proposal to generalize that advice is unacceptable.

Are All Marriages from God?

Still, a puzzle remains: Jesus taught that marriage is indissoluble; Paul received and handed on that teaching; yet Paul regarded certain marriages involving a Christian and a nonbeliever as dissoluble. Moreover, the Catholic Church has received and handed on Jesus' teaching, and popes have applied Paul's advice to various sorts of marriages involving nonbelievers that did not meet the conditions Paul specified. Since those popes did not mean to go against Jesus' teaching, they, like Paul, plainly thought that the

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3 vols., ed. Thomas P. Doyle (Washington: Canon Law Society of America, 1982) 2:1–19, at 14.

[88] HC 469 n. 51. HC are mistaken in claiming that some marriages regarded by the Church as indissoluble simply "cannot witness to the fruits of life in Christ." Even if one spouse is abusive and unfaithful, the other's lifelong fidelity can bear witness to Christ's unconditional fidelity to his sinful people.

marriages whose dissolution they accepted differed essentially from the marriage Jesus had in mind when he said that attempting divorce and remarriage ends in adultery.

Many theologians have tried to solve the puzzle by distinguishing between intrinsic and extrinsic indissolubility. "Intrinsic indissolubility" means that the spouses cannot dissolve their marriage, and "extrinsic indissolubility" means that only death can dissolve it. Theologians using this language have said that all marriages are intrinsically indissoluble, but only *ratum et consummatum* marriages are extrinsically indissoluble, and they have generally taken *ratum* to mean validly constituted between a baptized couple, and therefore sacramental.[89]

Jesus, however, made it clear—and the Church has taught and still teaches—that marriage was indissoluble as God instituted it in creating man and woman. Their covenantal marital union was to be brought about not only by their mutual self-giving but by God himself. For that reason, marriage was sacred—and, in a sense, was a sacrament—from the beginning.[90] However, marriage became a sacrament of the new covenant only when Jesus restored its original indissolubility. Therefore the sacramentality of the marriage of a baptized couple cannot ground its absolute indissolubility. Rather, that sacramentality presupposes the indissolubility and natural sacramentality a marital union has inasmuch as it is from God. Precisely because of the indissolubility and natural sacramentality of marriage as it was in the beginning, that covenantal marriage was suited to be transformed by Jesus into a sacrament of the new covenant, a sign and channel of his saving love and grace.[91]

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[89] The 1983 *Code of Canon Law* (c. 1061 §1) apparently takes that view for granted. To say that only *ratum et consummatum* marriages are indissoluble, however, need not mean that only sacramental marriages are indissoluble. *Ratum* could be used to characterize any covenantal marriage, whether sacramental or not. While the word is often used as a synonym for "sacramental," *ratum* actually means "*reckoned, calculated, fixed by calculation*; hence, *fixed, settled, established, firm, unalterable, sure, certain, valid*" (Charlton T. Lewis and Charles Short, *A Latin Dictionary founded on Andrews' edition of Freund's Latin Dictionary* [Oxford: Clarendon, 1879] 1566). Hereafter we call this work "Lewis and Short."

[90] Leo XIII, in his encyclical *Arcanum* (February 10, 1880), affirmed that marriage as God instituted it is of itself a sort of foreshadowing of the incarnation (the marriage of the divine with the human); Leo said that Innocent III and Honorius III rightly held that a "sacrament" of marriage always existed even among nonbelievers (*ASS* 12 [1879] 392).

[91] After reaffirming that indissolubility is an essential property of marriage, John Paul II teaches: "It is the natural dimension of the union and, more concretely, the nature of man created by God himself that provides the indispensable key for interpreting the essential properties of marriage." He at once goes on: "The further reinforcement that the properties obtain in Christian marriage by virtue of the sacrament (cf. can. 1056) *is based on a foundation of natural law* that, if removed,

Palmer suggests that the solution to the puzzle posed by Paul's advice is that neither Paul nor the early church in general regarded as *from God* marital unions that significantly deviated from God's plan. If remarriage was allowed by Paul and the early church, Palmer concludes, "it follows that the Church did not regard either pagan or Jewish marriage as so much from God that it could not be dissolved."[92]

Palmer finds support for this solution in Ambrose of Milan, "the first, to my knowledge, to direct himself explicitly to our question, whether all marriages are from God." Ambrose writes:

Some believe that every marriage is from God, especially since it has been written "What God has joined together, let no man put asunder." Therefore, if every marriage is from God, no marriage may be dissolved. And yet how could the Apostle have said: "But if the unbeliever departs, let him depart"? In this he clearly expresses his unwillingness that there should be grounds for divorce among Christians, and at the same time shows that not every marriage is from God.[93]

Ambrose's statement is mentioned by HC: "Ambrose of Milan used the expression 'it is not permitted to dissolve any marriage' if the marriage was 'of God.' But he concluded that marriage to a non-Christian was not of God, and therefore could be dissolved. It was his interpretation of the Pauline exception of 1 Corinthians 7."[94]

Misunderstanding covenantal marriage, however, HC fail to notice that Ambrose solved the problem posed by Paul's advice. For them, Ambrose's statement is an example of Church Fathers' speaking about divorce in "moral terms," not in the "language of 'indissolubility.'"[95] But Ambrose is not speaking about divorce only in moral terms. To make it clear that the marriages of Christians cannot be dissolved, Ambrose recalls "what the Lord said," namely, that divorce and attempted remarriage result in adultery. From that fact, which implies the impossibility of dissolving a marriage, Ambrose concludes that it is morally

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would make incomprehensible the very work of salvation and elevation of the conjugal reality that Christ effected once and for all" (Address to the Roman Rota [January 28, 2002] no. 3). John Paul's "further reinforcement" need not mean that only the marriages of the baptized are extrinsically indissoluble. Rather, it can mean that, in marrying sacramentally, Christians not only enter into a one-flesh union that is absolutely indissoluble, inasmuch as it is brought about by God, but that they are also enabled by Christ's grace to enjoy the blessings God intended for married couples and to bear witness by their fidelity to his fidelity toward humankind.

[92] Palmer, "Christian Marriage" 652.

[93] Quoted in ibid. with reference to "*De instructione virginum* 8, 2." However, the quotation accurately translates Ambrose, *Expositio Evangelii secundum Lucam* 8, 2, in *Sancti Ambrosii Mediolanensis Opera,* pars 4, *CCSL* 14 (Turnholti: Brepols, 1957) 299.

[94] HC 457 n. 11.   [95] Ibid.

wrong to attempt to do so: although allowed by human law, divorce is excluded by the "law of the Lord," which concerns "what God has joined."[96]

A contemporary Scripture scholar offers a similar interpretation of the New Testament texts: "The heart of this teaching has to do with those God joins together, not just any sort of human coupling or official or legal marriage act."[97] "There are plenty of examples ancient and modern in which men and women get themselves legally married without the blessing or guidance of God. Jesus is not talking about secular marriages or pagan marriages or even marriages between badly misguided and troubled believers. He is speaking quite specifically about marriage in which 'God has joined together' people."[98]

This solution to the puzzle posed by Paul's limited acceptance of divorce also explains how hardness of heart accounted for Moses' provision for divorce (see Mt 19:8). While that provision may have been intended to mitigate the evil of already-existing divorce practices, the hardness of heart that led to divorce primarily led to more fundamental evils—sinful social structures that made it virtually impossible for people to see covenantal marriage as an important dimension of a rich and satisfying life for themselves and others. The practice in most societies has been to marry by means of a secular contract or a covenant guaranteed by false gods, with the result that, though valid according to societal norms, those marriages have not been covenantal unions guaranteed by God. Thus, when fallen human beings married, they were hardly likely to undertake covenantal marriage.[99] Even in ancient Israel, the hardness of heart common to fallen human beings prevented most people from understanding and undertaking marriage as it was "in the beginning," so that divorce could be permitted even among God's chosen people.

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[96] Ambrose, *Expositio Evangelii secundum Lucam* 8, 4–5; ed. cit. 299–300. For this passage in Ambrose, HC (457 n. 11) refer to Mackin, *Divorce and Remarriage* 157–61. Also see Crouzel, *L'Église primitive* 260–63.

[97] Ben Witherington III, *Matthew* (Macon, Ga.: Smyth & Helwys, 2006) 359.

[98] Ibid. 363. Witherington elsewhere says: "If in fact a couple so joined together do divorce, they must not remarry anyone else because to do so would be adultery." He explains the significance of that teaching: "While Jesus recognizes the reality of divorce, he does not think this legitimizes remarriage if the original couple were joined together by God in the first place" (*The Gospel of Mark: A Socio-Rhetorical Commentary* [Grand Rapids: Eerdmans, 2001] 277).

[99] People clearly do not do so when, for example, a woman is given in marriage against her will, a man marries one woman while planning to have a sexual relationship with another, or someone undertakes marriage with the intention of terminating it if ever he or she judges that it has completely broken down.

This explanation of Paul's limited acceptance of divorce also accounts for the papal extensions of that acceptance to other marriages that were not covenants guaranteed by the true God.[100]

Paul Authentically Developed Evangelical Doctrine

Paul clearly understands the difference between covenantal marriage and secular marriage. The word of the Lord that he offers married Christians in general concerns covenantal marriage. His own advice to Christians with nonbelieving spouses concerns secular marriage that began before either spouse was a Christian. Such a marriage very likely involved attitudes and practices at odds with Christian morality. When one spouse became a Christian, he or she, learning about covenantal marriage and Christian conjugal morality, had a problem, which Paul addresses. He says the Christian whose nonbelieving spouse "consents to live with" him or her "should not divorce. . . . For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband" (1 Cor 7:12–14). Such a couple's marriage does not only, as HC suppose, survive rather than break down. Their marriage, which previously was not a covenantal union guaranteed by God, is now transformed by the believing spouse's new understanding of marriage and way of living married life along with the nonbelieving spouse's willingness to carry on married and family life on terms that a faithful Christian can live with. Thus, the nonbelieving spouse is "consecrated" by sharing in married life shaped by the Christian spouse's faith and life in Christ.

What if the unbelieving partner refuses to remain in the marital relationship on terms that a faithful Christian can live with? Paul advises: "If the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace" (1 Cor

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[100] For a summary of papal approval of dissolutions that did not meet the conditions articulated by Paul, see John T. Noonan Jr., *A Church That Can and Cannot Change: The Development of Catholic Moral Teaching* (Notre Dame, Ind.; University of Notre Dame, 2005) 161–77. Still, it is possible and, we think, likely that, both in ancient times and today, some of the holy men and women among God's original chosen people have understood his plan for marriage, as Jesus did, and formed covenantal unions that were indissoluble. John J. Collins describes conditions in Israel between 535 BC and 70 AD that made it unlikely that couples would form indissoluble unions (see "Marriage, Divorce, and Family in Second Temple Judaism," in *Families in Ancient Israel,* ed. Leo G. Perdue et al. [Louisville: Westminster John Knox, 1997] 104–62, at 107–22). But Collins also indicates that some people transcended those conditions (see 122–30 and 147–49). If a pope approved the dissolution of a covenantal marriage because it was not sacramental, we would consider that a mistake, but the possibility of such a mistake does not argue against the account we have provided. Of course, like any theological hypothesis, ours will provoke further questions, which cannot be addressed here.

7:15). By refusing to cooperate in a marriage compatible with Christian faith and life, the unbeliever prevents the defective marriage from being transformed. The Christian may accept the nonbeliever's departure, for such a marriage does not enslave Christians, and they must live in accord with their faith to find the peace to which God calls them.

EVANGELICAL DOCTRINE ON INDISSOLUBILITY

Jesus teaches that divorce and remarriage end in adultery (see Mt 5:32, 19:9; Mk 10:11–12; Lk 16:18). If divorce dissolved marriage, remarriage would not be adulterous. Jesus therefore must have meant that the divorced who try to remarry do not succeed, because marriage is indissoluble. HC acknowledge that there is a "broad consensus among Catholic biblical scholars" that "Jesus opposed divorce and considered remarriage to be adultery,"[101] but deny that Jesus was "making a metaphysical pronouncement about the nature of the marriage bond."[102] After considering HC's interpretation of Jesus' teaching, we will argue that his divorce saying can only reasonably be read as a statement about the nature of the marriage bond, and that the relevant Scripture passages must be interpreted as consistent with one another.

HC's Account of Jesus' Teaching on "Remarriage"

HC say that Matthew's *porneia* phrases present "some kind of exception to the absolute prohibition of Jesus," and that, while Jesus opposed divorce, Paul permitted it when a Christian's marriage with a nonbeliever was "an obstacle to peace and sanctification."[103] HC maintain that since "there is no teaching of Jesus apart from the Church, . . . [one cannot assume] 'that what scholarly research points to as Jesus' own utterance is necessarily any more determinative for the church'" than Matthew's and Paul's seeming exceptions.[104] Without explicitly saying that Jesus' teaching was contradicted, HC do say that the "variety of sayings" shows that the early Christian communities believed "'that the authority of the Spirit permitted them to modify and to apply these sayings of the Lord.' The teaching of Jesus is not the same as the teaching of the early Church."[105]

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[101] HC 466.   [102] HC 468.
[103] HC 465–66.
[104] HC 469; internal quotation from George MacRae, "New Testament Perspectives on Marriage and Divorce," in *Divorce and Remarriage in the Catholic Church,* ed. Lawrence Wrenn (New York: Paulist, 1973) 1–15, at 11.
[105] HC 470; internal quotation from Mary Rose D'Angelo, "Remarriage and the Divorce Sayings Attributed to Jesus," in *Divorce and Remarriage: Religious and Psychological Perspectives*, ed. William Roberts (Kansas City: Sheed & Ward, 1990) 78–106, at 79.

HC emphasize that Jesus' sayings about divorce are "not to be taken out of context and read as legal norms or even as moral maxims,"[106] because they occur when he "is teaching his disciples the meaning of the kingdom."[107] They note: "Jesus is portrayed in Matthew 5 as teaching a radicalized Torah such that a lustful look is described as adultery (5:27–28), and Mark's version is situated between the teaching on self-mutilation rather than scandal and the command to forsake riches, power, and prestige in order to follow Jesus."[108] So the divorce sayings are to be read as prophetic, radical statements—"symbolic ways of affirming that the demands of the kingdom touch the most intimate aspects of human life"[109]—and to take them out of context is "to make one illustration of the radicality of the reign of God uniquely normative."[110]

Still, HC think Jesus' saying that divorce ends in adultery has normative force. The gospel calls believers "to live differently because of God's future drawn near." In Jesus' time, some "had become too accommodating to divorce. Jesus clearly opposed this development." With the kingdom's coming, creation was to be restored to its original goodness, and "divorce was not part of the original intent of God for creation."[111] So HC think it is likely that "the historical Jesus taught that divorce was against God's will and that people ought not engage in the practice." On that basis, they conclude: "This is the meaning of the Lord's teaching: divorce is wrong and *ought* not occur, not divorce is wrong and *cannot* occur."[112]

Jesus' Teaching about Divorce and Adultery

HC's argument sometimes suggests that in saying remarriage after divorce ends in adultery, Jesus was using a figure of speech, as he did in recommending self-mutilation to avoid sin. However, his radical sayings on loving enemies, not judging others, and forgiving endlessly are usually read as moral guidance, and HC themselves reformulate Jesus' teaching about divorce and remarriage as a moral norm. In fact, "let not man put asunder" is normative and, in the context of Jesus' argument, implies moral norms against divorce and remarriage. HC might grant that point but insist that Jesus' saying that remarriage after divorce ends in adultery is only a figure of speech.

However, in Matthew, Jesus formally asserts—"And I say to you"—that divorce ends in adultery precisely to explain why divorce should be unlawful. It would have been fallacious and misleading for him to ground that

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[106] HC 466.   [107] Ibid., quoting Donahue, "Divorce" 5.
[108] HC 466.
[109] HC 467, quoting Donahue, "Divorce" 5.
[110] HC 467.   [111] Ibid.
[112] HC 468.

norm in an apparently serious claim if that claim were only a figure of speech. Moreover, even if it were reasonable to suppose that Jesus thought that human beings could dissolve what God had joined, it would hardly be reasonable to suppose that Jesus failed to realize that his argument was fallacious and that his saying would be misunderstood. And he surely did not intentionally offer a fallacious argument and mislead his disciples in a grave matter.[113]

HC are likely to object that one cannot confidently attribute to Jesus himself the words about adultery that absolutely exclude marital dissolution. For HC assert: "It is impossible to reconstruct the exact words of Jesus, though scholars affirm that Jesus opposed divorce and considered remarriage to be adultery."[114] However, Meier first accepts "the consensus of scholars that the historical Jesus, in some way or other, in some formulation or other, prohibited divorce (and remarriage)" and later says that "the total prohibition of divorce and remarriage taught by the historical Jesus has no clear parallel at Qumran."[115] Fitzmyer also identifies two sayings about divorce "that may plausibly be regarded as traceable to Jesus himself"; and one of them is: "'Everyone who divorces his wife and marries another commits adultery, and he who marries a divorced woman commits adultery.'"[116]

Matthew's "*Porneia*" Phrases

According to Jesus' teaching, when two conditions are fulfilled— (1) spouses joined by God are "divorced," and (2) one of them attempts remarriage—those in the new "marriage" commit adultery. However,

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[113] HC might insist that Jesus' teaching on divorce, as the Synoptic Gospels represent it, should not be taken literally because it was influenced by a radical-eschatological movement. John P. Meier, however, reports that exegetes have been abandoning that view. After recounting that older commentaries supposed that Jesus' teaching on divorce sided "with the stricter House of Shammai against the more permissive House of Hillel," and that more recent work supposed that Jesus' teaching reflected "the radical-eschatological interpretation of Torah seen in the Qumran scrolls," Meier reports that both hypotheses have been undercut by additional evidence. He concludes: "With Qumran and the Mishna out of the picture, Jesus' prohibition of divorce seems to come out of nowhere in Judaism and to go nowhere in Judaism" ("The Historical Jesus and the Historical Law: Some Problems within the Problem," *Catholic Biblical Quarterly* 65 [2003] 52–79, at 69–70 and 79).

[114] HC 466.

[115] Meier, "Historical Jesus" 69 n. 38, and 75.

[116] Fitzmyer, "Matthean Divorce Texts" 223. HC mention (466 n. 40) Fitzmyer and two other exegetes: "J. Fitzmyer and G. MacRae believe the Lukan text to be closest to the actual words of Jesus while R. Collins argues for Matthew 5:32, minus the exceptive clause as closer to the original statement." Attending to differences among the exegetes, however, HC overlook the fact that what the exegetes agree about—Jesus said that remarriage after divorce ends in adultery—falsifies the claim that Jesus only considered divorce wrong.

Matthew's accounts of that teaching seem to make an exception on the ground of unchastity (*porneia*).[117] If the phrase made a true exception, it would refer to cases in which both conditions were fulfilled, yet intercourse in the second marriage was not adultery. However, interpreted in either of two ways, the phrase does not make a true exception. One is that *porneia* refers to adultery violating a true marriage; but the phrase allows only for separation, not attempted remarriage. On that interpretation, the second condition is not met. The other way is that *porneia* refers to sexual activity within a "marriage" that never was a true marriage. On that interpretation, the first condition is not met.

Unless the *porneia* phrases make a true exception, they do not modify Jesus' teaching that remarriage after attempted divorce results in adultery, and many respected exegetes deny that the *porneia* phrases do make a true exception. In parallel passages, Jesus' statement is unqualified (see Mk 10:2–12; Lk 16:18). In Matthew, Jesus' stunned disciples' response—"If such is the case of a man with his wife, it is not expedient to marry" (19:10)—shows that they took his statement to be unqualified.[118] Some exegetes hold that the *porneia* phrases allow only for separation rather than remarriage.[119] Others hold that the phrases mean that the original "marriage" was something other than covenantal marriage as God created it.[120]

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[117] The passages are: "But I say to you that every one who divorces his wife, except on the ground of unchastity [*porneia*], makes her an adulteress" (Mt 5:32); "and I say to you: whoever divorces his wife, except for unchastity [*porneia*], and marries another, commits adultery" (Mt 19:9).

[118] Often made by others, this point is sometimes made by Scripture scholars: "That Mt understands the prohibition to be absolute is clear from the disciples' astonishment. If Jesus had simply championed the position of Shammai over that of Hillel, there would hardly be cause for such a shocked exclamation that the unmarried state is preferable" (John P. Meier, *Matthew* [Wilmington, Del.: Michael Glazier, 1980] 216).

[119] Collins noted (in 1992) that some contemporary exegetes have "vigorously proposed" this view (*Divorce in the New Testament* 199–200). HC, however, dismiss it as "eisegesis" (470 n. 53). But Luz, an able Protestant scholar who agrees with HC that marriage is dissoluble, argued (in 2001) for that view and concluded: "The exegesis shows that in all probability (one cannot say more than that) the Catholic practice of refusing divorce while allowing the partners to have separate living arrangements comes the closest to Matthew's intention" (*Matthew 8–20* 494; see 492–94).

[120] Fitzmyer observes that interpreting *porneia* as adultery "is open to the obvious objection that if Matthew had meant that, he would have written *moicheia*, a word that he otherwise knows and uses" ("Matthean Divorce Texts" 209). He affirms: "There is clear first-century Palestinian support for an interpretation of *porneia* in Mt 5:32 and 19:9 in the specific sense of *zĕnût* as an illicit marital union between persons of close kinship" (221). See also Aloysius M. Ambrozic, "Indissolubility of Marriage in the New Testament: Law or Ideal?" *Studia canonica* 6 (1972) 269–88.

If Matthew were making a true exception—that is, saying that some cove-nantal marriages are dissoluble—he would not be developing Jesus' teach-ing but would be disproving Jesus' argument that, precisely because marriage is covenantal, divorcing and "remarrying" will end in adultery.[121]

Still, HC's view does not depend on "except for unchastity" making a true exception; indeed, they hardly seem interested in showing it does. They deny, as we have seen, that Jesus taught that divorce is impossible. They therefore say that, "however *porneia* is understood," any adaptation by Matthew was simply intended to show "how disciples might be faithful within circumstances not included in the Messiah's description of God's reign."[122]

However, to maintain, as HC do, that the Spirit authorized the scriptural authors to modify substantially Jesus' teachings on divorce and remarriage is to hold that the Spirit helps Jesus' disciples not only appropriate and develop what God revealed in and through Jesus, but also make real excep-tions to the absolute indissolubility he taught, and thus contradict his teach-ing. As HC themselves point out, "The adaptations [i.e., assertions] of Paul and Matthew are inspired teaching, just as are the words of Jesus."[123] Therefore, if Matthew and Paul contradict Jesus, the Holy Spirit contra-dicts both himself and Jesus.

HC warn against reading "later categories into the language and teaching of the Lord." They state that "the two conditions that make marriage indissoluble in the mind of the Church, that it be both sacramental and consummated, are never mentioned anywhere by Jesus or the New Testa-ment authors." They claim that unless Jesus meant that "no divorce is

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[121] Reaching essentially the same conclusion, Witherington, commenting on both Matthew passages (and on Mark 10 and 1 Cor 7), affirms: "Jesus' basic view was no divorce." Like many other exegetes, Witherington holds that *porneia* prob-ably refers to an irregular "marriage" (one the Catholic Church would regard as null). He concludes that "its dissolution doesn't amount to a violation of a marriage relationship honored by God. In addition, Jesus seems to be saying that when God has joined two people together and the husband divorces his wife, God still sees them as married, hence the strong language about the remarried wife being forced to commit adultery" (*Matthew* 134).

[122] HC 469. As we have seen, Scripture scholars—many, including some cited by HC—are interested in determining what "except for unchastity" means. First on HC's list of scholars who comprise "a broad consensus . . . when discussing the five New Testament texts dealing with Jesus' attitude toward divorce" (HC 465) is Raymond F. Collins, who points out that many contemporary exegetes argue that *porneia* "connotes marriage within forbidden degrees of relationship" (*Divorce in the New Testament* [Collegeville, Minn.: Liturgical, 1992] 202). However, despite the many reasons he adduces for concluding otherwise (202–3), Collins holds that "*porneia*" means adultery (211–13). But see Luz (above, n. 119) and Fitzmyer (above, n. 120).

[123] HC 469–70.

possible once the couple has been baptized, given consent according to the proper canonical form, and engaged subsequently in sexual intercourse," then "present Catholic teaching is not in accord with Jesus' prohibition of divorce."[124]

The Church's developed teaching on marriage was not, of course, explicitly anticipated in the revelation to which the New Testament bears witness. Jesus never spoke of consummated, sacramental marriage; he spoke of the one-flesh communion of spouses who, in cleaving to each other, were joined together by God. By defending and applying that and other scriptural starting points, the Church developed its teaching on marriage. Such authentic development requires only that what was explicitly denied in the original articulation of the revelation is still denied but better understood, and that what was then explicitly affirmed is still affirmed but better understood. Such is the case in the Church's development of Jesus' teaching about marriage, for the Church still denies that divorce dissolves the oneness brought about by God and still affirms that attempted remarriage after divorce constitutes an adulterous relationship. The development concerns questions about what exactly counts as being married and as attempting remarriage.

INDISSOLUBILITY OF MARRIAGE: A DEFINITIVE DOCTRINE

The main reason for believing that covenantal marriages cannot be dissolved except by death is Jesus' statement that those who divorce and remarry commit adultery. The Synoptic authors agree that Jesus held that position, and the historical accuracy of their accounts is accepted by recent exegesis.[125] The Church's practices of dissolving some unconsummated[126] marriages and approving the dissolution of some noncovenantal[127] marriages is consistent with Jesus' teaching, and Matthew's *porneia* phrases cannot reasonably be regarded as introducing an exception to it.[128] So, to hold that it is possible for a *ratum et consummatum* marriage to be dissolved by anything but death is to imply that Jesus' teaching is untrue—that the Word of God misled us.

The preceding interpretation of the relevant scriptural passages is confirmed by tradition—the teaching of the Council of Trent and the teaching and practice of the Catholic Church since Trent—which manifests the Church's faith in the truth revealed by Jesus.

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[124] HC 468.   [125] See above, nn. 71, 115–16, 121.
[126] See the text accompanying nn. 73–77.
[127] See the text accompanying nn. 89–100.
[128] See the text accompanying nn. 117–24.

Trent's Definitive Teaching

Trent's Decree on the Sacrament of Matrimony (November 11, 1563) has two parts: a doctrinal preface and twelve canons. The preface reads:

Inspired by the holy Spirit, the forefather of the human race pronounced marriage to be a perpetual and indissoluble bond when he said: *This at last is bone of my bones, and flesh of my flesh. . . . Therefore a man will leave his father and mother and cleave to his wife, and the two will become one flesh.*

Christ our Lord taught more openly that two alone are to be coupled and joined by this bond when, referring to the words just quoted as spoken by God, he said, *So they are no longer two but one flesh,* and went on at once to confirm the lasting nature of the same bond, previously declared only by Adam, with the words, *What therefore God has joined together, let no one put asunder.*

Christ himself, the instituter and perfecter of the most holy sacraments, merited for us by his passion the grace that would perfect natural love, strengthen the unbreakable unity [*indissolubilem unitatem confirmaret*] and sanctify the spouses. This the apostle Paul indicated when he said, *Husbands love your wives, as Christ loved the church and gave himself up for her,* and went on to add, *This is a great mystery and I take it to mean Christ and the church.*

Since grace received through Christ raises marriage in the dispensation of the gospel above the unions of the old law, our holy fathers and councils and the universal tradition of the church have always taught that it is rightly to be counted among the sacraments of the new law. Against this teaching wicked and wild people of our time have not only thought basely about this revered sacrament but, as is their wont, smuggling in the license of the flesh on the pretext of the gospel, they have said and written a great deal that is foreign to the mind of the catholic church and to custom [*probata consuetudine*] from apostolic times, bringing great damage to the Christian faithful. Desiring to confront their rash opinions, the holy and universal council has decided to root out the more glaring errors and heresies of these schismatics, so that their noxious infection may not spread, and to decree against these heretics and their errors the anathemas that follow.[129]

Confronted with attempts to show from Scripture that bigamy and divorce can be morally acceptable and that Christian marriage is secular rather than sacred, Trent draws Catholic teachings about marriage from Scripture and tradition.

With compact precision, the council makes three points in the first two paragraphs. First, it interprets Adam's exclamation, "This at last is bone of my bones, and flesh of my flesh," as the assertion, inspired by the Holy Spirit, that marriage is a perpetual and indissoluble bond. Second, the council points out that after quoting what the Creator says ("Therefore a man will leave his father and mother and cleave to his wife, and the two will become

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[129] Tanner 2:753–54. An "approved custom from apostolic times" is an established practice that pertains to the apostolic tradition of God's revelation in Jesus.

one flesh"), Jesus teaches that marriage is monogamous when he asserts: "So they are no longer two but one flesh." Third, the council interprets the conclusion, "What therefore God has joined together, let no one put asunder," as Christ our Lord's reassertion of the bond's "lasting nature"—that is, of the indissolubility of the bond—which Adam alone previously asserted.

Trent goes on to teach that Christ merited the grace that, among other things, confirms the couple's indissoluble oneness. In teaching that Christ's grace *strengthens* indissoluble unity, the council does not imply that marriage's indissolubility depends on its sacramentality. Rather, because only something already existing can be strengthened, this teaching implies that grace enhances the indissoluble oneness that belongs to marriage as God instituted it. The truth about Christ's grace and its fruits, the council says, was suggested by Paul (see Eph 5:32, 35). The council next states that, because Christ's grace has raised marriage among Christians above marriage in the old covenant, "our holy fathers and councils and the universal tradition of the church have always taught that it is rightly to be counted among the sacraments of the new law."[130] Thus, while Trent draws the indissolubility of marriage directly from Scripture, the council affirms marriage's sacramentality as a conclusion traditionally drawn from the benefits for marriage of Christ's grace.

Finally, Trent explains that the canons that follow are meant to confront statements and writings "foreign to the mind of the catholic church" and to defend the Church's teaching, just summarized, against "the more glaring errors and heresies" of the time.[131] The canons, three of which are directly relevant to indissolubility, must therefore be understood in light of the prefatory teaching.

Canon one is: "If anyone says that marriage is not in a true and strict sense one of the seven sacraments of the gospel dispensation, instituted by Christ, but a human invention in the church, and that it does not confer grace: let him be anathema."[132] Without using the word *covenant,* this canon defines the truth that Christian marriage is more than a secular affair. Trent taught in the doctrinal preface that Christ's grace confirms marriage's indissolubility; by defining with canon one that marriage is a sacrament that confers grace, the council definitively excludes the notion that hardheartedness is so inevitable in fallen humankind that Jesus never really expected even Christians to live out the God-given indissolubility he affirmed.[133] Jesus not only taught what God intended marriage to be, but

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[130] Tanner 2:754. Trent does not deduce sacramentality from Ephesians, as careless readers might suppose.

[131] Ibid.   [132] Ibid.

[133] Some Catholics might concede that Jesus taught that remarriage after divorce ends in adultery, and that the Church has definitively taught the same, but hold that the teaching nevertheless is an impossible ideal because, they think,

by meriting grace for fallen men and women, and by making marriage a sacrament, he enabled every Christian spouse to overcome hardheartedness and remain faithful until death.

Canon five reads: "If anyone says that the marriage bond can be dissolved because of heresy, or irksome cohabitation, or because of the wilful desertion of one of the spouses, *anathema sit*."[134] This canon first appeared on August 7, 1563, only three months before Trent completed its Decree on Matrimony.[135] It originated from a suggestion on July 24 by the Cardinal of Lorraine that there be a canon condemning errors he attributed to Calvin: that a marriage may be brought to an end on account of disparity of cult, or disharmony of life, or long absence.[136] The very next day, the Archbishop of Sens proposed a formulation that began: "If anyone says that the willful absence of either spouse."[137] During the next two weeks, the proposal received the support of a very great number of the Fathers.[138] Canon five was therefore included in the new draft of the canons provided on August 7, and it appears, unchanged, in Trent's Decree on Matrimony.[139]

Although Trent did not define the general proposition that marriage is indissoluble, the council, in its doctrinal preface, did assert both that the

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fallen human beings cannot live by that hard word. Such Catholics would agree with HC that even in the case of *ratum et consummatum* marriages, the Church should accept remarriage after divorce. To defend that paradoxical position, these Catholics are likely to adopt a legalistic approach like that of Luz: "Unfortunately, in all probability Jesus also did not resist trying 'to regulate matters of the heart by means of laws,' but decisively established a fundamental principle" (Luz, *Matthew 8–20,* 494–95). If Catholics suppose that "the commandments of God are impossible of observance even by a person justified and established in grace" (Council of Trent, *Decree on Justification* c. 18; Tanner 2:680), then they will fail to recognize that even Jesus' hard words are good news that they really can live by. Resorting to legalism, they will rationalize setting aside difficult teachings, not only on divorce and remarriage, but also on masturbation, contraception, sodomy, abortion, and so on.

[134] Josef Neuner and Jacques Dupuis, *The Christian Faith in the Doctrinal Documents of the Catholic Church*, 7th ed., rev. Jacques Dupuis (hereafter Neuner-Dupuis) (New York: Alba House, 2001) no. 1812 (DS 1805).

[135] *Concilium Tridentinum: Diariorum, actorum, epistularum, tractatuum*, 13 vols., 2nd ed., ed. Societas Goerresiana (Freiburg im Breisgau: Herder, 1965) 9:682. Hereafter we call this work *Trent*.

[136] See *Trent* 9:642. Calvin approved of divorce only by public authority: "Calvin was as eager to safeguard against the prior canon law practice of private dissolutions as against the traditional canon law toleration of secret marriages" (John Witte Jr. and Robert M. Kingdon, *Sex, Marriage, and Family in John Calvin's Geneva,* vol. 1, *Courtship, Engagement, and Marriage* [Grand Rapids, Mich.: Eerdmans, 2005] 46; see 45–48).

[137] *Trent* 9:652.   [138] See *Trent* 9:682 n. 3.

[139] See *Trent* 9:682; Tanner 2:754.

Holy Spirit inspired Adam to declare marriage to be an indissoluble bond and that Jesus reaffirmed the bond's firmness that Adam had declared. Thus, the council drew the indissolubility of marriage from Scripture and taught, not explicitly but implicitly, that the general proposition that marriage is indissoluble is a truth revealed by God. By promptly defining the impossibility of dissolving marriages on the grounds attributed to Calvin, the Council Fathers manifested such great readiness to defend indissolubility that it is reasonable to suppose they would have defined the general proposition that marriage is indissoluble, had some Reformer denied it.

Less direct than canon five, canon seven defends the inerrancy of the Catholic Church's interpretation of Jesus' teaching in Matthew's Gospel against those who think the *porneia* phrases make a genuine exception:

If anyone says that the Church is in error for having taught and for still teaching that in accordance with the evangelical and apostolic doctrine, the marriage bond cannot be dissolved because of adultery on the part of one of the spouses, and that neither of the two, not even the innocent one who has given no cause for infidelity, can contract another marriage during the lifetime of the other; and that the husband who dismisses an adulterous wife and marries again and the wife who dismisses an adulterous husband and marries again are both guilty of adultery, *anathema sit*.[140]

In saying "for having taught and for still teaching that in accordance with the evangelical and apostolic doctrine," Trent refers to, among other things, its own reaffirmation, drawn from Scripture in the doctrinal preface, of marriage's indissolubility. By affirming that attempts at remarriage by either party end in adultery, the council makes it clear that the impossibility of dissolving marital unions brought about by God, even because of adultery, is independent both of fault and of gender.

The draft of canon seven under consideration on August 11, 1563, three months before Trent completed its decree on matrimony, would have directly defined the impossibility of dissolving marriages on the ground of adultery, as canon five does on other grounds, rather than defending the inerrancy of the Church's teaching, as the final canon seven does.[141] But Venice held eastern Mediterranean territories in which Greek Christians, among whom remarriage after divorcing an adulterous wife was accepted, were living under church prelates recognized by Rome. Venice's diplomatic agents said there was some hope of bringing those Christians closer to Rome, while anathematizing their position on divorce might well lead them to break entirely from the Holy See. The Venetians urged the council to adopt the indirect approach, for which they offered a draft text.[142]

First to address Venice's proposal that Trent say that the Church had not erred in its teaching was the Cardinal of Lorraine, who supported the

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[140] Neuner-Depuis no. 1814 (DS 1807).
[141] See *Trent* 9:682.   [142] See *Trent* 9:686.

proposal but suggested adding "*iuxta Scripturas*"—"in accordance with the Scriptures."[143] While wishing to meet the pastoral need the Venetians had pointed out, he plainly also wanted the definition to indicate that the canon's teaching on indissolubility is in accord with Scripture, and most of the Fathers who addressed his suggestion agreed with it.[144]

The next draft of the Decree (September 5, 1563) adopted Venice's indirect approach in canon seven and added "*iuxta evangelicam et apostolicam doctrinam*."[145] Also, for the first time, the new draft proposed what became the first three and one-half paragraphs of the Decree's doctrinal preface, in which the council draws from Scripture and tradition what the Church taught and teaches.[146] The Cardinal of Lorraine was again the first to speak on the new draft. He welcomed the doctrinal preface and, with respect to canon seven, suggested that "*matrimonium*" be replaced by "*matrimonii vinculum*" so that the canon would verbally address the indissolubility of the *bond* of marriage.[147] Most of the Council Fathers agreed, as the ultimate outcome makes clear.

From the preceding history, an important conclusion follows. Canon seven, like the other canons, defends the Church's teaching, summarized in the doctrinal preface, against one of the heresies of the time. However, unlike the other canons, canon seven is self-referential: It is an instance of

[143] See *Trent* 9:687. Between August 11 and 23, a group of Fathers, including the Cardinal of Lorraine, proposed a complete reformulation using the indirect approach (see *Trent* 9:742); in it, the Venetians' formulation "*non debere . . . contrahere*" was changed to "*non posse . . . contrahere,*" making it clear that remarriage after divorce is impossible to bring about, not only wrong to attempt.

[144] See *Trent* 9:687–743; summary of votes: *Trent* 9:742–43.

[145] See *Trent* 9:760. The drafters probably derived "*iuxta evangelicam et apostolicam doctrinam*" from a similar phrase, "*secundum evangelicam et apostolicam disciplinam,*" in what is now thought to be canon 8 of the eleventh Council of Carthage (June 13. 407) (see *Trent* 6:410, 9:649; and Crouzel, *L'Église primitive* 312–13). Both *secundum* and *iuxta* mean "in accordance with"; but *iuxta*'s primary sense of close proximity (see Lewis and Short, 1021) suggests close agreement between the Church's teaching and its scriptural sources. Likewise, both *disciplinam* and *doctrinam* mean "teaching," but the latter is less likely to be misunderstood as a mere custom or changeable rule of conduct (see Lewis and Short 587, 605). The September 5 draft omitted "*et docet*" ("and teaches"), which the Venetian proposal had included.

[146] See *Trent* 9:761; this initial draft of the doctrinal preface was offered, "if the Fathers approve it without dispute," to replace the brief introduction to the canons. The draft opened with "*Matrimonii perpetuum inviolabilemque nexum*," which in the final decree became "*Matrimonii perpetuum indissolubilemque nexum*."

[147] See *Trent* 9:779; the Cardinal of Lorraine also suggested that "*docuit*" again read "*docuit et docet.*" See also *Trent* 9:742, where he and others are reported as supporting "*matrimonii vinculum*," which had not been in the drafts of the canons until it appeared (August 7) in the new canon 5 (see above, nn. 134–39 and the accompanying text).

the very teaching that, in accordance with evangelical and apostolic doctrine, the canon itself definitively affirms to be inerrant.

HC and the ITC on Trent

HC summarize the Council of Trent's teaching:

The council asserted that Adam (in Genesis 2:23–24) pronounced marriage to be a perpetual and indissoluble bond (*nexum*). The council denied that a spouse could dissolve the bond of marriage 'on the grounds of heresy, irksome cohabitation, or continued absence,' or that it was dissolved by the adultery of one of the spouses (here great care was taken not to condemn the practice of the Eastern churches which permitted remarriage in cases of adultery).[148]

HC fail both to understand the significance of the Decree's doctrinal preface and to deal with the problems it poses for their project. Indeed, they here consider only the preface's first sentence. Their paraphrase of Adam's declaration, in that sentence, of the indissolubility of marriage omits that he was "inspired by the Holy Spirit."

In summarizing the canons, HC follow Tanner in two mistakes. They make "by a spouse" in canon five modify "dissolved" instead of "absence," thus making it seem, contrary to the canon's true meaning, that it is anathematizing only those who say that spouses themselves can dissolve their marriage.[149] The other mistake is that, in summarizing canon seven, they render "*propter adulterium*" as "by the adultery" rather than accurately as "on the ground of adultery," thus making the canon ambiguous, so that it could be read as anathematizing only those who think marriage is dissolved

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[148] HC 458. HC elsewhere assert that at Trent "the bishops stated 'that Christ's grace is available to make marriages indissolubly indissoluble' and by implication that marriages made indissoluble are sacraments" (HC 495–96; internal quotation from Theodore Mackin, "Ephesians 5:21–33 and Radical Indissolubility," in *Marriage Studies* 3:1–45, at 6). This assertion misinterprets the preface's teaching about how Christ's grace, marital indissolubility, and sacramentality are related.

[149] Translating canon 5 as Tanner and HC do is not precluded by the Latin text: "Si quis dixerit, propter haeresim, aut molestam cohabitationem, aut affectatam absentiam a coniuge dissolvi posse matrimonii vinculum: a.s." However, three considerations do preclude that translation. (1) It is at odds with the concern that gave rise to canon 5, namely, the errors of Calvin, who *safeguarded against* divorce by spouses themselves (see n. 136 above). (2) It is excluded by the history of canon 5's formulation. As explained above, the day after the Cardinal of Lorraine suggested a canon against Calvin's errors, the Archbishop of Sens proposed a formulation that included "affectatam utriusque coniugis absentiam" (*Trent* 9:652). With that understanding—not dissolution by a spouse but dissolution on the ground of desertion by a spouse—the proposal was readily adopted. (3) It leads to translating *affectatam* by "continued," though *affectatam* means "willful," not "continued" or anything like it.

by the very act of adultery.[150] With those two mistranslations, Trent's canons would allow marriages "completely broken down" to be dissolved, as HC propose.[151]

HC therefore do not even consider the obstacles to their proposal for revision presented by canon five of Trent's Decree on Matrimony. But they do try to remove the obstacle canon seven presents:

The International Theological Commission's (ITC) 1978 statement on marriage included an important caveat about the Council of Trent's declaration on marriage in canon seven. At Trent the bishops were focused on refuting the teaching of the Reformers, especially Luther, in his denial of the Church's authority over marriage. That was the proper subject of the teaching and the ITC accepts this narrow reading of Trent's aim. "It cannot be said then that the council had the intention of solemnly defining marriage's indissolubility as a truth of faith." Nor is there reason to believe that Trent saw the teaching as definitive doctrine.[152]

In the ITC's document, the passage HC quote is a conclusion drawn from this premise: "Because of historical doubts (opinions of Ambrosiaster, Catharinus, and Cajetan) and for some more-or-less ecumenical reasons, the Council limited itself to pronouncing an anathema against those who deny the Church's authority on this issue."[153]

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[150] Three considerations show that the correct translation of "*propter*" in canon 7 is not "by" but "on the ground of" (or "because of," as in the Neuner-Dupuis translation we use). (1) Tanner and HC themselves translate "*propter*" in canon 5 as "on the grounds of" (Tanner 2:754); translating *propter* as "by" in canon 5's "propter haeresim . . . a coniuge dissolvi posse" would have yielded in Tanner the absurd "can be dissolved by a spouse by heresy." (2) *Per fornicationem*, which can be read "by adultery," appeared in 1547 in an important document (see below n. 162), and the council could have used that ambiguous expression had it wished to leave the canon open to being read as "by adultery." (3) A draft canon with "*propter adulterium*" was delivered to the Council Fathers on July 20, 1563 (see *Trent* 9:640); in the ensuing debate the Bishop of Segovia on July 26 proposed an alternative with "non dissolvi . . . per fornicationem," which clearly meant "is not dissolved . . . by adultery" (see below, n. 155 and the accompanying text). That proposal was not well received; the next draft of canon 7 (August 7) still had *propter adulterium* (see *Trent* 9:682), as did the final version of November 11 (see *Trent* 9:967; Tanner 2:754).

[151] HC claim that the magisterial Church introduced, and so also can change, the teaching that marriage is indissoluble (see 478 n. 79). They speak of marriage's "triple bond"—moral, social, and religious—and say that only the couple themselves can break the moral bond, while only the state can free them from the social bond (see 487 n. 105). By suggesting that the Pauline Privilege might be extended, HC insinuate that the Church could officially accept the dissolution of a marriage, presumably after civil divorce (see HC 469 n. 51).

[152] HC 462–63; internal quotation from ITC, "Propositions on the Doctrine of Christian Marriage," in *International Theological Commission, Texts and Documents: 1969–1985,* ed. Michael Sharkey (San Francisco: Ignatius, 1989) 163–83, at 171. Hereafter we call this document "ITC."

[153] ITC 171.

The ITC's premise is false. Between July 20 and August 11, 1563, the day the Venetians pleaded for the indirect approach, the Council Fathers had heard many arguments—based on the Ambrosiaster (a work then mistakenly attributed to Ambrose), the sensibilities of Greek Orthodox Christians, and so on[154]—against anathematizing those who say marriage can be dissolved on the ground of adultery. On July 26, the bishop of Segovia had argued for a canon condemning those who say that the Church had erred (the indirect approach): "If anyone says that the Church has erred in saying that the bond of matrimony is not dissolved by adultery, *anathema sit*."[155] Yet the majority plainly rejected all those arguments, for the draft of August 7 still directly anathematized those who say marriage can be dissolved on the ground of adultery. Only the Venetian appeal *on pastoral grounds* won the majority for the indirect approach.[156] Moreover, the ITC's conclusion is also false. While Trent had no intention of solemnly defining marriage's indissolubility in general as a truth of faith, with canon five the council solemnly defined it on all the usual grounds except adultery.

Fransen on Canon Seven

Immediately after the passage referring to the ITC, HC continue:

In its interpretation of Trent the ITC was in accord with an influential series of essays published by Piet Fransen on interpreting Trent. [Note omitted.] Fransen showed that the participants at Trent were well aware of the varying viewpoints regarding indissolubility held by patristic and medieval theologians as well as the different practice of the Greek Church. The Council Fathers had no desire to include all this in their anathema and were focused on Luther.[157]

Since HC and many whose supporting opinions they invoke or cite follow Fransen's interpretation of Trent's canon seven, we will criticize his views

[154] For a summary, see *Trent* 9:680; also see Joyce, *Christian Marriage* 395–96.
[155] *Trent* 9:657.
[156] For a summary of the Council Fathers' reactions to the Venetian proposal, see *Trent* 9:742–43. It seems clear that the addition to that proposal of "*iuxta evangelicam et apostolicam doctrinam*" and the new doctrinal preface convinced the majority of those who had previously insisted on the direct approach that the council could accept the indirect one without sacrificing the truth about indissolubility.
[157] HC 463. In the omitted note, HC cite Piet Fransen, "Divorce on the Ground of Adultery—The Council of Trent (1563)," trans. Theo Westow, in *The Future of Marriage as Institution*, ed. Franz Böckle, *Concilium* 55 (New York: Herder & Herder, 1970) 89–100. Hereafter we call this author and article "Fransen." As HC point out, Fransen summarizes in this article key elements of his previous articles; its first footnote includes references to them. We here answer Fransen only inasmuch as HC use him; so our criticisms of him are to be understood as qualified by "in the article cited."

as he summarized them in the article HC cite. Fransen concentrates on three key words: *errare*, *iuxta*, and *vinculum*.

Errare

Fransen begins by focusing on Luther: "In his *De captivitate babylonica,* to which Trent mainly refers, Luther's position was not yet clear. He was, however, quite clear on the point 'that this issue could not be decided by the Pope or the bishops'. The Roman Church had therefore acted 'like a tyrant,' that is, had exceeded its competence." Fransen goes on at once to claim that canon seven "remained clumsy and unwieldy because the Council wanted to . . . quote Luther himself as his opinion had been summarized on 16 April 1547."[158] Later, those initial remarks about Luther are referred to by Fransen when he explains the meaning of the phrase, "If anyone says that the Church errs." Fransen claims:

This is a clever formula which ensured that the anathema and excommunication pointed exclusively to the statements made by the Reformers that in its juridical practice the Church had, in a "tyrannical way," exceeded its competence in the matter of divorce. I have already shown above that Luther had stated his position clearly only on this particular point. The word "*errare*" must therefore be understood in this sense.[159]

The Council of Trent did strive to respond to Luther's diverse challenges to the Roman Church, and some of them were arguments that its legislation and practices sometimes exceeded its competence. In such matters, to say that the Church erred was to say that the Church abused its authority or exceeded its competence. However, we will now show that canon seven was not concerned with such a matter.

While Fransen accurately quotes Luther's inflammatory remarks about the Roman Church, those remarks do not appear in the April 16, 1547 summary to which he refers. Instead, even if the substantive issue was unclear to Luther, three substantive statements are attributed to his *De captivitate babylonica*. Luther's text did not include, but at most suggested, two of them, both concerned with remarriage and one explicitly denying that remarriage leads to adultery.[160] A third statement actually appears in *De captivitate babylonica*: "Yet it is still a greater wonder to me, why they

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[158] Fransen 90.
[159] Fransen 92; see the similar claim at 93–94.
[160] "A married woman who makes herself available to another man ceases to be a wife, so much so that it is permissible for each spouse, or at least for the one who did not give cause for the divorce, to marry again—that is, for the man to take another wife or the woman to marry another man"; and "adultery is not committed by someone who, having dismissed his adulterous spouse, marries another" (*Trent* 6:98 and n. 10).

compel a man to remain unmarried after being separated from his wife by
divorce, and why they will not permit him to remarry."[161] But that state-
ment contributed nothing to the formulation of Trent's canons.

A document of August 1547 prepared for a Council Fathers' debate by
listing many authoritative theological sources—beginning with Mark,
Luke, and Paul—in support of the proposition that the bond of marriage
may not be dissolved *per fornicationem*[162] and listing some sources, begin-
ning with Matthew, seeming to support the contrary.[163] By August 29, a
canon had been formulated to condemn the first of the three statements
attributed to Luther in the April 16 summary, but with an addition: "Nor
does a man who dismisses an adulterous wife and marries again commit
adultery."[164] That addition makes it clear that absolute indissolubility is
at issue, and that issue was debated in general congregations September
2–6, 1547.[165]

In the debate, we find no mention of Luther or of the Church's compe-
tence. Five Fathers—including Cardinal de Monte, first president of the
council—held on the basis of Matthew that Christ allowed divorce and
remarriage in cases of adultery. But on the basis of the other Scripture
passages, their interpretation by the doctors, and the principle that
the Scriptures are to be understood in accord with the declaration of the
Church, eleven Fathers argued that the acceptable separation on the ground
of adultery was only as to bed, not as to bond.[166] The summary of the debate
concludes: "But the great majority confirmed that matrimony cannot be
dissolved on account of adultery, and that he commits adultery who, with a
wife living, marries another, and that there can be no separating except as to
bed."[167] The main issue under debate was, therefore, whether Matthew's
porneia phrases mark a real exception to the absolute indissolubility implied
by Jesus' teaching that attempted remarriage ends in adultery.

[161] *Trent* 6:99; translation taken from Martin Luther, *The Babylonian Captivity of the Church,* trans. A. T. W. Steinhäuser et al., in *Luther's Works*, vol. 36, ed. Abdel Ross Wentz (Philadelphia: Fortress, 1959) 105.
[162] See *Trent* 6:409–12; "Quod per fornicationem non solvatur vinculum matrimonii" (*Trent* 6:409). *Per fornicationem* can be read as meaning either "because of adultery [*ob* or *propter fornicationem*]" or, as John Chrysostom suggested (see Palmer, "Christian Marriage" 626–27 n. 19), "by the adultery itself [*per fornicationem ipsam*]." However, the summary of the debate—the Fathers "confirmavit matrimonium ob fornicationem dissolvi non posse" (*Trent* 6:434)—indicates that the issue was dissolution because of adultery.
[163] See *Trent* 6:412–13.
[164] See *Trent* 6:402. With the addition, the issue debated combined the first two propositions that had been attributed to Luther in April (see n. 160 above).
[165] See *Trent* 6:419–33.
[166] See *Trent* 6:434–35, 434 n. 14, 435 n. 1.
[167] *Trent* 6:434.

Fifteen years later (1563), the "minor theologians" debated several theses, including: "After repudiating one's wife on the ground of adultery, and with her still living, one is allowed to marry again, and the error is to divorce on a ground other than adultery."[168] That thesis plainly was drawn from Luther.[169] But he was not mentioned in the preparatory document, and the discussion (February 17–25) concerned neither Luther nor the competence of the Church, but the truth of the matter, argued mainly on the basis of scriptural and patristic texts.[170]

Finally, Trent's canon five straightforwardly condemns errors attributed to Calvin and definitively teaches that marriage cannot be dissolved on various grounds other than adultery.[171]

In sum, *pace* Fransen, canon seven's "If anyone says that the Church errs in having taught and teaching" does not primarily, much less exclusively, mean: "If anyone says that the Church exceeds its competence in having taught and teaching." It primarily, if not exclusively, means: "If anyone says that the Church asserts false propositions in having taught and teaching."

Iuxta

Fransen also claims that in saying church teaching on indissolubility is in accordance with (*iuxta*) evangelical and apostolic doctrine, the Council Fathers rejected two extreme formulations without *iuxta*. One of them—"ecclesiam errare cum evangelicam et apostolicam doctrinam docuit et docet"—made church teaching identical with "what is taught by the gospel and Paul." The other—"errs and teaches something beyond [*praeter*] the teaching of the gospel and the apostles"—only said that church teaching had not erred by going "against or beyond" Scripture. Trent steered a middle course, Fransen concludes, by using *iuxta* to say: "This teaching of the sacred canons was *inspired* by Scripture."[172]

However, *iuxta* does not literally mean "inspired by," and Fransen offers no evidence that Trent used *iuxta* with that meaning. But there is evidence to the contrary. Immediately after the Venetians pleaded for the indirect approach, on August 11, 1563, the Cardinal of Lorraine suggested inserting *iuxta Scripturas*.[173] Many supported that proposal or something similar, and "iuxta evangelicam et apostolicam doctrinam" appeared in the redrafted canon seven on September 5.[174] The council's course on this matter was set, and it never changed. Fransen's two "extreme" formulations were not

[168] *Trent* 9:380.   [169] See *Babylonian Captivity* 105.
[170] See *Trent* 9:408–21.
[171] See above, nn. 134–39 and the accompanying text; see also n. 149.
[172] Fransen 95.   [173] See *Trent* 9:687.
[174] See *Trent* 9:760.

offered until September 9.[175] The second was offered by the Bishop of Segovia. He wanted the canon amended to say "errs and [has taught and teaches] beyond or against the divine Scriptures" because he accurately understood but rejected "iuxta evangelicam et apostolicam doctrinam." He said the formula meant: "that this dogma is had from the Scriptures, which is not clear."[176]

Pace Fransen, then, Trent did not adopt a compromise when it said that the Church has taught and teaches marriage to be indissoluble "iuxta evangelicam et apostolicam doctrinam." Rather, four days before the "extremists" offered their substitutes for that phrase, the council had already adopted it as an amendment to the Venetians' proposal. The phrase is reasonably taken to mean that the truths defended by canon seven are had from the Scriptures. They are, of course, not identical with evangelical and apostolic doctrine, but neither are the truths the Church definitively teaches about Christ identical with their scriptural sources. In both cases, the Church not only faithfully teaches but also explains and defends the relevant truths, which are either asserted in Scripture or entailed by truths asserted in Scripture.

Vinculum

Fransen also notes that a formulation, "the marriage cannot be dissolved," was changed to "the bond of marriage cannot be dissolved" (*matrimonium* became *matrimonii vinculum*). The change, he claims, indicates that the canon is concerned only with intrinsic indissolubility (the impossibility of dissolution by the spouses) and not with extrinsic indissolubility (the impossibility of dissolution by any human power or by any cause except death). He says the change was made so that the anathema would apply "only to Luther's position and not to the Eastern Church," which denied only that marriage is extrinsically indissoluble; whereas Luther, he says, denied that marriage is even intrinsically indissoluble. Fransen asserts that the insertion of *vinculum* shows that "the Council made no statement about whether it was possible for the Church itself to declare a divorce."[177]

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[175] See *Trent* 9:785, 789; the second was endorsed the following day by another Council Father (see *Trent* 9:793).

[176] *Trent* 9:785: "Ex hoc canone habetur, quod hoc dogma habetur ex Scripturis, quod non est clarum, sed dicatur: *Si quis dixerit, ecclesiam errare et praeter aut contra divinas Scripturas* etc."

[177] Fransen 96. To support his claim that only intrinsic indissolubility is at stake, Fransen interprets canon 7 as teaching "that the bond of marriage cannot be dissolved by the adultery of one of the partners." We have already dealt with this mistranslation in n. 150 above.

That argument is unsound. Before "the bond of marriage" (*matrimonii vinculum*) appeared in canon seven (October 13, 1563), it was used in canon five (August 7, 1563), which responded to Calvin, whose concern was extrinsic dissolution by public authority.[178] Moreover, Fransen's argument presupposes that the "bond of marriage" refers to something really distinct from "marriage." But as HC themselves notice, for Trent, marriage is the bond: "The council asserted that Adam (in Genesis 2:23–24) pronounced marriage to be a perpetual and indissoluble bond [*nexum*]."[179] Therefore, Trent's statement "the bond of marriage cannot be dissolved" means that marriage cannot be dissolved. Had the Council Fathers meant what Fransen says they meant, they would have said that a spouse, or the spouses, cannot dissolve their marriage on the ground of adultery. Instead, in both canons five and seven, Trent uses the passive voice without mentioning the spouses or any agent whatever. Thus, the council attributes indissolubility to the bond of marriage itself and makes it clear that the states of affairs specified in each canon do not ground exceptions to Jesus' teaching that any attempt to dissolve what God has joined and to remarry will end in adultery.

Summary of the Preceding Critique of Fransen

In respect to divorce, the participants at Trent were mainly concerned to establish the truth revealed by God and to affirm it against contrary errors. Fransen did show that the Council Fathers were aware of the varying viewpoints regarding indissolubility held by patristic and medieval theologians as well as of the different practice of the Greek Church. But Fransen did not show that the Council Fathers were focused on Luther's inflammatory remarks, or that in canon seven they used *errare* to mean "to exceed competence," or that they used *iuxta* to mean "in the spirit of," or that they used *matrimonii vinculum* to make a distinction between intrinsic and extrinsic indissolubility.

Pace HC and those they cite in support of their view, Trent's canon five solemnly defines, as a truth of faith, the proposition that marriage cannot be dissolved on three grounds other than adultery; and canon seven solemnly defines that the Church has not erred and does not err in teaching that marriage cannot be dissolved on the ground of adultery. Since any proposition is either true or false, if the Church has not erred in teaching that proposition, it must be true. Moreover, canon seven, as we noted above, is self-referential, and it is now clear that "in accordance with evangelical and apostolic doctrine" means that canon seven is itself a dogma had

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[178] See nn. 134–39 above and the accompanying text.
[179] HC 458; Tanner 2:753. As HC indicate, *nexum* and *vinculum* are synonymous.

from Scripture—a dogma to be accepted as revealed truth and held with divine and Catholic faith.[180]

The Ordinary Universal Magisterium's Infallible Teaching

Rooted in Scripture, the Catholic Church's teaching on indissolubility always precluded dissolving *ratum et consummatum* marriages. Trent's doctrinal preface and canons shaped the Church's teaching and practice during subsequent centuries, and faithful Catholics believed the teaching and cooperated with the practice. Those facts show that the impossibility of dissolving *ratum et consummatum* marriages has been infallibly taught by the ordinary universal magisterium.

Conditions for Such Infallible Teaching

Vatican II, dealing with that mode of teaching infallibly, affirms that the bishops "proclaim the doctrine of Christ infallibly, although they are dispersed throughout the world, when they maintain communion with one another and with Peter's successor, authoritatively teach on a matter of faith and morals, and agree in one judgment as something to be held definitively."[181] For a teaching to be proposed infallibly by the ordinary universal magisterium, then, four conditions must be met.

First: those bishops proclaiming the teaching are in unity with one another and the pope. This does not mean they act formally as a body, but only that they are not separated from collegial communion. Thus, the

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[180] HC state: "In a 1986 letter, Ratzinger claimed that Trent defined the indissolubility of marriage as belonging to 'the patrimony of the Faith' and beyond challenge" (464). In fact, writing as prefect of the Congregation for the Doctrine of the Faith, Ratzinger asserted "that the church's position on the indissolubility of sacramental and consummated marriage, which you claim ought to be changed, was in fact defined at the Council of Trent and so belongs to the patrimony of the faith" ("Letter to Father Charles Curran Informing Him He Cannot Teach Catholic Theology," *Origins* 16 [1986] 201, 203, at 203). Thus, *pace* HC, Cardinal Ratzinger did not claim that Trent defined the indissolubility of marriage (in general) but that it defined the Church's position on the indissolubility of marriage (which Trent did insofar as that position was challenged by the Reformers). HC add: "In his response to Ratzinger, Curran remarked it was widely acknowledged among Catholic theologians that 'the teaching of the Council of Trent does not exclude as contrary to faith the practice of "*economia*" in the Greek church.' On this point we believe it was demonstrably the case that Curran is correct in his assertion" (464). But, *pace* Curran and HC, although Trent does not anathematize the practice of *economia*, canon 7 entails that its application to "remarriage" after divorce is contrary to faith.

[181] *Lumen gentium* (November 21, 1964) no. 25, our translation.

acceptance of divorce and remarriage by bishops separated from collegial communion does not prevent the consensus required for the ordinary magisterium to teach infallibly that marriage is indissoluble.

Second: the bishops teach authoritatively on a matter of faith and morals. This means they teach not as private individuals but as bishops, on a matter that falls within the ambit of their authority. While there is controversy about what *faith and morals* includes, it surely includes any matter explicitly dealt with in Scripture that gravely affects Christian life.

Third: the bishops agree in one judgment. This means that the bishops as a whole teach the same thing, even if some never mention the matter and a few dissent. Once this condition is met, the necessary universality is not nullified by a later lack of consensus.

Fourth: the bishops propose the teaching as a truth to be held definitively. This condition does not refer to the formulation necessary for a solemn definition, because what is at issue is the bishops' ordinary teaching. Rather, the condition means the teaching is not proposed as optional or merely probable, but as something Catholics have an obligation to accept as certainly true. To propose something as a truth of faith—as a truth to be held as divinely revealed—is a fortiori to propose it as a truth to be held definitively.

HC only once mention the infallibility of the ordinary universal magisterium.[182] They refer to Richard Gaillardetz, who denies that "currently disputed issues" can be resolved by "appeals to the teaching of the ordinary universal magisterium,"[183] and tries to refute arguments that were offered against that view by Lawrence Welch.[184] In particular, Gaillardetz argued that the lack of a current consensus among theologians that a proposition has been infallibly taught by the ordinary magisterium entails that it has not been.[185] Welch then responded to that argument; he also better explained why subsequent dissent cannot count against a truth of faith once it has been identified and held by the Christian community as a whole.[186] Gaillardetz has not replied to Welch, but the two had discussed the views of Francis Sullivan, who did reply.

On theological consensus, Sullivan writes: "I do not hold that the absence of the consensus of theologians would mean that *there has not been*

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[182] HC 464 n. 32.

[183] Richard R. Gaillardetz, "The Ordinary Universal Magisterium: Unresolved Questions," *Theological Studies* 63 (2002) 447–71, at 466.

[184] Lawrence J. Welch, "The Infallibility of the Ordinary Universal Magisterium: A Critique of Some Recent Observations," *Heythrop Journal* 39 (1998) 18–36.

[185] See Gaillardetz, "Ordinary Universal Magisterium" 466–67.

[186] See Lawrence J. Welch, "Quaestio Disputata: Reply to Richard Gaillardetz on the Ordinary Universal Magisterium and to Francis Sullivan," *Theological Studies* 64 (2003) 598–609.

a definitive teaching of the ordinary universal magisterium."[187] He insists, however: "I do not believe that one can appeal to a past consensus of *bishops* as infallible if they are no longer agreed in teaching that doctrine. To take one example: the bishops at the Council of Florence taught that all pagans and Jews would go to hell if they did not become Catholics before they died."[188] Sullivan's example, however, concerns a conciliar teaching, not a teaching of the ordinary magisterium.[189] Moreover, the agreement of future bishops is not necessary for the body of bishops to teach something infallibly now or for us to recognize such an infallible teaching.[190]

The Conditions Have Been Met

In recent years, various Catholic scholars have suggested that even *ratum et consummatum* marriages are dissoluble, and HC surely would have mentioned anything anyone found helpful to their case. So, more significant than their claim to find support in Basil, Chrysostom, two authors of penitential books, a disputed letter of Gregory II, Vatican II, and Trent is HC's silence about the witness of other Fathers and Doctors of the Church, popes, and councils.[191]

The Council of Trent, as we have seen, reaffirms what the Church taught and teaches about indissolubility, and defends challenged elements of that truth by definitive canons. By drawing from Scripture the general truth about indissolubility, Trent clearly, though implicitly, teaches that it too must be held by faith. After Trent, Catholic theologians explained and defended the council's teachings, including that on marriage and its

[187] Francis A. Sullivan, S.J., "Reply to Lawrence J. Welch," *Theological Studies* 64 (2003) 610–15, at 614–15.

[188] Ibid. 611, emphasis added.

[189] Even if Sullivan's example were relevant, his "if they did not become Catholics before they died" misstates Florence's necessary condition: "unless they are joined [*aggregati*] to the catholic church before the end of their lives" (Tanner 1:578). Florence's teaching is sound in substance if not pleasing in formulation. Despite appearances and perhaps even their own mistaken choices made in good faith to the contrary, pagans and Jews can be joined to the Catholic Church when they die, even if they never become Catholics by embracing the faith and receiving the sacrament of baptism. *Lumen gentium* no. 16 explains how they can be related to the Church in ways adequate for salvation (see Tanner 2:861).

[190] Suppose all the bishops of the world currently agreed in teaching as a truth to be held definitively that it is always gravely wrong to sell a human being, and suppose Sullivan acknowledged that state of affairs. Unless he gave up his present position, he would have to insist that the wrongness of ever selling a human being had not been infallibly taught by the ordinary magisterium because future bishops might no longer be agreed in teaching that doctrine.

[191] See Anthony J. Bevilacqua, "The History of the Indissolubility of Marriage," *Proceedings of the Catholic Theological Society of America* 22 (1967) 253–308.

indissolubility.[192] From Trent to Vatican II, numerous statements by popes, groups of bishops, and individual bishops reaffirmed the teaching in the face of both Protestant rejection of it and civil divorce laws. Even during the past half-century, there has been scant evidence of dissent by bishops from the position that, *pace* HC, the Fathers of Vatican II almost unanimously reaffirm.[193]

As part of Trent's reform, seminaries were established and, until Vatican II, seminary professors used textbooks approved by the bishops. Priests throughout the world learned from those books what to teach and how to carry out their pastoral practice. The approved authors uniformly taught that *ratum et consummatum* marriages are absolutely indissoluble. Most quote Scripture to support the teaching, and thus imply, as Trent did, that the proposition is a revealed truth calling for the assent of faith. By using Scripture in a way that implies that the teaching is divinely revealed, the *Roman Catechism*[194] and catechetical materials based on it also indicated that the general truth that marriage is indissoluble is to be held as divinely revealed.

Accordingly, for several centuries Catholics everywhere were taught that a sacramental, consummated marriage is dissolved only by death. Pastors made the teaching clear especially to couples preparing for marriage. The practice of the Church confirmed its teaching on indissolubility by uniformly rejecting, as gravely sinful, attempts to remarry after civil divorce. Tribunals treated the teaching as an exceptionless principle in their handling of marriage cases.[195] Pastors regularly warned those who had attempted remarriage against receiving Communion. Believing Catholics in invalid second "marriages" who had been soundly catechized realized they were living in mortal sin. Thus, catechesis and pastoral practice made it clear—especially to engaged and married couples—that the Church's teaching on indissolubility is part of the Catholic faith, and until about a half century ago, there was virtually no dissent from that teaching in the whole body of the faithful.

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[192] See, for example, the impressive treatment both of the absolute indissolubility of "*matrimonium fidelium consummatum*" and of the Reformers' counterarguments by Robert Bellarmine, "*De sacramento matrimonii*," in *Opera Omnia*, vol. 3, *Disputationum Roberti Bellarmini de controversiis . . .* (Naples: Josephus Giuliano, 1858) 809–23.

[193] For Vatican II's reaffirmation, see above, nn. 40–53 (esp. n. 44) and the accompanying text.

[194] *Catechismus Romanus seu Catechismus ex decreto Concilii Tridentini ad parochos* (Vatican City: Libreria Editrice Vaticana, 1989) 907–12, nos. 416–25.

[195] Both the 1917 *Code of Canon Law* (see c. 1118) and the 1983 *Code* (see c. 1141) introduce the chapter on the separation of the spouses and its article on the dissolution of the bond with the affirmation that only death can dissolve a valid, ratified, consummated marriage.

If *dogma* means a solemnly defined proposition, then there is no dogma that *ratum et consummatum* marriages as such are absolutely indissoluble. Nevertheless, that teaching was proposed as divinely revealed by the ordinary and universal magisterium and held as such by the whole Church. Teachings of that sort are no more open to revision than are solemnly defined propositions.[196]

CONCLUSION

During the past half century, various Catholic scholars—theologians, Scripture scholars, canonists, and others—have focused on data difficult to reconcile with the Church's teaching on marital indissolubility. They have criticized the commonly received theological account of that teaching and constructed arguments that tend to call it into question. HC select elements from that body of scholarship to build their case that the teaching on indissolubility does not pertain to Catholic faith and that substantive revision of that teaching is now possible.

HC's case is initially impressive because it synthesizes much of that recent work. However, as we have tried to show, some elements of that body of scholarship are unsound and HC's use of it is uncritical. Moreover, they largely ignore the work of Catholic scholars throughout the ages explaining and defending the indissolubility of marriage. While wrestling with the issues HC posed, we were forced to look into the longer theological tradition. The covenantal character of marital communion emerged as the key to harmonizing the indissolubility of marriage with the scriptural data as well as with the Church's treatment as dissoluble of some unconsummated and some nonsacramental marriages.

When one takes into account sound Scripture scholarship and reads evangelical and apostolic doctrine on marriage in the light of the covenantal character of marital communion, one cannot reasonably deny that Jesus and Paul taught the absolute indissolubility of covenantal, consummated marriage. When one also recognizes the mistakes that have obscured the witness of the Council of Trent and of the universal ordinary magisterium since Trent, one cannot reasonably deny that church teaching definitively conveys the divinely revealed truth about divorce and remarriage expressed in evangelical and apostolic doctrine. Substantive revision of the

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[196] Still, only a solemn definition of the truth that it is impossible for anything but death to end a covenantal and consummated marriage can reasonably be expected to overcome the present division among Catholic scholars and clergy. Pending such a resolution, ongoing division will continue to bring the great damage to the Christian faithful that the Council Fathers of Trent wisely and compassionately sought to prevent.

Catholic Church's teaching on indissolubility is therefore now and forever impossible.

When true love leads a man and a woman to marry, they want the union they initiate to be lifelong. Yet they realize that, if their mutual consent is only a commitment, it will be as revocable as any other human commitment. Indissolubility is part of the gift God offers such couples. If they believe in Jesus and undertake to live his truth in love, including the truth he teaches about indissolubility, they will share in the blessings of covenantal union. Amidst hardships and temptations, they will be strongly motivated to persevere. Those who do persevere will, during the present age, only imperfectly fulfill their hopes, including their hope for joyful married life. But when they inherit the definitive kingdom, they will see that all the sufferings of spouses who believed in indissolubility are not worth comparing to the good that God created with their cooperation. They will live with all the blessed in the unending joy of Jesus' marriage with his Church and will find in that covenantal communion the ultimate fulfillment of their marriages with one another.

Blindness to marriage's indissolubility afflicts the postlapsarian human condition. Compassionate pastors who recognize the disastrous consequences, not least for children, that plague any society that regards marriage as dissoluble are grateful to Jesus for healing that blindness and renewing marriage. They rejoice that the Church, led by the Holy Spirit, enables sacramentally married couples to know that they are indissolubly one. Far from thinking that the Church would be compassionate if it, like the world, accepted dissolubility, such pastors realize that true pastoral compassion offers the world the fullness of the gospel—all the blessings God has entrusted to the Church, including the blessing of covenantal marriage.[197]