

THE MUDDLED MARRIAGE

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HAVING heard that some persons involved in 'muddled marriages' thought they could find a justification for their condition in an article written by my English confrère, Father Gerald Vann, O.P.,¹ and had so quoted it to their parish priests, I am reminded of the old story of the prisoner at the bar who at the question of the Court: 'Guilty or not guilty?' promptly replied: 'Your Honour, I always thought myself to be guilty; but after listening to my lawyer's plea I am beginning to wonder if I did any wrong'. The accused was misled by his counsel's speech, and those Catholics have been misled by Fr Vann's article.

In each case, the source of the error lies in a misinterpretation, a misunderstanding over who is being addressed. The plea of the counsel for the defence was addressed to the court, and Father Vann's paper was addressed to the clergy. The defendant thought his lawyer was speaking to him; and the Catholics in 'bad marriages' thought that Fr Vann was writing to them.²

St Thomas, in drawing a comparison between a judge and a lawgiver, shows that the latter is in much the better position in that he deals with human actions as future, while the former must deal with them as present; towards that which is present one is easily moved by love or hate, whereby one's judgment becomes vitiated.³

As the counsel for the defence fears this probable inclination of the judge against the accused, at least on account of the accusation, he tries his best to neutralize this partiality, and so diminishes all he can the culpability of his client, perfectly aware that the judge will not be misled by his plea, but may come rather to some sentence which will at least be more favourable to his client than the penalty being sought by the prosecutor.

1. 'Moral Dilemmas. I. The Muddled Marriage', in *BLACKFRIARS*, September 1953, pp. 375-380. A partial reprint was given by *Catholic Digest*, January 1954, pp. 13-16. I shall follow the original article.

2. Though the lawyer has to speak in the presence of the accused, Fr Vann could have published his paper in some of the magazines exclusively devoted to the Clergy.

3. 'Lawgivers judge in the abstract and of future events; whereas those who sit in judgment judge of things present, towards which they are affected by love, hatred, or some kind of cupidity; wherefore their judgment is perverted.' (*Summa Theol.*, I-II, 94, 1, 2m.)

Fr Vann has done this. The clergy have, as judges, to apply the law. As they may be inclined towards a rigorous application of the law, it may not be amiss to insist on the great number of circumstances that call for a more benign exercise of their power. The clergy were not misled by Fr Vann's article. In fact, all that commented on it, agree that Fr Vann, in the fervour of his plea, has let himself go in a few statements which have to be corrected when taken in themselves and apart from the purpose for which they were intended.

Invited, as I have been, to express my opinion on the subject, I suggest (in order to face the most difficult situation) that we take for the purposes of discussion the case of a Catholic divorcée who, while her husband is still living, has entered into a new union with a non-Catholic man, but whose conscience is tortured because of this new union and who sincerely wishes to do her best, while confessing herself incapable of disrupting that union (which is the only case contemplated by Fr Vann).

To proceed methodically, I shall distinguish the relations of that Catholic woman with her second partner, with the children she has from him, with God, and with the ministers of God.

We all agree, and there is no need to insist, that between the Catholic divorcée from a valid and not invalidated marriage and the non-Catholic partner there is no possibility of a valid matrimonial contract. The *impedimentum ligaminis* is a diriment impediment. That is to say, the impediment of an existing bond renders a subsequent form of marriage null and void.

Fr Vann does not deny this, but seems inclined to admit some other contract. We would have expected him to define or to describe it. Rather, he contents himself with criticizing theologians who hold that a contract which is immoral is therefore invalid, not binding. We would like to know the reasons or the authorities on which he bases his criticism; but no reasons are given, no authorities quoted. We do not need to pursue Fr Vann in this direction.⁴ The contract we are viewing is not invalid just by reason of its immorality; it is invalid because there is no object for it. That which she promised by the so-called contract was not hers any more.

4. There are two questions. First, whether the one who promised, say, one thousand pounds for a murder, is bound to pay that amount after the murder is committed. Second, whether a man can bind himself to commit a murder. Some theologians have answered negatively to the first; but how could a theologian give to the second an affirmative answer? Nobody can contract a moral obligation to do an immoral act.

Fr Vann himself does not insist. 'Contract or no contract', he writes, 'the fact is that one human being has taken upon himself the care and responsibility for another human being, has profoundly changed another human life, and another human heart; and he cannot now simply shuffle out of his responsibilities or pretend that all this never really happened at all.'

I fear that here it may be that Fr Vann pleads the case too eloquently. First of all, why all this tenderness on behalf of the second partner and not even a kind thought on behalf of the former? For even with her first partner, she took upon herself the care and responsibility for another human being, profoundly changed another human life, and another human heart. Why can she now simply 'shuffle out of those responsibilities or pretend that all this never really happened'?

But secondly, one must not forget, she was *unable* under divine law to take upon herself this new care and responsibility. If this was from the outset known to the partner of the 'bad' marriage', he has no reason to complain: *scienti et volenti non fit iniuria*. He is like the possessor in bad faith who receives or buys from a thief, certain that the thing had been stolen. He has no title to retain it.

If the 'bad marriage' partner did not know of the woman's situation, then he was most grievously deceived; he can justly bring complaint against the deceiver, he might have grounds for an action against her. However, like the possessor in good faith, from the moment when he discovers the woman is not his, he cannot consider her his wife.

Whether the non-Catholic agrees or does not agree to abstinence from sexual intercourse is not exactly the point. The point is that he has no right to marital relations; that these relations are sinful, that the divorcée gravely sins while yielding to his petition. She may object that it is impossible to abandon and to hurt the feelings of the man she loves, of the man by whom she is most tenderly loved. But that love of hers is a love forbidden to her.⁵ And this love of his has little or no tenderness when he knows of her tortures of mind, of her perplexities of conscience, of her fear of eternal damnation, of her real unhappiness; in one word, he prefers to sacrifice her instead of sacrificing self. This is not love, but egoism.

5. Of this much she is aware at the moment; hence her sufferings. So I do not insist on the question whether or not a momentary aberration could have made her initial union, subjectively, no mortal sin.

Fr Vann agrees that to continue in the invalid marriage is to sin. He adds though: 'But to abandon it may also be a sin'. Fr Connell is perfectly right in saying that this sentence, if taken literally, means that there are occasions when a person is so situated that he cannot avoid committing sin, whichever course he follows—a proposition utterly opposed to Catholic teaching.⁶

Why should it be a sin to abandon that marriage? Fr Vann says: 'This is most obvious if there are children, who, having been brought into the world, have a right to their parents' love and care, to a home and family life'. The case is not mentioned of children born of the valid marriage. If there are such lawful children, have they not a right to their parents' love and care, to a home and a family life?

But let us grant there are no such children. However, in passing, and in order to clarify the issue, let us conjure up two other situations. First, that of a child born out of a transient adultery between a Catholic married man and an unmarried Jewish woman; would this man be obliged to seek a civil divorce from his true wife in order to marry the Jewess and so insure that his child be baptized and educated in the Catholic Church? Or secondly, take the case of a child born of a sacrilegious fornication, say between a priest (which God forbid) and an unmarried person; would he be bound to give up his clerical state in order to contract a civil marriage with the woman so as to insure the child a home and a family life?

Regardless of the question whether illegitimate and sacrilegious children ought to have the same rights as legitimate ones, it is self-evident that nobody is obliged to do what he can only do by sinning. A child, even illegitimate and sacrilegious, has his rights; the parents have their duties; they have to provide for him, but not necessarily by all kinds of means, such as continuing in adultery, but as far as they are able, physically and morally.

What if by abandoning her non-Catholic partner the Catholic divorcée foresees that the children will be educated in heresy, in atheism, in Communism? Well, even in this extreme case, if the Catholic mother does not succeed in providing for their religious education, after having tried all possible, physically and morally possible, means, then she has to resign herself to her own impot-

6. Connell, 'The Proper Attitude Toward Muddled Marriages' in *American Ecclesiastical Review*, January 1954, p. 54.

ency and to recommend to the power of God that which is above her human powers. This recommendation would be more acceptable to God if it came from one who does God's will, even to the sacrifice of her temporal happiness, than if it came from one who keeps offending God, in the habitual occasion of mortal sin, and in the readiness to yield to the request for sinning mortally.

Charity has an order. We are not allowed to commit even a venial sin, were the conversion of the whole world to depend on it. We are bound to save first our own soul and to give up everything, mother and father, husband and children, when they are an obstacle, a real obstacle, to our own salvation.

This is certainly heroism. But there is no heroic act which at times would not fall under a real precept. To give up one's life is heroism; in the case in which someone would say: 'Deny God's existence or I'll kill', we have to prefer death to apostasy. Our religion is the religion of Christ crucified, and if our Lord often is content to have us on our knees, he might also at times want us nailed to his cross; and we have to say, like Heli: 'It is the Lord. Let him do what is good in his sight.' (I Kings, 3, 18.) He is not asking too much while demanding that we repay his love with a similar love.

Our Catholic divorcée feels herself incapable of this heroic act; it means, for her, giving up her love and her happiness and causing her partner to suffer. But, while continuing in the proximate and habitual occasion of sin and in the habitual and actual disposition formally to co-operate in sin, she is tortured in mind, she is in a sense sorrowful about her situation, she longs for a settlement with God. Fr Vann says she is close to God, and it is this statement which has caused his critics' greatest opposition.

Obviously, Fr Vann did not mean union by sanctifying grace; even for Fr Vann, that woman is and keeps being in the state of mortal sin. Even her sorrow he does not confound with perfect contrition, though he speaks of contrition once. Perfect contrition implies the firm purpose of amendment, as every Catholic knows and a theologian can never forget. He speaks of a certain 'closeness' to God; and there we have a term which is but relative: of two beings close to a third, it can be said that one is closer than the other. So it is with the opposite term, distance: there is great distance and there is small distance.

Not all sins have the same gravity; neither do all grave sins

mean the same aversion from God. Despair removes a man from God further than fornication; and infidelity or apostasy further than the sin of despair. So it can rightly be said that our Catholic divorcée, though not united to God by grace, is closer to God than if she had lost hope and faith. It is very opportune to note that this is all Fr Vann is endeavouring to do—to have that poor woman not go farther, not lose these two theological virtues, though she has lost charity, the third. In this sense, she keeps ‘close’ to God.⁷

Furthermore, by faith and hope we really approach to God. The Council of Trent calls faith *humanae salutis initium* (Denz. 801) and teaches that adults by it *libere moventur in Deum* (Denz. 798). Hope also is a movement towards God. Theologians speak of the *pious affectus* included in faith and hope. And not only St Thomas holds that ‘by the very fact that we hope that good will accrue to us through someone, we are moved towards him as to our own good; and thus we begin to love him’⁸; but the very Council of Trent, after the *libere moventur in Deum, credentes . . . , in spem eriguntur, fidentes* explicitly says: *Deum diligere incipiunt* (Denz. 798). This is a love which is previous to justification, and thus previous to and different from, the perfect love of charity. To keep, then; faith and hope is, in a certain measure, to keep close to God.

The fact of multiplying mortal sins is also to enlarge the distance of the soul from God. Theologians admit a difference of the very pain of loss in hell, and they measure this difference from the multitude and gravity of sins, so that the one who is damned for a mortal sin of lust suffers God’s absence less than another damned for a sin of lust plus one of murder. We, then, can say that our divorcée, though sinning by adultery, if she avoids all other sins, does not separate herself from God as much as if she together with committing adultery would omit Mass on Sundays or break other precepts of the divine or ecclesiastical law. This is why Fr Vann insists on having her fulfilling all other obligations; by not going farther, she might be said to be ‘closer’.

Also the gravity of a sin, the subjective gravity, depends on the voluntary element it implies. Lying for the sake of lying is worse

7. Of apostasy St Thomas says: ‘The more a sin severs man from God, the graver it is. Now man is more than ever separated from God by unbelief, because he has not even true knowledge of God’ (*Summa Theol.*, II-II, 10, 3). And of desperation: ‘When hope is given up, men rush headlong into sin, and are drawn away from good works’ (*ibid.*, 20, 3); and he quotes this sentence of St Isidore: ‘To commit a crime is to kill the soul, but to despair is to fall into hell.’ (*ibid.*)

8. *Summa Theol.*, I-II, 40, 7.

than lying to save an innocent person; in the first case the lie is loved on its own account; in the other, as a means to something good. A girl who commits fornication to earn money to support her father would have an attenuating circumstance attached to her sinful act. In our case, as Fr Vann puts it, that divorcée continues her marital relations 'in a deep sense *contre-coeur*, unwillingly'; she would like not to be in the present situation; but because of the situation she goes on. Though the sins are grave sins, they would be more grievous if she wanted the situation to become definitive.

The question was raised, whether those sins were voluntary *simpliciter*. They certainly are. But together with the *voluntarium simpliciter* there is also a *voluntarium secundum quid*, a real and sincere repugnance. The merchant who, in the classical instance, throws his merchandise into the sea when threatened by shipwreck, is sorry that he has to throw his merchandise overboard; he does it willingly, to save his life, but 'in a deep sense *contre-coeur*, unwillingly', sorry that he is necessitated to do it and sorry that he finds himself in such need. Consequently, the act is less voluntary, and the sin, in our case, less grave. The woman we are speaking of does not sin as much as if she felt no repugnance; she does not go so far from God; she keeps closer to God, in this sense. Are we going to say that this very repugnance and the good acts she performs—for not every act of a sinner is necessarily a sin—do lead her positively closer to God?

As for the repugnance, Fr Vann says: 'The situation here is similar to that of a man who is battling, unsuccessfully, against an habitual failing: and who, though he continues to sin, grows in the love of God by the very fact of his battling for God's sake'. The example is not very appropriate.⁹ The man who is in the state of grace and fights against temptation, merits *de condigno*, by that fighting, an increase of charity and may even then increase in the love of God. But if after fighting he finally gives up, all that merit and that increase are lost. In his subsequent confession, or his subsequent contrition, he would regain that merit and probably that increase—if, by God's grace, his actual dispositions

9. The situation is rather that of one who is in a continuous and proximate occasion of sin; an occasion which cannot practically be removed but by physical separation. To this situation are fully applicable our Lord's words: 'If thy right eye scandalize thee, pluck it out and cast it from thee. For it is expedient for thee that one of thy members should perish, rather than that thy whole body be cast into hell . . .' (Matt. 5, 29f.).

are proportionate—but in the meanwhile he cannot be said to be closer to God, to have an increase of God's love. In the case we are considering, the divorcée is not in the state of grace; her repugnance, her battling, all good as they are, are not meritorious *ex condigno*; it is not a question of deadened (*mortificata*) works, but a question of dead (*mortua*) works.

The same should be applied to her good works, to that offering to God of her own unhappiness.¹⁰ But this is not saying that those good works are useless, and Fr Vann is perfectly right in insisting on this point. Even St Thomas recalls the opinion of some theologians that those good and dead works are meritorious *de congruo*. And though he prefers to say that they are not meritorious, he agrees that they have some advantage; they dispose to grace and they habituate to the doing of good.¹¹ It is in this sense that we can speak of an approach to God. To admit a real and properly called merit would be contrary to the clear and well-known words of the Apostle: 'If I should distribute all my goods to feed the poor, and if I should deliver my body to be burned, and have not charity, it profiteth me nothing.' (I Cor. 13, 3.) Fr Vann is well aware of this.

In order precisely to keep that poor soul in some proximity to God or to avoid, if you prefer, a wider separation from God, Fr Vann wants her to feel she is still in the Church and urges the ministers of God and of the Church to act charitably toward her. Ministers of God are ministers of his mercy and should not break the bruised reed nor extinguish the smoking flax (Matt. 12, 20).

Our divorcée is fighting her battle; she is tortured in mind because she still retains faith and fears the Lord. She might look

10. The divorcée is urged to put into God's hands the texture of her daily life, compounded of good and evil, of happiness and sorrow, assured that God, he who takes upon himself the sin of the world, will not repudiate it. I wonder how this offering could be pleasing to God, since it is made by one who is disposed to keep offending him, by one who prefers human love to his divine love. The only thing that may please God is the fact of her taking the sufferings consequent on her own fault without murmuring against divine Providence, as some would do.

11. 'As all things, whether temporal or eternal, are bestowed on us by the bounty of God, no one can acquire a claim to any of them, save through charity towards God: so that works done without charity are not condignly meritorious of any good from God, either eternal or temporal. But since it is befitting the goodness of God, that wherever he finds a disposition he should grant the perfection, a man is said to merit congruously some goods by means of good works done without charity. Accordingly suchlike works avail for a threefold good, acquisition of temporal goods, disposition to grace, habituation to good works. Since, however, this is not merit properly so called, we should grant that such works are not meritorious of any good, rather than that they are.' (*Summa Theol.*, Suppl. 14, 4.)

for the wrong kind of peace, might be tempted to give up finally in despair. Thus she might be led to set aside all her religious duties, as she sees no solution, and seek tranquillity of conscience by abandoning the Faith and separating herself entirely from the Church. Her partner is a non-Catholic and his insensibility to those problems is of itself an invitation to follow the same way of thinking. This real danger is to be prevented, and priests should be moved by compassion and kindness for that tortured woman, affording her advice and whatever else they can do for her.¹² They cannot absolve her, they cannot give her Holy Communion; but if sacramentals may be given to non-Catholics, should they be denied to Catholic sinners?

Everybody agrees that Fr Vann has been moved by great charity in writing this paper; his was a laudable purpose. But if charity pushed him strongly to call on God's and his ministers' mercy, let us also keep in mind that God's infinite mercy is always accompanied by his infinite wisdom, and thus also the priests' sympathy and conduct toward those poor souls must be regulated by prudence. Fr Vann himself calls for the art of prudence in handling these cases.¹³

And the point is exactly to determine what prudence does allow. For if we priests examine our own general conduct towards those fellow-priests who have given up their clerical obligations and live in concubinage, we see we cannot easily meet them publicly or receive their visits at home. Not that we think they are lost forever, not that we seek to drive them to wander further; but we feel that too friendly relations with them can lead them or others into thinking that we find little or nothing to blame them for. This line of conduct is not unmotivated and should not be under-estimated.

The first rule of prudence is that our sympathy and our help must not be taken by the divorcée as an approval, and still less for an inducement to prolong the actual situation. If she needs to be advised how to fight, she is not to be lulled into a false security.

12. Fr Vann himself wrote in *BLACKFRIARS* (p. 376) a note which was not reproduced in the *Catholic Digest*. It reads thus: 'The pastor cannot of course condone, still less encourage, the continuance of things which are sinful. What he can do, and what if he is a realist he must do, is to accept the facts as they are and then go on from there to see what can be done to make the best of a bad job—or, rather, to bring good out of the evil.'

13. 'The ultimate ethical judgment, as to what A is to do here and now, is not a question of science merely but of art, the art of prudence.' (*BLACKFRIARS*, p. 374.)

It might be useless to repeat to her the word of St John the Baptist: 'It is not lawful for you to have him' (Matt. 14, 4); but it might prove opportune to remind her that: 'Whosoever shall keep the whole law, but offend in one point, is become guilty of all' (James, 2, 10); that all her prayers, all her sorrow, all her other good works are not meritorious of eternal life; that this much which is done by her is not enough. Charity towards the divorcée calls also for this advice.

Charity also towards other Catholics is the second rule. The clergy are not exclusively charged to impart blessings and to give advice; they have with their words and deeds to enforce the observance of the divine and ecclesiastical moral code; they must not be a scandal to the faithful. If the good relations of priests with such sinners might lead the faithful or the sinners themselves to think that, all things being considered, such marriages are not so bad or that they can be imitated without serious consequences, charity may impose an obligation of partially or totally breaking off those relations.¹⁴

Within these rules, and provided there is no particular contrary regulation by his superiors, the priest may and should try his best to forestall greater evil and to obtain some good.

I am not going to follow Fr Vann's optimism on the creative power of darkness, in his final paragraphs. As I grow older, I feel my enthusiasm for poetry gets cooler; and I do not regret it. What I do regret more and more, as I advance in age, is that we—I mean all of us—have made exaggeration a need of social life. To be moved to pity, we oblige the beggar to exaggerate his wants; to be brought to the right price, we compel the seller to exaggerate his merchandise's cost; one must overpraise what one does not wish to see undervalued. But the beggar knows we do not believe all he says, the seller knows we are far from convinced by his protestations, and everybody knows that his words will not be taken too literally.

Exaggeration has thus become an art. A diplomat is supposed never to answer 'No'; if he means 'No', he should say 'Most likely'; if he means 'Likely', he must reply 'Of course'. To impress

14. It has been said that 'at a time when the unity and the indissolubility and the sacredness of matrimony are already under attack, the best possible service to American Catholics is to encourage them to heroism in regard to the divine and immutable laws of marriage'. (Carr, *Pity vs. Principles*, in *The Priest*, February 1954, p. 13f.). Circumstances must be considered by prudence.

his students an old theology professor used to put it this way: 'All theologians teach . . . , most theologians hold . . . , some theologians claim . . . '. This is called rhetoric. Fr Vann knows how to handle it. His article has served its purpose; it has been read, it has been commented upon, it has been criticized; all this because Fr Vann begins by exaggerating, although immediately attenuating his expressions. First: 'A contract has been entered into'; then 'There have been moralists holding invalid an immoral contract'; finally: 'Contract or no contract'. Many of his terms are not to be taken in a technical, theological sense, but to be interpreted to mean something less, at times something else.

He intended to make an impression on priests, to remind pastors of other sheep they have which are not of the familiar fold (John, 11, 16), and that even those others they should prudently call, rather than imprudently scare away. The means suggested by Fr Vann might not prove suitable; but the problem has been raised and this is the first step to a practical solution.

Perhaps by insisting on Fr Vann's exaggerations, I, like other critics, have also exaggerated. Fr Vann presented a case hinging on prudence, and most of our questions have dealt with science. Though it may prove convenient for a professor to change a pupil's difficulty in order to solve it with masterly dexterity, it would be of no profit to a patient to have the diagnosis of his case altered on the grounds that the pharmacist has but one medicine.

Let us, then, take the practical case as Fr Vann puts it. The Catholic divorcée comes with all secrecy—I mean without occasioning anybody's scandal—to you, a priest. She tells you of her situation, of her great difficulty in leaving children and partner, of her sorrow and of her tortures of mind.

As no arrangement, perfect from every point of view, is possible, would you just tell her she is only to be blamed and she has but to suffer the consequences of her own momentary but momentous aberration? Not if you have a heart.

Would you just content yourself with insisting on the sin she committed, on the sins she is committing, on the danger of her future salvation? You would run the risk of merely striking the air.

Would you just explain to her how her present sins, though involuntary *secundum quid*, are voluntary *simpliciter*; that her good works, even if by some theologians are called meritorious *de*

congruo, are not meritorious *de condigno*; that God's mercy is always regulated by his wisdom and justice? Not if you are a practical man.

As a practical man, you would try to make the best of a bad job. If nothing better can be obtained, you would advise her to pray that God helps her, either by himself changing the situation or by giving her the strength to change it herself; you would advise her to continue to keep the other commandments, to stay in the Church, to maintain her hope. And if, on leaving, she should say: 'Bless me, Father', you would give her your blessing.

Though this is not all Fr Vann says, it is according to his deep intention.

CATHOLICS AND PHILOSOPHY

A Spode House Conference

LAST September Spode House sponsored yet another of the Catholic gatherings for which it is rapidly gaining a reputation. This time it was the philosophers who met. As Fr Columba Ryan remarked, in introducing the conference, the philosophers had an advantage over the artists, writers and musicians who had held weekends already: they could not only discuss their calling, but practise it at the same time. And practise it they did. During the weekend there were two lectures, two symposia and three open discussions; and in addition the debate could be heard continuing in every available moment, at the tea-tables and floating across the park during the afternoons.

The conference was called as a first move towards meeting what is a grave danger at the moment for the Church: the growing gap between the language of the traditional philosophy in the Church and that of contemporary thinkers. It was intended to provide an opportunity for discussion between philosophers of both kinds, so that they might learn a little of each other's languages; and in this it was extraordinarily successful. The weekend started, one might say, in the shadow of the controversy that had for weeks been filling the correspondence columns of *The Tablet*. The opposite sides in that monumental discussion might be expected to be at each other's throats from the beginning. And indeed at the begin-