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## Marriage, Divorce, and the Catholic Lawyer

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# Marriage, Divorce, and the Catholic Lawyer \*

Patrick Quirk

## Abstract

On January 28, 2002 Pope John Paul II gave a speech to mark the inauguration of the judicial year before the Prelate Auditors, Officials, Advocates, Promoters of Justice and Defenders of the Bond of the Tribunal of the Roman Rota. The widely reported speech drew much comment and some mystification from lawyers, as well as sparking substantial media debate over the moral duties of Catholic lawyers in civil divorce proceedings. This brief note is intended to explain the context of the Pope's speech and to clear away the simpler misinterpretations of his message. It will also provide background for Dr Mortensen's accompanying piece in this issue of the Bond Law Review. A lengthy consideration of the interaction between the Catholic Church's teaching on marriage and the rules of legal professional ethics must be left for another day.

**KEYWORDS:** religion, christianity, legal ethics, Pope John Paul II, speech, January 28 2002, divorce

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\*My thanks to Dr Tracey Rowland for her comments on an earlier draft of this note; mistakes and omissions remain entirely my own.

# MARRIAGE, DIVORCE, AND THE CATHOLIC LAWYER

*Patrick Quirk\**

...‘our affections are not in our own power’—which is true enough, of course, and is precisely the reason that the marital vow exists to bind us even as our affections come and go...’

Gilbert Meilaender, quoting and commenting upon a letter written by Lord Byron to Lady Caroline Lamb<sup>1</sup>

## Introduction – was this a ban?

On January 28, 2002 Pope John Paul II gave a speech to mark the inauguration of the judicial year before the Prelate Auditors, Officials, Advocates, Promoters of Justice and Defenders of the Bond of the Tribunal of the Roman Rota.<sup>2</sup> The widely reported speech drew much comment and some mystification from lawyers, as well as sparking substantial media debate over the moral duties of Catholic lawyers in civil divorce proceedings.<sup>3</sup>

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\* Associate Professor, Bond University Law School. A variant of this note was delivered at the 2002 Australian Christian Lawyers Conference hosted at Bond University on 3 May, 2002. My thanks to Dr Tracey Rowland for her comments on an earlier draft of this note; mistakes and omissions remain entirely my own.

1 Gilbert Meilaender, ‘The Mess That Is Marriage’ (February, 2002) 120 *First Things* 18-19. <<http://www.firstthings.com>>.

2 The three levels of Church courts unfold in the following hierarchy: the diocesan tribunal, the metropolitan tribunal, and the Holy See. At the upper level sits the Roman Rota (Rota Romana)(appeal court) and the Apostolic Signatura (Signaturae Apostolicae) (supervisory court). The Apostolic Signatura is effectively the Church’s supreme court, handling appeals from the Rota. Further see James A Coriden, *An Introduction to Canon Law* (1991) 184.

3 ‘John Paul Says Catholic Bar Must Refuse Divorce Cases’, *New York Times* (New York, USA), 29 January 2002, 4, Patsy McGarry and Carol Coulter ‘Lawyers dismiss Pope’s proposal they should not handle divorces’, *The Irish Times*, 30 January 2002, 7, ‘Pope’s message on marriage - it’s still forever’, *Sydney Morning Herald* 6 February 2002, 13, ‘The Pope puts lawyers in the dock’, *The Age*, 31 January 2002, editorial, Katie Grant, ‘Why the Pope sees divorce as a ‘plague’’, *The Scotsman*, 30 January 2002, 10, ‘Pope call to boycott divorce work stirs Catholic lawyers’, *Law Society Gazette* (UK), 1 February 2002.

This brief note is intended to explain the context of the Pope's speech and to clear away the simpler misinterpretations of his message. It will also provide background for Dr Mortensen's accompanying piece in this issue of the *Bond Law Review*. A lengthy consideration of the interaction between the Catholic Church's teaching on marriage and the rules of legal professional ethics must be left for another day.<sup>4</sup>

### Mistranslation and correction

Due in part to a mistranslation of the original Italian, some commentators interpreted the speech as requiring Catholic lawyers to withdraw from all civil divorce proceedings for all time. Most certainly the Pope did *not* forbid Catholic lawyers for evermore from acting in such matters, nor did he unilaterally 'change' the Church's position on this (or any) issue. Claims that he was formulating a new doctrine of 'conscientious objection' applicable only to lawyers, are likewise unfounded.

According to the former Catholic Bishop of Hexham and Newcastle (UK), the Right Rev. Hugh Lindsay, the problems arose because the Vatican had not issued an English text of the speech on the Internet, and an unofficial translation had several defects including 'a truncated version of the key sentence and the omission of the next one.'<sup>5</sup> The Archbishop of Sydney, Dr George Pell, described the English translations of paragraph nine of the speech as 'clumsy and somewhat misleading on the role of Catholic judges and lawyers in civil divorce proceedings.'<sup>6</sup>

In Australia at least, this mistranslation problem was corrected amongst the New South Wales legal community through a media release issued by the St Thomas More Society and distributed to members of the New South Wales Law Society via e-mail on 1 February 2002.<sup>7</sup> Accompanying press coverage saw the issue die down in other States and Territories but unfortunately there has been little scholarly analysis of the speech in Australia.

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4 For a useful discussion by a Catholic Law Professor from the United States see William Wagner, 'Ethics, Faith, and Catholic Lawyers - A guide for the Perplexed', *Legal Times* (USA), 25 March 2002, 42.

5 Rt Rev Hugh Lindsay, Catholic Bishop of Hexham and Newcastle, 1974-1992, 'Reluctant Divorce', *The Independent* (London), 9 February 2002, 2.

6 Press release, 29 January, 2002.

7 Kim Cull, President, New South Wales Law Society, Pope's Position on Lawyers and Divorce Proceedings, e-mail to members, 1 February 2002. See also Mary Rose Liverani, 'What the Pope said on divorce was lost in translation' (March 2002) *Law Society Journal*, 22.

Rather than being a speech about divorce, some commentators maintain that the Pope's principal aim was in fact to *endorse* marriage<sup>8</sup> in the light of towering divorce rates,<sup>9</sup> and at the same time sensitise the consciences of lawyers. Most certainly the Pope reiterated existing Catholic teaching on divorce, as well as encouraging Catholic lawyers to study the principles of Christian morality concerning cooperation in evil. We now turn to the sacramental context of the speech before considering the role of conscience and the words of the speech itself.

## The Sacrament of Matrimony

The following five points, which illustrate the Church's enduring teaching on matrimony, provide essential background to discussion of the Pope's speech and the ensuing controversy.

Firstly, marriage is one of the Church's seven sacraments and therefore central to Catholic belief and practice.<sup>10</sup> The *Council of Trent* (1545-1563) defined this as an article of faith.<sup>11</sup> Only the baptised can receive the *sacrament* of marriage; yet even for the non-baptised it remains 'a true and binding contract and a state of life set up by God.'<sup>12</sup> The Church has always claimed jurisdiction rights over the fundamental aspects of marriage. Because of this, secular authorities, in her view, cannot maintain that the sacrament is mere 'decoration upon the cake' of a civil marriage contract. In fact the opposite is the case. Delivering a series of lectures

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8 See Russell Shaw, 'What did the Pope really say about divorce? Secular media misrepresents his recent remarks about Catholic judges and lawyers as 'interference' in civil law', *Our Sunday Visitor*, 24 February 2002. <www.osv.com>.

9 For very recent and sobering US sociological data on the adverse effects of divorce see Stephen J Bahr, 'Social Science Research on Family Dissolution: What It Shows and How It Might Be of Interest to Family Law Reformers', (2002) 4 *Journal of Law & Family Studies*, 5. Bahr maintains that 'Numerous studies have found that compared with married persons, divorced persons tend to have more economic hardship, higher levels of poverty, lower levels of psychological well-being, less happiness, more health problems, and a greater risk of mortality.'

10 See Canon 1056 which states 'The essential properties of marriage are unity and indissolubility; in Christian marriage they acquire a distinctive firmness by reason of the sacrament.' The Code of Canon Law, in English translation (1983), prepared by The Canon Law Society of Great Britain and Ireland in Association with The Canon Law Society of Australia and New Zealand and The Canadian Canon Law Society English translation copyright 1983 The Canon Law Society Trust.

11 This was not an essential change in the church's position. For a discussion of that famous line from Scripture 'What therefor God has joined together, let no man put asunder' (Matthew 19:6) see 'Jesus on Marriage and Divorce', The Ignatius Catholic Study Bible (2000), Revised Standard Version, Second Catholic Edition, The Gospel of Matthew, with introduction, commentary and notes by Scott Hahn and Curtis Mitch, Ignatius Press, San Francisco, 51. See generally V Rev Msgr Peter J Elliott, *What God has Joined: the Sacramentality of Marriage* (Alba, 1990).

12 Thomas Gilby, *Morals and Marriage*, (1952), 19.

on professional ethics at the University of Sydney in 1933, and drawing on an Encyclical of Pope Leo XIII written some fifty years earlier,<sup>13</sup> the Rev. C. Thompson robustly declared that ‘The Civil Authority ... has no more power to legislate about the Sacrament of Matrimony in any of its essential aspects, than it has to determine the matter and form of Baptism.’<sup>14</sup> This claim to jurisdiction over both sacrament and sacred contract goes back as far as c.300 A.D.<sup>15</sup>

Secondly, the sacramental nature of marriage does not prevent its being, at the same time, a civil contract, since what is raised in status is not abrogated, but rather fulfilled by the coming of Jesus.<sup>16</sup> More than sixty articles of the *Catechism of the Catholic Church (CCC)* are devoted to discussion of the nature of Marriage (CCC 1601-1666) including its status in the order of creation, its status under the regime of sin, and its status under the old Law and the New Covenant. John Paul II has spoken often and at length on the topic.<sup>17</sup>

Thirdly, following from the above, the laws of marriage from the point of view of Canon Law are primarily decreed by the Church and only secondarily by the civil law. As the old Canon law expressed the matter: ‘The Marriage of the baptised is ruled not only by Divine Law, but also by Canon Law, saving the authority of the Civil Power with regard to the purely civil effects of the same.’ (Can. 1016 – quoted in Thompson, *op. cit.*). The new Code of Canon Law promulgated in 1983 mirrors this approach in Can. 1059.<sup>18</sup>

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13 Arcanum (On Christian Marriage), Encyclical of Pope Leo XIII promulgated 10 February 1880.

14 Rev J C Thompson, CM, MA (Rector of St John’s College), Lectures on Medical and Legal Ethics (1934) given at St John’s College, University of Sydney, Lent and Trinity Terms, 1933, Pelligrini and Co, 88.

15 Archbishop Michael Sheehan, *Apologetics and Catholic Doctrine* (a new edition revised by Father Peter M Joseph) (2001), The Saint Austin Press, 604.

16 According to the Catholic Encyclopedia entry ‘Divorce (in Civil Jurisprudence)’, (1909) Volume V, ‘Before the adoption of Christianity as the state religion of the Roman Empire, it would appear that divorce in some form existed among all ancient peoples from whom European civilization is derived. Among the Hebrews no precedent for divorce can be found prior to the Mosaic Law.’ <<http://www.newadvent.org/cathen/05064a.htm>>.

17 See for example the Apostolic Exhortation *Familiaris Consortio*, ‘On the role of the Christian Family in the Modern World’ (1981) and other speeches, letters and messages on the Vatican website <http://www.vatican.va>. See also his major text, published in 1960 before becoming Pope: Karol Wojtyła, *Love and Responsibility*, (1993) Ignatius, San Francisco. For a comprehensive survey of the Pope’s work see Kenneth D Whitehead (ed), *John Paul II – Witness to Truth* (2001) St Augustine’s Press, South Bend, Indiana. For a very fine survey of Church teaching on marriage and the family see Ramon Garcia de Haro, *Marriage and the Family in the Documents of the Magisterium* (1989) Ignatius.

18 Can. 1059 ‘The marriage of Catholics, even if only one party is baptised, is governed not only by divine law but also by canon law, without prejudice to the competence of

Fourthly, the Church *cannot dissolve a true marriage*. In the words of Archbishop Michael Sheehan 'The Church never dissolves, and has never claimed power to dissolve, a marriage [validly] entered into by two Christians, if the parties have actually lived together as man and wife.'<sup>19</sup> So-called 'annulments'<sup>20</sup> (decrees of invalidity) are also a different matter,<sup>21</sup> as is the issue of separation (eg due to violence), and the ancient Pauline privilege as applying to unbaptised persons and based on 1 *Cor* 7:12 ff.<sup>22</sup> The Petrine privilege, also called privilege of the faith, is likewise distinguishable. A detailed discussion of these is beyond the scope of this note.<sup>23</sup>

Finally, and importantly, according to the Catholic Catechism a *civil* divorce is not *per se* a moral offence (CCC 2383). It may indeed be necessary if it is the only possible way of ensuring certain legal rights, the care of children or the protection of inheritance (CCC 2383). Indeed, a Catholic Tribunal cannot begin any official examination of a marriage prior to a decree of civil divorce.

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the civil authority in respect of the merely civil effects of the marriage.' *The Code of Canon Law*, in English translation (1983).

19 Archbishop Michael Sheehan, above n 15, 602. 'Living together as man and wife' implies sexual intercourse by which the marriage moves from being 'ratified' only to the state of being 'ratified and consummated'. See further James A. Coriden, *An Introduction to Canon Law* (1991), Paulist Press, 133 and the Canon Law provisions there discussed.

20 The author prefers 'declaration of nullity' to 'annulment'. Declarations of nullity often receive an amused smile from the secular media. For a response to this in the light of the declaration made in respect of Sheila Rauch Kennedy and U.S. Rep. Joseph Kennedy II see Robert Royal, 'Catholic Gobbledygook' (October, 1997) 76 *First Things* 14-15. [www.firstthings.com](http://www.firstthings.com). For an Australian reference work on the relevant Canon Law and trial practice see Mons Doogan (ed) *Catholic Tribunals – Marriage Annulment and Dissolution* (EJ Dwyer, 1990) and Bishop Geoffrey Robinson, *Marriage, Divorce & Nullity: A guide to the Annulment Process in the Catholic Church* (Liturgical Press, 2000). See also the list of useful on line resources on divorce and annulment <<http://www.catholic-pages.com/dir/divorce.asp>>.

21 Some would argue they are certainly not unrelated and that the Pope is also very concerned about rising annulment rates in Church courts. See Robert H Vasoli, 'Houses of Worship: Loose Canons', *The Wall Street Journal* (USA), 11 September 1998, 9; and by the same author *What God Has Joined Together: The Annulment Crisis in American Catholicism*, (OUP 1998), and Clarence J Hettinger, 'Too many invalid annulments', *The Homiletic & Pastoral Review* (1993) 15-22.

22 A marriage between two unbaptised, though sacred, is not a sacrament. Should one party become Catholic, and the other 'refuse to live in peace with the convert' the Catholic party may seek permission from the Bishop to enter a new marriage with another. See further Sheehan op. cit. 603-4. See also Code of Canon Law (1983), cans. 1143-50.

23 See Sheehan above n 15, 602-604.

Nevertheless, this does not change the teaching that divorce *per se* is a grave offence against the natural law (CCC 2384) and so is an intrinsically evil act. Apart from divorce, other offences against the dignity of marriage include adultery (CCC 2380 ff), polygamy (CCC 2387), incest (CCC 2388) and so-called 'free unions' (CCC 2390 ff).

## Conscience and Legal Professional Ethics

The predicaments of conscience confronting lawyers, Catholic Christian or otherwise, arise in many differing circumstances. Most lawyers have their private thoughts about the unjust law, the death penalty, the 'guilty' client, the lying witness, participation in a corrupt political regime, and so on. Beyond this, Catholic lawyers are called to rely upon a comprehensive set of principles of moral theology (Christian morality) which precede and inform their personal exercise of practical art of 'legal ethics'.<sup>24</sup> They are exhorted to inform their consciences and exercise enlightened moral judgment in a lifelong task which 'guarantees freedom and engenders peace of heart.' The *Catechism of the Catholic Church* discusses the moral conscience at length in the chapter on *The Dignity of the Human Person*.<sup>25</sup>

In relatively rare cases a choice must be made between a rule of professional conduct and a moral teaching of the Church. By way of illustration, one may take the recent case in Tennessee of a threat of professional discipline against a Catholic lawyer who refused to represent adolescent girls seeking to bypass parental permission for abortions.<sup>26</sup>

In the context of civil divorce, the Pope's speech has reminded Catholic lawyers around the world that they must inform their consciences on this issue and act accordingly. In particular, they must inquire, on a case-by-case basis, whether their actions are promoting a mindset which favours divorce or marriage. According to at least one commentator, those Catholic lawyers whose entire practice is based on divorce may have to face some difficult issues.<sup>27</sup>

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24 See CCC [1776] ff for a discussion of moral conscience, its formation, and the problem of erroneous judgment.

25 *Catechism of the Catholic Church* (1994) para. 1776 ff. For further discussion on conscience by a noted jurist see Cormac Burke, *Conscience and Freedom*, (2nd ed, 1992), Siag-Tala, Manila. See also Robert J Muise, 'Professional Responsibility for Catholic Lawyers: The Judgment of Conscience', (1996) 71 *Notre Dame Law Review* 771. More generally see Gerard B Wegemer, *Thomas More on Statesmanship*, Chap 10 'The Limits of Government and the Domain of Conscience', (1996), CUA Press, Washington DC 183.

26 Board of Professional Responsibility of the Supreme Court of Tennessee, Formal Op. 96-F-140 (1996).

27 See comments of Professor Jane Adolphe of Ave Maria Law School in Judy Roberts, 'Pope's Call to Arms for Lawyers: Combat 'Divorce Mentality'', *National Catholic Register*, February 2002, <[http://www.ncregister.com/Register\\_News/022002div.htm](http://www.ncregister.com/Register_News/022002div.htm)>.



## The Speech (Vatican Internet translation)

As mentioned, there was some confusion over translation of some parts of the speech. Correctly translated, the portions most relevant to this discussion are as follows:

On the other hand, professionals in the field of civil law should avoid being personally involved in anything that might imply a cooperation with divorce.

*For judges* this may prove difficult, since the legal order does not recognize a conscientious objection to exempt them from giving sentence. For grave and proportionate motives they may therefore act in accord with the traditional principles of material cooperation. But they too must seek effective means to encourage marital unions, especially through a wisely handled work of reconciliation.

*Lawyers*, as independent professionals, should always decline the use of their profession *for an end* that is contrary to justice, as is divorce. They can only cooperate in this kind of activity when, *in the intention of the client*, it is not directed to the break-up of the marriage but to the securing of other legitimate effects that can only be obtained through such a judicial process in the established legal order (cf. *Catechism of the Catholic Church*, n. 2383). In this way, with their work of assisting and reconciling persons who are going through a marital crises, lawyers truly serve the rights of the person and avoid becoming mere technicians at the service of any interest whatever.<sup>28</sup> (*My emphasis*).

We now turn to the heart of the Pope's message to lawyers.

### Cooperation in evil

Of central importance in the speech is the concept of 'cooperation' in evil. In Catholic moral tradition, cooperation is of two basic types: formal cooperation and material cooperation. So far as formal cooperation is concerned, Catholics have a personal responsibility for the evil acts committed by others when they 'cooperate in them: by participating directly and voluntarily in them; and by ordering, advising, praising, approving them; by not disclosing or not hindering them when [they] have an obligation to do so; [and] by protecting evil-doers.'<sup>29</sup>

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28 Address of John Paul II to the Prelate Auditors, Officials and Advocates of the Tribunal of the Roman Rota, Monday, 28 January 2002

<[http://www.vatican.va/holy\\_father/john\\_paul\\_ii/speeches/2002/january/documents/hf\\_jp-ii\\_spe\\_20020128\\_roman-rota\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/speeches/2002/january/documents/hf_jp-ii_spe_20020128_roman-rota_en.html), accessed 15 March 2002>.

29 *Catechism of the Catholic Church* (1994) para. [1868]. A more poetic version appears in Watkins' *Manual of Prayers*: 'Nine ways of assisting in another's sin: by counsel, by command, by consent, by provocation, by praise or flattery, by concealment, by

Formal cooperation can never be justified and depends upon the mind of the cooperator being at one with the actual doer of the evil act. By way of contrast, mere material cooperation excludes the notion of united wills. Professor Germain Grisez quotes St. Alphonsus, the once famous Neapolitan barrister, as differentiating the two in the following way: 'That [cooperation] is formal which concurs in the bad will of the other, and it cannot be without sin; [on the other hand] that [cooperation] is material which concurs only in the bad action of the other, apart from the cooperator's intention.'<sup>30</sup>

The New Catholic Encyclopedia<sup>31</sup> devotes considerable space this difference:

Cooperation is material when it avoids participation in the evil intention of the sinner. The material cooperator does not want the sinful action to take place, and there is an ambiguity about what he actually does. His assistance, may in fact contribute to the sin, but it is not of its nature or in the circumstances exclusively ordained to the commission of the sin. To sell a bottle of whiskey may contribute to the drunkenness of the one who buys it; but whiskey has other than sinful uses, and the shopkeeper does not necessarily enter into the intentions of his customers who want to intoxicate themselves.

Formal cooperation in the sin of another is always sinful because it involves, virtually at least, a sharing in a sinful purpose. Material cooperation, on the other hand, is considered permissible under certain conditions, namely, that the action of the material cooperator is not evil in itself, that his intention is good, and that he has a proportionately grave reason for doing something that may contribute in some way to the sin of another.

The rendering of any aid whatever to the commission of sin is a thing to be avoided; but if the aforesaid conditions are verified, the principle of double

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partaking, by silence, by defence of the ill done.' James D Watkins, *Manual of Prayers* (3rd ed, 1998), Pontifical North American College, Rome, 48.

30 Germain Grisez, *The Way of the Lord Jesus, Volume Three, Difficult Moral Questions* (1997), Franciscan Press, Illinois, Question 873 (quoting St Alphonsus Liquori, *Theologia moralis*). See further Appendix 2: Formal and material cooperation in others' wrongdoing, 871, 876.

31 *New Catholic Encyclopedia* (1967), Vol XIII, McGraw Hill, 245-6. On material cooperation of lawyers see further Teresa Stanton Collett, 'Speak No Evil, Seek No Evil, Do No Evil: Client Selection and Cooperation with Evil', (1998) 66 *Fordham Law Review* 1339, 1376. See also Teresa Stanton Collett, 'Marriage, Family and the Positive Law' (1996) 10 *Notre Dame Journal of Law, Ethics & Public Policy*, 467, Teresa Stanton Collett, 'The Common Good and the Duty to Represent: Must the Last Lawyer in Town Take Any Case?' (1999) 40 *South Texas Law Review*, 137, Teresa Stanton Collett, 'Love Among the Ruins: The Ethics of Counselling Happily Married Couples' (1998), 22 *Seattle University Law Review*, 139, Teresa Stanton Collett, 'To Be a Professing Woman' (1996) 27 *Texas Tech Law Review* 1051.

effect is applicable, and an action can be performed even though it is foreseen that an evil effect may ensue.<sup>32</sup>

In estimating the proportionate gravity of the reason for cooperating materially in the sin of another the authors state that:

the immediacy or mediacy, the proximateness or remoteness, of the influence of the cooperation upon the sin should be taken into consideration, as well as the necessity of the cooperation to the commission of the sin. Obviously it requires a less grave reason to justify the doing of something that only mediately and remotely lends aid in the commission of sin than something that is proximately and immediately involved in the sinful act. Similarly, a form of cooperation readily available from other sources would be easier to justify than cooperation that no other could supply.<sup>33</sup>

Lawyers will be relatively at ease with the concepts of proximity, remoteness and necessity since these concepts have a life elsewhere in the law. Lawyers may not, however, be familiar with their use or application in the world of moral theory and the advice of a prudent counsellor is always recommended in difficult cases.<sup>34</sup> As one commentator proposed 'It seems to me that you've got to go on a case-by-case basis and see if you are promoting the divorce mentality or not.'<sup>35</sup>

### **Law reform and the Family Law Act (Cth)**

We will deal briefly with this issue. In some circumstances, Australian law requires that the parties to a civil divorce seek counselling before filing their case.<sup>36</sup> According to the Family Law Council these measures have not been successful in promoting reconciliation and should be repealed.<sup>37</sup> Such compulsory attempts at reconciliation must of course be weighed by Catholic lawyers in deciding whether and how to act in a particular case, but they are not determinative. In its 1992 Report *Multiculturalism and the law*,<sup>38</sup> the Australian Law Reform Commission proposed changes to the Family Law Act to deal with the situation where, under the laws of a particular religion, a spouse had the option to remove or not to remove impediments to remarriage. This proposal was in the context of a Jewish Bill of Divorcement (a 'gett'), which can ultimately only be

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32 Ibid.

33 Ibid.

34 Ibid.

35 Professor Jane Adolphe of Ave Maria Law School quoted in Judy Roberts, 'Pope's Call to Arms for Lawyers: Combat 'Divorce Mentality'', *National Catholic Register*, February 2002, <[http://www.ncregister.com/Register\\_News/022002div.htm](http://www.ncregister.com/Register_News/022002div.htm)>.

36 Anthony Dickey, *Family Law* (4th ed. 2002) 220 ff.

37 Ibid 223 citing Family Law Council: Annual Report 1984-85 (1985) 45.

38 Australian Law Reform Commission, *Multiculturalism and the Law*, Report No 57 (1992) p. 105-111.

given voluntarily by the husband to the wife. By way of contrast, a Catholic annulment requires intervention by a Church court.

## Conclusion

In practical terms, how is a Catholic lawyer to recognize a necessary civil divorce from one that is unnecessary, serves no legitimate end, and is perhaps objectively sinful? Such questions exercise the minds of moral theologians. Is this for the busy lawyer? Yes and no. Catholic lawyers are not expected to be moral theologians, but nevertheless must take responsibility for both their professional as well as personal life. Catholic lawyers cannot hide behind the law to work an injustice and so must concern themselves both with obtaining a reasonable knowledge of their faith, together with access to experts in cases of doubt. In the case of civil divorce this will also aid Catholic clients who are often uncertain of the interaction between civil and Church law, and are in need of sympathetic advisers who 'understand' the spiritual ramifications of the steps they are proposing (or may be obliged) to take.<sup>39</sup>

In an interview with Vatican Radio, Francesco D'Agostino, president of the Union of Italian Catholic Jurists described the speech as 'an invitation to all jurists to be conscious of the height of their profession'.<sup>40</sup> It seems the Pope is keen to remind lawyers that indissolubility is the essence of marriage and what he dubs the 'divorce mentality' is to be countered not only by careful support of married persons, but also by clarification and defence of Catholic doctrine. Even if one disagrees with the Church's moral theology, the Pope has pricked the consciences of an influential professional group by reminding them that their cooperation in individual cases must always promote justice. Legal and moral excellence are inseparable.

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39 In this regard see Pontifical Council for the Family, 'Recommendations for care of "Divorced"', *L'Osservatore Romano*, Weekly Edition in English, 6 March 1997 available online <<http://www.ewtn.com/library/CURIA/PCFDIVOR.HTM>>.

40 Reported on Zenit.org, Vatican City, January 30, 2002 <<http://www.zenit.org>>.