the reality of God as the source of these spiritual relationships and purifies the soul in its perception of and abandonment to the divine person disclosed through the artistic symbol. In both its expressive and pedagogical functions, art meeting Remodernist criteria evokes a reality in which the rational soul constitutes the central actor in what is ultimately a spiritual drama of recognition and purification.

This emphasis on the reality of the human soul illuminates the primacy accorded authorial voice in the art criticism generated by the Remodernist movement. In his essay for the catalogue accompanying the “Magnarico: Re Mo” exhibition of visual art at the University of New Mexico in 2002, the Berkeley art critic Kevin Radley celebrates the return of the singular author’s voice as central to artistic creation and interpretation.

“There seems to be a re-emergence of confidence in the artist’s singular voice—a renewal of the belief that an artist can explore their [sic] own nature without the restatements of the iconic, the cynical, or the didactic. To re-contact the notions of presence, re-invent their sense of beauty, and renew our need for intimacy. Is this a return to earnest individualism? … I suggest we let the artist decide.”

In explicit reaction against the postmodern tendency to emphasize the disparate cultural factors that inform the genesis and content of a particular artwork, Radley insists on the centrality of the unique author who has fashioned the work and whose distinctive style reflects the unique soul of the artist. Respect for the self-expression of the artist’s idiosyncratic interpretation of the real replaces ironic deconstruction of the artwork as the fulcrum of aesthetic analysis.

Fourth, the Remodernists emphasize a new connection to God in the reemergence of art rooted in the spirituality of the human soul. “The Remodernist’s goal is to bring God back into art but not as God was before (RM no.13).” The purpose of art is to rekindle awe and ecstasy in the viewer, but not in a sectarian subservience to a particular set of dogmas.

Like a jejune PBS special, the Remodernist Manifesto draws strict lines between the spiritual and the religious. An earlier thesis in the manifesto insists that “[s]piritual art is not religion (RM no.9).” A later thesis argues that “spiritual art does not mean the painting of Madonnas or Buddhas (RM no.13).” For Childish and Thomas, art appears to offer a path toward union with God much as an earlier Romantic generation of artists conceived it. For a cultivated public no longer discovering God through scripture and sacrament, the artistic symbol can provide a new avenue toward transcendence. The authentic artist functions like a priest who permits the viewer to enter into communion with God through the artwork. In this perspective, art is neither an ally of nor complement to religion; it has become an alternative to religion for those skeptical of an institutionalized faith.

The link with the earlier Romantic sacramental conception of art indicates one of the ways in which the Remodernists remain faithful to modernity and hostile to any retrieval of the medieval. If God remains central to the Remodernist vision of art, it is a God who is no longer accessible through participation in a church grounded on God’s self-revelation represented through scripture, sacrament, and clergy. The manifesto’s realist affirmation of the existence of a God who exists independently of the human mind and who transcends the material representations that point toward God remains addressed to a modern post-Christian public still clearly the grandchildren of the Enlightenment.

Conclusion

Both the practice and theory of Remodernism in the artworld suggest directions, indeed moral imperatives, for the retrieval of realist perspectives in a more philosophically metaphysics. Attention to the real rather than to the desires of the will underscores the pre-existence and independent existence of the external world glimpsed and analyzed by the human mind. The affirmation of purpose within the natural and interpersonal spheres contests the reduction of telos to a projection of the psyche. It also insists that judgments of natural or artistic worth are tied to the intrinsic perfection of the object or act falling under normative judgment. The affirmation of the human soul’s spiritual personality underscores the subjectivity of the human agent as a difference in kind from nonrational agents and as a hermeneutical key in interpreting the very phenomenon of art. The affirmation of a God beyond human projection points to a spiritual reality that precedes and that stands in judgment on the play of social construction. Such theses constitute a substantial neorealistic agenda.

Do Catholics Need Ecclesiastical Permission to Divorce?

Edward N. Peters
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Canons 1151-1155 of the Code of Canon Law state that Roman Catholics wishing to separate from their spouses must obtain ecclesiastical permission for the cessation of conjugal life. Canons 1692–1666 set forth the procedure for obtaining that authorization. Yet, of the tens of thousands of Catholics who separate or divorce each year in the United States, virtually none of them makes any effort to comply with these norms. “As a matter of fact, cases of separation are rarely brought before ecclesiastical authorities. Many couples sue for a civil divorce only.” In more than a decade of diocesan work, I never saw or heard of a spouse seeking ecclesiastical permission for separation or divorce.

This stark contrast between what appear to be plain provisions of law and this apparent widespread disregard for those norms prompts some to wonder whether a multitude of lay Catholics are in violation of several canons intended to direct their behavior toward the good, whether bishops are being negligent by not urging lay Catholics to comply with requirements set forth by a wise and loving Church, or whether noncompliance with these canons is weakening the Church’s witness to the permanence of marriage. Indeed some intelligent (but not canonically trained) persons, interested in promoting Church teaching on marriage, have come across these canons and—withstanding the heavy logistical demands that adopting their proposals would place on bishops and their staff—assert that observance of these norms must forthwith be urged by bishops and pastors upon pain of pastoral dereliction. I think, however, that such calls, at least insofar as they claim to rest on canonical imperatives, are ill-founded. I will offer here several observations toward either abandoning such proposals or reformulating them in light of canonical arguments that could be raised against them.

Some preliminary points may be set out. Our focus is on Western canon law, but even so, I would observe that, over time and across various ecclesiastical genres, terms such as “separation” and “divorce” have been used with significantly different shades of meaning by approved authors. Thus apparent similarities in usage do not always signify the same things, while differences in phrasing do not necessarily denote disagreement. Next, Canons 1151-1155 (stating the conditions under which spouses may separate or divorce) are almost identical to Canons 1128-1132 of the 1917 Code. This continuity allows us to invoke commentators on the old law for insights into the new. In contrast, Canons 1692-1666 (outlining the procedure for seeking Church permission to discontinue conjugal life) are new and thus lack

https://www.catholicscholars.org/PDFFiles/v40n12sprsum2017.pdf
significant roots in canonical tradition. Finally, all translations herein are mine.

At the risk of beginning this analysis in the middle of the matter, I first observe that during the post-Conciliar canonical revision process, as the Church transitioned from the 1917 Code to the 1983 Code, there was opposition to retaining the older norms on spousal separation in the projected law and to introducing new such cases therein.

For example in 1978 advisors to the Coetus on Marriage argued that “suggested that all the material on separation while the bond endures [the future Canons 1535-1535] not be retained in the Code but rather should be left to episcopal conferences which, if they felt it necessary, could enact local norms in accord with the practices of their peoples.” The coetus replied that, because adultery (the traditional factor triggering separation) was discussed in Scripture, these proposed canons should be retained in the law. Of course, many things are discussed in Scripture that are not found in canon law, and canon law provides for many matters not found in Scripture, so the reasoning here is less than persuasive.

Likewise in 1979 advisors to the Coetus on Procedural Law argued that “this title on separation cases [the future Canons 1626-1666] should be suppressed because spouses never bring separation cases to ecclesiastical tribunals, or the whole matter should be left to local law.”

The coetus replied, however, that these canons “cannot not be in the general law” and retained them despite concerns that they would remain essentially unused.

Some might look at the dates of these objections (the late 1970s) and attribute them to a wider post-Conciliar malaise regarding the defense of marriage or see the apparent side step on separation cases [the future Canons 1626-1666] more as a result of concern about the authority of bishops to send marriage cases, and with due regard for divine and canon law—the Church explicitly or at least implicitly tolerates spouses going directly to civil courts to seek separation.

This view is the more well-founded, is practically safe, and should be preferred. For, on the one hand, [direct recourse to civil courts] is not intrinsically evil, even the Holy See would not have, indeed could not have, issued permissions for it; on the other hand, Catholic doctrine [for example, on the ultimate authority of the Church over the marriages of the baptized, discussed below] stands, as do divine and canon law, and grave cause could exist, indeed most serious cause could exist, for turning to civil courts especially in regard to preserving property rights.

In short, notwithstanding spousal separation canons that, in terms virtually identical to those used in the 1983 Code, required all Catholics to obtain ecclesiastical permission to dissolve conjugal life, canons of the pre-Conciliar law and of the post-Conciliar Code did not recognize lay divorces in many countries, in particular in countries where the Church had never formally recognized the concept of divorce. For other countries, even in those countries where divorce had been recognized, Catholic marriage cases, and with due regard for divine and canon law—the Church explicitly or at least implicitly tolerates spouses going directly to civil courts to seek separation.

Or again, “If the parties have already separated…without ecclesiastical authorization, the obligation [to seek such authorization] need not be insisted upon nor the parties disturbed.” This relaxed view toward observatory canons on spousal separation was not limited to our side of the herring pond: “No spouse may bring a separation case before the civil court without the permission of the Ordinary; but in practice, he does not usually require the formality.”

Clearly, then, even during a period of high regard for canon law, one free of the pastoral timidities experienced in later years, solid canonists, reading spousal separation canons nearly identical to ours, concluded that they were not to be enforced according to their plain terms. To understand how such a seemingly anomalous situation arose, I suggest turning now to the renowned Roman canonist Felix Cappello who, in his Trattato Canonico-Morale di Sacramenti, addresses this matter with respect for canonical principles and a sense for pastoral practicality.

Cappello, like Boussacan and Ellis, Halligan, and Naz, advised priests against requiring Catholics unaware of the canonical separation requirements (which would have been most Catholics) then as now to undertake a formal canonical process in regard to discontinuing conjugal life, but Cappello offered more analysis than did the others and his insights are illuminating for us.

Cappello began by noting that the Holy See had signed a concordat (treaty) with France in 1860 noting that Catholics who did not reside in France could exist, for turning to civil courts especially in regard to preserving property rights.

Some say that the Church in no way allows spouses to approach civil courts and that any sentence issued by a civil court would be illicit and would not protect one’s conscience.

Others hold that spouses have the right to approach civil courts if there is a statement to that effect from the Holy See (such as was made for England in 1860 or France in 1885) but not in other nations.

Still others hold that in light of circumstances—such as pressing grave cause, while respecting Church doctrine about the exclusive authority of the Church over marriage cases—and with due regard for divine and canon law—the Church explicitly or at least implicitly tolerates spouses going directly to civil courts to seek separation.

First, as noted above, various countries have concordats with the Holy See whereby some canonical marriage decisions are given civil weight. In some other nations, including Islamic ones, civil law itself sometimes recognizes religious divorces, for example, in Morocco, Algeria, Tunisia, and Morocco. In some countries, canonical norms for separation and divorce cases would be needed to guide parties and ecclesiastical officials whose actions and decisions could carry civil consequences. The Code might be considered a convening place to locate such norms. But again, to my knowledge no such marriage concordats or social observances exist in common law countries, leaving the canons on spousal separation with “no practical application in English-speaking countries as couples who wish to obtain a legal separation have recourse to the civil courts.”

The drafters of the 1983 Code would have done better, in my view, not to include in universal law norms that are needed only in certain regions; but included they were, with the result that today, some people coming across these canons understandably, but wrongly, conclude that, like most other canons in the Code,
significant roots in canonical tradition. Finally, all translations herein are mine.

At the risk of beginning this analysis in the middle of the matter, I first observe that during the post-Conciliar canonical revision process, as the Church transitioned from the 1917 Code to the 1983 Code, there was opposition to retaining the older norms on spousal separation in the projected law and to introduc- ing new such cases therein.

For example in 1978 advisors to the Coetus on Marriage “suggested that all the materials on separation while the bond endures [the future Canons 1153-1155] not be retained in the Code but rather should be left to episcopal conferences which, if they felt it necessary, could enact local norms in accord with the practices of their peoples.” The coetus replied, however, that because ad- ltery (the traditional factor triggering separation) was discussed in Scripture, these proposed canons should be retained in the law. Of course, many things are discussed in Scripture that are not found in canon law, and canon law provides for many matters not found in Scripture, so the reasoning here is less than persuasive.

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Some might look at the dates of these objections (the late 1970s) and attribute them to a wider post- Conciliar malaise regarding the defense of marriage or see the apparent lack of spousal separa- tion norms just one more example of the modern fail- ure to respect canon law. Against such a view, though, stands the fact the nonuse of spousal separation canons, which is noted above in such cases therein the 1917 Code in terms nearly identical to the current law, was well known before Vatican II.

Consider this advice from the standard pre-Conciliar canon law textbook used in American semi- naries during the twenty years leading up to Vatican II: A party seeking separation should normally be re- ferred to the Ordinary. However, since people usu- ally hesitate to enter into direct communication with diocesan officials in these matters, it will usually be well, if the parties are unaware of it, especially if the separation is already in effect and there is no great scandal connected with it.

Or again, “If the parties have already separated… without ecclesiastical authorization, the obligation [to seek such authorization] need not be insisted upon nor the parties disturbed.” This relaxed view toward observ- ing canons on spousal separation was not limited to our side of the herring pond: “No spouse may bring a separation case before the civil court without the per- mission of the Ordinary; but in practice, he does not usually require the formality.”

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In short, notwithstanding spousal separation canons that, in terms virtually identical to those used in the 1983 Code, required all Catholics to obtain ecclesiastical permission to discontinue conjugal life, canons of the Code did not regard a civil decree of divorce as settling marriage-related decrees from religious tribunals—in most such cases, provided only that they did not regard a civil decree of divorce as settling canonical issues such as the validity of their marriage. Doubtless some impressive canonists could, as suggested by Cap- pello himself, be cited in disagreement with his view (I find Halligan, for example, uncharacteristically ambiva- lent in this area), but such disagreements among experts only reinforce my main point, namely, that canonists did not regard a civil decree of divorce as settling canonical issues such as the validity of their marriage. 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these norms must be applicable everywhere.

Second, the Church has, to be sure, fundamental jurisdiction over the marriages of all the baptized, even though she chooses not to exercise that jurisdiction over marriages involving only baptized non-Catholics or, as a rule, even to involve herself in the civil consequences of marriages between Catholics. Still, the retention of norms such as Canons 1151-1155 and 1692-1696 in universal law might help to preserve, at least in some “symbolic” way, the Church’s assertion of her radical baptismal jurisdiction over marriage. I find the cost of retaining in law “symbolic” norms, if that is what these canons amount to in many places, to be high (if only in terms of their potential to cause confusion among the faithful), but the legislator apparently concluded otherwise. Nevertheless, even “symbolic” canons must be read in accord with their text and context, and the context of the canons on spousal separation strongly suggests that they are not to be applied in all countries the way they might be applied in some.

In conclusion, most Catholics today, and certainly the most Catholics living in countries such as the United States, have no idea that any canons seem to require further catechesis.

ENDNOTES

2 Eastern law treat the same issues in CCEO 810-816 and 1778-1782.
3 1983 CIC 17.
4 Communicationis 11:1130.
5 Communicationis 11:1725.
6 Bouscaren & Ellis, Canon Law: A Text and Commentary (1946), 372.
7 Hélignon, Administration de l’Eucharistie (1963), 216.
8 Nisa, Traité de Droit Canonique II (1954): 477.
9 V (1947), 824-25.
10 Kelly, in Letter to Spirit (1976), 344.
13 McAleer, Canon Law of Marriage (1997), 212.
14 1983 CIC 1721.
15 1983 CIC 1.22, 1593.
16 1983 CIC 17.

Religious Warfare

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The shift from a predominantly Protestant to a secular or humanist culture in North America may be dated to the mid-decades of the last century, to the period some are calling the “cultural revolution.” Clearly a shift took place sometime in the last century, with the result, one may say, that the religious mind is no longer faced with defining its vision of the contemporary meaning of Christianity or Judaism against other religious outlooks. Each is now called to defend itself in the face of major secular attacks, hostile to all religious belief and practice. It may take considerable learning and analysis to recognize the full extent of the secular threat to religion, but little reflection is needed to recognize its social effects, namely, a general disintegration of religious commitment, manifesting itself in a startling rise in promiscuity, divorce, and abortion, in the widespread acceptance of pornography and homosexuality, and in a growing tolerance of deviant behavior in its many forms. The rejection of the biblical sources of morality has its social consequences. Appeals to a natural moral order fare no better.

On a more subtle level, the war against Christianity has affected the college curriculum, insofar as it has led to the neglect of classical learning, ancient and modern languages, history, theology and philosophy, disciplines all of which were pursued in part because they traditionally provided the materials through which revealed religion was received and developed.

As many have observed, a community cannot long exist without a core of common convictions. Some of the social tensions in North America are but a reflection of a deeper conflict between religious and secular outlooks. If the secular is not totally to eclipse the religious and become the measure of thought and conduct, representatives of the religious outlook will have to confront the challenge vigorously. The following reflections are an attempt to understand the causes that have led to the present impotence of the religious mind and its prospects for the future.

Skepticism with respect to Christian convictions has been forming among the occidental intelligentsia for at least two centuries. Nietzsche already in the nineteenth century observed that the West no longer possessed the spiritual resources that had formerly infused its existence and without which it could not survive. In more ways than one, from the last half of the twentieth century to the present, the intellectual climate has been governed by the legacy of the French Enlightenment. Views entertained in eighteenth-century drawing rooms and in the academy of that day have become mainstream. Diderot set the tone in his famous En评为লাসলে যখন তিনি লিখেছিলেন, “Everything must be examined, everything must be shut up, without exception and without circumspection.”

Voltaire urged the eradication of Christianity from the world of higher culture, but he was willing to have it remain in the stables and in the scullery, mainly as a moral force, lest a servant class emancipated from the traditional sources of morality might pifer. Like Diderot, he was convinced that the critical spirit could do its constructive work only after it had liberated man from the shackles of traditional belief. There are times when one must destroy before one can rebuild, he said. Voltaire readily admitted his intolerance, declaring that his was an intolerance directed against intolerance.

Jeremy Bentham thought the state should actively work to stamp out religion. His disciple, John Stuart Mill, repudiated Christianity but not the religion of humanity, which he thought to be, from the standpoint of the state, a useful thing. August Comte was more benevolent in his attitude toward Christianity than either Voltaire or Mill. In spite of his denial of all metaphysical validity of religious belief, he was willing to accept as a civic good the moral and ritual traditions of at least Catholic Christianity.

Emile Durkheim, carrying the Enlightenment spirit into the early decades of the twentieth century, was not so positive. For him, a major task of the state is to free individuals from partial societies such as the family, religious organizations, and labor and professional groups. Modern individualism, Durkheim thought, depends on preventing the absorption of individuals into secondary and mediating groups.

Ludwig Feuerbach, whose materialism was to have a significant influence on Marx and Freud, assigned to reason the task of destroying the illusion of
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connection between the dogmas of the Immaculate Conception and the Assumption, Welby reaches this judgment about the latter: “There is no biblical support for this teaching. It came to be promulgated because human being springs from human beings having a sinful nature, and therefore Mary could not have died if she had been born without possessing such a nature” (8). The Catholic perspective is that Luke 1:28 provides strong evidence for the related doctrines of the Immaculate Conception and the Assumption. Here it is important to note that the Assumption is about the entrance of Mary body and soul into heavenly glory and not about her death. With respect to the comment just cited from Welby, we should also be reminded that Jesus, too, did not possess a sinful nature but accepted death in obedience to his beloved Father.

Some of Welby’s comments seem speculative and beyond the evidence. For instance, at one point he contends: “It’s possible that one of the reasons Jesus waited until the age of thirty to begin his ministry was because he was waiting for the youngest of Mary’s children to grow up and move out on his own” (68). Given the dogma of the Immaculate Conception of Virgin Mary, formulated in the classical phrase ante partum, in pari natura post partum, the Catholic Church does not accept the notion that Mary had other children but positively teaches against it. The Protoevangelium of James (c. 145 A.D) had for its focus, according to the acclaimed patrologist Fr. Johannes Quasten, “to prove according to the acclaimed patrology of James the Mother of Jesus as the Ever-Virgin. Fr. Johannes Quasten, “to prove according to the acclaimed patrology of James the Mother of Jesus as the Ever-Virgin.”

Welby’s comments on the references to Mary in the Qur’an and on the hostile treatment afforded the Mother of Jesus in the Talmud opens up his discussion to certain Islamic and Jewish views. His presentation of the Matthean and Lucan genealogies (8-12) is helpful. And he gives his readers a glance at the fascinating debate about the meaning of the terms almah and betulah in Isaiah 7:14 (22-23). He minces no words in dispatching with the preposterous—really, blasphemous—and totally unscholarly theory that Almighty God sexually violated Mary of Nazareth (47-49) to effect the conception of Jesus. On this topic, he writes: “She was chosen by divine will and the young lady considered herself having been singled out by God as the highest of human privileges. So she obediently acquiesced to the announcement with full cooperation.” (49). Such cooperation in no way implies unthinkable sexual violation.

Welby finishes his volume with this comment: “Both Roman Catholic and Protestant believers in the Lord Jesus the Messiah may say with one voice that Mary’s magnificent poem of praise to God has been abundantly fulfilled throughout the centuries since generations all over the earth have called her blessed” (166). Along with the Christological hymn found in scripture, the Magnificat is the gold standard of New Testament praise to our Creator. Given the importance of its subject matter and the wealth of information it contains, Welby’s book is most welcome. As its cover, it uses a modern forensic projection of the Mother of Jesus painted by Dean Buckwood that is based on the Shroud of Turin. It also contains two helpful appendices, one on Timothy W. Dunkin (“Does Isaiah 7:14 Prophecy That a Virgin Would Conceive?”) and another by Charles W. Misler (“A Commentary on 2 John”).
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