T HIS article has a pastoral goal: to help Catholics in particular, especially the married, understand where they stand before the Gospel and the Church community on the nature and the indissolubility of marriage. More specifically I would like to show that the understanding of marriage, and of marriage as a sacrament, which we find in the text of Canon Law and the more fundamental theological approaches is not as straightforward as it seems to be. If we looked at marriage as it exists in daily life, including the divorce rate, we would see that there is a vast difference between theological and canonical theory and what many Christians live in practice. This is not to say that practice should override doctrine. However, a look at the tradition down the ages may lead us to ask: are we being unjust to people and our tradition when we cling to a fixed and unchangeable approach to marriage and indissolubility?

Schillebeeckx came to the conclusion that marriage is an historically and culturally determined reality. After some study and reflection on the canon law, the theology, the interpretation of scripture, and the history of the nature of marriage, especially of marriage as a sacrament, I could only agree. Another way of stating it would be to say that we are still working out the meaning of marriage and marriage as a sacrament with quite some way to go even to catch up with the questions the present age and culture pose to us. I propose here to highlight some of the difficulties we come up against when we try an over-simple approach to defining Christian marriage and marriage as a sacrament along with the teaching on indissolubility.

Let us begin with the 1983 code of canon law since in practice that is what governs the discipline of marriage within the Church. Canon 1055 states:

1. The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptised, been raised by Christ the Lord to the dignity of a sacrament.

2. Consequently, a valid marriage contract cannot exist between baptised persons without its being by that very fact a sacrament. Canon 1056. The essential properties of marriage are unity and indissolubility: in Christian marriage they acquire a distinctive firmness by reason of the sacrament.

The description of marriage as a partnership or covenant of life shows the progress made since the first Code of 1917. We now recognise more explicitly the personal and relational nature of marriage with the deletion of the emphasis on the hierarchy of primary and secondary ends. However, when we come to marriage as a sacrament problems begin to arise.

Sacraments and faith go together.

What if a couple, baptised in infancy but never brought up in the Christian faith, have no idea of the Faith and do not believe in Christ, the Church or the sacraments, and yet have given themselves to each other in marriage? The canon says that a valid marriage is a sacrament ipso facto for the baptised. How can there be the grace of the sacrament without faith? If there is no faith and consequently no sacrament the canon would deny that there is a valid marriage even though, or because, these people were baptised. When faced with this question the International Theological Commission concluded:

...the personal faith of the contracting parties does not constitute the sacramentality of matrimony, but the absence of personal faith compromises the validity of the sacrament. This fact poses new questions that to date have not been resolved satisfactorily.

Logically we might have to question the
validity of many marriages today if marriage and the sacrament for the baptised are inseparably united as the canon insists. Indeed, many Christian churches do not recognise marriage as a sacrament and would positively exclude the idea. It is interesting to note that historically insistence on the doctrine that every marriage between the baptised is a sacrament is partly the result of the Church rejecting the attempts of civil governments to take complete control of marriage as a civil affair.

We need to be aware in passing that the teaching of Canon Law, while it obviously affects the practical theology and treatment of marriage for Catholics, is written primarily as law to safeguard the institution of marriage and its governance in the Church, and is not ultimately theological definition. Nonetheless, it represents the Church’s pastoral teaching and norm.

Continuing with canon 1056 we note that the essential properties of marriage are unity and indissolubility.

Although the teaching that marriage is indissoluble goes back to the Lord himself, the history of marriage in the Church shows that up till the middle ages indissolubility was treated more as a moral requirement or the way Christians should consider their marriage bond rather than something of the essence of marriage which no earthly power could dissolve.

In fact the Church has from the earliest times recognised the dissolution of marriages by dissolving every kind of marriage except the marriage of two baptised. And even here, after the Church had accepted in the middle ages and later declared at Trent that such marriages were a sacrament, the Church would dissolve a valid marriage of the baptised if it had not been consummated, or if one party of an unconsummated marriage later took the vows of religious life.

Thus the Church accepts in practice that indissolubility is not an absolute, an essential property of marriage as such, or of all valid marriages. We need only list the Pauline Privilege cases, the Favour of the Faith cases and the many exceptions granted for mission territories where polygamy or polyandry was practised.

A Study of the History of Marriage in the Church

This confirms the view that marriage is basically a culturally determined reality.

While the early Church insisted on the fact that Christians ought to live according to different values from the pagans it did not try to take over the institution of marriage. Marriage customs were regulated by the state and the family itself. You did not go to the church to get married. Usually it was the head of the family who presided at the wedding. One special step the Church took was to acknowledge the marriage of slaves as true marriages in contrast to the Roman law which gave slaves no such right. There was little change down the centuries even though some marriages were blessed by the bishop or priest, and special liturgies developed in particular places. It was not until the eleventh century that the Church began seriously to take over jurisdiction for the marriages of the baptised. And, as we know, the imposition of the “form of marriage” for validity in certain Countries was the result of the Council of Trent in the sixteenth century.

It was as late as the twelfth century when Pope Alexander III issued tribunal decrees linking indissolubility with the sacrament so that only marriages of the baptised were declared to be absolutely indissoluble, and even then consummation was the deciding factor. As we know Jesus did not speak about marriages of the baptised or about sacramental marriages. Jesus preached about marriage in general in the terms of divorce and remarriage. The practice of the popes and the Church in dissolving marriages, except the ratum et consummatum marriage of the baptised, leads us to ask whether indissolubility is of the nature of marriage. What is it then that makes a sacramental marriage indissoluble? Mackin gives us one opinion:

The fact that marriage is now understood as a man’s and a woman’s relationship of self-giving love makes impossible the hold on indissolubility as a fixed and given characteristic of a marital institution. It is a condition-to-be-attained of the love relationship. If it is in a given marriage, it is
there by the spouses’ decision and by their effort to put it there.”

Culture played a most important part in deciding what marriage was in a particular age and place. The Jews had their concept of marriage with its emphasis on procreation and assimilation into a family. The Romans by the time of Christ recognised the right of both the woman and the man to enter marriage by their own decision or consent to a community of life. In France and in northern Europe the contract was the important aspect with the handing over of the bride and dowry from one family to another. The woman was more a chattel in that culture and place. The Jews had their concept of marriage and the forbidding of divorce with remarriage.

Yet, when we look to the experts in scripture we find again that the interpretation and application of Jesus’s words are anything but simple. And then Matthew inserts an exception clause which as far as I can ascertain has posed problems of interpretation right down to today.

For a start, we know that Jesus was not using legal terminology: he was trying to get across the spirit of marriage according to the will of the Creator. And up to the middle ages this is how the Church interpreted indissolubility, as a demand of marriage and not as a constituent of marriage itself. Even in the Apostolic Church Paul was quick to adapt the ideal to the situations he found in his pastoral activity. Rather than enter a field not my own I prefer to quote Raymond Collins to sum up the scriptural position:

In sum, I consider that Jesus’ saying on divorce was a prophetic utterance, rather than a community regulation. Uttered by Jesus, a prophet from Nazareth in Galilee, it was originally formulated from the point of view of the male. As such, it was part and parcel of his call to repentance in view of the coming of the kingdom. It condemned divorce and its consequences, rather than a second marriage as such. The condemnation proclaimed divorce to be a violation of the Decalogue’s prohibition of adultery. And it may have been the well-known situation at the court of Antipas which prompted the condemnation.

Speaking of the Church’s role in the development of the teaching Collins goes on:

...it is important to remember that Jesus’ entire ministry was re-evaluated and reinterpreted by his disciples in the light of his death and resurrection... The image of Jesus the prophet gave way to the image of Jesus the teacher...

What had been a prophetic saying now became a community regulation, promulgated on the authority of one whom the church recognised as its Lord. 

Collins concludes his book with this point:

In any event, the fact that the tradition of Jesus’ saying on divorce exists in so many different versions and that it is almost impossible to recover the most primitive version of the saying even though to do so had been made in the present study – stands as evidence that the first generations of Christians experienced a need not only to pass along Jesus’ teaching on divorce but to adapt it circumstances. To pass along the tradition, all the while adapting it to the circumstances of later times, is the perennial challenge to those who want to be faithful to Jesus’ prophetic witness and to a teaching that concerns not only the lives of specific individuals.
but also the very existence of the church itself."

**Personalist Culture of our Times**

*Gaudium et spes, Humanae vitae, Familiaris Consortio,* and the 1983 Code of Canon Law all present a changed view of the nature of marriage, a view adapted to the personalist culture of our times.

The stress is on "community of life" rather than on consent to the right to copula or the procreation and education of children as the primary end of marriage. The emphasis is on covenant rather than on contract. This is an official recognition that the times we live in are quite different from those of the early Church or the middle ages or the 16th Century.

While we must seek to be true to the teaching of Jesus and the fundamental tradition of the Church, it is not right to burden people of today with another age's view of life and culture. We must look to the reality of married life and the family today to assist us in developing a theology of marriage faithful to the teaching of the Gospel and to the nature of human beings created by God and graced by God's presence.

The Scholastics' attempts to define sacrament and relate it to marriage are not necessarily valid and the last word. The theologians of the past belonged to their age and thought in their categories. What we have seen of the history of marriage and marriage as a sacrament should make us reflect and re-examine what it means today to call marriage a sacrament. What brings about this sacrament? We have progressed beyond defining reality according to abstract essences.

Are theologians like Schillebeeckx and Mackin right in proposing that it is the couple themselves who bring about the sacrament and the indissolubility of their marriage by their decisive will to make this conjugal community of life a means of salvation, a sign of Christ's fidelity and for them an indissoluble union?

What if what was intended as a Christian marriage dies? That is, the conjugal community of life (including love and perhaps fidelity) has ceased to exist? We speak often enough of a marriage being dead. Does the sacrament continue where there is no way of it ever becoming fruitful again? Or is it the legal bond which continues? Is there no possibility of creating a new conjugal relationship based on love and fidelity, despite previous fault or sinfulness, and again partaking of the grace and the presence of Christ in a new sharing of human conjugal love? While respecting and observing the Church's teaching, and its right to teach, we are left with questions that need further thought and development. At the same time, especially in an atmosphere of easy civil divorce, do we need to protect marriage as an institution and in the spirit of Christ's teaching on divorce?

In view of the ongoing development of the theology of marriage, including the canon law revisions, the long and involved history of marriage in the Church, the scriptural difficulties, it seems to me that we should be quite careful about excluding people from sacramental life because they do not measure up to the ideal as we have understood it. Like the early church we must see Christ as prophet, teacher and Lord. But we should not be afraid to interpret his words for our day and culture as the apostles and evangelists did, and the Church; canonists and theologians have tried to do down the ages. Since we are still progressing with our understanding of the nature of marriage and marriage as a sacrament we need to avoid above all a legalist or status quo mentality, thus becoming stultified for fear of making mistakes. The Spirit of the Lord will see to the credibility of the Church and its fidelity to Christ's teaching.

**NOTES**


4. International Theological Commission, 1977, 2.3. For a detailed discussion see Mackin, *The Marital*.
Reflections on Marriage and the Sacrament of Marriage


10. In the Digest of Justinian (23, 2, 1) written in the sixth-century we find this definition: "Marriage is a union of a man and a woman, and a community of the whole of life, a participation in divine and human law." In his Institutes (1, 9, 1) Justinian offers this definition: "Marriage; or matrimony, is a union of a man and a woman, a union involving a single sharing of life. We should not be surprised to find two definitions from the same Emperor-lawyer as he was really making collections of sources of law and not necessarily offering his own norms.

12. Cf. Angelo O’Hagan OFM, "Divorce - Marriage in Tension with this Age," in Studi Biblici Franciscani Liber Annuus 22(1972)96, where he writes: "Just as surely as Paul later, Jesus himself reaches back behind the Old Law and beyond all laws. It can be strongly argued that if Christ intended his word on divorce to be merely another law it loses its impact, being an entirely new thing no longer."


16. Cf. Frank Moloney SDB, in an article "Biblical Reflections on Marriage," in Compass 28(1994:1)14, where he says: "As I attempted to show in my explanation of Matt. 19:3-12, Jesus’ encounter with the Pharisees is a plea that we return to God’s original design. The ideal is that Christian marriage relive the perfection of the created order before sin entered our story. But the ideal, the challenge to live again the dream presented by the authors of Genesis, the way things were ‘in the beginning’, has been made the norm. This is a dangerous practice in terms of law. The Roman Church simply takes for granted that the perfection of the way things were ‘in the beginning’ is in place once people are married. We all know"