CBCP Position
AGAINST the DIVORCE Bill
and
AGAINST THE DECRIMINALIZATION
OF
ADULTERY AND CONCUBINAGE

Be sober and vigilant. Your opponent the devil is prowling around like a roaring lion looking for someone to devour. (I Peter 5:8)

Divorce

One senator of the Republic was recently quoted as saying that the fact that the Philippines is the only country without a divorce law is not something we should necessarily be proud of. To that, I hasten to add: Neither is it something for which we should be apologetic!

That all countries of the world save ours have it is no compelling reason to have it. Ours is the only Constitution in the world that includes the non-juridical word “love”. That is no reason to expunge it from our fundamental law!

The reasons thus far advanced for a divorce law fail to convince! Divorce, its advocates argue, is a solution to failed, if not oppressive and dehumanizing unions. The terms are powerful, but they invite visceral, rather than rational reactions.

A failed marriage is not an argument for divorce. It is rather proof of the necessity that only mature people enter into it. It proves the wisdom of the judiciousness of the Church in its conduct of pre-Cana and canonical inquiries. It proves the woeful inadequacy of the present system under Philippine law that makes the issuance by the civil registrar of a marriage license and attendance at a government-delivered seminar on family planning the sufficient conditions for marriage!

If indeed a spouse proves not only to be overbearing but oppressive and cruel, there are sufficient provisions in the Family Code, specifically those that provide for the legal separation of the spouses, and, in some cases, even annulment of voidable marriages. There are furthermore the salutary provisions of Republic Act No. 9262, the Anti-Violence Against Women and their Children act for the protection of women and their children.

If, on the other hand, one spouse finds the other – or himself or herself – psychologically incapable of fulfilling the obligations of marriage, the much-abused Art. 36 of the Family Code on psychological incapacity, ironically patterned after a similar canonical provision, is available.

In other words, the supposed suffering that a spouse must bear owing to a failed marriage is more imagined than real, and comes only upon one who does not make use of the remedies already available under existing law.
So, why then would one want divorce if legal separation, annulment and declarations of nullity are juridical options already available? The answer is simple: **Divorce allows an already married person to have another go at it, despite failing at the first.**

While one can reasonably test-drive a car and replace it with a better one should the test-drive prove unsatisfactory, it is plainly dehumanizing to both spouses to allow for a test-run, through a first marriage, and then grant the possibility of a replacement of spouses should the test fail. It is ironic that those most vocal in their support for divorce also hold themselves out as champions of human rights – and there can be no violation of human rights more egregious than to treat human persons the same way that you treat vehicles and appliances!

**Divorce is a deterrent to working on differences.** Marriage is and ought to be a work in progress. There is no such thing except in the limp imagination of mediocre, starry-eyed writers of romance novels as “a couple meant for each other” or a man and a woman who are a “perfect match”. Matches are worked out on earth, not pre-fabricated in heaven! When the expedient of divorce is readily available, a couple will be less likely to work on differences, dialogue and reasonably work out solutions because there is a quick fix to “incompatibilities”. While the blending of different tempers, attitudes and perspective should be enriching, although a challenge of harmonize, a token effort at ‘making the marriage work’ is all that can be expected when the possibility of ending the union by divorce is offered by the State!

**Logically, divorce puts its advocates in the dilemma of choosing between making of marriage a mockery and being arbitrary.** A divorce law will either grant divorce on any ground – in which case marriage becomes a mockery – or on some grounds. But if it is granted on some grounds, irreconcilable differences, for example, who is to say that a person is more greatly challenged by irreconcilable differences than by the snoring of a spouse at night? Setting forth grounds for divorce is always tricky business, if not downright whimsical, because it assumes that one is in a position to grade degrees of misery or difficulty, and to say of some that they are worthy of the ‘relief’ of divorce while others are not. But how does one construct a hierarchy of miseries?

**Divorce victimizes children.** The separation of parents is already traumatic on the children who must choose between mother and father when custodial rights are judicially resolved. Visitation rights are a poor substitute for living with one’s parents. Divorce however compounds the trauma by allowing a total stranger to the children to enter into their lives – the new spouse.

**Society should be able to count on some promises as irrevocable.** The promise of a physician to serve life and not to destroy it, the promise of a public official to serve and defend the Constitution, the promise of spouses to be faithful to each other, the promise of a priest to mirror to the world the care of the Good Shepherd – all these are promises that society has a right to rely on and that those who so promise have no right to renege on. If you cannot keep the promise, do not make it all. Do not claim its privileges while refusing to own up to its demands!
Decriminalizing Adultery and Concubinage?

The State sends a signal to the public and educates its citizens by the incentives it offers as well as the matters it penalizes. By penalizing offensive conduct, the State signals its ideal of social cohesion and of living together. Article II of the Constitution reads:

“Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.”

Adultery and concubinage have been in our penal code for not only decades but centuries now. Striking them off the catalogue of crimes – will this not send the message to Philippine society that now, sexual liaisons and dalliances with persons other than with one’s spouse are now allowed? How can such a legislative proposal “protect and strengthen the family as a basic social institution”? While it is true that Article II is a set of non-self-executory principles and policies, the provisions give direction to legislation and shape jurisprudence. Otherwise they would have no place in the Constitution at all.

Under our VAW law – passed as domestic legislation in response to international covenants, the Convention on the Elimination of All Forms of Discrimination Against Women, as well as the Covenant on the Rights of the Child among them – we consider violence not only physical but psychological cruelty. What can be more cruel for a spouse than to have the other sexually engaged with another and entering into intimate liaisons with another? How can it serve legal coherence for us to de-criminalize under one title what we consider criminal cruelty and violence under another?

What can be done though is to eliminate the discriminatory distinction between adultery and concubinage, for it has long been observed that limiting the applicability of adultery provisions only to women is in fact discriminatory. Concubinage – the crime for which a husband with extra-marital affairs can be charged – is more difficult to prove because its elements are “cohabitation with another under scandalous circumstances” while all it takes to commit adultery is one act of sexual intercourse with a man other than one’s husband! It is this asymmetry that should be rectified.

We have taken tremendous strides in the direction of protecting women and children. The proposal to pass a divorce law and to de-criminalize adultery and concubinage go in the opposite direction. We should not lend to support to such moral and juridical incoherence!

Let the Word of God guide us.

The Pharisees approached and asked, “Is it lawful for a husband to divorce his wife?” They were testing him. He said to them in reply, “What did Moses command you?” They replied, “Moses permitted him to write a bill of divorce and dismiss her.” But Jesus told them, “Because of the hardness of your hearts he wrote you this commandment. But from the beginning of creation, ‘God made them male and female. For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh.’ So they are no longer two but one flesh. Therefore what God has joined together, no human being must separate.” (Matthew 10:2-9).

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