

The Church as a Reconciling Community

As in these past forty years divorce has been legalized in many countries, a vast number of baptized Catholics who were (and are) divorced and remarried have been living in a state that Canon Law classifies as “irregular”. This status implies that they are all permanently expelled from the sacraments of Holy Communion, Penance and the Anointing of the Sick. Even conservative estimates reveal that several million Catholic Christians are being affected today. Hence, the problem of how to deal with divorced persons who have remarried is tantamount to a state of emergency in the present life of the Church - a pressing issue whose magnitude is not recognized by many.

The Church expressly urges divorced persons who have remarried to participate in ecclesial life by listening to the Word of God, praying on a regular basis, raising their children in the Christian faith, supporting the Church in its social endeavours and celebrating Sunday mass with their congregation. However, being continuously denied participation in the Eucharist during the lifetime of their first spouse, the divorced and remarried are expelled from what the Second Vatican Council calls the actual “source and summit” of the Christian life. Thus, should we be surprised that many devout Catholics feel that they are labelled as “second-class” Christians and turn their backs on the Church?

Questions Raised by Several Theological Disciplines

Thus far, the Church has not adequately addressed the issue of potentially admitting to the sacraments divorced persons who have remarried. Moreover, the issue is not only of pastoral care. Inevitably, it merges the questions and concerns of several theological disciplines, which have been part of the discussion

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for several decades. Nevertheless, their conclusions have never led to practical decisions.

First of all, exegesis has a pivotal role in this discourse. However, the exegetical study of particular scriptural passages does not provide a single indisputable point of view. On one hand, as unanimously reported by the Synoptic Gospels (cf. Mk 10:11 par), Jesus unequivocally emphasizes the indissolubility of marriage and the requirement of marital fidelity.¹ Jesus goes beyond the casuistic regulations of Jewish divorce law to refer back to the original order of creation, according to which, God intends marriage to be an indissoluble life partnership between a man and a woman.

The fact that Jesus gives prominence to the original state, which later additions in the Jewish Halakha exempted, and his emphasis on the original will of God, have to be seen in the light of his central message of the dawn of the kingdom of God. Just like Jesus' teachings of infinite forgiveness, and his instructions to renounce retribution and to love one's enemies, his words on marriage and divorce are intended to be a prophetic admonition. They aim at pointing out the implications for marital life in the coming of God's reign.

Despite the fact that on a form-critical level, many exegetes consider Jesus' words as eschatological divine law, the proclamation must not be equated with the prescriptive obligation of a canonical norm. Rather, as pointed out by Joseph Ratzinger in 1969, one has to note an important difference: "Since Jesus reaches beyond the level of law, going back to the original state, his words cannot unabatedly and without further reflections be considered a law."²

Moreover, a close look at the scriptures of Mark, Matthew and Paul reveals a differently nuanced interpretation. In their writings, the unconditional prohibition of divorce is relaxed in cases of hardship and in exceptional circumstances. Apparently, the communities of the New Testament felt authorized to adjust Jesus' instruction on marriage on the grounds of his word on binding and loosening (cf. Mt 16:19; 18:18).³ It served to justify special regulations that the congregations considered valid soon thereafter.

¹ "And he said to them, 'Whoever divorces his wife and marries another commits adultery against her.'" English Standard Version, accessed January 2013, <http://bible.cc/mark/10-11.htm>.

² "Zur Theologie der Ehe," in Gerhard Krems, Reinhard Mumm [Hg.], *Theologie der Ehe*, (Regensburg: Pustet 1969), 81-115, hier: 83 (meine Übersetzung; P.W.):

³ Mt 16:19: "I will give you the keys of the kingdom of heaven, and *whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven.*" English Standard Version, accessed January 2013, <http://bible.cc/matthew/16-19.htm> (meine Hervorhebung; P.W.).

Gentile Christian communities that grew as a result of the missionary work of Paul the Apostle, applied Jesus' instructions to certain situations of crisis, but they were not considered to be unconditionally binding. When counseling his congregation on matters of marital life, Paul does not consider himself fully authorized to deviate from the clear moral obligations of the word of the Lord: "But for those who are married, I have a command that comes not from me, but from the Lord. A wife must not leave her husband" (1 Cor 7:10).⁴

Nevertheless, Paul permits the divorce of a valid marriage in certain cases; that is, when the divorce is initiated by the other partner. When this happens, the innocently divorced spouse is free to remarry. In addition, Paul grants the devoutly religious spouse of an infidel to divorce his or her partner, if the latter initiated the wish to separate. The devout spouse is no longer bound like a slave but has been called by God to "live in peace" (1 Cor 7:15).⁵

Like Paul, Mark and Matthew acknowledge that there may be exceptional circumstances in which Jesus' word is not obligatory. In opposition to Jesus' clear word, Mark permits separation from one's spouse if the couple's shared life has become unbearable (cf. Mk 10:11). Moreover, in the so-called "exception clause", which exegetes have interpreted in various ways, Matthew allows the innocently divorced spouse to remarry (cf. Mt 5:32; 19:9).⁶ Nevertheless, while the early Christian communities adapted Jesus' teaching on divorce to make it more applicable to exceptional situations, it is not inconclusively evident whether that entailed the permission to remarry, or just the possibility of separating from one's spouse.

Canon Law's later practice of dissolving a Catholic's marriage to an unbeliever "*in favorem fidei*" (for the benefit of faith) interprets the passage as allowing the contraction of a second marriage. Today, many exegetes confirm this, by referring to the overall stance in Jesus' proclamations.

⁴ New American Standard Bible, accessed January 2013, http://bible.cc/1_corinthians/7-10.htm – Die sonstigen englisch-sprachigen Übersetzungen scheinen immer von dieser etwas uneleganten Version zu sein: "Ich gebiete (nicht ich, sondern Gott)".

⁵ New International Version, accessed January 2013, http://bible.cc/1_corinthians/7-15.htm: "But if the unbeliever leaves, let him do so. A believing man or woman is not bound in such circumstances; God has called us to live in peace."

⁶ New International Version, accessed January 2013, <http://bible.cc/matthew/5-32.htm> "But I tell you that anyone who divorces his wife, except for marital unfaithfulness, causes her to become an adulteress, and anyone who marries the divorced woman commits adultery." New International Version, accessed January 2013, <http://bible.cc/matthew/19-9.htm> "I tell you that anyone who divorces his wife, except for marital unfaithfulness, and marries another woman commits adultery."

Acquiescing Second Marriages on Pragmatic Grounds

Generally speaking, the Bible has a twofold position on the issue of marriage and divorce. On one hand, the biblical authors recorded Jesus' word on the indissolubility of marriage and his calling for unconditional marital faithfulness as a universal standard for marital life. On the other, they acknowledged that there could be exceptional circumstances deviating from this standard that even permitted Christians to separate from their spouse. In such cases of hardship, Paul advised the people to remain unmarried (cf. 1 Cor 7:11).⁷ More likely, however, the actual practice of early Christian communities was to be open to the possibility of remarriage. The practice of adjusting Jesus' instructions in the light of exceptional adversity never intended to question his general prohibition of divorce. Rather, its aim was to safeguard the relevance and attainability of this teaching even when faced by extremely strenuous situations, like a spouse's infidelity or some other form of human misconduct.

Similarly, the ecclesiastical practices of the first centuries struggled with maintaining a balance between remaining faithful to the instructions of Jesus Christ, while leaving open the possibility of establishing flexible exceptions in cases of hardship. Nevertheless, the prevalent tendency, dictated by the general prohibition of divorce and remarriage, does not completely extinguish the secondary line of argumentation, which concedes second marriages among Christians on pragmatic grounds.

Even if these special regulations, while legitimate, fall short of the actual norms of ecclesiastical teaching and practices, they do not put into question the requirements of the Gospel in regard to marital life. Instead, they confirm the profound struggle to grasp the tense unity between the biblical testimony on one hand, and the everyday life in a community - with all its unique dynamics - on the other.

Without putting into question the general prohibition to divorce and remarry, it is predominantly the Church fathers of the Eastern Orthodox Church who address the issue of why communities acquiesce to a practice that in its essence contradicts the Holy Scripture. Among the most prominent proponents of that position were Origen (/d3/) and St Basil the Great. In the West, Ambrosiaster and Hilary of Poitiers made similar considerations. According to these positions, a deviation from the norms of the Gospel can be justified if the intent is to consider human flaws with mercy. Moreover, under specific circumstances, such

⁷ New International Version, accessed January 2013, http://bible.cc/1_corinthians/7-11.htm "But if she does, she must remain unmarried or else be reconciled to her husband. And a husband must not divorce his wife."

a deviation could be the lesser evil, and thus could be tolerated by the church to avoid worse acts.

The aforementioned patristic texts carry paradigmatic weight for the present discussion in the Church. As early as the congregations of the New Testament, the Church has attempted to relate Jesus Christ's teaching of the indissolubility of marriage to the actual life circumstances of those baptized Christians whose first marriage has been disrupted.

Joseph Ratzinger differentiates between the two levels of discourse in the patristic tradition as follows: “[B]elow the threshold of the classical teaching, so to speak beneath or within this ideal form that is in fact determinative for the Church, there was evidently again and again in the *concrete pastoral application a more elastic practice*, which was not indeed seen as entirely in conformity with the true faith of the Church, but which [...] could not be absolutely excluded [either].”⁸ In his attempt in 1972 to find a solution for the contemporary pastoral dilemma by studying the complexity of the tradition, the present Pope concluded that admitting to the sacraments divorced people who have remarried “appears to be [...] fully in line with the Church's tradition.”⁹

Less Feasible Attempts at ‘Stretching’ Canon Law

Currently, there are two kinds of propositions being discussed in the fields of Church Law, dogmatic theology and theological ethics, with the aim of improving the standing of divorced and remarried people in the Catholic Church. A number of propositions intend to remove the possibility of having the Latin Church follow in the footsteps of the Orthodox Church, which grants a second contraction of marriage while the former spouse of one of the partners is still alive. This could be a second union by way of penance and an appeal to mercy in the face of human frailty. The second marriage would be acknowledged by the Church but does not attain the status of the first sacramental marriage. Thus, its liturgical contraction would have to occur on an inferior level, in order to avoid any confusion with the sacramental symbolism of marriage, which should be

⁸ Joseph Ratzinger, “On the Question of the Indissolubility of Marriage: Remarks on the Dogmatic-Historical State of Affairs and its Significance for the Present,” translated by Joseph Bolin, March 25, 2011, accessed January 2013, <http://www.pathsoflove.com/pdf/ratzinger-indissolubility-marriage.pdf> p.4 (Hervorhebung bereits in der Übersetzung); Original: „Zur Frage nach der Unauflöslichkeit der Ehe: Bemerkungen zum dogmengeschichtlichen Befund und zu seiner gegenwärtigen Bedeutung“, in: Franz Henrich, Volker Eid (Hg.), *Ehe und Ehescheidung: Diskussion unter Christen* (München: Kösel, 1972), 35-56, hier: 40

⁹ Ibid., 12: “[...] the opening up of community in Communion after a period of probation appears to be no less than just and to be fully in line with the Church's tradition.” Original: S. 55.

exclusively confined to the highest form of marriage. (In the Orthodox churches, however, the contraction of a second or third marriage is often conducted in the celebratory rites of the sacraments, which in fact violates the regulations of Church Law).

More recent initiatives to reform Canon Law have also been contemplating the possibility of a second sacramental marriage for baptized Christians. Of course, this would demand that the first marriage has irreversibly been disrupted and can no longer function as a personal life partnership between the spouses. Consequently, a decree of separation by the Church would have to confirm that the marriage is “dead” and all hope of potentially reinstating the couple’s marital life must be completely extinguished.

Careful distinctions in Canon Law could legitimize such a solution, but those who are not experts in the field of judicial argumentation often interpret such possibilities as a sophist’s argument. These reform initiatives expressly want to maintain the indissolubility inherent to a first marriage and are opposed to relinquishing any of its constituent elements, such as unity, indissolubility and the openness to procreation. Despite all this, they claim that, nonetheless, it should be possible to obtain a waiver from the legal effects under the aforementioned conditions. This could be achieved either by applying a specific legal argumentation, the “*aequitas canonica*”, which means, moderating Canon Law, or by means of granting dispensation from the Church’s authority. Once the legal ramifications of the contraction of the first marriage have been waived (despite the fact that it continues to be a valid marriage), its inherent impediment to a second sacramental marriage has lapsed. Thus, the door would be open for the spouses who have separated to conduct a second church wedding, even during their former spouse’s lifetime.

There is, however, an obvious objection and seeming contradiction to stretching Canon Law to the extent that it reaches such a surprising conclusion. The argument appears to aim at facilitating something impossible, without changing anything about the basic conditions of the Church’s teaching on marriage.

Thus, this attempt would hardly appear to be credible. In fact, many people are already questioning the credibility of the Church’s jurisdiction on marriage even as it is now. Wouldn’t the public perception change for the worse, if these propositions were to be implemented? In fact, people’s current attitudes could hardly be altered, even if the existing annulment procedures were to be expanded generously and brought to the public attention. It can be argued with all honesty that more than a handful of valid marriages are in fact void, lacking the fundamental conditions of a valid marital intent or a deliberate consummation

of the marriage (which does not only refer to sexual companionship, but also requires unabated mutual devotion). However, this raises the question if, expanding the reasons for nullifying a marriage and bringing annulment procedures more to the public's attention, would not in itself make people doubt the one guiding principle, which is the indissoluble, lifelong marriage.

The second proposition states that, by adhering to the teaching of Jesus Christ, the Church does not have the option of offering a second church wedding to divorced people, while the former spouse of one of the partners is still alive. This approach appears to rest on coherent reasoning, as a second union that may have come into being as a result of infidelity, a lack of love, negligence, or a deliberate breach of marital vows cannot be considered to be a visible, sacramental sign of God's faithfulness among human beings. However, the Catholic understanding of marriage between two baptized people requires exactly that.

This is why the second approach has a different point of departure: It concedes that divorced and remarried people can sincerely repent of their respective faults that disrupted their first marriage. If, for legitimate and coherent reasons, it is altogether impossible to reunite with the former partner, their separation must not be mistaken for an indication of a lack of remorse or the absence of the willingness to rectify the situation. Rather, there can be morally worthy reasons for engaging in a legal second marriage. This is especially true when human values inherent to a marriage, such as mutual devotion, faithfulness, reliability and responsibility, are lived out to the fullest. In spite of its being void in a canonical sense, a legal second marriage could feature all the essential elements inherent to a marriage as understood by the Church. These are the strong will to lifelong faithfulness, unabated devotion to one's partner, the willingness to engage in an all-encompassing personal life partnership and the mutual responsibility for children.

Therefore, if the two spouses in a void marriage live out what is considered to be the essence of a marriage, their union cannot be called a non-marriage or concubinage—the terminology used by the Church in the past. It is not acceptable that some magisterial documents label the life circumstances of remarried people as continuous adultery or a state of grave sin without any further reflection. Admittedly, purposefully disrupting a marriage in order to enter a new union could be an indication of human malice and meanness on the part of one of the partners and in fact, could entail severe culpability. Such a case leaves no room for human understanding and must be morally condemned. However, from such woeful human failure one cannot rightfully infer that all the people living in a legal second marriage have burdened themselves with guilt that must be objectively judged as severe and cannot be repented of.

Instead, it can be assumed that most people living in a legal second marriage entered their new union after reflecting deeply in their conscience on their decision. Even if the new partnership came into being as a result of unjust behaviour towards the former partner, preserving this new relationship could itself become a moral obligation, especially if the relationship is long lasting. Indeed, withdrawing from a long-established relationship would in itself constitute further guilt. Thus, as long as their living together proves to be a reliable personal life partnership, it cannot be considered as grave sin. Instead, it deserves to be morally appreciated due to the partners' mutual exchange of human values and their willingness to take on responsibility for each other on a public and legally binding level. When such an act of mutual support between two people in situations of trouble and hardship is lived in a spirit of faith, their marriage also attains a spiritual quality as a result of the partners' personal commitment and participation in Church life.

Acknowledging a Person's Judgement of Conscience

In accordance with this theological and ethical line of argumentation, this reassessment of a legal second marriage leads to the conclusion that divorced and remarried persons are not to be excluded from Communion - neither permanently, nor up to the point of their former spouse's death.

Thus, their full re-admittance and re-invitation to the Eucharist and the sacraments of Penance and the Anointing of the Sick can take place on an extra-legal level, such as, for instance, through the testimony of their priest or minister, or several members of the congregation. However, there is also a less direct way, as introduced by the bishops of the ecclesiastical province of the Upper Rhine in their 1993 pastoral letter, *Pastoral care of the divorced and remarried*. They argue that divorced people who have remarried can join Holy Communion, despite not being admitted by the Church authority. The bishops legitimized this by referring to the individual's personal judgement of conscience.

It is solely the people involved in their individual judgement of conscience who can take all relevant factors into consideration and assess their unique life circumstances before God. Therefore, through acknowledging and respecting an individual's judgement of conscience, the Church may not only invite the divorced and remarried to participate in Church life in general, but also to fully participate in the Eucharist, which is the most tangible sign of the presence of the Lord and of the union of believers together and with Christ. Thus, this proposition focuses on establishing criteria for a responsible judgement of conscience, and calls on priests and their colleagues to conduct a form of pastoral care with the intent to guide every person's own judgment of conscience.

This invitation to fully participate in the Eucharist and receive Communion does not only provide divorced and remarried Christians with a chance to reconcile their own life story; it is also of paramount importance to the Church. Such a public gesture by the Church may go a long way to improve the lopsided and tragic assessment of the Church's reputation in the minds and hearts of so many people. Even devout Christians rarely experience the Church as a source of strength and support in the midst of the turbulent times of separation and divorce. Instead, as a result of the Church's disciplinary measures after the second contraction of marriage, they suffer from feelings of having been morally condemned, of potentially losing their spiritual home and of being painfully ostracized.

Many times, the people directly affected and their immediate family members and friends, who have witnessed the disruption of the first marriage, are under the impression that the Church simply does not care about divorced and remarried people. In such times of conflict, the Church is not perceived as a community of reconciliation, but rather as a morally rigorous institution that is insensitive to the life circumstances of its members. It appears to be at a loss when confronted with the unpredictability of life and the increased demands on personal life choices in postmodern society.

The Church is not a 'Community of the Immaculate'

According to its own self-understanding and mission, the Church is supposed to be a community where people are welcomed with understanding, even when some of their life choices have been failures. Understanding, however, includes more than simply relinquishing explicit condemnation and rejection.

Rather, it entails expressing personal regard (which many congregations do in fact express towards the divorced and remarried) through public signs that contain clear messages. If the Church and its authoritative teaching are instructed to conduct a "ministry of reconciliation" (cf. 2 Cor 5:14–6:1), then there can be only one such message:¹⁰ separated, divorced, or remarried people are not on the margins of Church life. Rather, they belong fully in the Church, just like many other guilt-ridden and flawed baptized Christians.

The divorced and remarried are not simply a subgroup in the Church to whom

¹⁰ Cf. 2 Cor 5:18,19: "All this is from God, who reconciled us to himself through Christ and gave us the *ministry of reconciliation*: that God was reconciling the world to himself in Christ, not counting men's sins against them. And he has committed to us the *message of reconciliation*" (my emphasis). New International Version, accessed January 2013, http://bible.cc/2_corinthians/5-18.htm.

different rules apply. Instead, the pivotal issue is to rectify the interpretation of essential statements of faith. In particular, this includes the Church's understanding as sacrament and the mission of the Magisterium. When Paul the Apostle explains to his congregations the duties of apostolic service, he does not only point out administrative requirements or the need for leadership in the community, but also refers to the Gospel: "Through reconciliation as the decisive realization of his healing grace, God has at once instituted the ministry of reconciliation. Paul was assigned to fulfill this mission for and within the congregation. Only thus can the community be what it was appointed to be by God: a community of reconciliation."¹¹

Current ecclesiology often refers to the verse from Paul "We are therefore Christ's ambassadors, as though God were making his appeal through us. We implore you on Christ's behalf: be reconciled to God" (2 Cor 5:20) to emphasize the theological legitimacy of the Magisterium in its indispensable role to unify believers. In this context, one must not overlook the fact that, according to Paul, the Christological justification of the Magisterium implicitly calls for a particular kind of conduct in exercising that ministry. Thus, this demand functions as a restrictive condition. Paul does not only say: the ministry of "ambassadors [...] on Christ's behalf" (2 Cor 5:20)¹² fulfills an indispensable role within the Church, as God wants to reconcile Himself with the believers through their ministry. His line of argumentation also defines the purpose of the ministry as aiming to make God's act of reconciliation apparent within the realm of the Church. However, this implies that the ministry of admonishing and reprimanding "on behalf of" Jesus Christ has to be carried out in a manner that enables the believers to be receptive of God's offer of reconciliation. Only then will this ministry have attained full spiritual authority to enhance the community.

The Church does not live up fully to its being the Church of Jesus Christ until it offers to all believers the Gospel of God's love and mercy to become truly reconciled with themselves and their respective life story through the "word of reconciliation". Hence, why the question of how the divorced and remarried should be treated in the Church is not a problematic issue only for the individuals directly concerned, but for the entire Church. The question must be raised as

¹¹ Cf. Gisbert Greshake, *Priestersein, Zur Theologie und Spiritualität des priesterlichen Amtes*, 3rd ed. (Freiburg: Herder, 1991), 33; meine Übersetzung; P.W. Veröffentlichte englischsprachige Übersetzung (nicht mehr erhältlich): *The Meaning of Christian Priesthood*, (Westminster, Md.: Christian Classics, 1996).

¹² "We are therefore Christ's ambassadors, as though God were making his appeal through us. We implore you on Christ's behalf: Be reconciled to God." New International Version, accessed January 2013, http://bible.cc/2_corinthians/5-20.htm.

to whether the Church as a whole is adhering fully to the mission it has been assigned.

The Church established by Jesus Christ is by no means a community of the pure and immaculate who are without sin. Instead, it is the Church of Sinners, nurtured by the mercy of God who celebrates His presence with other sinners in the sacraments. Among all the Church's sacraments, the Eucharist is the quintessential sacrament of God's descending love. It reminds the Church of its everlasting origin, which is the love God communicates to all the sinful on the cross of Jesus Christ. Consequently, the Eucharist is not just a celebration for the redeemed to express their gratitude, but it is also the supper of reconciliation. It is the extended hand of God, which intends to reach every person – including the divorced and remarried members of the Church.

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