

The Orthodox Tradition on Divorced and Remarried Faithful: What can the Catholic Church Learn?

This study investigates the question “The Orthodox Tradition on Divorced and Remarried Faithful: What can the Catholic Church Learn?” in three steps: first, it outlines the progress of Catholic interest in the Orthodox approach to divorce and remarriage over the last few decades; secondly, it presents the main features of this approach against the broader context of the Orthodox world; and thirdly, it points out five aspects of the Orthodox tradition that can shed new light and instigate the Catholic Church in her ongoing reflection on marriage and the pastoral challenges of the family.

Catholic Interest in the Orthodox Tradition

In recent decades, various Catholic scholars and bishops have shown interest in the Orthodox tradition on divorced and remarried faithful. Three significant reasons for this increased attention are the *ecumenical atmosphere* that has been nurtured over the last century, the growing number of *mixed marriages* between Catholic and Orthodox faithful,¹ and the great amount of *marriage breakups* in the West. The latter reality presents the Catholic Church with the painful plight

¹ For instance, the Instruction *Dignitas Connubii* expects Catholic ecclesiastical judges to have good knowledge of the Orthodox legislation concerning marriage. It states that a marriage between a Catholic and an Orthodox is governed by divine law, Catholic canon law and Orthodox matrimonial law, and adds that the Catholic Church recognises the Orthodox form of celebration of marriage. See “Pontifical Council for Legislative Texts. Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage, *Dignitas Connubii* 25 January 2005,” nos. 2 and 4, http://www.vatican.va/roman_curia/pontifical_councils/intrptxt/documents/rc_pc_intrptxt_doc_20050125_dignitas-connubii_en.html.

of many faithful whose canonically valid marriages have failed; it also puts before her the pastoral dilemma created by the sacred precept of the indissolubility of marriage on one hand and the failure of many individuals to abide with this demand on the other.

In this light, on the 29 September and the 4 October 1965, Archbishop Elias Zoghby, the Melkite Greek-Catholic Patriarchal Vicar for Egypt and the Sudan, made two interventions at the Second Vatican Council. He highlighted the trauma of the innocent spouse in failed marriages and insisted with the Synod Fathers that the Catholic Church cannot leave the young victims of marital breakdown “without an answer.” Zoghby asked whether a pastoral solution could be provided in the Catholic Church in view of the Orthodox tradition. A year later, in November 1966, Maximos IV, Patriarch of the Melkite Greek-Catholic Church, wrote a memorandum in which he confirmed the thoughts of his patriarchal vicar and observed that his interventions at the Council “have had worldwide reverberations and stirred up reaction among people and in the press” but “had no practical effect on the council or even held its attention, for we find no trace of them in the explanations of the amendments or in those of the *modi*.” Patriarch Maximos IV added:

We do not ask that the general teaching of the Church be disregarded or that we be given an immediate reply or even one in the near future. What we are asking is simply whether it would not be opportune on the occasion of the Second Vatican Council, which desires the union of the Churches and the peace of mind of souls, to seek to settle, or at least to clarify to a greater extent, this great question by creating a commission composed, if possible, of eminent members of the two Churches, Eastern and Western, in order to conduct a study in the light of faith, in a spirit of openness and charity, taking into account Holy Scripture, theology, Tradition, the Fathers, and the conduct of the Church through the centuries, by having recourse to either the *oikonomia* of the Eastern Church or to the “privilege” of the Western Church, in order to alleviate the unjust suffering of such a large number of souls. We also believe that as long as the Church does not resolve, through its leaders, to do absolutely everything in its power to find a way out of this impasse, it is not entitled to enjoy a peaceful conscience; and its conscience cannot be liberated before God and man unless, after this conscientious work, it turns out to be true that the status quo is indispensable.²

² For full transcripts of the pronouncements of Archbishop Zoghby and Patriarch Maximos IV, see Melkite Greek Catholic Church, *L'Église Grecque Melkite au Concile: Discours et notes du Patriarche Maximos IV et des prélats de son Église au Concile Œcuménique Vatican II* (Beyrouth, 1967), chap. 15. English translation available at <https://melkite.org/faith/faith-worship/introduction>.

The issues raised in the pronouncements of these two figures from the hierarchy of the Melkite Greek Catholic Church opened the door for further debate and research and, in the following fifteen years, have been the subject of numerous theological and ecumenical studies.

In 1980, the Orthodox tradition on divorced and remarried faithful was proposed again during the Synod of Bishops on the Family. In the Synod speeches and in at least one working group there was a bold request for an official study commission to be set up in order to investigate the teaching and practice of the Eastern Churches on this matter. A softened idea of the original suggestion was eventually included in the official *Propositiones* of the Synod. The last part of paragraph 14 of the *Propositiones* reads: “The Synod declared its wish that a new and deeper study be initiated into the pastoral care of these [divorced and remarried] faithful, ‘taking account of the practices of the Eastern Churches,’ so that pastoral kindness can be brought more clearly to the fore.”³ The votes of 206 Synod Fathers on this paragraph were as follows: 179 in favour, 20 against and 7 abstentions.⁴ Notwithstanding the great support for this paragraph, the proposal did not feature in the post-synodal *Apostolic Exhortation* “*Familiaris Consortio*” nor in any other study commissioned by the Roman Curia. As a consequence, in the following years, the debate on this matter slowed down.⁵

In the last ten years, the Orthodox tradition on divorced and remarried faithful was referred to by two Roman Pontiffs. In 2005, during a meeting with the diocesan clergy of Aosta, Pope Benedict XVI was asked about the possibility of reception of Holy Communion by divorced and remarried faithful. In his answer, the Holy Father acknowledged that this reality is a particularly “painful”

³ See Jan Grootaers and Joseph A. Selling, *The 1980 Synod of Bishops “On the Role of the Family”: An Exposition of the Event and an Analysis of its Text* (Leuven, 1983), 139-141.

⁴ See Bernard Häring, “The Synod of Bishops on the Family: Pastoral Reflections,” *Studia Moralia* 19, no. 2 (1981): 243.

⁵ The topic featured again in 1993, when three German bishops – Karl Lehmann, Oskar Saier, Walter Kasper – issued a pastoral letter calling for a pastoral dialogue on the prohibition against the divorced and remarried receiving the Eucharist. This intervention was followed by a series of meetings between the three bishops and Cardinal Joseph Ratzinger, the then Prefect of the Congregation of the Faith. A year later, the same Congregation issued a letter with the approval of Pope John Paul II to the bishops of the world concerning the subject matter. See Karl Lehmann, Oskar Saier and Walter Kasper, “Letter regarding the Pastoral Ministry to the Divorced and Remarried, 10 July 1993,” *Origins* 23 (10 March 1994) 670-676; Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful*, 14 September 1994, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_14091994_rec-holy-comm-by-divorced_en.html.

and “highly-complex problem” which “must be studied further” and for which “none of us has a ready-made formula.” At one point, he also mentioned the Orthodox practice and observed that this approach is often presented within Catholic circles as a model for the possibility of remarriage. However, the German Pope added that the Orthodox Churches concede divorce too lightly with the consequence that the principle of indissolubility is seriously impaired.⁶

Eight years later, a similar question was posed to Pope Francis. The Holy Father replied that the present time is “a *kairos* of mercy” and affirmed that the Church, as a mother who goes out with mercy to heal those who are hurting, needs to look at the reality of the divorced and remarried “within the larger context of the entire pastoral care of marriage.” At this point, he opened a very brief parenthesis, and said that “the Orthodox have a different practice. They follow the theology of what they call *oikonomia*, and they give a second chance, they allow it,” and closed the parenthesis.⁷ A few months later, Pope Francis convoked a two-stage Synod of Bishops with the intention of discussing the pastoral challenges of the family, including the reality of divorced and remarried faithful.

The Orthodox Tradition on Divorced and Remarried Faithful

The second part of this study presents the Orthodox tradition on divorced and remarried faithful in five main points: the first two concern the broader context in which this approach is embedded; the remaining three discuss the actual content of the Orthodox doctrine and discipline on this matter.

⁶ See Pope Benedict XVI, “Meeting with Diocesan Clergy of Aosta: Address of His Holiness Benedict XVI, 25 July 2005,” http://w2.vatican.va/content/benedict-xvi/en/speeches/2005/july/documents/hf_ben-xvi_spe_20050725_diocesi-aosta.html. Seven years later, during his pastoral visit to the Archdiocese of Milan on the occasion of the 7th World Meeting of Families in 2012, Pope Benedict reiterated that “the problem of divorced and remarried persons is one of the great sufferings of today’s Church” for which “we do not have simple solutions”. See “Pastoral Visit to the Archdiocese of Milan and the Seventh World Meeting of Families: Evening of Witness; Address of His Holiness Pope Benedict XVI, 2 June 2012,” http://w2.vatican.va/content/benedict-xvi/en/speeches/2012/june/documents/hf_ben-xvi_spe_20120602_festa-testimonianze.html.

⁷ See “Apostolic Journey to Rio de Janeiro on the occasion of the XXVIII World Youth Day. Pope Francis, Press Conference during the Return Flight, Sunday 28 July 2013,” http://w2.vatican.va/content/francesco/en/speeches/2013/july/documents/papa-francesco_20130728_gmg-conferenza-stampa.html

A Decentralised, Conservative and Mystical Tradition

The Orthodox position on divorce and remarriage must be understood within the broader context of the Eastern world, which is thoroughly different from its Western counterpart.⁸ Even before the dawn of Christianity, Greece and Rome – that is, East and West – were already of fundamentally differing cultures, political ideologies, military objectives and societal achievements.⁹ Eventually, this divergence infiltrated also the Christian world. In the early centuries, papal decretals and the Latin Fathers were not very well known in the Greek East and vice versa. From the sixth century onwards, when cultural contact between East and West became scarce, they were no longer read at all.¹⁰ Moreover, for the past millenium, the Orthodox world stood “outside the circle of ideas within which all Western Christians have moved.”¹¹

A major dissimilarity between the two traditions is the lack of an official updated and all-binding Catechism and Code of Canon Law in the Orthodox East. Among the main factors that contribute to this difference, one finds the following three. First, the Orthodox world, which nowadays comprises around 300-350 million Christians, is *decentralized* and *diversified*. It comprises distinctive traditions and various autocephalous or independent Churches – each with its own Primate – that are divided in two main branches.¹² On one hand, one finds Oriental Orthodoxy. This branch, which broke away from the rest of Christianity following the Council of Chalcedon in A.D. 451 and recognizes only the first three ecumenical councils, comprises six ancient eastern Churches that are in communion with each other in matters of faith but are

⁸ See Lorenzo Lorusso, “Lo scioglimento del matrimonio nelle chiese ortodosse,” in *Lo scioglimento del matrimonio canonico*, ed. Renato Baccari, *Studii giuridici*, no. 101 (Città del Vaticano: Libreria Editrice Vaticana, 2013): 196.

⁹ See Nicon D. Patrinos, *A Dictionary of Greek Orthodoxy* (New York: Greek Orthodox Archdiocese, 1984), s.v. “Schism: the Great,” 333.

¹⁰ See Nicolaas van der Wal, “Secular Law and the Eastern Church’s Concept of Marriage,” *Concilium* (English edition) 6/5 (1970): 79; David Wagschal, “Orthodox Canon Law: The Byzantine experience,” in *The Orthodox Christian World*, ed. Augustine Casiday (London: Routledge, 2012), 386.

¹¹ Athenagoras Kokkinakis, “Does Our Church Need a New Reformation? An Orthodox Reply,” *Concilium* (English Edition) 6/4 (1970): 59.

¹² According to Orthodox theology, none of these churches is the Orthodox Church on its own, but all the sister churches together – as a whole – form the One, Holy, Universal and Apostolic Church. See Ivan Žužek, “A Code for the Orthodox Churches,” in *The Future of Canon Law*, ed. Neophytos Edelby, Teodoro Ignacio, Jiménez Urresti and Petrus Huizing (New York: Paulist Press, 1969): 146.

fully independent and possess different traditions.¹³ On the other hand, there is Eastern Orthodoxy, which officially broke away from Western Christianity in A.D. 1054. This communion is made up of fourteen Churches that are united in faith and order with the Patriarch of Constantinople but are independent from each other in matters of organization and administration.¹⁴ This study will focus on the tradition of the Eastern Orthodox Churches.

Secondly, the Orthodox tradition has a *conservative spirit*. For great periods in history, the Eastern Churches existed in lands where they lived either as a minority or under persecution. As a consequence, their theology and canon law were mostly conserved in monasteries and have never undergone the systematic elaboration and presentation which their Latin counterparts went through, in particular thanks to the method of Scholasticism, the challenge of the Reformation and the influence of the Napoleonic Code.¹⁵ For this reason, the Orthodox tradition keeps referring to the doctrine and discipline of the early Church, as found in the writings of the early Christian writers and the Fathers, and in the promulgations of several Regional Synods (Councils) and the first Seven Ecumenical Synods – including the *Quini-Sext* that took place in Trullo in A.D. 691, which was never accepted as authoritative or ecumenical by the Catholic Church.¹⁶

Thirdly, the Eastern character is predominantly *mystical* and *experiential*, with the liturgy being the most beautiful and indicative discipline for any theological and canonical theme.¹⁷ For instance, in the Orthodox tradition, the mystery

¹³ The Oriental Orthodox Churches are the Armenian Apostolic Church, the Coptic Orthodox Church of Alexandria, the Syriac Orthodox Church of Antioch, Malankara the Orthodox Syrian Church, the Ethiopian Orthodox Tewahedo Church, and the Eritrean Orthodox Tewahedo Church. See Ronald Roberson, *The Eastern Christian Churches. A Brief Survey*, 7th ed. (Rome: Pontifical Oriental Institute, 2008), 19-37.

¹⁴ The Eastern Orthodox Churches are the Patriarchate of Constantinople (Ecumenical Patriarchate), Patriarchate of Alexandria, Patriarchate of Antioch, Patriarchate of Jerusalem, Patriarchate of Moscow and all Russia, Patriarchate of Romania, Patriarchate of Bulgaria, Patriarchate of Georgia, Orthodox Church of Cyprus, Orthodox Church of Greece, Polish Orthodox Church, Albanian Orthodox Church and the Czech and Slovak Orthodox Church. Some of these Churches recognize the autocephaly of the Orthodox Church in America. See Roberson, *The Eastern Christian Churches*, 39-132.

¹⁵ See Athenagoras Kokkinakis, "Does Our Church Need a New Reformation? An Orthodox Reply," 58-59.

¹⁶ For more information on the Synod of Trullo, see *The Council in Trullo Revisited*, ed. George Nedungatt and Michael Featherstone, *Kanonika*, no. 6 (Rome: Pontifical Oriental Institute, 1995).

¹⁷ See Angelo Altan, "Indissolubilità ed oikonomia nella teologia e nella disciplina orientale del matrimonio," *Sacra Doctrina* 49 (1968): 98.

(sacrament)¹⁸ of marriage “transcends both fleshly union and contractual legal association”¹⁹ and is primarily and fundamentally perceived as a spiritual-mystical union. According to Orthodox theology, marriage, by its very nature, is a sacred foundation, rooted in the eschatological realm of the Kingdom and immersed in the great mystery of Christ and the Church (cf. Eph 5:32).²⁰ In fact, the minister of the sacrament of marriage in the Orthodox Church is the priest and the constitutive element is the sacred rite that includes the crowning of the spouses and the priestly blessing.²¹ In this light, the Orthodox doctrine of marriage “has not been given a ‘juridical’ formulation and remains, as much of Eastern Orthodox theology in general, in the state of affirmations rather than explanations; [it] is expressed more often in liturgical rites rather than canonical texts, and finally serves as a guiding principle rather than explicit legislation.”²²

The Dialectic of Akribia and Oikonomia

The Orthodox position on divorce and remarriage must also be placed against the backdrop of the dialectic between *akribia* and *oikonomia*. *Akribia* stands for strictness in the application of canon law, exactness in Church practice, and faithfulness to the revealed truth, while *oikonomia* refers to an approach of mercy, leniency and flexibility, that is mostly expressed through a regulated deviation or suspension of the rule. In Orthodoxy, these two principles exist

¹⁸ In Eastern theology, the sacraments of the Church are called “*mysteria*” (mysteries) – the same Greek term that refers to the divine mysteries. See Edward Farrugia, *Dizionario enciclopedico dell’Oriente cristiano* (Rome: Pontifical Oriental Institute, 2000), s.v. “sacramenti,” 652-654.

¹⁹ John Meyendorff, *Byzantine Theology: Historical Trends and Doctrinal Themes*, 2nd ed. (New York: Fordham University Press, 1987), 197.

²⁰ See Patrick Viscuso, “The Theology of Marriage in the Rudder of Nikodemos the Hagiorite,” *Ostkirchliche Studien* 41 (1992): 206; Alexander Schmemmann, “The Indissolubility of Marriage: The Theological Tradition of the East,” in *The Bond of Marriage: An Ecumenical and Interdisciplinary Study*, ed. William W. Bassett (London: University of Notre Dame, 1968): 115-116; Panteleimon Rodopoulos, W.J. Lillie and George Dion Dragas, *An Overview of Orthodox Canon Law* (Rollinsford, NH: Orthodox Research Institute, 2007), 186.

²¹ In fact, the Orthodox Churches do not admit: extraordinary forms of marriage, dispensations from the proper celebration of marriage, marriages by proxy, and *sanatio in radice*. Likewise, they do not consider the following as sacramental Orthodox marriages: marriages celebrated or presided by an Orthodox deacon or lay person; marriages celebrated or presided by a non-Orthodox bishop, priest, deacon or layperson; and civil marriages.

²² Schmemmann, “The Indissolubility of Marriage,” 98. See also Alvia N. Smirensky, “The Evolution of the Present Rite of Matrimony and Parallel Canonical Developments,” *St Vladimir’s Theological Quarterly* 8, no. 1 (1964): 38.

side by side and are both very important²³: *oikonomia* without *akribia* runs the risk of becoming a shallow and false acceptance of reality, while *akribia* without *oikonomia* becomes abstract, puritan, unreachable and incapable of handling reality. Infact, the two principles are called “the double ecclesiastical practice of the Orthodox tradition,”²⁴ “the two main ways in which the Church can advance in the use of the means of salvation,”²⁵ and the “twin principles governing the life of the church.”²⁶

The Orthodox invocation of *oikonomia* is based on the Eastern understanding of two theological notions: divine economy and the “power of the keys” (*potestas clavium*). Originally, the secular Greek term *oikonomia* (economy) referred to the wise administration of a household by its own master (*oikonomos*). With the birth of Christianity, it was transposed into the theological context and began to refer to the management of the Universe by God, the Supreme *Oikonomos*. The East was always aware that God governs the world through mercy and kindness; faced with the weakness and the failures of humanity, God always changes his plan and bows down in order to heal, lift up, and give a new possibility. According to Orthodox ecclesiology, in the New Testament, Christ handed down the authority of this governance – symbolised in the Keys of the Kingdom that “bind and loosen” – to all the Apostles (cf. Mt 18:18), not just to Peter (cf. Mt 16:19). At that moment, all the Apostles became “keybearers of the Kingdom of Heaven,”²⁷ and the Church became the “continuer of Christ’s redeeming word”²⁸ and “dispenser of divine mercy.”²⁹

²³ See Cyril of Alexandria, *Letter 56*, in PG77:319-320; Patriarch Dositheos of Jerusalem, “Letter to Michael of Belgrade”, in *Patriarchal Documents*, ed. Kallinikos Delikanis, vol. 3, (Constantinople: Patriarchal Typography, 1905), 684.

²⁴ “Address by Patriarch Bartholomew I of Constantinople to His Holiness Karekin II, Supreme Catholicos of all Armenians, 21 June 2006”, <http://www.ec-patr.org/docdisplay.php?lang=en&id=683&tla=en>

²⁵ Interorthodox Preparatory Commission of the Great and Holy Council of the Orthodox Church, *Towards the Great Council: Introductory reports of the Interorthodox Commission in preparation for the next Great and Holy Council of the Orthodox Church* (London: SPCK, 1973), 41.

²⁶ Norman Russell, “Nikodemus the Haghiorite”, in *The Orthodox Christian World*, 323.

²⁷ Angelo Altan, “Indissolubilità ed oikonomia nella teologia e nella disciplina orientale del matrimonio”, *Sacra Doctrina* 49 (1968): 107. See also Milan Petrovic, “The Principal Differences between Orthodox Church Law and the Law of the Roman Catholic Church,” *Law and Politics* 6, no. 1 (2008): 2-3.

²⁸ Radko Poptodorov, “Economy in the Orthodox Tradition and Practice of the Slavic Churches,” *Kanon* 6 (1983): 52.

²⁹ Lewis J. Patsavos, “The Orthodox Position on Divorce,” in *Ministering to the Divorced Catholic*, ed. James J. Young (New York: Paulist Press, 1979), 60.

In this light, Orthodox theology teaches that the application of *oikonomia* belongs to all bishops as successors of the Apostles. They are the *oikonomoi*, the stewards and overseers (*episcopoi*) of the house of God. In view of the authority which they receive through the episcopal consecration, bishops are able to “bind and loosen” either individually in their diocese, or collectively within synods. Nevertheless, the Orthodox tradition specifies that they can exercise this authority only in imitation of divine mercy;³⁰ for specific and individual situations; and for a higher purpose, such as the good and salvation of souls and the benefit and unity of the Church.³¹

The Indissolubility of Marriage

The Orthodox tradition upholds that sacramental marriage is indissoluble and attributes an eternal character to this indissolubility. This position is based on the divine will in scriptures (cf. Gen 2:24; Mt 5:31-32; 19:3-12; Mk 10:1-12), on the fact that the sacrament of marriage is immersed in the great and ageless mystery of Christ and the Church (cf. Eph 5:32), and on the unrepeatable event of the Resurrection, which permeated the whole Universe and transformed once and for all the temporal reality of natural marriage into an eschatological and eternal union.³² This view of the indissolubility of marriage generates two consequences that are foreign to the Latin West: first, that Orthodox sacramental marriage is not dissolved with the death of one of the spouses but remains forever, and secondly, that sacramental marriage is only one and can never be followed by another marriage, not even in the case of widows.³³ Thus, the principle of *akribia* calls upon Orthodox married couples to stay and live together for all their life, and insists with widowed or divorced persons to embrace celibacy for the rest of their life.

³⁰ In a tenth century letter to Pope Anastasius III, Patriarch Nicholas the Mystic of Constantinople wrote: “*Oikonomia* is a concession unto salvation, saving him who has sinned, stretching out the arm of help, and lifting up the fallen from his fall; not permitting him to lie where he has fallen, nor rather pushing him toward a miserable pit. *Oikonomia* is an imitation of divine mercy; a snatching out of the jaws of the beast that howls against us.” See Patriarch Nicholas the Mystic, *Letter 32*, in *PG111:195-220*.

³¹ See Ladislav Örsy, “In Search of the Meaning of *Oikonomia*: Report on a Convention,” *Theological Studies* 43 (1982): 313.

³² See John Meyendorff, *Marriage: An Orthodox Perspective*, 3rd rev. ed. (Crestwood, NY: St Vladimir’s Seminary Press, 1984), 54.

³³ See Athenagoras (Peckstadt) of Sinope, *Marriage, Divorce and Remarriage in the Orthodox Church: *Economia* and Pastoral Guidance*, http://www.orthodoxresearchinstitute.org/articles/liturgics/athenagoras_remarriage.htm

The doctrine of the indissolubility of marriage is beautifully expressed in various symbolisms of the Orthodox liturgical celebration of marriage. For instance, the prevalent role of the bishop or priest in the Service of Crowning affirms the presence and witness of God, the Eternal One (cf. Mal 2:14); the Epistle reading taken from the Letter to the Ephesians (cf. Eph 5,20-33), proclaims the great and ageless mystery of Christ and the Church; the various liturgical petitions invoke the Divine for the gift of permanent love; the crowns symbolize immortality and victory over death; the joining of the hands of the spouses and the breaking of the cup by the priest show that the indissolubility of marriage is closely linked to the property of unity, since no one else should drink from the cup of the spouses; and the ceremonial procession of the spouses, or Dance of Isaiah, recalls the eternal nature of marriage via its circular motion.³⁴

The Concession of Divorce

Having said this, the Orthodox tradition is also aware that while the sacrament of marriage remains in eternity, the marital relationship in this world comes to an end. The East has always understood the axiom of Christ “what God has joined together, let no one separate” (cf. Mk 10:9; Mt 19:6) as a moral ideal rather than as an ontological truth about marriage. For Orthodox scholars, when Christ said that nobody should break a marital relationship, He did not say that this cannot be broken.³⁵ In fact, this takes place all the time: either through the natural death of one of the spouses or by means of an action or circumstances that render a marital cohabitation impossible.

Faced with the latter scenario, the Orthodox tradition invokes *oikonomia* and grants an ecclesiastical divorce as a lesser evil. However, it must be noted that this concession does not transform divorce into a good or praiseworthy experience, for any separation of the spouses goes against the moral ideal set by Christ (cf. Mk 10:9). In fact, situations wherein divorce has become popular and frequent are for the Orthodox Church “a real tragedy both for the individual and the people”³⁶, and divorced men or men who got married to a divorced woman

³⁴ See Angelo Altan, “Indissolubilità ed *oikonomia* nella teologia,” 100-101; Antonio Carlo Cucinotta, “Teologia e prassi delle Chiese Orientali” in *Quale comunione? Divorziati, risposati e sacramenti*, ed. Francesca P. Puleo (Roma: Città Nuova, 2009): 99-102.

³⁵ See Peter L’Huillier, “Le divorce selon la théologie et le droit canonique de l’Eglise orthodoxe,” *Le Messager* 65 (1969): 28; Athenagoras (Peckstadt) of Sinope, *Marriage, Divorce and Remarriage in the Orthodox Church*, 6.

³⁶ Russian Orthodox Church, *The Basis of the Social Concept*, 16 August 2000, <https://mospat.ru/en/documents/social-concepts/>

cannot receive ordination.³⁷ Moreover, an ordained person who gets divorced from his wife cannot continue in his ministry.³⁸

Orthodox ecclesiastical divorce is regulated and granted only against certain grounds. The majority of the Orthodox grounds of divorce find their roots in Novel 117 (*De diversis capitibus et solutionibus matrimonii*) promulgated by the Christian Byzantine Emperor Justinian in A.D. 542. Over the centuries, that list has been modified and nowadays the number and type of grounds of divorce vary from one Orthodox Church to another. However, they are all linked to three biblical factors that – according to Eastern interpretation – denote an end to a marital relationship: death (cf. 1 Cor 7:39); adultery (cf. Mt 5:32; 19:9); and iniquity (cf. 1 Cor 6:5-10). In Orthodoxy, divorce is not granted on the basis of mutual agreement between the spouses (*ex consensus*).³⁹

The Toleration of Remarriage

Beside the fact that marital relationships can come to an end, Orthodox tradition is aware of another reality: that not all widowed or divorced persons are capable of embracing celibacy for the rest of their lives. In the First Letter to the Corinthians, Paul acknowledges this fact and writes that certain widows “cannot control themselves” and “they should marry, for it is better to marry than to burn with passion” (cf. 1 Cor 7:8-9). Faced with the plight of her faithful who find themselves in similar situations, the Orthodox Church endorses the Pauline concession to widows and extends it to divorced persons.

Just as in the case of ecclesiastical divorce, the concession of remarriage is granted out of *oikonomia* and only under certain conditions. For instance, a new marriage must always follow either the death of a spouse or an ecclesiastical divorce, which verifies that the previous marital relationship has died completely. In the case of an innocent spouse, it must be proved that he or she has done all that was possible to save the previous marriage and was not able to live honestly and without great harm the calling of lifelong celibacy (cf. Mt 19:12). On the other hand, in the case of a spouse guilty of breaking a previous marriage, various Orthodox Churches uphold that he or she cannot enter a second marriage as long as the other spouse is alive; and if the previous marriage was ended by means of an adultery, he or she cannot remarry the adulterous partner, not even after

³⁷ See Lv 21:7,14; Ezk 44:22; 1 Tm 3:11; “Apostolic Canons,” no. 18, <http://www.newadvent.org/fathers/3820.htm>.

³⁸ See “Apostolic Canons,” no. 5.

³⁹ See Angelo Altan, “Indissolubilità ed oikonomia nella teologia,” 108-109.

the death of the other spouse. Orthodox clergy and their wives cannot remarry following the death of their spouse, since they are obliged to abide by *akribia*.⁴⁰ On the same lines, remarried men or men married to remarried women cannot receive ordination.⁴¹ In Orthodoxy, third marriages are allowed but not favoured, and there is no possibility of a fourth marriage.⁴²

Moreover, any remarriage in the Orthodox Church is non-sacramental. In fact, the liturgical rite contains no doxological invocation and in principle should contain no crowning, although a canonical response of Nicetas of Herakleia shows that in the eleventh century, the crowns were already being used in Constantinople.⁴³ Although celebrated with a liturgical rite which bestows a certain sacredness on the new union, second and third marriages are “like sacramentally ‘insufficient’ marriages,”⁴⁴ that is, they do not have “sacramental

⁴⁰ See “Apostolic Canons”, 26; Synod of Neocaesarea (A.D. c. 315), canon 1, [http://www.documentacatholicaomnia.eu/03d/0325-0787,_Concilia,_The_First_Seven_Ecumenical_Councils_\[History_And_Canons\],_EN.pdf](http://www.documentacatholicaomnia.eu/03d/0325-0787,_Concilia,_The_First_Seven_Ecumenical_Councils_[History_And_Canons],_EN.pdf); Synod of Trullo (A.D. 692), canon 6, [http://www.documentacatholicaomnia.eu/03d/0325-0787,_Concilia,_The_First_Seven_Ecumenical_Councils_\[History_And_Canons\],_EN.pdf](http://www.documentacatholicaomnia.eu/03d/0325-0787,_Concilia,_The_First_Seven_Ecumenical_Councils_[History_And_Canons],_EN.pdf). In the Orthodox tradition, monks and ordained ministers are all called to “belong to the class of the ‘perfect’ Christians”. In the fourteenth century, Matthew Blastares observed that greater requirements of virtue are made for those who are chosen to draw near to God, that they might not be seen as unworthy by living contrary to His will. See George Dmitry Gallaro, “Oikonomia and Marriage Dissolution in the Christian East,” *Logos: A Journal of Eastern Christian Studies* 49, no. 1-2 (2008): 46; Patrick Viscuso, “The Prohibition of Second Marriage for Women Married to Priests,” *Orientalia Christiana Periodica* 66 (2000): 441-448; Viscuso, “A Late Byzantine Theology of Canon Law,” *Greek Orthodox Theological Review* 34, no. 3 (1989): 209.

⁴¹ See “Apostolic Canons,” nos. 17 and 18.

⁴² This limit is based on the teaching of Gregory of Nazianzus who considered the first marriage as a rule, the second as a concession, the third as a trasgression, and anything beyond the third as belonging to swines. See Gregory of Nazianzus, *Oratio* 37, 8, in *PG*36:292. In “The Tome of the Union of 920” – which Meyendorff calls “the most solemn set of rules accepted by both church and empire concerning the conditions of successive marriages” – the Eastern Church confirmed the ban on fourth marriages and placed strict limitations on those entering a third union. See John Meyendorff, “Christian Marriage in Byzantium: The Canonical and Liturgical Tradition,” *Dumbarton Oaks Papers* 44 (1990): 102; Leendert Gerrit Westerink, *Nicholas I, Patriarch of Constantinople: Miscellaneous Writings*, Dumbarton Oaks Texts, no. 6 (Washington, DC: Dumbarton Oaks Center for Byzantine Studies, 1981), 59-71.

⁴³ See Aristarchos Mavrikis, *The Law of Marriage and Divorce in the Church of England and the Church of Greece in Recent Times (1850-1980): With its Theological Implications* (Athens: S.D. Basilopoulos Historical Publications, 1992), 304-305.

⁴⁴ Gheorghios Patronos, “Teologia ed esperienza del matrimonio,” in “*La cella del vino*”: *Parole sull'amore e sul matrimonio*, ed. Stavros S. Fotiou and Anna Marini (Schio, VI: Interlogos, 1997), 130.

fullness,”⁴⁵ because “the fullness of sacramental meaning [is] only in the first marriage.”⁴⁶

Besides, Orthodox remarriage is penitential. In the case of widows, penance (*epitimia*) is prescribed for the inability of remaining celibate, while in the case of divorced persons, it is imposed in view of the sin of divorce as well as the inability of remaining celibate. The penitential character of Orthodox remarriage is expressed mainly in three ways. First, the Orthodox liturgical rite for second and third marriages cannot be celebrated by a bishop, is less festive, has a sober tone and contains several penitential prayers. As Schmemmann puts it, “it is indeed a penitential service, it is intercession, it is love, but nothing of the glory and joy of that which has been broken remains.”⁴⁷ Secondly, the priest who celebrates the wedding is prohibited from attending the wedding feast.⁴⁸ Thirdly, the remarried couple is excluded from the Eucharist for a temporary period of repentance and mourning which extends from one to two years in the case of a second marriage and from four to five years in the case of a third marriage.⁴⁹ At first glance, such penances may seem trivial for the Latin mind; however, they are very significant in Orthodoxy, where great importance is attached to symbols, liturgical rituals, and communion with the Eucharistic community. As we have already pointed out in this study, “it is precisely through the [liturgical] service that it is possible to understand how the discipline of second marriage is perceived in the ecclesial experience and the theological reflection of the Orthodox Church.”⁵⁰

Suggestions for Further Research

The last part of this study attempts to answer the question: “What can the Catholic Church learn?” – or better, “How can the Orthodox tradition help the Catholic Church in her ongoing reflection on marriage and the family?” It will present five aspects from the Orthodox tradition that can shed important

⁴⁵ See John Meyendorff, *Marriage: An Orthodox Perspective*, 46, 62; Theodore G. Stylianopoulos, “The Indissolubility of Marriage in the New Testament: Principle and Practice,” *Greek Orthodox Theological Review* 34, no. 4 (1989): 344.

⁴⁶ Stephanos Charalambidis, “Marriage in the Orthodox Church,” *One in Christ* 15, no. 3 (1979): 217.

⁴⁷ Schmemmann, “The Indissolubility of Marriage,” 105.

⁴⁸ See “Synod of Neocaesarea,” canon 7.

⁴⁹ See Lucas Papanastasiou, “Le penitente imposte ad alcuni peccati,” in *La penitenza nelle chiese ortodosse: Aspetti storici e sacramentali*, ed. Basilio Petrà (Bologna: EDB, 2005), 110.

⁵⁰ Andrea Palmieri, “The second marriage service in the Orthodox Church,” *Intams Review* 14 (2008): 170.

light on certain areas of Catholic doctrine and practice. Rather than offering answers, this section seeks to suggest proposals for further research, study and discernment.

The Grey Areas of Life

Very often, the Catholic Church seems to be afraid of the grey areas of marital life. Many Catholics get anxious, afraid, and at times even confused, when a complex matter – such as the pastoral care of divorced and remarried faithful – is opened for ecclesial debate and synodal discernment. On the contrary, the Orthodox Church seems to find it less difficult to live and navigate within such areas of imprecision and lack of clarity. Through her approach to divorce and remarriage, the Orthodox Church affirms that the sacrament of marriage – and life in general – cannot be perceived within a black-and-white paradigm. She proclaims that marriage, like all other aspects of human reality, is lived and experienced within the dialectic of heaven and earth, holiness and sinfulness, the ideal and the reality, the already and the not yet. The Orthodox tradition on divorced and remarried faithful boldly shows that sacramental marriage is indissoluble and eternal, but that marital relationship is fragile and can be easily broken; that spouses receive the gift of marriage with joy and hope that they will remain together forever, but in the journey of life several couples experience the wreck and destruction of their project; and that marriage was instituted by God in paradise (cf. Gen 2:18-24), but it became as we know it when Adam knew Eve and she conceived in the Fallen State (cf. Gen 4:1).⁵¹ Thanks to her more mystical – and less juridical – character and her constant interplay with both *akribia* and *oikonomia*, the Orthodox Church does not find it difficult to grasp and endorse this truth about life. In fact, figures like Cyril of Alexandria and Theophylact of Ochrid have compared the application of *oikonomia* to the task of steering a ship at sea, which includes the art of “relaxing the tiller to avoid capsizing, jettisoning what is less important to save the cargo, or steering between the scylla and charibdis of today.”⁵²

In this light, the Orthodox tradition on divorced and remarried faithful can help the Catholic Church hear once again the words of Christ, “*duc in altum*,”

⁵¹ See Nenad S. Milosevic et al., *To Christ and the Church: The Divine Eucharist as the All-Encompassing Mystery of the Church* (Los Angeles: Sebastian Press, 2011), 162-163.

⁵² John H. Erickson, “Oikonomia in Byzantine Canon Law,” in *Law, Church and Society*, ed. Stephan Kuttner et al. (Philadelphia, PA: Pennsylvania Press, 1977), 230. See also Cyril of Alexandria, *Letter 57*, in *PG77:320-321*; Radko Poptodorov, “Economy in the Orthodox Tradition and Practice of the Slavic Churches,” *Kanon* 6 (1983): 52-53.

“put out into deep waters” (Lk 5:4). This bold phrase, which was put before the Catholic Church by Saint John Paul II at the beginning of the new millennium,⁵³ calls upon the Church to approach and navigate the grey areas of marital life, including the reality of divorced and remarried Catholic faithful, without fear and anxiety. Moreover, the Orthodox practice, firmly rooted in the dialectic of *akribia* and *oikonomia*, can also lead the Catholic Church towards a serious reflection on complex and controversial notions, such as the death of love,⁵⁴ and on her current understanding and application of “mechanisms of exception” that are already available in the Latin tradition (e.g., *epikeia*, canonical equity and dispensations).⁵⁵

The “Power of the Keys”

The Catholic Church upholds that the “power of the keys” (*potestas clavium*) belongs solely to the Roman Pontiff as Successor of Peter (cf. Mt 16:19). In the Catholic tradition, the Pope alone can dissolve a non-consummated marriage which is validly ratified or a valid marriage contracted by two spouses of whom one wishes to embrace the faith. Moreover, as we have seen in the case of the 1980 Synod of Bishops or in the case of the three German bishops (cf. footnote 5), development of discipline does not belong to bishops alone but to the Roman Pontiff who, “by virtue of his office ... possesses supreme, full, immediate, and universal ordinary power in the Church, which he is always able to exercise freely.” Although in fulfilling the office of supreme pastor of the Church, the Pope is always joined in communion with the other bishops and with the universal Church, he “has the right, according to the needs of the Church, to determine the manner, whether personal or collegial, of exercising this office”.⁵⁶ On the other hand, we have seen that the Orthodox Churches underline the fact that Christ handed the “keys to bind and loosen” not only to Peter but to all the Apostles (cf. Mt 18:18). On this basis, the Orthodox tradition allows bishops to exercise the *potestas clavium* on an individual level, even in the field of marital breakups.

In this light, the Orthodox tradition invites the Catholic Church to explore in a deeper manner the expression “power of the keys” and reassess her

⁵³ See “Apostolic Letter *Novo Millennio Ineunte* of His Holiness John Paul II at the Close of the Great Jubilee of the Year 2000,” no. 1, http://w2.vatican.va/content/john-paul-ii/en/apost_letters/2001/documents/hf_jp-ii_apl_20010106_novo-millennio-ineunte.html.

⁵⁴ See Basilio Petrà, “Il matrimonio può morire? Risposta a Rodríguez-Luño,” *Rivista di teologia morale* 33 (2001): 249-258.

⁵⁵ See Günter Virt, “Moral Norms and the Forgotten Virtue of Epikeia in the Pastoral Care of the Divorced and Remarried,” *Melita Theologica* 63, no. 1 (2013): 17-34.

⁵⁶ Catholic Church, *Code of Canon Law (CIC 83)*, 25 January 1983, canons 331 and 333 § 2.

understanding of this notion: first, as regards the participation of bishops in this authority; and secondly, concerning whether other marriages beside those already prescribed by the current canonical discipline can be dissolved by the *potestas clavium*.⁵⁷

The Notion of Scandal

Catholic doctrine states that the reception of the Eucharist by divorced and remarried persons is also forbidden because it can give rise to scandal, since the impression would be given that the Church no longer upholds the indissolubility of marriage, and the faithful would be led into error and confusion.⁵⁸ On the other hand, the Orthodox Church grants the possibility of divorce and remarriage out of fear that she might be the one giving scandal if she sidelines her “ministry of reconciliation” (cf. 2 Cor 5:18-19) and her mission of healing to those who have been wounded along the journey of life. In the Orthodox perception, an across-the-board rejection of the possibility of divorce and remarriage as well as a permanent exclusion from the Sacraments for the divorced and remarried persons weaken the witness of the Church to the compassion and forgiveness of Christ.

In this light, the Orthodox tradition invites the Catholic Church to revisit her notion of scandal and attempt to look at this important aspect of the Christian life from a totally different angle.⁵⁹ Such a change of perception can “improve the lopsided and tragic assessment of the Church’s reputation in the minds and hearts of so many people,” who, unfortunately, do not experience the Church “as a source of strength and support in the midst of the turbulent times of separation and divorce” but rather “suffer from feelings of having been morally condemned, of potentially losing their spiritual home and of being painfully ostracized.”⁶⁰

⁵⁷ See Cyril Vasil and George Dmitry Gallaro, “Remarriage in the Orthodox Church Challenges Catholic Church,” *Studia Canonica* 47, no. 1 (2013): 143; Basilio Petrà, “Potere della Chiesa e matrimoni falliti,” *Rivista di teologia morale* 38 (2006): 379-397.

⁵⁸ See “Apostolic Exhortation *Familiaris Consortio* of Pope John Paul II on the Role of the Christian Family in the Modern World”, 22 November 1981, no. 84, https://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html.

⁵⁹ Kevin Kelly writes that the Catholic argument concerning scandal is “an argument from consequence” which carries no more weight than the opposite assertion, since no empirical evidence is offered to prove the truth it affirms. See Kevin Kelly, “Divorce and Remarriage: Conflict in the Church,” *The Tablet* 248 (1994): 1374.

⁶⁰ Eberhard Schockenhoff, “The Church as a Reconciling Community,” *Melita Theologica* 63, no. 1 (2013): 13.

The Notion of Contract

In Catholic tradition, marriage is primarily perceived as a juridical reality based on the notion of “contract.” This position, based on the Roman principle *consensus facit nuptias* and endorsed by theologians like Peter Lombard was emphasized by the Magisterium, especially since the seventeenth century. The 1917 Code of Canon Law also understood marriage as a contract that is ratified through the exchange of consent and sealed by the consummation of marriage. This contract gave the parties equal life-long and exclusive rights to each other’s bodies for sexual union oriented towards procreation.⁶¹ Within this paradigm, the abstract legal relationship that emerged from the contract of marriage existed independently of the personal relationship that existed or not between the spouses. Even if the couple separated, and started hating each other, the legal relationship continued to exist as long as both partners lived, with the consequence that the right to sexual union excluded any third party.

The Second Vatican Council attempted to go beyond this contractual notion of marriage and spoke of marriage in terms of a “covenant,” that is, of a personal living and loving community of husband and wife who mutually give and accept each other as persons. As a consequence, the exclusive right of spouses was no longer seen as an isolated right that exists for its own sake, but as the result of a personal community of life and love. These notions were accepted by many; however the traditional understanding of marriage as a contract remains very strong in the Church. In fact, the exclusion of divorced and remarried Catholic faithful from the Eucharist is still based on the concept of a life-long, exclusive and abstract “right” of the spouses to sexual union. It is the violation of this right that makes a person who enters a new meaningful relationship commit the mortal sin of adultery, which in turn, removes the person from Eucharistic communion⁶². On the other hand, in the previous pages we have seen that in the Orthodox tradition, marriage is fundamentally a spiritual union that goes beyond the notion of contract, a gift of grace that is bestowed on the couple by the bishop or priest through the sacred rite.

In this light, the Orthodox tradition can help the Catholic Church consider the fact that a non-contractual understanding of Christian marriage is possible, and that a theological breakthrough on this level can have a huge impact on the pastoral ministry towards divorced and remarried faithful.

⁶¹ See Catholic Church, *Code of Canon Law (CIC 17)*, 27 May 1917, canons 1012, 1110, 1081 and 1111.

⁶² See Matthäus Kaiser, “Why should the Divorced and Remarried (not) Be Admitted to the Sacraments,” *Theology Digest* 41, no. 1 (1994): 8-14.

Penance and Mercy

In the Catholic Church, the exclusion of divorced and remarried faithful from the sacraments – in particular the Sacrament of Reconciliation, Anointing of the Sick, and the Eucharist – is a logical sanction incurred through a violation of a law. This sanction endures until the person involved remains in that situation. In the previous pages, we have seen that the Orthodox Churches also prescribe an exclusion from the Eucharist for divorced and remarried persons, because divorce and remarriage are not praiseworthy actions. However, the Orthodox penance prescribed to those who enter a second or a third union is temporary and strictly linked to one's spiritual journey. It is a three-fold pedagogical and therapeutic process, since first, it helps the person to admit and redeem the committed sin through repentance, mourning and exclusion from the Eucharistic community; secondly, it invites the person to make reconciliation with God, the others and himself via a slow reintegration into the Eucharistic community and sacramental life; and thirdly, it restores the virtues of hope, faith and charity in the person by offering a possibility for a new beginning.

In this light, the Orthodox tradition on divorce and remarriage can help the Catholic Church rediscover the penitential tradition, in particular its atoning, pedagogical and therapeutic dimensions. As a consequence, the Church can then create a practical, public and temporary penance for divorced and remarried faithful who love God with a sincere heart and wish to stay close to Him, with the aim of reintegrating them slowly within the Eucharistic community. Such a penance would proclaim two fundamental truths of the Catholic faith: first, that marriage is indissoluble and any remarriage of divorced persons merits a significant penance; and secondly, that God, in His mercy and through the Church, never tires of offering salvation, healing, reintegration and the hope of a new possibility to those who fail to abide by His demands. Such a consideration would be in line with what Pope Francis stated in a recent homily delivered before the College of Cardinals:

The Church's way, from the time of the Council of Jerusalem, has always been the way of Jesus, the way of mercy and reinstatement. This does not mean underestimating the dangers of letting wolves into the fold, but welcoming the repentant prodigal son; healing the wounds of sin with courage and determination; rolling up our sleeves and not standing by and watching passively the suffering of the world. The way of the Church is not to condemn anyone for eternity; [but] to pour out the balm of God's mercy on all those who ask for it with a sincere heart. The way of the Church is precisely to leave her four walls behind and to go out in search of those who are distant, those essentially on the "outskirts" of life. It is to adopt fully God's own approach,

to follow the Master who said: “Those who are well have no need of the physician, but those who are sick; I have come to call, not the righteous but sinners” (Lk 5:31-32).⁶³

Conclusion: A Final Proposal

In concluding this study, it is important to point out that the Orthodox tradition on divorced and remarried faithful is far from perfect. Some scholars insist that there was too much involvement of secular and imperial powers in the historical development of this approach. Others criticize the fact that Orthodox clergy and faithful often abuse of this practice or take it lightly⁶⁴. At the same time, this study has also tried to show that the Catholic Church cannot simply copy and paste the Orthodox practice in its totality because the latter is embedded in a tradition that has developed in a distinctive manner from the Latin one.

Having said this, I still believe that the Catholic Church should deepen her knowledge of the Orthodox tradition on divorced and remarried faithful and set up an inter-Church Commission to seriously study the Eastern approach. As we have seen, there are various aspects from this approach that can shed new light on certain areas of Catholic doctrine and discipline and challenge them towards further research, study and discernment.

After all, the Orthodox tradition on divorced and remarried faithful has never been condemned by the Catholic Church. In the Council of Florence (A.D. 1439), the Pope and the Latin Fathers did not consider the Eastern practice so important as to cause the rupture of the renewed union⁶⁵, while in the Council of Trent, the Catholic Church was very careful in her formulation of the doctrine of indissolubility not to condemn or completely exclude the

⁶³ “Holy Mass with the New Cardinals: Homily of His Holiness Pope Francis, Sunday 15 February 2015,” https://w2.vatican.va/content/francesco/en/homilies/2015/documents/papa-francesco_20150215_omelia-nuovi-cardinali.html.

⁶⁴ See Peter L’Huillier, “L’attitude de l’église orthodoxe vis-à-vis du remariage des divorcés,” *Revue de Droit Canonique* 29, no. 1 (1979): 57; Cyril Vasil, “Separazione, scioglimento, nuove nozze nell’ortodossia. Orientamenti per la prassi cattolica,” *Nicolaus* 37, no. 1 (2010): 243; John Meyendorff, *Marriage: An Orthodox Perspective*, 358; Theodore G. Stylianopoulos, “The Indissolubility of Marriage in the New Testament: Principle and Practice,” *Greek Orthodox Theological Review* 34, no. 4 (1989): 345; Stylianopoulos, “Towards a Theology of Marriage in the Orthodox Church,” *Greek Orthodox Theological Review* 22, no. 3 (1977): 279-280; John H. Erickson, *The Challenge of Our Past. Studies in Orthodox Canon Law and Church History* (Crestwood, NY: St Vladimir’s Seminary Press, 1991), 39, 49.

⁶⁵ See Joseph Gill, *The Council of Florence* (Cambridge: Cambridge University Press, 1959), 296-297.

distinct tradition of the Orthodox East⁶⁶. Besides, in the last five decades, various pronouncements of the catholic Magisterium have spoken of the Catholic Church and the Orthodox Church as “the sister Churches of East and West,”⁶⁷ while the Second Vatican Council proclaimed that the Orthodox Churches possess not only true sacraments but also a heritage of spirituality and liturgy, of discipline and theology that belongs to the full Catholic and apostolic character of the Church⁶⁸. In this light, Saint John Paul II warned that “each Church must struggle against the temptation to make an absolute of what it does.”⁶⁹

Finally, the Catholic Church should not be afraid to let herself be challenged by the Orthodox approach because the official Catholic discipline regarding divorced and remarried Catholic faithful has already changed drastically in the past, especially in the last hundred years,⁷⁰ and because the ultimate practical

⁶⁶ In canon 7 of the *De Matrimonio* (Session 24), the Council used the peculiar but clever formula “*Si quis dixerit ecclesiam errare...*” to ensure that the *anathema* pointed exclusively towards the statements of the Reformers and did not exclude the Eastern tradition that followed a practice contrary to that of the Church of Rome. See Hubert Jedin, *Storia del Concilio di Trento*, 4th ed. (Brescia: Morcelliana, 1981), 4:139-173; Piet Fransen, “Divorce on the Ground of Adultery: The Council of Trent (1563),” *Concilium* (English edition) 6/5 (1970): 91-92, 98.

⁶⁷ Pope John Paul II, “Speech during the Ecumenical Meeting in the Basilica of Saint Nicholas, Bari, 26 February 1984,” no. 2, in *Insegnamenti* 7:1; “Encyclical Letter of Pope John Paul II, *Slavorum Apostoli*, 2 June 1985,” 27, http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_19850602_slavorum-apostoli.html. See also Pope Paul VI, “Apostolic Brief *Anno Ineunte*, 25 July 1967,” *Acta Apostolicae Sedis* 59 (1967): 257-299; “John Paul II, Letter to the Bishops of Europe on Relations between Catholics and Orthodox in the New Situation in Central and Eastern Europe, 31 May 1991,” no. 4, http://w2.vatican.va/content/john-paul-ii/en/letters/1991/documents/hf_jp-ii_let_19910531_relationships-catholics-orthodox.html; “Pope John Paul II, *Ut Unum Sint*: On Commitment to Ecumenism, 25 May 1995,” nos. 55-57, https://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25051995_ut-unum-sint.html.

⁶⁸ See Vatican Council II, *Decree on Ecumenism* “Unitatis Redintegratio,” 21 November 1964, nos. 14-17.

⁶⁹ “Apostolic Letter *Orientalium Lumen* of Pope John Paul II to mark the Centenary of *Orientalium Dignitas* of Pope Leo XIII,” 2 May 1995, no. 8, http://w2.vatican.va/content/john-paul-ii/en/apost_letters/1995/documents/hf_jp-ii_apl_19950502_orientale-lumen.html.

⁷⁰ At the beginning of the 20th century, the divorced and remarried were considered as *ipso facto infames* and *publice indigni*. Today, such persons are considered as Christian faithful, members of the People of God, and are not completely excluded from communion with the Church, even though they have limited access to the sacraments and cannot participate in ecclesial service that has a representational character. Divorced and remarried faithful are invited to spiritual communion and the Church recognizes that in certain cases, such couples have a good, significant and valid reason not to separate, and to keep on living together in friendship, esteem, help and respect. Some can even proceed to receive communion on certain conditions of *foro interno*. Moreover, in the new Code of Canon Law, there is no trace of an impediment to

consequence of the Eastern tradition – namely that genuine divorced and remarried faithful can stay in their new non-sacramental union and participate in sacramental life following a temporary period of penance and exclusion from the Eucharist – is very close to the *sensus fidelium*, that is, to what the majority of Catholic faithful are asking from their Church on this matter.⁷¹

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marriage between two persons linked with adultery. This impediment featured in canon 1075 of the 1917 Code of Canon Law and canon 65 of the Motu Proprio *Crebrae Allatae Sunt* of Pope Pius XII. See Basilio Petrà, “I divorziati risposati: Un nuovo stato di vita nella Chiesa?,” in *Quale comunione? Divorziati, risposati e sacramenti*, ed. Francesca P. Puleo (Rome: Città Nuova, 2009), 65-77.

⁷¹ See Timothy J. Buckley, *What Binds Marriage?: Roman Catholic Theology in Practice* (London: Continuum, 1997), 178.