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Divorce and Remarriage in the Catholic Church: Ten Theses

THESIS 1 *Marriage between baptized believers is a sacrament, that is, a prophetic symbol of the union between Christ and the Church.*

Prophets were fond of symbolic actions. Jeremiah bought an earthen pot, dashed it to the ground, and proclaimed, "Thus says the Lord of Hosts: so will I break this people and this city as one breaks a potter's vessel" (Jer 19:11). Ezekiel took a brick, drew a city on the brick, laid siege to the city, and proclaimed the city "Jerusalem" and his action "a sign for the house of Israel" (Ezek 4:1-3; see also 5:5). Prophetic action-symbols reveal in representation the presence and action of God. Jeremiah's shattering of his pot and Ezekiel's destruction of his city is God's shattering of Jerusalem. The prophet Hosea portrayed marriage, the union of a man and a woman, as a prophetic symbol of the union between God and God's people, a reality not only of law but also of grace. On the one hand, it bespeaks the covenanted love of a man and a woman; on the other hand, it *also* bespeaks the covenanted love of God and God's people. This Jewish view of marriage, with a change of *dramatis personae*, became the Christian view. The Letter to the Ephesians taught that marriage is a prophetic symbol of the new covenant between Christ and Christ's Church; later Christian history taught that it was sacrament (Lawler: 1995, 5-62).

A sacrament, then, is a prophetic symbol in which the Church reveals in representation the grace of God. To say that marriage is a sacrament is to say that it reveals the intimate union of a man and a woman *and* the intimate union of Christ and Christ's Church. A couple entering any marriage says to one another "I love you and I give myself to and for you." A couple entering a sacramental marriage say that too, of course, but also more. Each says "I love you as Christ loves his Church, steadfastly and faithfully." From its beginning, therefore, a sacramental marriage is intentionally more than human covenant; it is *also* religious covenant. It is more than law; it is *also* grace. From its beginning, God and Christ are present in it, gracing it, modeling and challenging its faithfulness. This presence of God, grace in its most ancient Christian meaning, is not something extrinsic to Christian marriage but something intrinsic to it, something without which it would not be *Christian* marriage at all.

I note here, and will develop below in Thesis 7, an important sacramental fact. A truly *Christian* marriage is not simply a marriage between two people who *say* they are Christians (Lawler, 1991: 712–31). It is a marriage between two Christian *believers* for whom the steadfast love of God and of God’s Christ is consciously present as model for their mutual love. The love of faith-filled spouses is, indeed, the very matrix of the sacrament of marriage, for it is in and through the spouses’ love that God and Christ are prophetically made present. It is a matter for empirical verification, however, that not all Christian marriages become permanent. Some die, and when they die it makes no sense to claim they are still binding ontologically, for the death of a marriage is as definitive as the death of a spouse. When a marriage dies, the Church traditionally deals with it in one of its many canonical processes. Its claim that it is precluded from doing otherwise by “fidelity to the words of Jesus” is not convincing in the honest light of its own ancient tradition.

THESIS 2 *The theology and practice of the Catholic Church with respect to divorce and remarriage are not as faithful to the New Testament as is claimed.*

On October 14, 1994, the Congregation for the Doctrine of the Faith sent a letter to the bishops of the world entitled “Concerning the Reception of Holy Communion by Divorced and Remarried Members of the Faithful” (CDF, 1994). That letter purported to articulate Catholic doctrine concerning divorce and remarriage and claimed, citing Mark 10:11-12, “fidelity to the words of Jesus Christ.” The implication was that, since the doctrine in question is based on fidelity to the words of Jesus, it is irreformable. That argument might be true if the words of Jesus as cited from Mark were the only teaching in the New Testament on divorce and remarriage. That, of course, is not the case.

Paul attributes a prohibition of divorce and remarriage to the Lord (1 Cor 7:10-11), and the Gospels report four times words of Jesus about divorce and remarriage (Mark 10:11-12; Matt 5:32 and 19:9; Luke 16:19). What is critical about these reports for our present purpose is that there are five of them, that they are not in agreement, and that they are not all derived from Jesus. Though Paul reports Jesus’ command on divorce and remarriage (1 Cor 7:10-11), he also gives it his own nuance (7:12-16) and that nuance passed into the law of the Catholic Church as the Pauline Privilege. Matthew also nuances Jesus’ words with his own exception (5:32; 19:9) which is a genuine exception to Jesus’ received words, though “its meaning is not self-evident to modern interpreters” (Collins, 205). These divergent accounts exist because divergent Christian communities had divergent concerns about marriage and divorce

that needed to be addressed. The nuancing of the words of Jesus on the basis of contextual need, initiated by the early Church, was continued in the later Church by Gratian in respect to what consummates a marriage as indissoluble (1140), and by the so-called Petrine Privileges of Popes Paul III (1537), Pius V (1561), and Gregory XIII (1585) with respect to the circumstances of polygamy and slavery (Lawler, 1993:92–93). This consistent nuancing of the words of Jesus in the Church makes arguments based exclusively on the words of Jesus at best incomplete and at worst dishonest.

This brief consideration of the traditional data on divorce and remarriage leads to several important conclusions. First, it is incorrect to speak of the New Testament *teaching* on divorce and remarriage; there are several *teachings* which do not all agree. Second, not all these teachings derive from Jesus, as the Catholic Church claims. Third, diverging accounts of divorce and remarriage are an integral part of the New Testament and later Christian traditions because the diverse cultural followers of Jesus sought to translate the meaning of his life, death, and resurrection into their concrete lives. Fourth, though popular unwisdom later singled out one element in those diverging accounts, namely the demand for indissoluble marriage, and allowed that one element to override all the others, that fact should not be allowed to obscure the original divergence.

THESIS 3 *The solemn teaching of the Council of Nicea is intimately related to the Church's teaching on divorce and remarriage, and has much to say to its pastoral practice today.*

There is a veneration in the Church of ecumenical councils, especially of the first four councils, and most especially of the first of them, the Council of Nicea (325) whose Creed established the doctrinal basis of the Christian faith. Canon 8 of that council goes to the very heart of the question of divorce and remarriage.

As regards those who define themselves as the Pure and who want to join the Catholic and Apostolic Church, the holy and great Council decrees that they may remain among the clergy once hands have been imposed upon them. But beforehand they will have to promise in writing to comply with the teachings of the Catholic and Apostolic Church and to make them the rule of their conduct. That is to say, they will have to communicate both with *those who married a second time (digamoi)* and with those who failed under persecution but whose time has been established and whose moment of reconciliation has arrived. They will, therefore, be bound to follow the teaching of the Catholic and Apostolic Church completely (Mansi, II, 672. My emphasis).

According to this canon, the “Pure,” those who belonged to the rigorous sect called Novatians (Hefele, I, 410), had to promise in writing to accept the teaching of the Catholic Church before they could be reconciled with it. Specifically, they had to accept to live in communion with those who had been married twice (*digamoi*) and those who had apostacized during persecution but who had completed their period of penance and had been reconciled to the Church. We are concerned here only with those *digamoi* who have done penance and have been reconciled to the Church.

Novatian teaching excluded from penance and reconciliation those who were guilty of certain sins “leading to death,” among them *digamia* which refers to remarriage either after the death of a spouse or after a divorce. Since, however, remarriage after the death of a spouse was not considered a sin leading to death until long after the Council of Nicea, the council’s *digamoi* must be those who have remarried after a divorce or repudiation. That “sin,” according to the council, can be forgiven and reconciliation with the Church can be achieved after a period of suitable penance. Acutely relevant is the fact that neither the Church before Nicea nor the council itself required the repudiation of the new spouse as a prerequisite for forgiveness and reconciliation. This was in keeping with the proscriptions of Deut 24:1-4, which was taken to be binding in the Church before Nicea and which forbade a husband to take back his repudiated wife after she had married another (See Origen, PG 13, 1237 and Jerome, PL 22, 563). Basil explicitly reports the treatment of a man who had abandoned his wife and remarried, who had “done penance with tears,” and who, after seven years, had been accepted back “among the faithful” (Basil, PG 32, 804–5). The man’s second marriage is accepted and neither the repudiation of his second wife nor his taking back of the first is demanded as a prerequisite for full communion. This teaching of Basil is the foundation for the teaching and practice of the Orthodox Church known as *oikonomia*.

THESIS 4 *The Catholic Church has never practiced what is enshrined in its law, namely, that “the essential properties of marriage are unity and indissolubility” (1983 Can 1056). The actual number of marriages the Church holds to be indissoluble is very limited.*

If the Church truly believed that indissolubility was an essential property not just of Christian marriages but of all marriages, and that by the will of God “from the beginning” (Mark 10:6; Matt 19:4) then it would treat all marriages as indissoluble. It does not and never has. The Church accepts the marriages of the non-baptized as valid when they have been performed according to the laws which govern them and yet, utilizing the Pauline Privilege, it regularly dissolves them “in

favor of the faith of the party who received baptism" (1983 Can 1143). It has further extended the Pauline Privilege, as already noted, to embrace the dissolution of valid marriages utilizing the Petrine Privilege. In Christian marriages, indissolubility is said to acquire "a distinctive firmness by reason of the sacrament" (1983 Can 1056), and yet valid sacramental marriages which have not been consummated are dissolved "by the Roman Pontiff for a just reason, at the request of both parties or of either party" (1983 Can 1142). Long-standing church practice with respect to the dissolution of valid marriages demonstrates anything but a belief that an essential property of marriage is indissolubility.

The formal doctrine of the Church on the indissolubility of marriage demonstrates that fidelity to the words of Jesus is not the only criterion for ecclesiastical judgments about divorce and remarriage. Only that marriage "which is ratified (as sacrament) and consummated cannot be dissolved by any human power other than death" (1983 Can 1141). The two conditions which make a marriage indissoluble in the eyes of the Church, that it be both sacramental *and* consummated, are not conditions ever mentioned by Jesus or any of the New Testament writers. They are both the result of historical nuancing long after Jesus, despite the teaching of the recent *Catechism of the Catholic Church* that "the marriage bond has been established by God himself in such a way that a marriage concluded *and consummated* between baptized persons can never be dissolved" (n. 1640, my emphasis). That marriage was created by God no Catholic theologian would debate. That the marriage bond becomes indissoluble, even in a sacramental marriage, only when the marriage is consummated is a nuance added in the twelfth century.

THESIS 5 *The Code's claim that "a valid marriage contract cannot exist between baptized persons without its being by that very fact a sacrament" (1983 Can 1055,2) contradicts the Catholic dogma that faith is necessary for the reception of grace and salvation.*

The Code presumes something that cannot be theologically presumed, namely, that all that is required for the *sacrament* of marriage is prior baptism and a valid marriage contract. That presumption stands in contradiction to the long tradition about the necessity of personal faith in Catholic teaching. The Gospels record that Jesus both complained about the absence of faith and praised its presence (Matt 8:5-13; 8:23-27; 9:2; 9:20-22; 17:19-21; 21:18-22; Mark 5:25-34; 6:1-6). Paul vehemently defended the necessity of personal faith for salvation (Rom 1:16-17; 3:26-30; 5:1; Gal 3:6-9). That tradition of the necessity of faith continued in the Church and flowered on both sides of the Reformation controversies.

Martin Luther made his stand on “faith alone.” Though wishing to combat the Lutheran teaching that faith *alone* was necessary for salvation, the Council of Trent left no doubt about the necessity of personal faith: “Faith is the beginning of man’s salvation, the foundation and source of all justification, ‘without which it is impossible to please God’” (Heb 11:6) (DS 1532). Baptism is “the sacrament of faith, without which no man has ever been justified” (DS 1529). The Latin text makes clear that “without which” (*sine qua*) qualifies faith and not sacrament or baptism, both of which would require *sine quo*. There is no doubt that the Fathers of Trent wished to affirm solemnly the primacy of active, personal faith for salvation. So also did both the First and Second Vatican Councils: faith is an act by which “a man gives *free* obedience to God by cooperating and agreeing with his grace, which can be resisted” (DS 3010, my emphasis); faith is an act by which “man entrusts his whole self *freely* to God, offering ‘the full submission of intellect and will to God who reveals,’ and *freely* assenting to the truth revealed by him” (*Dei Verbum*, n. 5). That free, cooperating, personal faith is required for salvation is a solemn dogma of the Catholic Church.

Convinced of the necessity of faith for the validity of baptism, Augustine sought to make good the lack of faith in infant baptism by arguing that *ecclesia fidem supplet*, the Church makes good the faith required (*Epist 98, The Fathers*, 133–38). That argument cannot be applied in the case of marriage, a sacrament for adults who are required to have an active faith to participate in any sacrament. Aquinas never doubted that “every sacrament remains a sign and a proclamation of personal faith. Whoever receives it without believing in his heart places himself in a violent state of ‘fiction’ and deprives himself of sacramental grace” (Villette, 40). Bonaventure agrees: the sacrament of marriage can be distinguished only by personal faith (*IV Sent.*, d.26, a.2, q.1. *Opera Omnia*, 6,215).

The 1980 Synod of Bishops gave quasi-unanimous support (201 placet, 3 non placet) to the following proposition: “We have to take into account the engaged couple’s degree of faith maturity and their awareness of doing what the Church does. *This intention is required for sacramental validity*. It is absent if there is not at least a minimal intention of believing with the church” (My emphasis). Sacramental intention is critical in sacramental theology. To intend to participate in a sacrament, the participant must intend what the Church intends in the sacrament. The theological question is: Can a person have a real intention to participate in a sacrament without at least minimal personal faith?

Aquinas has no doubt: “Faith directs intention, and without [faith] intention cannot be right” [*Fides intentionem dirigit, et sine ea non potest esse . . . intentio recta* (*IV Sent.*, d.6, q.1, a.3 ad 5)]. The International Theological Commission continues that tradition: the real intention is

born from and feeds on living faith (Malone, 15). One cannot have a right sacramental intention without at least a minimum of personal faith. When personal faith is absent, so too is right sacramental intention; when right intention is absent, as the tradition universally holds, the sacrament is not valid. No personal faith/no right intention is a well-founded theological judgment. The conclusion that flows from it is equally well founded: without faith no one can enter into a valid sacramental marriage.

The intention required to participate in a sacrament, as distinct from a mere physical rite, is the intention to participate in a rite that offers salvation, a God-in-Christ and Christ-in-Church event. Neither God-in-Christ nor Christ-in-Church can be intended, however, without being at least minimally known and embraced in faith. The connection of personal faith to a valid sacrament is particularly relevant today when Catholic theology distinguishes the baptized as *baptized believers*, those who have been baptized *and* nurtured into active faith, and *baptized non-believers*, those who have been baptized *and* not nurtured into active faith (see Malone, 14–21). The two should never be confused in law.

THESES 6 *The Catholic Church, which teaches that the only marriage which is indissoluble is the sacramental and consummated marriage, today has no criterion for judging when a marriage has been consummated and therefore made indissoluble.*

A theological question is consistently raised about the Catholic teaching on the effect of consummation: What is it that consummation adds to sacrament that makes the consummated sacramental marriage immune to dissolution? Pius XI suggested the answer lies in “the mystical meaning of Christian marriage,” namely, its reference to that “most perfect union which exists between Christ and the church” (AAS, 1930, 552). Though it does not specify as precisely as Pius that it is the consummated sacramental marriage that is indissoluble, the International Theological Commission offers the same reason for the indissolubility of Christian marriage. The ultimate basis for the indissolubility of Christian marriage lies in the fact that it is the sacrament, the image, of the indissoluble union between Christ and the Church.

But questions remain. When Pius XI wrote in 1930, he took for granted the 1917 Code of Canon Law that dealt with marriage as a contract (Can 1012), that declared the object of the contract to be the exclusive and perpetual right to the body of the other for acts suitable for the generation of offspring (Can 1081,2), and that declared the ends of marriage to be primarily procreation and secondarily mutual help and the remedy of concupiscence (Can 1013). In such a legalist and physicalist context, it is easy to see how a single act of sexual intercourse could be

taken to be the consummation of a marriage. It is not so easy to see in the changed theological and personalist climate in which the Second Vatican Council rooted its doctrine on marriage.

The council teaches that marriage “is rooted in the conjugal covenant of irrevocable personal consent” (GS,48). Despite insistent demands to retain the legal word *contract* as a precise way to speak of marriage, the council demurred and chose instead the biblical, theological and personal word *covenant*. This choice locates marriage as an *interpersonal* rather than as a *legal* reality, and brings it into line with the rich biblical tradition of covenant between God and God’s People and Christ and Christ’s Church. The revised *Code* also preferred *covenant* to *contract* (1983 Can 1055,1), though it relapses into contractual language some thirty times.

The council made another crucial change to Catholic teaching about marriage, which is central to any modern theological discussion of consummation and which was later also incorporated into the revised *Code*. The traditional teaching on the ends of marriage was the primary end-secondary end hierarchy between procreation and spousal love (1917 Can 1013). Despite insistent demands to reaffirm this hierarchical terminology, the council refused to do so. It taught explicitly that procreation “does not make the other ends of marriage of less account,” and that marriage “is not instituted solely for procreation” (GS, 50). That this refusal to speak of a hierarchy of ends in marriage was not the result of oversight but a deliberate choice was confirmed when the council’s teaching on ends was incorporated into the revised *Code* (1983 Can 1055,1).

This change of perspective raises questions about the claim that the spouses’ first sexual intercourse is the consummation of their mutual self-gifting and marriage. If the procreation of human life *and* the *consortium*-communion between the spouses are equal ends of marriage, why should an act of sexual intercourse alone be the symbol of the union of Christ and Christ’s Church? Why should the extended marital *consortium*, itself symbolized in sexual communion, not be the symbol? These questions have been exacerbated by the change in the way consummation is specified in both the council and the revised *Code*. A marriage is now said to be “ratified and consummated if the spouses have in a *human manner (humano modo)* engaged together in a conjugal act in itself apt for the generation of offspring” (1983 Can 1061,1). The phrase I have underscored has placed Catholic teaching on consummation and indissolubility on hold theologically and canonically, for as yet a theology of sexuality elucidating what sexual intercourse *humano modo* means has not been elaborated. Since marital intercourse *humano modo* cannot be precisely defined, neither can the marital consummation it is said to effect. Since consummation cannot be defined, many more valid marriages than heretofore ever imagined are open to dissolution in the Church.

THESIS 7 *The Code's claim that "a ratified and consummated marriage cannot be dissolved by any human power" (Can 1141) ignores the more-than-human power in the Church capable of dissolving such marriages.*

Though the question of the consummation of a marriage is now moot until the meaning of *humano modo* can be defined, there is still a more-than-human power in the Church to dissolve a failed ratified and consummated marriage. Two things are to be noted. First, the question asks about extrinsic indissolubility, the immunity of a marriage to dissolution by an agent other than the spouses. There is universal agreement that a *marriage* (not only a ratified and consummated marriage) is intrinsically indissoluble, that is, immune to dissolution by the spouses. Second, the extrinsic indissolubility of a ratified and consummated marriage as prescribed in the Code is not a revealed truth. Billot's opinion that it is *de fide catholica* has never found support (Billot, 440); most theologians judge it to be *doctrina catholica*. Navarrette's claim that Pius XI implicitly and Pius XII explicitly affirm that the ratified and consummated marriage cannot be dissolved, not even by the vicarious power of the Roman Pontiff, is an exaggeration (Navarrette, 449). Both Popes do no more than cite without comment the legislation then current in Canon 1118. They add nothing that would elevate the teaching to a theological level higher than *doctrina catholica*.

The history of the doctrine and law about ratified and consummated marriage in the Catholic tradition demonstrates three facts. First, it is a compromise between the Roman law in which consent makes marriage and the northern European custom in which sexual intercourse makes marriage. Second, the compromise emerges from a mixed cultural understanding of marriage, the southern culture and the northern culture of twelfth-century Europe. Third, it is not *de fide*; it is *doctrina catholica*. That is not to say that it is not true. It is to say only that it is not irreformable, and to suggest that the agent of reformation is the same agent that introduced the teaching in the first place, namely, the magisterial Church, whose power extends to the binding and loosing of sin, to the transformation of bread and wine, and certainly to the reformation of a reformable doctrine it itself inaugurated. If a non-consummated marriage between baptized believers, that is, a sacramental marriage which falls under God's law, "can be dissolved by the Roman Pontiff for a just reason" (1983 Can 1142), a ratified and consummated marriage which falls under the Church's law can also be dissolved by the Roman Pontiff for a similarly just reason. The bond of a ratified and consummated marriage is far from immune to the more than human power daily exercised in the Church.

THESIS 8 *The argument that Catholics who are divorced and remarried civilly without annulment are “in a situation that objectively contravenes God’s law (and) consequently they cannot receive holy communion as long as this situation persists” (CDF, 339) is contrary to the universal law of the Catholic Church, obedience to which takes precedence over obedience to a Roman dicastery.*

The matter is clear from Book IV, Title III, Chapter I, Article 2 of the current Code, “Participation in the Blessed Eucharist.” The relevant canons prescribe the following: “Any baptized person who is not forbidden by law may and must (*debet*) be admitted to holy communion” (1983 Can 912); “those upon whom the penalty of excommunication or interdict has been imposed or declared, and others who obstinately persist in manifest *grave sin*, are not to be admitted to holy communion” (1983 Can 915. My emphasis); “anyone who is conscious of *grave sin* may not celebrate mass or receive the Body of the Lord without previously having been to sacramental confession. . . .” (1983 Can 916. My emphasis).

Since the first part of Canon 915 does not apply to Catholics who have been divorced and civilly remarried without annulment, because they are neither excommunicated nor placed under interdict, that leaves only the question of *grave sin* or *mortal sin* in the terms of Canons 915 and 916. The question can be put succinctly: Does grave sin in the Catholic tradition, and therefore in the mind of the legislator, follow from the fact that an action “objectively contravenes God’s law” or constitutes gravely sinful matter? The answer can be put just as succinctly: In Catholic moral theology an objectively serious sinful action does not *ipso facto* result in grave sin.

In addition to objectively grave matter, grave sin requires both full consciousness of the sinfulness of the action *and* fully free consent to the action. The civil remarriage of the Catholic divorced and without annulment may constitute grave matter in the eyes of the Church; it *may* even constitute sin. But it constitutes *grave sin* only when there is full awareness and free consent. Those Catholics who have attempted remarriage after divorce without obtaining an annulment, or who have been unable to obtain an annulment for some formal reason, do not all *necessarily* have the required full awareness and free consent to commit grave sin. They are not, therefore, all guilty of grave sin and are not all, therefore, prohibited by law from receiving holy communion.

Those who are not guilty of grave sin because the traditional conditions for grave sin, objectively grave matter, full consciousness and free consent, have not all been met—and whether or not the conditions have been met will have to be decided on a case by case basis in discus-

sion with a pastoral counselor—*must* be admitted to holy communion according to the universal law of the Catholic Church (1983 Can 912). No undifferentiated pronouncement of any Roman dicastery, or even of the bishop of Rome (AAS, 74, 185), can bar them from the communion to which they are entitled by faith and by law. And no minister of the Church should either take or be put in the invidious position of refusing them the holy communion to which they are entitled.

THESIS 9 *The scandal insinuated in both papal and dicasterial statements if divorced and civilly remarried Catholics are admitted to communion is no different from the scandal one could insinuate in solutions approved by the Church.*

Pope John Paul II specifies the scandal that might ensue if the divorced and civilly remarried were admitted to communion: “the faithful would be led into error and confusion regarding the Church’s teaching about the indissolubility of marriage” (*Familiaris Consortio*, n. 84). The CDF repeats his judgment without commentary (CDF, n. 4). The implication is that, if the divorced and civilly remarried were admitted to communion, people could come to believe that the Church no longer teaches that fidelity is required in marriage and that marriage is indissoluble. No one should ever underestimate the possibility of scandal; but neither should anyone overestimate it. No one, in fact, should ever estimate it at all, for real scandal is a fact which can be clarified *empirically*. Real scandal is in the same category as real sin; it can, and therefore must, be clarified on a case by case basis.

There are two cases in which the Church permits the civilly divorced and remarried to approach communion. The first is the case in which a couple has received the necessary annulment(s) to be free to marry; the second is the case in which a couple agrees to live as brother and sister. Neither case removes the threat of scandal.

The brother-sister case, in which the couple lives together publicly as husband and wife but abstains from all sexual intercourse, provides the same threat of scandal as the case of a couple not living as brother and sister, for no adult conscious of the ways of men and women would ever presume sexual abstinence in a couple living together as husband and wife. Kelly notes the obvious: “Unless a couple had a ‘brother and sister’ logo on their doorstep, neighbors and fellow parishioners would be none the wiser and so the alleged scandal would presumably still be given” (Kelly, 1994: 1374). Given these obvious empirical considerations, it is astonishing to see the Pope (AAS,74,186) and the new Catechism (n. 1650) presenting the brother-sister solution as a genuine pastoral option, completely ignoring the weight of theologians and canonists who teach that this option is *res plena periculis* and

should be employed *rarissime* and *fere numquam* (Sullivan, viii). The case of annulment runs the same peril. Unless a couple publicized their annulment from the sanctuary, most fellow-parishioners would never know about its existence. Today, indeed, when annulment has become so commonplace, those fellow parishioners would simply assume that the couple had been granted annulment(s) and think no more of it. Most of them would take the same approach to the divorced and civilly remarried approaching communion.

The scandal given in the case of the divorced and civilly remarried may lie elsewhere, not with the remarried but with the Church which bars them from communion. Based on interviews with priests working with alienated Catholics in Boston, New York, Providence and Wilmington (Del.), Himes and Coriden report that “the single biggest reason people cease active participation in the Church is that they have found themselves in irregular marital situations and feel unwanted and rejected by the Church” (Himes and Coriden, 118). Cardinal Newman taught that the *consensus fidelium* senses error “which it at once feels as a *scandal*” (Newman, 73). After a five-year study of divorce and civil remarriage in England, Buckley reports that the consensus of bishops, priests, and people is that “something is seriously wrong with the present teaching and that more than that it is a *scandal*” (Buckley, 178). There is sound basis for extending that judgment to the United States where, in a 1992 survey, only 23 percent of Catholics agreed that the magisterium *alone* should decide the morality of a divorced Catholic remarrying without an annulment, and 72 percent agreed that divorced and remarried Catholics should be able to receive communion (D’Antonio, 53).

THESIS 10 *The Roman Catholic Church should embrace the practice of oikonomia, declared by the Council of Trent to have certain claim to the gospel and to the name Christian.*

Questions raised today by divorce and remarriage confront all Christian churches in the United States. Not one escapes them. What should the churches do about divorce and remarriage? They should, I suggest, pay closer attention to the ancient Orthodox practice of *oikonomia*. *Oikonomia* flourishes within a context of spirit and grace, not within a context of law; it grows out of faith in the Spirit of God and of Christ. It heeds the scriptural injunction that “the written code kills, but the Spirit gives life” (2 Cor 3:6).

What does *oikonomia* have to say to the churches about divorce and remarriage? It admonishes them to be realistic, to understand that, though the gospel demands that marriages be lifelong, real men and women sometimes do not fully measure up to the gospel. It instructs them that marriages, even marriages between Christians, sometimes

die and that when they die it makes no sense to argue they are still binding. When a marriage is dead, even if the former spouses still live, *oikonomia* moves the churches to be sad, for the death of a marriage is always “the death of a small civilization” (Wallerstein, xxi), but also to be compassionate, even to the point of permitting the remarriage of an innocent spouse. The ritual of that remarriage, however, is not on a par with the first marriage, now dissolved, as the liturgy makes clear.

There are prayers for the couple now entering into the bond of a second marriage. There are petitions that the spouses be pardoned for their transgressions and confession that there is none sinless save only God. Absent is the unbridled joy of the first-marriage ceremony; present is sorrow and repentance for its failure. Present too is the necessary confession that no one in attendance, including the Church’s minister, is without sin. The economy of spirit and grace is always threatened by sin; the Christian ideal is ever at the mercy of human frailty. It is precisely in such an economy that the Church of Christ is summoned to minister and to be compassionate on behalf of the compassionate God.

A reasonable Christian objection arises at this point. Should not what the churches do about divorce and remarriage be based on the tradition of Jesus mediated to them in the New Testament? Yes, it should, and we considered that tradition briefly in Thesis 2 where we found diverging accounts of divorce and remarriage in the New Testament tradition as culturally diverse followers of Jesus sought to translate the meaning of his life, death, and resurrection into their diverse lives.

The early process of interpreting the Lord’s command concerning divorce and remarriage continued in the churches of both East and West. The East developed its doctrine of *oikonomia* related to marriage; the West developed its law related to marriage which continues in force today. In the twelfth century, the Bologna canonist, Gratian, developed two pieces of legislation which continue to be a central part of Roman Catholic law. The first was a continuation of Paul’s exception, now called the Pauline Privilege, which remains today one of the bases on which the Catholic Church grants the dissolution of a valid marriage. The Pauline Privilege, as noted earlier, has been much extended beyond what Paul ever envisioned by the so-called Petrine Privilege. The second piece of legislation was a compromise solution between the Roman and northern European answers to the question of when a valid marriage came into existence. “Marriage is initiated by betrothal (consent), perfected (or consummated) by sexual intercourse” (Gratian, PL 187, 1429 and 1406). These two pieces of legislation became enshrined in the law of the Roman Catholic Church with respect to the indissolubility of marriage. That Church regards as indissoluble only that marriage which is both sacramental *and* consummated by sexual inter-

course (1983 Can 1141). It holds all other marriages to be dissoluble and it dissolves them on occasion “for a just reason” (1983 Can 1142) or “in favor of the faith” (1983 Can 1143).

Several things are clear. First, despite every claim to follow only the Lord’s command, the Catholic Church also follows Paul and Matthew in interpreting that command for their ongoing situations. Second, it is not true that the Roman Catholic Church never grants divorces. It grants them regularly in marriages which are not sacramental or not consummated, though it obscures that fact by naming the process *dissolution* rather than *divorce*. Third, though there is no warrant in the New Testament for such canonical processes, there is ample warrant for *oikonomia*, a fact to which the Council of Trent attested. Despite hewing to a rigid line on the question of the indissolubility of marriage, the council steadfastly refused to condemn the practice of *oikonomia* or to declare that it did not have equal claim to the gospel tradition and to the name Christian (DS, 1807).

The 1980 Synod of Bishops presented to Pope John Paul a request that the Orthodox practice of *oikonomia* be carefully studied for any light it might shed on a pastoral approach to Catholics who are divorced and civilly remarried. Many of those second marriages have become so stable, and the families nurtured in them so Christian, that they cannot be abandoned without serious spiritual, emotional, and economic harm. The Catholic Church is summoned to discern whether its understanding of the gospel precludes the development of an *oikonomia* approach to the pastoral care of its members in second marriages. It is summoned to gospel *oikonomia* as a way to alleviate the suffering of those thousands of Catholics divorced and remarried without sin and as a way to attain the ecclesial peace and communion to which God has called all Christians (1 Cor 7:15).

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