

THE MERCIFUL GIFT
OF INDISSOLUBILITY AND THE
QUESTION OF PASTORAL CARE
FOR CIVILLY DIVORCED
AND REMARRIED CATHOLICS

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“The deepest wounds in our culture
stem from a crisis of faith.”



In his interview with Fr. Antonio Spadaro in August of last year, Pope Francis summed up his vision for the Church with a memorable image:

What the Church needs most today is the ability to heal wounds. . . . I see the Church as a field hospital after battle. It is useless to ask a seriously injured person if he has high cholesterol and about the level of his blood sugars. You have to heal his wounds. Then we can talk about everything else. Heal the wounds. Heal the wounds.¹

1. Interview of Pope Francis by Antonio Spadaro, SJ. Text available at: http://www.vatican.va/holy_father/francesco/speeches/2013/september/

Among the most painful and most serious wounds of our time is the widespread breakdown of marriages. This wound is both a human tragedy—a source of deep suffering for the spouses and especially for their children—and, as Pope Francis argues, a “profound cultural crisis . . . because the family is the fundamental cell in society.”² Within the Church, the breakdown of marriage represents a crisis of faith in the sacramental economy. The sacrament of marriage is a privileged point of contact between the order of nature and the new gift of grace. Marriage is a real symbol of the fidelity and mercy of God in his covenant love for creation. In the life, death, and Resurrection of the Incarnate Son, this faithfulness reaches down to the deepest roots of nature and—through the Church and her sacraments—heals and elevates nature to the extent of allowing nature to share in God’s own life and love.³

The entire situation is made more complicated due to the fact that many, if not most, of those whose marriages have apparently failed have received a civil divorce and have entered into new civil unions. Here we approach one of the difficult questions at the center of the upcoming synods on the family. How can the Church offer pastoral care for Catholics in this situation? How can the Church help to heal the wounds? For reasons that I hope to clarify during the course of this essay, a proposal that emerged in Catholic theology in the early 1970s has gained new currency. The proposal, which represents a departure from Catholic teaching and practice, is that civilly divorced and remarried Catholics should be readmitted to eucharistic Communion—not as a “general norm” but in particular cases.

documents/papa-francesco_20130921_intervista-spadaro_en.html.

2. Francis, *Evangelii gaudium*, 66.

3. The image of Christian marriage reaching the “deepest roots” of nature is taken from Matthias Scheeben, *The Mysteries of Christianity*, trans. Cyril Vollert (St. Louis, MO: B. Herder Book Co., 1946), 610:

In this sacrament the Church clasps to her heart the first of all human relationships, that upon which the existence and propagation of human nature depends. . . . Nowhere has the truth more strikingly come to light that the whole of nature down to its deepest roots shares in the sublime consecration of the God-man who has taken nature to himself. Nowhere does the truth more clearly appear that Christ has been made the cornerstone upon which God has based the preservation of and growth of nature.

Obviously, there are many dimensions to this issue: What is marriage, both as a natural institution and as a sacrament of the new law? What is meant by the indissolubility of marriage and what is the ground of indissolubility? What is the meaning of adultery and why is marriage the only legitimate context for conjugal relations? What is the relationship between marriage and the Eucharist, “the source and summit of Christian life?”⁴ What does it mean to receive this supreme gift of God in a worthy manner? Finally, what is the meaning of mercy and what is the relationship between mercy and sin?

Keeping in mind these various aspects, my aim in what follows is first to provide some context for the current debate by recalling the recent history of this question in Catholic theology. The proposal recently articulated by Cardinal Walter Kasper is not new; theologians as well as the teaching office of the Church have been thinking and writing about the implications of this proposal for at least forty years.

After presenting some of this history, part two of my paper will summarize Kasper’s arguments regarding civil remarriage and the sacraments as set forth in his lecture to the extraordinary Consistory on 20 February 2014.⁵ In a foreword to the published text, Cardinal Kasper said that he hoped his presentation would “trigger questions” and provoke discussion. Accordingly, in the third part of my paper, I will outline three sets of questions, or three areas where more reflection and discernment seems warranted. Above all, I hope to uncover the connection, somewhat obscured in Kasper’s proposal, between the mercy of God and the gift of indissolubility.

PART 1. PASTORAL CARE FOR CIVILLY DIVORCED
AND REMARRIED CATHOLICS—
THE RECENT HISTORY OF THE QUESTION

The literature on this subject is surprisingly vast and rapidly ex-

4. *Lumen gentium*, 11.

5. Walter Kasper, *The Gospel of the Family*, trans. William Madges (New York: Paulist Press, 2014).

panding.⁶ My aim here is simply to note some of the key arguments that emerged in the early 1970s and to summarize the response of the teaching office of the Church. A good place to begin is with Archbishop Elias Zoghby's intervention during the fourth session of the Second Vatican Council.⁷ The patriarchal vicar of the Melkites in Egypt pleaded that special consideration be given to abandoned spouses, and he suggested that the Eastern practice of tolerating remarriage in certain cases should be considered. Zoghby's remarks provoked a strong negative reaction at the Council,⁸ but they soon became a reference point for a growing number of articles and books that aimed to reconsider and revise the Church's doctrine and practice on divorce and remarriage.⁹

6. For an annotated list of books and articles on divorce published prior to 1979, see Robert T. Kennedy and John T. Finnegan, "Select Bibliography on Divorce and Remarriage in the Catholic Church Today," in *Ministering to the Divorced Catholic*, ed. James J. Young (New York: Paulist Press, 1979), 260–73. For a survey of more recent literature, see James H. Provost, "Intolerable Marriage Situations: A Second Decade," *The Jurist* 50 (1990): 573–612; and John P. Beal, "Intolerable Marriage Situations Revisited: Continuing the Legacy of James H. Provost," *The Jurist* 63 (2003): 253–311.

7. Cf. *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani Secundi*, vol. 4, pars 3 (Vatican City: Typis Polyglottis, 1977), 45–47.

8. The following morning (30 September 1965), at the request of Pope Paul VI, the order of speeches was suspended and Cardinal Journet was asked to respond to Zoghby. Citing Mk 10:2 and 1 Cor 7:10–11, Journet said that "the teaching of the Catholic Church on the indissolubility of sacramental marriage is the very teaching of the Lord Jesus that has been revealed to us and has always been safeguarded and proclaimed in the Church . . . the Church has no authority to change what is of divine law" (*Acta Synodalia* IV/3, 58, cited in *History of Vatican II*, ed. Giuseppe Alberigo, vol. 5 [Maryknoll, NY: Orbis Books, 2006], 159).

9. Charles E. Curran reviews the literature of divorce published between 1966 and 1974 in "Divorce: Catholic Theory and Practice in the United States," *The American Ecclesiastical Review* 168 (1974): 3–34; 75–95. See also Urban Navarrete, "Indissolubilitas matrimonii rati et consummati. Opiniones recentiores et observationes," *Periodica* 58 (1969): 441–93; Josephus F. Castaño, "Nota bibliographica circa indissolubilitatis matrimonii actualissimam quaestionem," *Angelicum* 49 (1972): 463–502; Seamus Ryan, "Survey of Periodicals: Indissolubility of Marriage," *The Furrow* 24 (1971): 107–22; Werner Löser, "Die Kirche zwischen Gesetz und Widerspruch: Für und wider eine Zulassung wiederverheirateter Geschiedener zu den Sakramenten," *Herder-Korrespondenz* 26 (1972): 243–48; Richard A. McCormick, "Notes on Moral Theology," *Theological Studies* 32 (1971): 107–22; 33 (1972): 91–100; 36 (1975): 100–17.

What began in the late 1960s as a steady stream of publications became a veritable flood around the year 1972. This was the year a study committee commissioned by the Catholic Theological Society of America issued an “Interim Pastoral Statement” on “The Problem of Second Marriages.”¹⁰ In addition to arguing that civilly remarried Catholics should not be excluded from the sacraments, the authors of this study exhorted Catholic theologians to rethink and revise the meaning of consummation and the meaning of indissolubility. Within the next two years some six books and scores of articles would be published in the United States alone devoted to the question of divorce and remarriage.¹¹ Exegetes, canon lawyers, and moral theologians approached the issue from a variety of perspectives, but there was a common thread: each of these books (and almost all of these articles) advocated a change in the Church’s practice so as to allow civilly remarried Catholics to receive the Eucharist.

A similar discussion unfolded in Europe. In Germany, the book *Ehe und Ehescheidung: Diskussion unter Christen* [Marriage and Divorce: A Discussion Among Christians], also published in 1972, included substantial essays by leading exegetes and theologians such as Schnackenburg, Ratzinger, Lehmann, and Böckle.¹² Again, each of these authors argued for pastoral leniency that would allow, under certain limited conditions, remarried Catholics to receive the Eucharist. I will say more about Ratzinger’s 1972 essay below.

10. “The Problem of Second Marriages: An Interim Pastoral Statement by the Study Committee Commissioned by the Board of Directors of the Catholic Theological Society of America,” *Proceedings of the Catholic Theological Society of America* 27 (1972): 233–40.

11. James J. Rue and Louise Shanahan, *The Divorced Catholic* (Mahwah, NJ: Paulist Press, 1972); John Noonan, Jr., *Power to Dissolve* (Cambridge, MA: Harvard University Press, 1972); Alcuin Coyle and Dismas Bonner, *The Church Under Tension: Practical Life and Law in the Changing Church* (New York: Catholic Book Publishing Co., 1972); *Divorce and Remarriage in the Catholic Church*, ed. Lawrence G. Wrenn (New York: Neuman Press, 1973); Steven Joseph Kelleher, *Divorce and Remarriage for Catholics?* (Garden City, NY: Doubleday, 1973); Dennis Doherty, *Divorce and Remarriage* (St. Meinrad, IN: Abbey Press, 1974). For a list of articles on divorce and remarriage, see the references in notes 6 and 9 above.

12. *Ehe und Ehescheidung: Diskussion unter Christen*, ed. Franz Henrich and Volker Eid (Munich: Kösel Verlag, 1972). See also *Wie unauflöslich ist die Ehe: Eine Dokumentation*, ed. Jakob David and Franz Schmalz (Aschaffenburg: Paul Pattloch Verlag, 1969).

In France in 1970, the association of moral theologians devoted their annual meeting to the theme of divorce and the indissolubility of marriage.¹³ And the journal *Recherches de Science Religieuse* devoted entire issues to this theme in 1973 and in 1974, again advocating for a new pastoral practice.¹⁴

Surveying this literature from the early 1970s, it is possible to discern the development of three basic arguments in support of a change in the Church's teaching and practice with regard to divorce and remarriage.

The first argument, which is the path taken by Bernard Häring, Edward Schillebeeckx, Charles Curran, Richard McCormick, and Theodore Mackin (among countless others) is premised on a radical redefinition or abandonment of indissolubility. This approach to divorce and remarriage was outlined in an influential article by Schillebeeckx titled "Christian Marriage and the Reality of Complete Marital Breakdown," which was published in 1970. Schillebeeckx writes:

Indissolubility cannot mean that a first marriage continues to exist as a prohibition against a second marriage. Such a prohibition would leave indissolubility without any actual meaning; for it says nothing, realistically speaking, about the first marriage in question. If that marriage has in fact completely broken down, then humanly speaking there is no more marriage; there is no longer anything to which "indissolubility" or "dissolubility" can be applied.¹⁵

It is worth noting that proponents of this position often appeal (wrongly in my view) to the theology of marriage set forth in *Gaudium et spes*. The argument in its bare essentials goes something like this: *Gaudium et spes* redefined marriage in personalistic terms as an "intimate communion of life and love" ("in-

13. Cf. *Divorce et indissolubilité du mariage. Congrès de l'Association de théologiens pour l'étude de la morale* (Paris: Cerf, 1971).

14. Cf. *Recherches de Science Religieuse* 61 (1973): 483–624; 62 (1974): 7–116.

15. Edward Schillebeeckx, "Het christelijk huwelijk en de menselijke realiteit van volkomen huwelijksontwrichting," *Annalen van het Thijmgenootschap* (1970): 184–214. English trans. "Christian Marriage and the Reality of Complete Marital Breakdown," in *Catholic Divorce: The Deception of Annulments*, ed. Pierre Hegy and Joseph Martos (New York: Continuum, 2000), 82–107, at 97.

tima communitas vitae et amoris coniugalis").¹⁶ Whereas prior to the Second Vatican Council, marriage was conceived more as a "contract" whereby each party gives and accepts a perpetual and exclusive right over the body for conjugal acts, *Gaudium et spes* speaks of marriage as a "covenant" of life and love formed by the spouses giving and receiving themselves. In short, the Church now teaches that love belongs to the very essence of marriage. It follows that when love dies or no longer exists, the marriage itself ceases to exist.¹⁷ Theodore Mackin draws the final consequence of this new approach to Christian marriage when he writes: "I recommend that the words 'indissoluble' and 'indissolubility' be abandoned. Predicated of sacramental marriages they have suggested for centuries that these marriages hold a quality, an indestructibility, that transcends the volition of the spouses."¹⁸

The second argument in support of allowing civilly divorced and remarried Catholics communion was set forth in a series of articles in Germany by Joseph Ratzinger and Karl Lehmann.¹⁹ Walter Kasper added his voice in support in a book on the theology of Christian marriage published in 1977.²⁰ Unlike the

16. *Gaudium et spes*, 48.

17. The fatal weakness in this interpretation of the "personalism" of *Gaudium et spes* is the failure to grasp the objectivity of love conceived as a "total gift of self." Cf. Nicholas J. Healy, Jr., "Christian Personalism and the Debate Over the End of Marriage," *Communio: International Catholic Review* 39 (2012): 186–200, at 193: "Spousal love involves a total gift of self that, by its very nature, founds a form and is itself a form. The reciprocal gift of self that brings the marriage into being culminates precisely where the gift is as it were taken out of the spouses' hands and becomes an objective form endowed with the equally objective properties of unity and indissolubility—indissoluble precisely because the gift of self is total and irrevocable."

18. Theodore Mackin, "The International Theological Commission and Indissolubility," in *Divorce and Remarriage: Religious and Psychological Perspectives*, ed. William R. Roberts (Kansas City, MO: Sheed and Ward, 1990), 59.

19. Joseph Ratzinger, "Zur Frage nach der Unauflöslichkeit der Ehe: Bemerkungen zum dogmengeschichtlichen Befund und seiner gegenwärtigen Bedeutung," in *Ehe und Ehescheidung*, 3–56; Karl Lehmann, "Unauflöslichkeit der Ehe und Pastoral für wiederverheiratete Geschiedene," *Internationale Katholische Zeitschrift Communio* (1972): 355–71. English trans. "Indissolubility of Marriage and Pastoral Care of the Divorced Who Remarry," *Communio: International Catholic Review* 1 (1974): 219–42.

20. Walter Kasper, *Zur Theologie der christlichen Ehe* (Mainz: Matthias-Grünewald Verlag, 1977). English trans. *Theology of Christian Marriage* (New

proposal noted above, these German theologians all affirmed the indissolubility of sacramental marriages. Instead of calling into question the continued existence of the bond of marriage, Ratzinger, Lehmann, and Kasper appealed to certain passages in the Church Fathers that seem to allow leniency in emergency situations. They also suggested that the Church could learn something from the Orthodox practice of *oikonomia* in difficult marital situations, and in this connection they noted that the Council of Trent took care not to condemn the Orthodox position. These features of the tradition suggest, they argued, that a new approach might be possible in our current situation. The following conditions would have to be met. First, the individual must be willing to embark on a path of penance that would require repentance for any guilt incurred in the failure of the first marriage. Second, it must be established that the first marriage has irreparably broken down for both partners. Third, the second civilly contracted marriage must have withstood the test of time. When moral obligations have arisen from this second union (namely, children), and when continence does not appear to be a real possibility in the practical order, then, and only then, would it be possible and indeed just for the Church to make a concession in order to allow these individuals to receive the Eucharist.²¹

York: Crossroad, 1981).

21. In a letter to *The Tablet*, published on 26 October 1991, Cardinal Joseph Ratzinger responded to Theodore Davey's claim that Ratzinger himself (writing as a theologian prior to his elevation to the episcopacy) had approved the internal forum solution to enable divorced and remarried Catholics to receive the Eucharist. Ratzinger's response is noteworthy both in terms of the development of his own thought and in terms of clarifying the limits of the internal forum. Regarding the former, Ratzinger retracts the "suggestion" ("*Vorschlag*") that he had put forward in 1972 as no longer tenable because "the Magisterium subsequently spoke decisively on this question in the person of the present Holy Father in *Familiaris consortio*." Regarding the limits of the internal forum, he writes:

As far as the "internal forum solution" is concerned as a means for resolving the question of the validity of a prior marriage, the Magisterium has not sanctioned its use for a number of reasons, among which is the inherent contradiction of resolving something in the internal forum which by nature also pertains to and has such important consequences for the external forum. Marriage, not a private act, has deep implications of course for both of the spouses and resulting children and also for Christian and civil society. Only the external

A third line of argument, which I do not have space to elaborate, sought to resolve the dilemma by means of an appeal to the internal forum.²² This solution can take different forms. Some authors propose that an individual—convinced of the invalidity of their first marriage, but unable to prove this in the external forum—could legitimately enter into a new marriage. Other authors concede the enduring existence of the prior marriage, but suggest that the internal forum opens a path for a civilly remarried Catholic to repent of past mistakes and approach the sacrament in a spirit of penance.

Given the ferment in Catholic theology and the explosive number of Catholics obtaining civil divorces and then entering into new unions, it was natural that this topic would be discussed during the 1980 Synod on the Family. In the months leading up to the synod, a number of bishops called attention to the urgency of this pastoral problem.²³ In his opening *relatio* at the synod, Cardinal Ratzinger (at this point still Archbishop of Munich-Freising) said: “the problem of divorced and remarried persons, who are truly faithful and desire to participate in the life of the Church, is one of the most difficult pastoral concerns in many parts of the world. It will be up to the synod to show the correct approach to pastors in this matter.”²⁴ The resolutions adopted by the synod, confirmed and deepened by Pope John Paul II in his apostolic exhortation *Familiaris consortio* (=FC), fulfilled

forum can give real assurance to the petitioner, himself not a disinterested party, that he is not guilty of rationalization. I might add, moreover, that the numerous abuses committed under the rubric of the internal forum solution in some countries attest to the practical unworkability of the internal forum solution. It is for reasons such as these that the Church in recent times, most notably in the new Code of Canon Law, has broadened the criteria for the admissibility of testimony and evidence in marriage tribunals so that the need to appeal to an internal forum solution would not arise.

22. Cf. Ladislav Örsy, “Intolerable Marriage Situations: Conflict Between External and Internal Forum,” *The Jurist* 30 (1970): 1–14; Bernard Häring, “Internal Forum Solutions to Insoluble Marriage Cases,” *The Jurist* 30 (1970): 21–30.

23. Cf. Giovanni Caprile, *Il Sinodo dei vescovi: quinta assemblea generale (26 settembre–25 ottobre 1980)* (Rome: La Civiltà Cattolica, 1982); 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 Texts* (Leuven: Peeters, 1983).

24. Cited in Caprile, *Il Sinodo dei vescovi*, 755.

this expectation. Under the heading “Pastoral Care for Families in Difficult Situations,” John Paul II devotes an entire section to civilly divorced and remarried Catholics. After describing civil remarriage as “an evil that . . . is affecting more and more Catholics,” John Paul II emphasizes that the Church does not abandon these individuals and “will therefore make untiring efforts to put at their disposal her means of salvation.”²⁵ He writes,

Together with the synod, I earnestly call upon pastors and the whole community of the faithful to help the divorced, and with solicitous care to make sure that they do not consider themselves as separated from the Church. . . . They should be encouraged to listen to the word of God, to attend the sacrifice of the Mass, to persevere in prayer. . . . Let the Church pray for them, encourage them, and show herself a merciful mother. . . .

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

Reconciliation in the sacrament of Penance which would open the way to the Eucharist, can only be granted to those who, repenting of having broken the sign of the covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage. This means, in practice, that when, for serious reasons, such as for example the children’s upbringing, a man and a woman cannot satisfy the obligation to separate, they “take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples.”²⁶

After the publication of *Familiaris consortio*, the discussion among theologians continued with a repackaging of many of the old

25. John Paul II, *FC*, 84.

26. *Ibid.*

arguments (especially the appeal to the internal forum).²⁷

The next important development occurred in July of 1993, when three prominent German bishops (Oskar Saier, Walter Kasper, and Karl Lehmann) published a letter on the pastoral care for the divorced and remarried.²⁸ Referring to John Paul II's teaching in *Familiaris consortio* as a general norm that, while true, cannot regulate all of the very complex individual cases, these bishops from Upper Rhineland proposed a set of criteria that would allow individuals (guided by a pastor) to decide for themselves whether or not they could approach the table of the Lord. The same conditions noted above were specified: there should be repentance for the failure of the first marriage; the civil marriage has to prove itself over time as stable; the commitments assumed in the second marriage have to be accepted, etc. Under these conditions civilly remarried people could in good conscience receive the Eucharist without any commitment to live continently. This letter was quickly translated and published in French and English, and it attracted considerable attention in the press.

The Congregation for the Doctrine of the Faith responded in 1994 with a document titled "Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful."²⁹ Citing both *Familiaris consortio* and the recently published *Catechism of the Catholic Church*, this letter confirms that the doctrine and practice

27. Cf. Kevin T. Kelly, *Divorce and Second Marriage: Facing the Challenge* (London: Geoffrey Chapman, 1982); Gerald D. Coleman, *Divorce and Remarriage in the Catholic Church* (New York: Paulist Press, 1988); Bernard Häring, *No Way Out? Pastoral Care of the Divorced and Remarried* (Middlegreen, England: St. Paul Publications, 1990); *Divorce and Remarriage: Religious and Psychological Perspectives*; Margaret A. Farley, "Divorce, Remarriage and Pastoral Care," in *Moral Theology: Challenges for the Future*, ed. Charles E. Curran (New York: Paulist Press, 1990): 213–39.

28. Cf. Die Bischöfe der Oberrheinischen Kirchenprovinz, "Zur seelsorgerlichen Begleitung von Menschen aus zerbrochenen Ehen, Geschiedenen und Wiederverheirateten Geschiedenen. Einführung, Hirtenwort und Grundsätze," *Herder-Korrespondenz* 47 (1993): 460–67. An English translation appeared in Kevin T. Kelly, *Divorce and Second Marriage: Facing the Challenge*, 2nd ed. (London: Geoffrey Chapman, 1996), 90–117.

29. The text is available online at: http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_14091994_rec-holy-comm-by-divorced_en.html.

of the Church precludes civilly remarried Catholics from receiving communion because their condition of life objectively contradicts the union of love between Christ and the Church. The pastoral letter from the German bishops was not mentioned, but it is evident that their initiative had occasioned the 1994 letter. I will not cite all of the relevant passages from this document. However, it is worth noting that the letter specifically addresses the false notion of conscience whereby an individual could determine for himself or herself the validity of a prior marriage or the appropriateness of receiving the sacrament of the Eucharist while civilly remarried. The CDF also elaborated on the scope of the teaching of *Familiaris consortio*. The constant and universal practice of the Church in this matter is, in the words of John Paul II, “founded on Scripture.” The 1994 letter of the CDF comments: “The structure of the exhortation and the tenor of its words give clearly to understand that this practice, which is presented as binding, cannot be modified because of different situations.”³⁰

A review of the literature on this issue published after 1994 shows that, for the most part, the path suggested by John Paul II, which calls for pastoral care enriched by a deeper understanding of the meaning of prayer and the value of sharing in the sacrifice of Christ at the heart of the Church’s liturgy, as well as a deeper understanding of the Christian vocation to chastity made possible by the gift of grace, was not followed.³¹ Therefore, the question was discussed and debated again during the 2005 Synod on the Eucharist. Pope Benedict’s *Sacramentum caritatis* (2007) again confirmed the Church’s doctrine and practice as based on sacred Scripture. In this document, Pope Benedict XVI called for a deeper theological understanding of the relationship between marriage and the Eucharist and new pastoral efforts to help young people who are preparing for the sacrament of marriage.

30. Ibid.

31. Cf. Kenneth R. Himes and James A. Coriden, “Notes on Moral Theology: Pastoral Care of the Divorced Remarried,” *Theological Studies* 57 (1996): 97–123; Michael Lawler, “Divorce and Remarriage in the Catholic Church: Ten Theses,” *New Theology Review* 12 (1999): 48–63; *Catholic Divorce: The Deception of Annulments*; Eberhard Schockenhoff, *Chancen zur Versöhnung? Die Kirche und die wiederverheirateten Geschiedenen* (Freiburg: Herder, 2012).

This brings us to the last step in our itinerary. On 28 July 2013, during the return flight after World Youth Day in Brazil, Pope Francis was asked the following question:

Holy Father, during this visit too, you have frequently spoken of mercy. With regard to the reception of the sacraments by the divorced and remarried, is there the possibility of change in the Church's discipline? That these sacraments might be an opportunity to bring these people closer, rather than a barrier dividing them from the other faithful?³²

Pope Francis answered the question by emphasizing the importance of mercy—the Church is a mother and she has to heal those who are hurting. Secondly, he mentioned (without commentary) that the Orthodox have a different practice that they call *oikonomia*, which means “they give a second chance.”³³ He then said that this problem needs to be studied further within the context of the pastoral care of marriage and he referred the issue to the upcoming synod on marriage and the family.

To help prepare for the synod, Pope Francis asked Cardinal Walter Kasper to present a lecture on pastoral challenges to the family at the extraordinary Consistory that met in Rome on 20–21 February 2014.

PART 2. THE PROPOSAL OF CARDINAL KASPER

The aim of the lecture, Kasper indicates, is to provide a theological basis for discussion at the Consistory with a view to preparing for the upcoming synods in October of 2014 and October of 2015. The lecture, titled *The Gospel of the Family*, is divided into five sections: 1. The Family in the Order of Creation; 2. Structures of Sin in the Life of the Family; 3. The Family in the Christian Order of Salvation; 4. The Family as Domestic Church; 5. Concerning the Problem of the Divorced and Remarried.

While there is much that is true and important in the

32. A transcript of the interview on 28 July 2013 is available at: http://w2.vatican.va/content/francesco/en/speeches/2013/july/documents/papa-francesco_20130728_gmg-conferenza-stampa.html.

33. Ibid.

first four sections, most attention has been focused on the proposal—outlined in section five—to change the Church’s practice by readmitting (in particular cases) civilly remarried Catholics to eucharistic communion.³⁴

Taking note of developments from the 1917 Code of Canon Law, which threatens the civilly remarried with excommunication, through *Familiaris consortio* and *Sacramentum caritatis*, Kasper asks whether a further development might be possible. His answer is a qualified “yes,” not as a general solution for all cases, but under limited conditions and in light of particular circumstances. He proceeds to sketch two situations that suggest two distinct solutions to the problem. I will call them Plan A and Plan B.

Plan A, in a nutshell, would involve a generous expansion of the annulment process. How might the Church open up or simplify the annulment process? There are two main aspects to Kasper’s proposal:

First, the competency or authority to declare a marriage

34. During an interview with journalists on the return flight from his pilgrimage to the Holy Land, Pope Francis suggested that discussion surrounding the synod has been too narrowly focused on the problem of communion for the civilly divorced and remarried:

Second, thank you for your question about the divorced. The synod will be on the family, the problem of the family, the treasures of the family, the present situation of the family. The preliminary talk which Cardinal Kasper gave had five chapters: four of them were on the family, the beauty of the family, its theological foundations, and problems facing families; while the fifth chapter dealt with the pastoral issue of separations, declarations of marriage nullity, divorced persons. . . . Part of this issue is that of communion. I have not been happy that so many people—even church people, priests—have said: “Ah, the synod will be about giving communion to the divorced,” and went straight to that point. I felt as if everything was being reduced to casuistry. No, the issue is bigger and wider. Today, as we all know, the family is in crisis, it is in crisis worldwide. Young people don’t want to get married, they don’t get married or they live together. Marriage is in crisis, and so the family is in crisis. I don’t want us to fall into this casuistry of “can we” or “can’t we?” . . . So I thank you so much for this question, because it gives me the opportunity to clarify this.

Francis, Interview with Journalists During the Return Flight from the Holy Land (26 May 2014), http://w2.vatican.va/content/francesco/en/speeches/2014/may/documents/papa-francesco_20140526_terra-santa-conferenza-stampa.html.

null could be granted to a designated priest in each diocese. It should be noted that Kasper is not simply proposing a reform of juridical procedures, but a shift away from the juridical order to “pastoral and spiritual procedures.”³⁵

Second, Kasper seems to suggest that the Church should recognize a new diriment impediment: the absence of personal faith. He writes,

Many pastors are in fact convinced that many marriages, which were concluded in ecclesial form, are not validly contracted. For as a sacrament of faith, marriage presupposes faith and consent to the essential characteristics of marriage—unity and indissolubility. But can we, in the present situation, presuppose without further ado that the engaged couple shares the belief in the mystery that is signified by the sacrament?³⁶

Working in tandem, these two elements could indeed radically simplify and open up the annulment process. An individual in a troubled marriage could inform the designated priest that he or she, at the time of their wedding, did not really believe in the mystery of Christ. The priest could declare the marriage null and void.

Kasper expresses reservations regarding his own proposal (Plan A). “It would be mistaken,” he writes, “to seek the resolution of this problem in a generous expansion of the annulment process. The disastrous impression would thereby be created that the Church is proceeding in a dishonest way by granting what, in reality, are divorces.”³⁷ Thus he proceeds to outline a second scenario, Plan B. This situation involves a valid and consummated sacramental marriage. The marriage has failed and one or both partners have contracted a second, civil marriage. The situation is further qualified in two senses. First, the prior sacramental marriage is considered “irreparably broken.”³⁸ This hypothetical situation attains the status of an iron law for Kasper; it is impossible for the first marriage to be healed and renewed. “A return,” he writes, “is definitively out

35. Kasper, *Gospel of the Family*, 28.

36. *Ibid.*

37. *Ibid.*, 29.

38. *Ibid.*, 30.

of the question.”³⁹ Second, there are new obligations in the second marriage, namely, children. Accordingly, the civilly remarried couple is obligated to live together for the sake of raising their children. Twice Kasper appeals to the good of the children. It should be noted, however, that he does not mention the children born of the first marriage and the effects of divorce on these children.

What can be done in the way of pastoral care in this scenario? At this point Kasper restates the proposal that he had outlined in 1977: “After the shipwreck of sin, not a second ship, but a lifesaving plank should be made available to the drowning person.”⁴⁰ If a person is truly sorry for the failure of the first marriage and is ready to follow a path of penance, if a person cannot undo the commitments that were assumed in the second civil marriage without new guilt, if he or she longs for the sacraments as a source of strength, how can the Church exclude such a person from the sacraments? “We must seriously ask ourselves,” he writes, “whether we really believe in the forgiveness of sins . . . whether we truly believe that someone who has made a mistake, regrets it, and cannot reverse it without incurring new guilt, but does everything that is possible for him- or herself, can obtain forgiveness from God, and whether we then can deny absolution to him or her?”⁴¹

Kasper notes that the Church already teaches that these individuals can receive “spiritual communion.” The one who receives spiritual communion, he argues, is one with Jesus Christ. Why, then, cannot he or she also receive sacramental communion? In short, to refuse the sacraments of Penance and the Eucharist would be an un-Christian rigorism that calls into question the mercy of God.

PART 3. CRITICAL QUESTIONS

A number of authors have already responded to Kasper’s proposal. As I suggested in the introduction, there are many di-

39. *Ibid.*, 32.

40. *Ibid.*, 29.

41. *Ibid.*, 45.

mensions to this issue, which touches both the entire sacramental economy and the foundations of moral theology. In the space remaining I want to note three difficulties—or perhaps three areas where an alternative approach might prove more fruitful and more merciful. My primary aim is not to criticize Cardinal Kasper, but to think through some of the issues that are important both for the upcoming synods and for the Church’s missionary task.

1. The first difficulty was identified by Cardinal Carlo Caffarra.⁴² What about the first marriage? If the Church is going to extend mercy and pastoral solicitude, it matters a great deal to know whether or not the individual person is married. A recent interview with Cardinal Kasper published in *Commonweal* sheds light on precisely this question.⁴³ The editors of *Commonweal* asked the following question:

When it comes to the issue of communion for divorced and remarried Catholics, you have your critics. . . . Cardinal Carlo Caffarra, archbishop of Bologna, was given a great deal of space in *Il Foglio* to criticize your proposal. He has one question for you: “What happens to the first marriage?”⁴⁴

Kasper responds as follows:

The first marriage is indissoluble because marriage is not only a promise between the two partners; it’s God’s promise too, and what God does is done for all time. Therefore the bond of marriage remains. . . . I do not deny that the bond of marriage remains.⁴⁵

Later in the interview Kasper returns to this point:

In no way do I deny the indissolubility of a sacramental

42. Cardinal Carlo Caffarra, “From Bologna With Love: Hold on a Moment!” *Il Foglio* (14 March 2014).

43. The interview, titled “Merciful God, Merciful Church: An Interview with Cardinal Walter Kasper,” by Matthew Boudway and Grant Gallicho is available at: <https://www.commonwealmagazine.org/kasper-interview-popefrancis-vatican>.

44. *Ibid.*

45. *Ibid.*

marriage. That would be stupid. We must enforce it, and help people to understand it and to live it out.⁴⁶

There are two points to note in response. By upholding indissolubility and thus the continued existence of the bond, Kasper is forced to abandon the exclusivity at the heart of marriage both as a natural institution and as a real symbol of Christ's love for the Church. Allowing multiple marriages or conjugal relations outside of the context of marriage represents a clear departure from the words of Christ and the constant and universal teaching of the Church. In the words of Cardinal Caffarra, Kasper's proposal "demolishes the foundations of the Church's teaching on sexuality."⁴⁷

Furthermore, Kasper's position does not accord with the Church's understanding of indissolubility, despite his repeated assurances to the contrary. The ground of indissolubility is the total and permanent self-giving of the spouses through their exchange of vows and through their one-flesh union. Through the grace of the sacrament this reciprocal self-giving is a real symbol of Christ's love for the Church. In an important passage in *Familiaris consortio*, John Paul II ties together the idea of love as a total gift of self and the grace of indissolubility:

Being rooted in the personal and total self-giving of the couple, and being required by the good of the children, the indissolubility of marriage finds its ultimate truth in the plan that God has manifested in his revelation: He wills and he communicates the indissolubility of marriage as a fruit, a sign, and a requirement of the absolutely faithful love that God has for man and that the Lord Jesus has for the Church . . . Just as the Lord Jesus is the "faithful witness," the "yes" of the promises of God, and thus the supreme realization of the unconditional faithfulness with which God loves his people, so Christian couples are called to participate truly in the irrevocable indissolubility that binds Christ to the Church his bride, loved by him to the end.⁴⁸

Indissolubility—the fruit, sign, and requirement of a total and permanent gift of self that participates in Christ's love for the

46. Ibid.

47. Caffarra, "From Bologna With Love."

48. John Paul II, *FC*, 20.

Church—includes and requires exclusivity. The inseparability of indissolubility and exclusivity is grounded in the nature of marital consent as reciprocal giving and receiving of self. If a theologian or member of the Church thinks it is possible to be indissolubly bound to another while allowing for sexual relations with someone else, he or she has not affirmed the truth of indissolubility.

The gift of an indissoluble bond is at once the form and fruit of Christ's going to the end of love by handing over the very substance of his life to the Father and to the Church *and* the form and fruit of a genuinely human love that desires to give the totality of one's life and to receive the beloved in an irrevocable communion. Sacramental indissolubility is a supreme gift of mercy whereby divine love indwells human love, and allows this love to grow beyond itself to participate in God's love and God's faithfulness. This grace enables those who exchange wedding vows to say in truth—I pledge my life to you in good times and in bad, in sickness and in health, unto death—and know that these words are true. The gift of indissolubility means that despite the vicissitudes and suffering that come with human failure and sin, the sacramental marriage bond remains an abiding source of mercy, forgiveness, and healing.

The Church does not have the authority to change Christ's teaching on the indissolubility of marriage.⁴⁹ If it is true

49. Regarding the content and status of the Church's doctrine on the indissolubility of marriage, see John Paul II, Address to the Roman Rota, 21 January 2000:

[It is] appropriate to quote the *Catechism of the Catholic Church*, with the great doctrinal authority conferred on it by the involvement of the whole Episcopate in its drafting and by my special approval. We read there: "Thus 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. This bond, which results from the free human act of the spouses and their consummation of the marriage, is a reality, henceforth irrevocable, and gives rise to a covenant guaranteed by God's fidelity. The Church does not have the power to contravene this disposition of divine wisdom" (n. 1640). The Roman Pontiff in fact has the "*sacra potestas*" to teach the truth of the Gospel, administer the sacraments and pastorally govern the Church in the name and with the authority of Christ, but this power does not include per se any power over the divine law, natural or positive. Neither Scripture nor Tradition recognizes any faculty of the Roman Pontiff for dissolving a ratified and consummated marriage; on the contrary, the Church's constant practice

that indissolubility includes and requires exclusivity, it is not possible for the upcoming synods or Pope Francis to go in the direction suggested by Cardinal Kasper. Kasper's words from 1977 still hold true:

The Church is not able to formulate its own casuistic law that is different from the law of Christ. It can only be faithful to the words of Jesus. It cannot simply pay lip-service to its confession of the indissolubility of marriage and undermine it in practice.⁵⁰

2. That leaves us with Plan A—a generous expansion of the annulment process. As confirmed by the Council of Trent and subsequent doctrine and practice, the Church does have considerable authority over the form of marriage; concretely, she can determine the conditions for validity or the impediments to marriage. As noted above, there are several elements to Kasper's Plan A. I want to focus on a single question: is personal faith necessary for the validity of marriage? Kasper does not devote as much attention to this question, but a number of theologians, including Joseph Ratzinger, have indicated that this question merits further study.

It is highly instructive to trace the development of Ratzinger's own stance on this issue. In an important essay written in 1998 and republished in *L'Osservatore Romano* in 2011, "The Pastoral Approach to Marriage Should Be Founded on Truth," Cardinal Ratzinger wrote:

Further study is required, however, concerning the question of whether non-believing Christians—baptized persons who never did or who no longer believe in God—

shows the certain knowledge of Tradition that such a power does not exist. The forceful expressions of the Roman Pontiffs are only the faithful echo and authentic interpretation of the Church's permanent conviction. It seems quite clear then that the non-extension of the Roman Pontiff's power to ratified and consummated sacramental marriages is taught by the Church's Magisterium as a doctrine to be held definitively, even if it has not been solemnly declared by a defining act. This doctrine, in fact, has been explicitly proposed by the Roman Pontiffs in categorical terms, in a constant way and over a sufficiently long period of time. It was made their own and taught by all the Bishops in communion with the See of Peter, with the knowledge that it must always be held and accepted by the faithful.

50. Kasper, *Theology of Christian Marriage*, 64.

can truly enter into a sacramental marriage. In other words, it needs to be clarified whether every marriage between two baptized persons is *ipso facto* a sacramental marriage. In fact, the Code states that only a “valid” marriage between baptized persons is at the same time a sacrament (cf. CIC, can. 1055). Faith belongs to the essence of the sacrament; what remains to be clarified is the juridical question of what evidence of the “absence of faith” would have as a consequence that the sacrament does not come into being.⁵¹

The assumption underlying this passage is the simple but crucial idea that the sacraments are sacraments of faith, they are not simply magic. As the Second Vatican Council teaches, “the sacraments not only presuppose faith, but by words and objects they also nourish, strengthen and express it.”⁵² However, Ratzinger’s statement in this 1998 essay raises issues demanding further clarification. The problem is not simply a matter of identifying adequate criteria for measuring the presence or absence of personal faith, although this inherent difficulty should not be underestimated. At a more basic level, the requirement of “personal faith” touches the inseparability of institution and sacrament in marriage as well as the objectivity of the sacramental economy as safeguarded by the principle *ex opere operato*.⁵³

Seven years later, now as Pope Benedict XVI, he returned to the question of faith and sacrament in an address to the diocesan clergy of Aosta:

When I was prefect of the CDF, I invited various bishops’ conferences and experts to study this problem: a sacrament celebrated without faith. Whether, in fact, a moment of invalidity could be discovered here because the sacrament was found to be lacking a fundamental dimension, I do not dare to say. I personally thought so, but from the discussions we had I realized that it is a highly complex problem and ought to be studied further.⁵⁴

51. <http://www.osservatoreromano.va/en/news/the-pastoral-approach-to-marriage-must-be-founded->.

52. *Sacrosanctum concilium*, 59.

53. For an excellent reflection on the relation between faith and sacrament in marriage, see José Granados’s article in this issue, “The Sacramental Character of Faith: Consequences for the Debate on the Relation Between Faith and Marriage,” *Communio: International Catholic Review* 41 (Summer 2014): 245–68.

54. Benedict XVI, Address to the Diocesan Clergy of Aosta (25 July 2005),

Pope Benedict himself apparently continued to reflect on this question, and there is evidence that he changed his mind. His final teaching on the necessity of “personal faith” for the validity of marriage was set forth in an address to the Roman Rota some three weeks before he announced his resignation. He said:

The indissoluble pact between a man and a woman does not, for the purposes of the sacrament, require of those engaged to be married, their personal faith; what it does require, as a necessary minimal condition, is the intention to do what the Church does. However, if it is important not to confuse the problem of the intention with that of the personal faith of those contracting marriage, it is nonetheless impossible to separate them completely. As the International Theological Commission observed in a Document of 1977: “Where there is no trace of faith (in the sense of the term ‘belief’—being disposed to believe), and no desire for grace or salvation is found, then a real doubt arises as to whether there is the above-mentioned and truly sacramental intention and whether in fact the contracted marriage is validly contracted or not.” However, Blessed John Paul II, addressing this tribunal 10 years ago, pointed out that “an attitude on the part of those getting married that does not take into account the supernatural dimension of marriage can render it null and void *only if it undermines its validity on the natural level on which the sacramental sign itself takes place.*”⁵⁵

This is an extremely important teaching, with endless implications for the theology of nature and grace. The crucial point is that we can and should affirm the essential importance of faith for the celebration of the sacrament. But the relevant questions for determining the validity of a sacramental marriage, in light of Benedict’s statement, are these: Are you baptized? Do you intend to get married in the Church? Do you know the essential properties and ends of marriage? If the person approaching the sacrament of marriage is baptized, the seed of faith is present. The preparation for marriage provides a unique occasion to re-

http://www.vatican.va/holy_father/benedict_xvi/speeches/2005/july/documents/hf_ben-xvi_spe_20050725_diocesi-aosta_en.html.

55. Benedict XVI, Address to the Roman Rota (26 January 2013). Emphasis added.

awaken the faith given in baptism. We should not underestimate all that might be contained in the fiancés' intention to marry. If each of them truly intends marriage, there is an implicit openness to God and to God's covenant faithfulness.⁵⁶ This is sufficient for sacramental validity. In other words, in order to show the importance of faith for the sacrament of marriage, we should deepen our understanding of "the natural level on which the sacramental sign itself takes place."⁵⁷ Already in the order of creation, marriage is saturated with the mystery of God. At the heart of marriage is an openness to God and an implicit faith in God's covenant fidelity.⁵⁸

3. This brings me to my third and concluding objection to Kasper's proposal. To a remarkable degree this proposal has become the core issue for the upcoming synods. In an "Afterword" to his lecture in which he advocates for a change in the Church's practice, Kasper writes:

In this matter, there are great expectations in the Church. Beyond a doubt, we cannot fulfill all expectations. But it would cause a terrible disappointment if we would only repeat the answers that supposedly have always been given. As witnesses of hope, we may not allow ourselves to be led by a hermeneutic of fear. Some courage and above all biblical candor (*parthesia*) are necessary. If we don't want that, then we should not hold a synod on this topic, because then the situation would be worse afterwards than before. We should at least open the door a crack. . . .⁵⁹

Notice the words "a synod on this topic." It may be worthwhile to question the centrality that Kasper accords this particular issue (communion for the civilly divorced and remarried), and

56. During the Rite of Marriage, the couple is asked, "Will you accept children lovingly from God?"

57. Benedict XVI, Address to the Roman Rota (26 January 2013).

58. Cf. Joseph Ratzinger, *Daughter Zion: Meditations on the Church's Marian Belief*, trans. John M. McDermott (San Francisco: Ignatius Press, 1983), 23: "Marriage is the form of the mutual relationship between husband and wife that results from the covenant, the fundamental human relationship upon which all human history is based. *It bears a theology within itself, and indeed it is possible and intelligible only theologically.*" Emphasis added.

59. Kasper, *Gospel of the Family*, 47.

not simply because the teaching office of the Church has already dealt with this issue with a certain definitiveness. Taking to heart Pope Francis's request to heal the wounds, it is important for the Church to discern the deepest and most urgent wounds. But how are these best understood?

Granted there is genuine pain and suffering among civilly remarried Catholics who feel excluded from the Eucharist. This, however, is neither the most serious wound nor the gravest pastoral challenge facing the Church today. The deepest wounds in our culture—including the wounds of broken families—stem from a crisis of faith, which is always also a crisis of love and a crisis of reason. Together with the eclipse of the sense of God, there is a loss of confidence in the intelligibility and goodness of the created order. It is difficult for young people today to believe in a God who is present in human history and who shares his life in the sacraments of the Church. The most urgent pastoral task is to bear witness to God's abiding and merciful love, which both presupposes and safeguards the *logos* of creation and the dignity of human life and human love.

In conclusion, let us return to the image of a field hospital after a battle. In one sense the Church is the hospital and the sacraments are the medicine that really contain and mediate the healing grace of God's love. But there is always more to the sacraments, especially the sacrament of the Eucharist, which sums up our faith and encompasses the whole of our lives. The sacraments are not just medicine; they are more like the hospital itself—a place of healing and renewal. And more than being simply a hospital, the sacraments disclose the deepest truth of our origin and our final destiny. They open a space for authentic human life, for mercy and forgiveness, and for the renewal of all creation. The sacraments are a surprisingly capacious gift—just as in the Eucharist the whole mystery of Christ's life and love is, as it were, concentrated and really given to the Church. So too in marriage, there is a sacramental bond that can encompass all of one's life, even the most difficult and painful situations of illness, suffering, and abandonment. Forgiveness and mercy are always present, not simply as an ideal or in spite of the supposed failure of the marriage, but in and through the undying marriage bond that remains a sign and source of mercy and a real symbol of Christ's victory over death.

It would be good for the upcoming synod to remember the words of Tobias as he exchanges irrevocable vows with Sarah while praying to God:

“Grant that I may find mercy and may grow old together with her.” And she said with him, “Amen.” (Tb 8:7–8)

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