

**DISCUSSION PAPER
ON THE PASTORAL CARE OF SEPARATED/DIVORCED
CATHOLICS INCLUDING THOSE WHO HAVE RE-MARRIED**

PART 1 - GENERAL

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INTRODUCTION

I congratulate those priests who recently came together to reflect on this subject, and those whose leadership provided the occasion. Fr Tony Russell IC rekindled our thinking around this topic, and suggested that we keep up a reflection-dialogue on it. The present paper is offered not to foreclose such continuing discussion, but to promote it.

The issues are not open-ended in every direction, and the parameters need to be clarified. There are also grey areas in which there is room for some flexibility according to time and circumstance. These areas also need to be identified. I offer this paper with those objectives in mind.

WHY A TRIBUNAL PROCESS?

Priests sometimes comment - out of obvious pastoral concern - that the Tribunal process can be cumbersome and disproportionate to some particular cases. It is certainly true that gathering the necessary evidence can take time, especially if important witnesses are not willing to help, or if the key players themselves are reluctant to recall past, painful experiences. Perhaps it can also be conceded that we need to find simpler ways of handling "obvious" cases of nullity. After all, in all cases, when the object is to establish nullity or establish the grounds for dissolution, what is required is moral certainty - neither less nor more.

Why does the Church insist on an official process for obtaining declarations of nullity and dissolutions? I suggest it all derives from the fact that marriages entered into with the Church's blessing must be considered valid until they are either proved invalid or officially dissolved.

If this were not the case, then there would be many situations in which couples could be unsure whether their marriages were valid or not. The Church assures them by declaring that their marriages are valid unless the Church itself says they are not; (c. 1060).

But this presumption in favour of validity automatically means that a second marriage entered into without a declaration of nullity or a dissolution of the first marriage presumably falls under the Lord's teaching that

The man who divorces his wife and marries another is guilty of adultery against her. And if a woman divorces her husband and marries another, she is guilty of adultery too. (Mark 10:11, 12)

It is with good reason, therefore, that the Church insists on a process which leads to an official declaration of nullity or a dissolution of the bond.

WHAT KINDS OF CASES CAN BE TAKEN TO THE TRIBUNAL?

There are cases where the invalidity of the first marriage can be proved without a formal Tribunal process, e.g. when the first marriage was invalid through lack of canonical form or because of an invalidating ("diriment") impediment (cf cc 1083-94). In such cases, the invalidity is proved merely by obtaining the relevant documentation. These "administrative cases" are handled at the Vicariate.

A somewhat more formal process is undertaken by the Tribunal when the dissolution of a valid, though non-sacramental, marriage is sought. These are mainly the "privilege of the faith" cases, which require reliable, supporting evidence (cf c 1143, and Norms, SCDF, December 6, 1973).

A fully formal process is conducted when it is a matter of proving that the marriage was never valid in the first place. The grounds for invalidity include various ways in which proper consent can be lacking; e.g. because something essential to the marriage (permanency, exclusiveness, or openness to having children) was excluded; or because of the influence of fear or pressure; or because one or other partner lacked the ability to

properly understand the marriage relationship; or lacked the ability to assume the obligations of marriage.

HOW DOES ONE APPROACH THE TRIBUNAL?

It is unfair to lead people to hope for more than can be realistically expected. But it is unjust to dissuade them from approaching the Tribunal if they might have a good case. Therefore, pastors must be well informed, and know how to refer people to the Tribunal.

Bishop G Robinson's book on Annulments is minimum reading for any pastor. There are also documents that should be on hand in every presbytery; refer Mrs Carol Miers.

Regarding costs, it is policy of the NZCBC that at an early stage the full costs of processing a case are discussed with the client, and agreement is reached concerning what portion of the full costs the client will be able to pay.

SEPARATED AND DIVORCED BUT NOT REMARRIED

In his letter regarding the role of the Christian Family in the Modern World (Familiaris Consortio) 1981, Pope John Paul II discussed the situation of divorced Catholics who are remarried, but not before calling on the Church to support those who have not remarried;

Loneliness and other difficulties are often the lot of separated spouses, especially when they are the innocent parties. The ecclesial community must support such people more than ever. It must give them much respect, solidarity, understanding and practical help, so that they can preserve their fidelity even in their difficult situation; and it must help them to cultivate the need to forgive which is inherent in Christian love, and to be ready perhaps to return to their former married life.

The situation is similar for people who have undergone divorce, but, being well aware that the valid marriage bond is indissoluble, refrain from becoming involved in a new union and devote themselves solely to carrying out their family duties and the responsibilities of Christian life. In such cases their example of fidelity and Christian consistency takes on particular value as a witness before the world and the Church. Here it is even more necessary for the Church to offer continual love and assistance, without there being any obstacle to admission to the sacraments. (n.83)

PART 2

PASTORAL CARE OF DIVORCED & REMARRIED CATHOLICS

THEIR RIGHT TO THE CHURCH'S CARE

For these Catholics, too, the Pope's main emphasis is on pastoral care. He combines this with the Church's duty to give consistent witness to the Lord's teaching on indissolubility. This latter aspect will be treated below, but let us first notice the right of these Catholics to the Church's care;

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

Even in the case of those who have entered an irregular second union, the Pope has something positive to say;

With firm confidence she believes that those who have rejected the Lord's command and are still living in this state will be able to obtain from God the grace of conversion and salvation, provided that they have persevered in prayer, penance and charity. (n.84)

CAN THEY RECEIVE THE SACRAMENTS?

A. Presuppositions

In discussing this question, the following are presupposed:

1. That the previous marriage(s) is (are) irretrievable;
2. That there is sincere sorrow for whatever guilt there might have been for the breakdown of the previous marriage(s);
3. That a solution through the Matrimonial Tribunal is not possible. (This could be

because the invalidity of a marriage cannot be proven in the external forum, or because the parties simply lack the ability to appreciate the need for a Tribunal process, or feel the whole process is simply beyond them, i.e. a "moral impossibility". Note, however, the persons concerned, and sometimes priests, can be too quick to conclude that a Tribunal solution is not possible. Many of those who remarry without the benefit of an annulment then find that their own decision is not easy to live with, or they more easily drift away from the Church.)

The absence of any of the above three presuppositions results in a different kind of pastoral situation from that being discussed here.

B. Parameters of Genuine Solutions:

1. Any solution must be compatible with the Church's duty (i.e. the duty of the Catholic people themselves and their pastors) to be consistent with the Lord's teaching on indissolubility;
2. Any solution must be compatible with the Church's obligation to do all it can to include these Catholics in the life of the Church.

Neither of these principles can be used against the other.

C. Can nothing be done if such couples are not living as brother and sister?

Pope John Paul II reiterates the Church's practice

.....of not admitting to Eucharistic Communion divorced persons who have remarried.....

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.
(n.84)

In order not to wrongly interpret this teaching, we need to remember that Papal teaching focuses mainly on objective morality; it promulgates the Church's official positions.

This is never intended to cancel out those other aspects of the Catholic tradition which are normally treated by "the approved authors". These treat the great variety of circumstances and subjective dispositions relevant to conscience and the reception of sacraments.

Earlier in the same paragraph, the Pope called on pastors to discern between different situations:

Pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations. There is in fact a difference between those who have sincerely tried to save their first marriage and have been unjustly abandoned, and those who through their own grave fault have destroyed a canonically valid marriage. Finally, there are those who have entered into a second union for the sake of the children's upbringing, and who are sometimes subjectively certain in conscience that their previous and irreparably destroyed marriage had never been valid. (n.84)

All such distinctions, and recognition of those "who are sometimes subjectively certain in conscience that their previous marriage had never been valid" would be superfluous if pastors had only one answer to offer for every case regardless of these differences.

The reality of solution in the internal forum is clearly recognized by the Congregation for the Doctrine of the Faith:

In regard to admission to the sacraments, Ordinaries are asked on the one hand to stress observance of current discipline and, on the other hand, encourage pastors to exercise special care in seeking out those who are living in an irregular union by applying, in addition to other right means, the Church's approved practice in the internal forum. (April 11, 1973). (Underlining mine)

In response to a request by the American Bishops, 1974, for clarification, Archbishop Hamer of the Congregation for the Doctrine of the Faith replied as follows:

I would like to state now that this phrase must be understood in the context of traditional moral theology. These couples may be allowed to receive the sacraments on two conditions, that they try to live according to the demands of Christian moral principles and that they receive the sacraments in churches in which they are not known so that they will not create any scandal.

A further clarification, from Cardinal Ratzinger of the same Congregation, 1991, said this means that they abstain from sexual relations. Further reference will be made to this below,

but at this stage the point to notice is that there is such a thing as a solution in the internal forum which can result in people receiving the sacraments even though they are in an irregular union.

D. What then are these "Internal Forum" solutions?

We need to distinguish two different kinds depending on whether the previous marriage was valid or not.

1. "Internal Forum Solutions"

Though authors use terms interchangeably, "internal forum solution" is used here in regard to a union in which the person concerned is "certain in conscience that their previous marriage had never been valid". Some prefer the term "conscience solutions."

The possibility of, and the need for, a solution in the internal forum arises from

....the inevitable limitations of law. Law cannot possibly cover adequately every possible complexity of the human situation. So, for example, the situation could arise where a person has a solidly based conviction that his/her first union lacked some essential element. But it may be impossible to prove this before the Church Courts. (B. Johnson CSSR, Compass Theology Review, December 1979, p. 3)

In these cases, the fact that the first marriage cannot be proved invalid in the external forum is the reason why the Church cannot recognize the new union. For the same reasons I do not think c.1116's provision for valid consent without canonical form applies to these cases. After all, that canon gives recognition in the external forum.

Nevertheless, people caught in this conundrum still have a natural right to marry, and this right prevails over the requirements of human law. This makes it difficult to judge the moral status of their new union. Some refer to it as "valid in conscience". I think this language risks confusing between the juridic order which deals with validity and the moral order which deals with right and wrong behaviour.

The decision in conscience concerning the invalidity of the previous marriage and the morality of the new union belongs to the persons concerned. The priest only helps them look at their situations objectively, (which he certainly cannot do in a single interview.) He may not "officiate" at a marriage which cannot be recognised in the external forum, nor provide any other alternative religious service that would give the impression that their union has the Church's blessing; (FC, n.84).

In assessing their eligibility for the sacraments of Penance and Eucharist, it cannot be assumed that they are in an invalid marriage - given their natural right to marry and their subjective certainty concerning the invalidity of the previous marriage. It is necessary, however, that such persons be sorry for any previous guilt and that they be sincerely open to the will of God concerning future possibilities for convalidation in the external forum.

2. "Conflict" cases, or "hardship" cases

In the "internal forum solution" described above, the first marriage was conscientiously considered to have been invalid, even though this could not be proved in the external forum.

A completely different situation arises when there are no grounds for believing the first marriage was invalid. In these "conflict" or "hardship" cases, the wrongness of the new union derives from the fact that one (or both) of the partners already has a husband or wife. This is a very different reason for not recognising the new union. Nor can there be any question of the new union becoming valid in conscience, because of that first marriage.

Nevertheless, it is still possible for such persons to reach a conscientious decision not to separate. This is especially so where the natural rights and needs of children are involved. The couple may consider they are keeping God's law as far as possible in their circumstances. Here, too, the decision is theirs. They

may even experience their union as having the qualities of a good marriage.

Eligibility for the sacraments of Penance and Holy Communion would presuppose

- (a) recognition of an objective wrongness in their situation in as much as there is still another husband or wife somewhere; and consequently
- (b) the sincere intention of resolving their new situation as best they can.

What does this sincere intention to do their best consist of? Cardinal Ratzinger says they must "pledge to abstain from sexual relations." Archbishop Hamer had required "that they try to live according to the demands of Christian moral principles". The sincere intention to do their best is the normal requirement for absolution.

Some people in this situation believe that to live as brother and sister is beyond them. For them "doing their best" could mean the intention to remove the wrongness of their situation if and when that becomes possible some day.

Immediate success in putting the situation right is not normally a pre-requisite for absolution when there is an ongoing problem. The sincere intention to do so as soon as possible is sufficient - and also necessary.

It is also to be remembered that people's ability to live by the full measure of the law can vary from individual to individual, and can take time. This is also acknowledged by the Pope (cf FC n.34)

Sometimes people are in "good faith" through ignorance, and removing their ignorance might only result in them continuing in bad faith. This is a very real possibility where Catholics can easily be more influenced by society's attitudes to divorce and remarriage than by the Church's teaching.

All these subjective factors are the kind of considerations that are dealt with in the moral theology books, while Papal teaching and catechisms normally concentrate

on general principles and norms. The principles of moral and pastoral theology also belong to the Catholic tradition.

And so it is possible, without self-contradiction, to ask people to align their lives to subjective truth, and also celebrate the sacrament of Penance with those who sincerely want to, and are trying to, but are not yet able to do so fully.

If they receive Holy Communion, it must be in circumstances which do not cause scandal, i.e. lead others to believe that the Church's teaching on indissolubility can be put aside, or doesn't matter much. It should also be by way of exception, thereby acknowledging that their situation has not yet been set right. Such people should also be helped to understand that there are other ways of sharing in the life of Christ and the Church, even without sacramental Communion.

PART 3 - EDUCATING THE CATHOLIC COMMUNITY

Education relating to Christian marriage is education in the faith and in the values of the gospel. The point is worth recalling because when confronted by moral dilemmas it is easy to slip into the assumption that there must be a happy solution - within this life - to every personal problem. The gospel makes no such promise: none of us can assume that we will not be called upon to "give up" or "lose" much, even life itself, for the sake of "the kingdom" and its values. Living by faith means believing that we are "blessed" even where happy or just solutions aren't possible.

Education in this matter also means that we who are pastors and teachers in the faith must further develop our ability to teach what is right without giving divorced/remarried people the impression that there is nothing we can do for them or that they "cannot be forgiven".

(A professional counsellor recently contacted me on behalf of a client who says that a priest told her that her divorce could never be forgiven. I presume the priest did not actually say that. However, that is the impression she took away, and so the damage was done.)

Just leaving these people to themselves and their own devices is sufficient to create the impression that we cannot do anything for them. Helping them to know they still belong requires a positive, pastoral interest in them.

Education in this matter includes helping Catholics realise that when people seek solutions in the forum of conscience they are not necessarily disregarding the Church's official teaching, but may well be reaching for it as best they can.

Precisely for this reason, I question the value of describing internal forum solutions as "exceptions". The word "exception" seems to carry more than one meaning. Some will take it to mean that a person is being excused from the norm. That is not the position being promoted in this discussion paper. This paper is based on the fact that (1) the norm is always there as that towards which we must strive; (2) people are not always capable of measuring up to the norm straight away (cf FC n.34). This links with the Church's teaching regarding the sacrament of Penance for which the sincere intention of doing one's best is both required and sufficient - even if future failures are foreseen. Perhaps rather than a "theology of exceptions", what needs to be developed further is our theology of "oikonomia" (cf H O'Leary CSSR). Some theologians argue that even when the Church formally dissolves a marriage, such marriages are not actually being dissolved; rather the Church is

*"...condoning a situation that is contrary to the ideal of the Lord's teaching, but is nevertheless a valid dispensation of the mercy of God by the Church's ministry." (W. Daniel SJ, On Marriage and Divorce
(Compass Theological Review)*

This, in essence, is "oikonomia", which is deeply entrenched in the Church's traditional practice, although the Eastern Church applies oikonomia to the situation of divorced/re-married persons more widely than does the Western Church.

If internal forum solutions are not exceptions to indissolubility, are they exceptions to the Church's requirements for the sacraments of Penance and Holy Communion? No, because it is according to the normal requirements for absolution that the penitent sincerely intend to set matters right as soon as they can, even if they cannot manage this

immediately.

However it is also sometimes necessary to forgo that which is "allowable" if in the circumstances we would be leading others astray (read 1 Cor 8:-9-12). This could be especially necessary when the Church's teaching on indissolubility is under pressure. This sense of subordinating one's own rights to the needs of the Church community also belongs to this part of Catholic education.