



## **Theologically-responsible, pastorally-appropriate ways of assisting remarried divorcees**

*Reflections of the German Bishops' Conference in preparation for the Synod of Bishops  
on "The pastoral challenges to the family in the context of evangelisation"*

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### **I. The concern of the Church regarding marriage and the family**

The question of contemporary pastoral care of marriage and of the family which is theologically sound and takes up the experience of spouses and families as well as those of pastors has been discussed over a period of many years at the level of the dioceses and of the German Bishops' Conference, taking account of many studies from the theological disciplines. In particular during the "Living In Faith Today" discussion process, reference was repeatedly made to the need for renewed pastoral care of marriage and of the family, taking account of the experience of Christian spouses and families, as well as of the reality faced by those whose marriages have failed and who have entered into a new civil marriage after a state divorce. It became clear in this process that the answers to today's questions regarding the pastoral care of marriage and of the family are highly significant to evangelisation and the credibility of the Church. For this reason, the commitment, which is already considerable in this pastoral domain, will also be continued in the future, and is to be stepped up in some areas.

The German bishops very much welcome the fact that Pope Francis has convened a Synod of Bishops on the topic of "The pastoral challenges to the family in the context of

evangelisation". The Extraordinary Assembly to be held in 2014 will be addressing the real situation in our local churches and collecting testimonials and proposals which do justice to the current challenges of the pastoral care of marriage and of the family. Concrete guidelines for the pastoral care of marriage and of the family, or appropriate statements, are then presumably to be formulated in the Ordinary General Assembly of the Synod of Bishops in 2015.

In order to obtain a differentiated picture of today's situation, a questionnaire was sent to the Bishops' Conferences in the run-up to the Extraordinary Synod of Bishops, asking them to include the responses from the parishes. The questionnaire has had a major echo in the Church in Germany. Many parishes and associations drafted detailed responses which they forwarded to the bishops. This enabled the German Bishops' Conference to provide an equally detailed and realistic description of the current situation of marriage and the family.

The responses to the questionnaire<sup>1</sup> are confirmed by the experience that many pastors have had in recent decades. It is possible to sum up by stating that a successful partnership and family are part and parcel of a happy life filled with meaning for the faithful, but also for people in Germany generally. For many years, sociological analyses, and youth studies in particular, have also revealed uninterruptedly high levels of respect for partnerships and the family. Almost all adolescents and young adults aspire to a partnership designed for permanence, and wish to form a family. They consider a loving relationship to constitute the place within society in which they can satisfy their need for personal recognition, emotional warmth and security. However, particularly those faithful who take little part in the life of the Church have a certain lack of knowledge of the Church's doctrine on marriage, or on specific aspects of this doctrine (such as the sacramental nature of marriage).

Although the societal, economic and cultural changes have made living together and cohesion in the family more difficult in recent decades, many faithful give an impressive witness of married and family life characterised by mutual love, responsibility and faithfulness. They make a major contribution to the formation and liveliness of parish life, and their influence goes beyond this sphere and into society as a whole. They affirm the Christian understanding of a marriage and family based on love, life-long faithfulness and mutual responsibility, and they do their utmost to meet these demands in their marriages and family lives.

In this situation, the German bishops consider it to be necessary to be able to have their voice heard once again with regard to the aspects of sexuality, marriage and the family. At anthropological level, the questions of marriage and the family need to be placed within the wider context of the question of how people can find happiness and fulfilment in their lives.

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<sup>1</sup> cf. The pastoral challenges to the family in the context of evangelisation. Summary of the responses from the German dioceses and archdioceses to the questions contained in the preparatory document for the III Extraordinary General Assembly of the Synod of Bishops in 2014. Resolution of the Permanent Council of the German Bishops' Conference of 3 February 2014. [http://www.dbk.de/fileadmin/redaktion/diverse\\_downloads/presse\\_2014/2014-012a-Fragebogen-Die-pastoralen-Herausforderungen-der-Familie.pdf](http://www.dbk.de/fileadmin/redaktion/diverse_downloads/presse_2014/2014-012a-Fragebogen-Die-pastoralen-Herausforderungen-der-Familie.pdf).

At theological level, it is necessary to enquire how coexistence in marriage and the family can be understood and lived in terms of deliberately following Christ in the community of the Church.

The German Bishops' Conference will therefore be launching an initiative of pastoral care for marriage which will make the Church and the public more aware of "the Gospel of the family", as well as examining and lending form to the various fields of pastoral care for marriage (the Catechesis, youth pastoral work, preparation for marriage, support of marriage, marriage guidance in crisis situations, marriage, and the family as a "house church" etc.).

However, improved pastoral care of marriage and preparation for marriage will also not be able to prevent marriages failing. The question of a theologically-responsible and pastorally-appropriate way of assisting Catholics whose marriages have broken down and who have divorced under civil law and remarried is pressing for several reasons. Roughly one-third of marriages in Germany currently end in divorce. Joint minor-age children are involved in roughly half of all divorces. Surveys have found that Catholics' marriages are somewhat more stable than average, but the difference is not very great. Civil divorce and remarriage frequently set off a process of becoming distant from the Church, or make the existing distance to the Church, which most who find themselves in this crisis situation find not helpful and dismissive, even greater. This development frequently also leads to a turning away from the Christian faith, which loses its life-giving strength for lack of a tie to the Church.

The way in which the Church deals with those among the faithful whose marriages have failed and who have concluded a second civil marriage meets with unambiguous criticism both inside and outside the Church, and this is indeed voiced publicly. As is shown by the responses to the questionnaire for preparing the Synod of Bishops, the pastoral arrangements for dealing with this group of individuals are not understood and are regarded as being unmerciful, not only by those concerned themselves, but also by many Catholics who live in a successful marriage. This particularly applies to exclusion from the sacrament of penance and from communion. Even many pastors consider the Church's regulations to be unhelpful.

Many practicing Catholics in Germany who have a committed involvement in the Church consider the way in which pastoral care deals with faithful who have had a civil divorce and remarried to be a test case for an evangelising Church which does not withdraw to specific groups of faithful, but which also approaches and invites those whose life plans have failed. It has become the touchstone of whether the joy of the Gospel also applies to remarried divorcees and their families.

The German Bishops' Conference will therefore be attaching particular attention to the question of renewed pastoral care for faithful whose marriage has broken down and who might have entered into a new civil union. There are two principles which show the way for the German bishops. Firstly, pastoral care for remarried divorcees may not reduce or obscure the Church's faithfulness to Jesus' prohibition of divorce and Her witness to the

indissolubility of marriage. It may not contradict the Church's doctrine of the sacramental nature of Christian marriage. The German bishops are therefore in agreement that, after the (sacramental) marriage has broken down while the partner remains alive, neither a renewed church marriage can be concluded, nor can a civil marriage be recognised by the Church.

Secondly, faithful whose marriage has broken down may not be given the impression that they have been marginalised by the Church or even excluded from the Church community. The Apostolic Exhortations *Familiaris consortio* (1981, No. 84) and *Sacramentum caritatis* (2007, No. 29) emphasise that faithful whose marriages have broken down and who have entered into a new union belong to the Church. As all faithful, they too must experience the Church as their home and be able to play an active role in Her life. It is an important task of pastoral care to help them deal with the breakdown of their marital partnership in psychological and theological terms, to encourage them to continue to play an active role in the Church, or to do so once again, and to support them in their efforts to live a life of faith.

In this context, many faithful ask themselves the question of whether the Church cannot, under certain conditions, admit faithful who have had a civil divorce and remarried to the sacrament of penance and to communion. They ask whether all the theological implications and consequences have really been sufficiently considered in this matter. We as bishops cannot leave these questions unanswered. The German Bishops' Conference therefore established a working party in September 2012 consisting of bishops which was to address in particular the question of possibly admitting to communion, within pastoral care, faithful who have had a civil divorce and remarried. It was also investigated and considered once more whether such people could be readmitted to the sacrament of penance, but further efforts are needed. The considerations of the working party were discussed several times in detail, and openly, in the Bishops' Conference. It became clear here that the Bishops' Conference has not yet reached a unanimous judgment with regard to this question.

A number of bishops consider the existing regulations to be required in theological terms and appropriate in a pastoral context. With regard to other solutions, they are concerned that the witness of the indissolubility of marriage might be obscured. On the basis of these principles, they nonetheless consider that there is an urgent need to develop pastoral care specifically for remarried divorcees. It must become clear when dealing with remarried divorcees that they belong to the Church, that God does not withdraw His love from them and that they are called on to practice love of God and neighbour, and to be real witnesses for Jesus Christ.

The vast majority of bishops are asking the question of whether there are not theological reasons making it possible under certain conditions to admit faithful who have had a civil divorce and remarried to the sacrament of penance and to communion if the legal possibility of an annulment turns out to not be feasible. These bishops are also aware of the witness of faithful who have had a civil divorce and remarried, who are highly faithful to the doctrine of the Church, and have therefore frequently not attended these sacraments for many years of their lives. Some of them feel strengthened if persons to whom they are close, and with whom they have a spiritual tie, take communion.

The reflections below are restricted to this pastorally-urgent theological problem, and are also to be put to the General Assemblies of the Synod of Bishops in the autumn of 2014/2015. They are deliberately formulated in thetic terms, and need a more profound theological discussion. They do not contain a complete theology of marriage and the family, but rather the German bishops will take account of the deliberations and results of the two Synods of Bishops on the pastoral care of the family, and will promote them where possible, and on this basis will draw up a hand-out on pastoral care of marriage and of the family which will comprehensively address both the theological questions and the practical consequences.

## **II. Regarding today's principles of the way in which pastoral care deals with faithful who have had a civil divorce and remarried**

Questions on pastoral assistance for faithful who have had a civil divorce and remarried have been intensively considered for several decades at the level of the dioceses, the German Bishops' Conference and the universal church. This also includes the question of possible admission to the sacrament of penance and to communion. It is particularly worth mentioning here the Resolution of the Joint Synod of the Bishops in the Federal Republic of Germany on Marriage and the Family of 1975, the Apostolic Exhortation *Familiaris consortio* (1981), the Reflections of the Bishops of the Upper Rhine Ecclesiastical Province on Pastoral Assistance for People from Broken Down Marriages of 1993, the Response of the Congregation for the Doctrine of the Faith to these Reflections of 1994, the Letter from the Bishops of the Upper Rhine Ecclesiastical Province to those working in Pastoral Care of 1994, as well as the Apostolic Exhortation *Sacramentum caritatis* of 2007.

The Apostolic Exhortation *Familiaris consortio*, which was published subsequent to the Synod of Bishops on the Christian Family in the Modern World (1980), also takes up a position on pastoral care for remarried divorcees. The principles that are stipulated in No. 84 of this exhortation set out the way in which pastoral care deals with this group of the faithful today:

- Faithful whose marriage has failed and who have entered into a new union after a civil divorce continue to belong to the Church. Pastors are obliged to distinguish carefully between the various situations for the sake of the truth.

“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.”

- Pastors and churches are called up on “to help” faithful who have had a civil divorce and remarried, “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.” The Church is to “encourage them and show herself a merciful mother, and thus sustain them in faith and hope”.

- They may not however be admitted to receive communion. A twofold reason is stated for this. 1) “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”. 2) “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 opens up the way to receiving the Eucharist can only take place via repentance of what has taken place and being “sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage”. This means in concrete terms that if the new union cannot be dissolved for serious reasons, for instance because of the upbringing of the children, both partners must “take on themselves the duty to live in complete continence”.

The new union may also not be blessed in such cases in order to avoid any error as to the indissolubility of the validly-concluded, sacramental marriage. These principles have been confirmed several times in recent decades. They are based on the following theological insights: First and foremost comes Jesus’ prohibition of divorce. It is pronounced in the Gospels four times (cf. *Mt* 5,31–32; 19:3–12; *Mk* 10,2–12; *Lk* 16,18), and the Apostle Paul speaks explicitly of a Word of the Lord (cf. *I Cor* 7,10–11). Even though we no longer know in what specific context Jesus handed down this prohibition, there is nonetheless no doubt that Jesus rejected the contemporary practice of divorce as an expression of “hardness of heart”. The reason which He gave for the prohibition of divorce was God’s original creative will (cf. *Gen* 1,27; 2,24), adding: “Therefore what God has joined together, no human being must separate” (*Mk* 10,9). Jesus’ reference to the creation stories (cf. *Mk* 10,6–7; *Mt* 19,4–5) makes it clear that marriage is to be understood as a concrete, whole but also physical community of man and woman, and that the unity and indissolubility of marriage are founded in the Creation. As is shown by the disciples’ reaction in Mathew’s Gospel (cf. *Mt* 19,10), Jesus’ prohibition of divorce was received as a provocation from the outset.

The prohibition of divorce is part of the message of the Kingdom of God. Jesus proclaims in word and deed the start of a new age in which God turns to human beings without reservation or condition. Jesus’ disciples are to emulate God’s unreserved love in their own lives (cf. *Mt* 5,48; *Lk* 6,36). They are to approach their neighbours, and even their enemies, with love and a willingness to forgive, and thus to give witness to God’s love. In view of God’s steadfast love for His people, Jesus thus demands that the husband also hold onto his love for his wife and not expel her. Mark also says analogously in the Hellenic area that the wife may not leave her husband (*Mk* 10,12; cf. also *I Cor* 7,10–16). He is proclaiming an ethos of unlimited love and care of the other from which the individual may also not withdraw via legal reservations. Jesus’ instructions remain provocative in every generation. They challenge the faithful to strive for “surpassing righteousness” (*Mt* 5,20), and thus to give witness of

God's love and faithfulness. This is why the Church has also held onto the indissolubility of marriage throughout Her history, partly also in the face of resistance. Despite all the understanding for the difficult situation in which they live, pastoral care for faithful whose marriage has failed and who have had a civil divorce and remarried may not obscure the Church's witness for the indissolubility of marriage and lead to misunderstandings in the public with regard to the Church's doctrine.

With regard to the question of admitting to communion those faithful who have had a civil divorce and remarried, the ecclesial documents refer to the theological connection between the marriage sacrament and the Eucharist. The Bible does not understand marriage solely as a reality of creation. Particularly the Prophets Hosea (cf. *Hos* 1–2) and Malachi (*Mal* 2,13–16) relate it to God's Covenant with His people. This Covenant-related theological viewpoint of marriage is taken up in the letter to the Ephesians, and now related to Christ and the Church: "Husbands, love your wives, even as Christ loved the church and handed himself over for her" (*Eph* 5,25). It goes on to say somewhat later, referring to *Gen* 2,24: "For this reason a man shall leave (his) father and (his) mother and be joined to his wife, and the two shall become one flesh. This is a great mystery, but I speak in reference to Christ and the church" (*Eph* 5,31–32). On this Biblical foundation, the Church understands Christian marriage as a sacrament, that is as an effective sign of the Covenant between Christ and the Church. "For as God of old made Himself present to His people through a covenant of love and fidelity, so now the Savior of men and the Spouse of the Church comes into the lives of married Christians through the sacrament of matrimony. He abides with them thereafter so that just as He loved the Church and handed Himself over on her behalf, the spouses may love each other with perpetual fidelity through mutual self-bestowal" (*Gaudium et spes*, No. 48). Marriage is "a reflection of the loving covenant uniting Christ with the Church" (*ibid.*). It lends concrete form to Christ's Covenant with His Church and becomes a place of sanctification: In marriage, the partners experience the love of God, which transforms them, and they are enabled and called upon to pass on this love. Marriage opens up to both partners ways of being human. The joint process of human and spiritual maturing of both partners and the procreation and upbringing of children should be mentioned here. Christian spouses not only pass on life, but also faith; they not only help maintain society, but also contribute towards the growth and building of the Church.

From a sacramental point of view, the indissolubility of marriage is Christ's assurance which at the same time is contingent on the spouses' willingness to live up to it in faithfulness. Love between the spouses is at the same time taken into Christ's love for His Church. This is why wedlock, or the marriage bond, continues when love between the two partners has fallen on hard times, or indeed has broken down. The marriage bond is neither a metaphysical hypostasis above or in addition to mutual love, nor is it taken up in mutual affective devotion (*Gaudium et spes*, No. 48; cf. also *Evangelii gaudium*, No. 66). At the same time, the doctrine of the marriage bond takes seriously the freedom of the human to be able to submit a binding promise and make a definitive decision.

The relationship between wedlock and the Eucharist is determined in the context of the Biblically-founded covenant theology, which is the memorial meal of the New Covenant. The Covenant between Christ and the Church finds its sacramental expression in the Eucharist. The work of our salvation is simultaneously completed in the celebration of the remembrance of Jesus' suffering, death and resurrection. Wedlock is related to the Eucharist in two ways. Firstly, wedlock symbolically portrays Christ's Covenant with His Church which is repeatedly renewed and confirmed in the Eucharist. Secondly, the Eucharist strengthens co-existence in marriage and in the family, and enables the family members to follow Christ in their everyday lives. At the same time, Christian marriage has a "Eucharistic dimension" (*Sacramentum caritatis*, No. 27).

The decision to not admit to the sacraments those faithful whose marriage has broken down and who have had a civil divorce and remarried is justified by the fact that "their state and their condition of life objectively contradict the loving union of Christ and the Church signified and made present in the Eucharist" (*Sacramentum caritatis*, No. 29).

In the case of the breakdown of a marriage, it is the task of the pastor to indicate to those concerned the possibility of an annulment and to recommend them to seek the advice of an ecclesial marriage court. If special circumstances applied on conclusion of the marriage preventing the marriage becoming valid, it can be annulled by a marriage court. This opens up the way to a new church marriage. Such circumstances may lie in ignorance of the marriage vows on the part of one or both partners, in a lack of willingness to marry or indeed in mental defects. If a marriage cannot be annulled, the pastors are to encourage the faithful to respect the marriage vows that have been given previously and refrain from becoming involved in a new union for the sake of the indissolubility of the marriage (cf. *Familiaris consortio*, No. 83). If they nonetheless become involved in a new civil union and wish to partake of the sacramental life of the Church, they are obliged to "live in complete continence" (*Familiaris consortio*, No. 84). Sexual relationships with a partner outside marriage are regarded in objective terms as a serious breach of God's law ("adultery"), even if conjugal life has irreparably broken down by human standards.

The Church's doctrine and pastoral care make high moral and spiritual demands which are not met by most faithful who have had a civil divorce and remarried, but also not by some who have married in Church. The members of the German Bishops' Conference consider these principles to be theologically necessary so that the witness of the Church for the indissolubility of sacramental marriage retain its inambiguity and clarity. In view of difficult situations in which an annulment of marriage is not possible, and of couples who consider themselves unable to live in complete continence, many bishops – at least with regard to the majority of those concerned – pose questions as to the practicability of this serious, urgent recommendation of the Church, without wishing to obscure the witness for the indissolubility of sacramental marriage in its inambiguity and clarity.



### III. Questions of today's doctrinal teaching and pastoral practice

#### 1. *Difficulties arising in today's pastoral care*

From the point of view of the majority of German bishops, today's guidelines on the way in which pastoral care deals with faithful who have had a civil divorce and remarried are problematic and pose difficulties to them and to their pastors which can hardly be overcome. Without claiming exhaustiveness, some of these difficulties should be mentioned here:

- The annulment of a Church marriage frequently goes against the feelings of the faithful whose marriage has broken down. According to the personal understanding of many, there was also no lack of willingness to undertake a Christian marriage, but events and developments occurred in the course of married life which ultimately led to the breakdown of the marriage. The path to the annulment of a marriage under ecclesial law is therefore only viable for a small number of those concerned; it does not solve the problem.
- Furthermore, the terms "annulment" and "irregular situation" are not helpful, despite clear information being provided on this matter within pastoral care, because they create the impression that the previous marriage was a "nothing". The active second marriage is hence valued as a separate social value, and is not perceived as "irregular", particularly if moral obligations arise from it vis-à-vis children.
- A growing number of faithful who have had a civil divorce and remarried consider their failure and their guilt as lying in the process of separation from their first partner, and less in the taking up of a new union. Many probably also do not properly understand the indissolubility of marriage. They consider authentic penance and repentance to lie not in cancelling the current married life. Rather, they relate Jesus' call to repent (cf. *Mk* 1,15) and to avoid sin (cf. *Joh* 8,11) to a good and better way of living in the second civil marriage, particularly if the first (sacramental) marriage cannot be taken up again, even with the best will of the partners.
- By taking up a new union, and particularly on concluding a civil marriage, the partners have assumed moral obligations towards their new partner and any children, and these must not be disregarded. Cancelling this marriage would destroy a moral value and cause serious moral damage in many cases.
- The Church's advice of marital co-habitation without a sexual union appears to many of those concerned to be morally questionable because it isolates the sexual aspect and de-integrates the sexual dimension of life from the loving and living together of a man and a woman. As a rule, those concerned are unable to comply, and it equates to selecting a celibate living arrangement for which they however have no vocation. It is not overlooked here that there are people who have indeed opted for continence in their civil second marriage.

- The assurance that faithful who have had a civil divorce and remarried continue to belong to the Church (cf. *Familiaris consortio*, No. 84; *Sacramentum caritatis*, No. 29) conflicts with non-admission to the sacraments, and is regarded by those concerned as an exclusion and as an elementary expression of being unreconciled.

This clash climaxes in the call for these people to share in the celebration of the Eucharist whilst at the same time banning them for life from taking sacramental communion. Particularly faithful who are practicing and closely involved with the parish consider the obligation to celebrate the Eucharist only inwardly is as unreasonable if it is required permanently, as is the case with remarried divorcees. They do not understand why a deviation, in an admittedly major aspect, from the Church living arrangement for which they at least do not bear sole responsibility justifies being excluded from sacramental communion for life.

- Many pastors themselves do not know what to do because they cannot provide any pastoral remedy to these situations which is accepted with an honest conscience by the faithful concerned and at the same time is in accord with the Church's current doctrine.

Such situations frequently lead to priests acting against the instruction of the Church because they do not consider it to be possible to apply it in pastoral practice. This promotes divisions within the Church, both between priests and bishops, but also between the priests themselves.

- The situation faced by non-Catholic Christians who have taken up a sacramental marriage in a registry office free from formal obligations, and who, after a civil divorce and remarriage with a Catholic, unmarried partner, find that they have received a sacrament, poses the theological question of the relationship between faith and sacrament. This applies in a similar manner to couples who, having been distant from the Church for years, frequently only have a vague idea of the marriage sacrament and of its relationship with the Church and with the Eucharist.

The caesura which can be observed today between the proclamation of the Church and the religious and moral convictions of a large majority of the faithful is highly questionable. There is in every period a tension between the demand of the Gospel and the reality of life, and the Church cannot simply take as the standard for Her proclamation the moral feelings even of a broad majority within society. On the other hand, this undoubtedly correct view cannot be taken as an excuse to ignore the experience and witness of the faithful who know of the beautiful and difficult sides of married and family life from their own experience. The discernment of the faithful in matters of faith should be heard and observed, particularly in questions of sexuality, marriage and the family. If practicing faithful who are committed towards the Church regard the way in which pastoral care deals with remarried divorcees today as an annoyance, we must seriously ask whether the Scriptures and tradition really do not show any other way. It can certainly be found in today's situation that the concern expressed in *Familiaris consortio* (No. 84), namely that admitting divorced persons to

Eucharistic communion who have remarried, would lead faithful into error and confusion regarding the Church's teaching about the indissolubility of marriage, has had the opposite effect: Non-admission is regarded as obscuring the witness of the proclamation of mercy.

## 2. *Theological questions*

### *On Scripture and tradition*

The Holy Scripture does not give any concrete instructions as to how the current difficult situation with regard to the way in which pastoral care deals with remarried divorcees is to be resolved. However, it does provide fundamental orientations for proclamation and pastoral care. Back in New Testament times, faithfulness to the message of Jesus did not rule out the prohibition of divorce being applied in a situation-orientated manner. The "adultery clause" in Matthew (5,32; 19:9), which permitted spouses to separate in cases of adultery, is significant in terms of its historical significance, as is the permission given by the Apostle Paul to Christian spouses to release unbaptised spouses from marriage should they so wish (cf. *1 Cor* 7,15). Paul however leaves no room for doubt that the "*Privilegium paulinum*" subsequently named after him is to be understood as an isolated pastoral arrangement which does not as a matter of principle restrict the general validity of the prohibition of divorce (cf. *1 Cor* 7,10-11). The 7th chapter of the letter to the Corinthians furthermore shows clearly how the Apostles wrestled over the questions which the church in Corinth asked with regard to the correct understanding of marriage, celibacy and divorce.

Such wrestling can also be recognised in the writings of the Church fathers, who unflinchingly abide by the indissolubility of marriage. However, there were also cases of adultery in the Ancient Church, followed by a second marriage-like union. The Church fathers did not find a uniform answer to the question of how the Church should deal with such faithful. Even though historical findings are always contentious in detail, it is however possible to state that faithful in individual local churches who took up a second union while the first partner was alive were able to take communion again after a period of penance.<sup>2</sup>

It is naturally not possible to simply transfer earlier isolated arrangements to the present. The Church's proclamation and pastoral care must do justice both to Jesus' prohibition of divorce and to His message of God's love for those who have contracted guilt. God's love includes the gift of repentance, releasing people from biographical dead-ends and enabling them to start anew. The Church must remain true to both aspects of Jesus' message in Her proclamation and pastoral care – albeit in different ways – even if this is not possible in all situations without conflict. Here and in other questions, She must reconcile demands for justice with mercy. As his Holiness Pope John Paul II said in his Encyclical *Dives in*

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<sup>2</sup> cf. Walter Kardinal Kasper, *Das Evangelium von der Familie*. The Gospel of the Family. The address before the College of Cardinals, Freiburg 2014, 63, 73-77. For instance, Origen writes *In Matth.* 14,23, PG 13,14-25: "some even of the rulers of the church have permitted a woman to marry, even when her husband was living, doing contrary to what was written, where it is said ... (quoting *1 Cor* 7:39 and *Romans* 7:3), not indeed altogether without reason, for it is probable that this concession was permitted in comparison with worse things, contrary to what was from the beginning ordained by law, and written ..."

*misericordia* (1980), “the fundamental structure of justice always enters into the sphere of mercy. Mercy, however, has the power to confer on justice a new content, which is expressed most simply and fully in forgiveness.”<sup>3</sup>

#### *On covenant theology*

The understanding of marriage under covenant theology doubtlessly means a theological and spiritual deepening of marriage theology which, on the one hand, expresses more clearly than was previously the case the personal relationship between the spouses, and on the other hand anchors Christian marriage more firmly within the life of the Church. Two insights need to be taken into account when it comes to the explication of the interpretation of marriage within covenant theology.

The Prophet Hosea interprets God’s Covenant with Israel in the light of the experience of fidelity and infidelity in marriage. He takes this fundamental human experience to illustrate to the Israelites God’s love and faithfulness (cf. *Hos* 1–2, also *Jes* 54,5; *Ez* 16,8). The message is similar in the letter to the Ephesians: “For this reason a man shall leave (his) father and (his) mother and be joined to his wife, and the two shall become one flesh. This is a great mystery, but I speak in reference to Christ and the church” (5,31–32).

It then needs to be noted that the relationship between wedlock and God’s Covenant with His people is similar. Along with the similarities between the two covenants, the greater dissimilarity needs to be considered in theological and pastoral terms. Whilst wedlock refers to a symmetrical relationship between two persons of equal personal dignity (cf. *Gaudium et spes*, No. 49), the Covenant between God and His people, or between Christ and His Church, is an asymmetric one. The Covenant between God and His people is then an eternal one. As seen in the New Testament, God’s faithfulness to the Covenant is shown not lastly in the resurrection of the dead: God’s faithfulness overcomes death. Wedlock, by contrast, is a time-limited bond, ending with the death of a partner (cf. *1 Cor* 7,39). It is therefore possible for a person to take up several sacramental marriages, which are valid under ecclesial law, one after the other – that is after the death of the respective spouse. The faithfulness of the infinite God is shown in the marriage between two persons only in a finite, temporal manner. This dissimilarity also relates to the relationship between divine and human love. God’s love goes beyond any standard of human love. For this reason, conjugal love too can at all times only depict God’s love in an incomplete, broken manner. The Prophet Isaiah described this relationship between human and divine love through the image of a mother’s love. In response to the accusation that God had forgotten Zion, the Lord answers: “Can a mother forget her infant, be without tenderness for the child of her womb? Even should she forget, I will never forget you” (*Isaiah* 49,15). A mother’s love for her child is a powerful image of God’s love for His people. The New Testament also states that Christ remains faithful if we are unfaithful, for he cannot deny Himself (cf. *2 Tim* 2,13). God’s love also includes those whose love has failed. If the dissimilarity between God’s Covenant with His people and

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<sup>3</sup> Encyclical Dives in misericordia, published by Secretariat of the German Bishops’ Conference (= Verlautbarungen des Apostolischen Stuhls 29), Bonn 1980, 46.

wedlock is disregarded in theological terms, the Church's proclamation and pastoral care is at risk of a moral rigourism which denies major insights under covenant theology. Biblical covenant theology includes the experience of Israel and of Jesus' disciples that God also does not give up on people who have broken His commands and whose moral efforts have failed; He approaches them to win them back for Him. It therefore remains a task for the Church's proclamation and pastoral care to encourage and assist people on their path within marriage; She however also does not give up on those whose marriages have broken down, going after them and bringing them back into the community of God's people. The question must therefore be taken seriously as to whether this analogous relationship between wedlock and God's Covenant with His people is adequately considered in today's proclamation.

### *On sacrament theology*

In their lives together, spouses experience the statement of the Apostle Paul that they hold God's gift in earthen vessels (cf. *2 Cor* 4,7). The experience not only of the past few decades, but indeed of all times, has shown – frequently painfully – that marriages of faithful can break down too. The breakdown of marriages poses the theological question of what the marriage sacrament means for the faithful. When according to human assessment reconciliation with the partner is ruled out and the marital partnership cannot be recommenced, many whose marriages have broken down feel the life-long promise of faithfulness which remains valid under ecclesial law as merely a religious law which forces them to live a life that they have neither voluntarily chosen nor to which they feel called by God. They can no longer recognise the theological meaning of the marriage sacrament which is intended to help them take the path of sanctification in this situation. The frequently irresolvable situation in which those concerned find themselves frequently shines a negative light on the principle of a marriage that is concluded for life.

Some therefore propose that not only the physical death of a partner, but also the “moral death” of the personal relationship, could dissolve wedlock. The metaphor of “moral death” however disguises the fact that the breakdown of a marriage is not a natural phenomenon, but frequently the consequence of human failure. The breaking of the promise of fidelity is distinct from the death of a partner. Jesus' message that what God has joined together, no human being must separate (cf. *Mk* 10,9) would also be de facto rescinded through recognition of “moral death”.

One should, furthermore, consider the experience gathered in the past decades in situations of separation, civil divorce and remarriage. Obligations towards the spouses persist after separation and civil divorce, some of which are also stipulated in state law. Particularly, the joint responsibility of both partners for the livelihood and upbringing of the children remains. These responsibilities, and any emotional consequences of separation, pose challenges and burdens for the second civil marriage which are recognisably different than when it comes to a second marriage that is concluded after the death of a partner. As justified as the Church's doctrine of the continuation of the marriage bond after separation is, it may not lead to placing people in dead-ends with regard to their lives from which no realistic way out can be found.

Particularly in the light of a covenant theology understanding of marriage, the question arises as to what the doctrine of the continuing marriage bond means for faithful whose marriage has irreparably broken down. The II Vatican Council understands marriage not only as a legal relationship, but as an “intimate partnership of married life and love” (*Gaudium et spes*, No. 48). Christ’s assurance applies to this partnership of mutual self-bestowment and faithfulness. What however is meant in terms of sacrament theology by Christ’s assurance if the partnership has broken down?

### *On Eucharist theology*

Those divorced remarried people who follow Christ’s invitation, take an active part in the life of the Church and make honest efforts to lead a life in love of God and neighbour find exclusion from sacramental communion to be particularly painful. Each celebration of the Eucharist which they attend shows them repeatedly that all their efforts to lead a life that pleases God are obviously never sufficient to come to the table of the Lord who, when he was still on Earth, ate with tax collectors and sinners (cf. *Lk 15,2*).

Exclusion from sacramental communion is justified by stating that the situation of faithful who have had a civil divorce and remarried objectively contradicts Christ’s covenant of love with His Church, which is made visible in the Eucharist. It should however be taken into account here that the Eucharist not only portrays Christ’s covenant of love, but also repeatedly renews it and strengthens the faithful in their love of God and neighbour. The two principles for admission to the Eucharist, that is the witness to the unity of the Church and participation in the means of grace, can clash at times: “Witness to the unity of the Church very generally forbids common worship to Christians, but the grace to be had from it sometimes commends this practice.” This statement, made in *Unitatis redintegratio* (No. 8)<sup>4</sup>, has fundamental pastoral significance beyond the ecumenical field. “The Eucharist, although it is the fullness of sacramental life, is not a prize for the perfect but a powerful medicine and nourishment for the weak. These convictions have pastoral consequences that we are called to consider with prudence and boldness” (*Evangelii gaudium*, No. 47). Pope Francis explicitly refers in this context to the witness of Church fathers Saint Ambrose and Cyril of Alexandria. Saint Ambrose writes: “I must receive it always, so that it may always forgive my sins. If I sin continually, I must always have a *remedy*.”<sup>5</sup> Cyril says: “I examined myself and I found myself unworthy. To those who speak thus I say: when will you be worthy? When at last you present yourself before Christ? And if your sins prevent you from drawing nigh, and you never cease to fall – for, as the Psalm says, ‘what man knows his faults?’ – will you remain without partaking of the sanctification that gives life for eternity?”<sup>6</sup> In light of these considerations, the question arises as to whether today’s theological justification for the exclusion of faithful who have had a civil divorce and remarried does not excessively emphasise the symbolic nature of the Eucharist and neglect participation in the means of grace.

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<sup>4</sup> cf. a. *Orientalium ecclesiarum*, Nos. 26-29.

<sup>5</sup> *De sacramentis*, IV, 6, 28: PL 16,464. Quoted from *Evangelii gaudium*, Note 51.

<sup>6</sup> In *Joh. Evang.*, IV, 2: PG 73, 584-585. Quoted from *Evangelii gaudium*, Note 51.

Also the indication that faithful who have had a civil divorce and remarried cannot receive sacramental communion, but can receive spiritual communion,<sup>7</sup> gives rise to questions in terms of sacrament theology. “In fact, someone who receives spiritual communion is one with Jesus Christ; how can he be in contradiction to Christ’s commandment? Why, then, can he not also receive sacramental communion?”<sup>8</sup> The argument is equally questionable according to which non-participation in communion gives a witness for the holy nature of the sacraments. “Is it not perhaps an exploitation of the person who is suffering and asking for help if we make him a sign and a warning for others?”<sup>9</sup>

### **3. Reflections on guilt and reconciliation**

#### *The question of guilt in case of separation and civil remarriage*

The breakdown of a marriage is as a rule experienced by the partners as an extremely painful process that is flawed with shame and guilt. Along with the marriage, life plans and hopes also break down. The period of separation is typified by misunderstandings and accusations, disappointments and hurts, experiences of unfaithfulness, unsuccessful attempts at reconciliation, and finally the painful realisation that it is no longer possible to live together. Trust, understanding and love are supplanted by mistrust, alienation and aversion, which in some cases turn into contempt and hate. People talk at cross-purposes and only live next to one another. When the moment of separation has finally come, both partners have to learn once again to go through life alone, against their will and frequently after having spent many years together. The breakdown of the marriage additionally entails economic and social consequences in many cases which also need to be overcome.

The breakdown of a marriage has serious consequences, not lastly for the children, in particular if they are not yet adults. They experience how the two persons on whose love and reliability they build gradually become strangers, how inability to talk to one another, aggression and fights become more and more the prevalent atmosphere in the family. They want their parents to make up, but consider themselves to be helpless. Their parents frequently unintentionally involve them in the fights, and they become alienated from one parent or from both parents. When the parents have finally separated, they need to learn to cope with a new situation. Parents and children need to place their relationship on a new foundation which is now determined by two different places of residence, visiting and holiday arrangements, and not lastly also new relationship constellations. Even if the marriage has broken down, the family ties between the parents and children remain. Couples may separate, but they remain father and mother together.

In theological terms, the breakdown of a marriage remains an event that entails guilt. The Prophets, and Malachi in particular, leave no room for doubt that the fact of leaving one’s wife constitutes “covering one’s garment with injustice” (*Mal* 2,16). Jesus similarly justifies

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<sup>7</sup> cf. Congregation for the Doctrine of the Faith, Letter concerning the reception of Holy Communion by the Divorced and Remarried Members of the Faithful (1994), No. 6.

<sup>8</sup> Walter Kardinal Kasper, loc cit., 61.

<sup>9</sup> ibid.

the prohibition of divorce by pointing out that man and woman become “one flesh” in marriage, so that they form a personal, physical and spiritual community, and what God has joined together, no human being must separate (cf. *Mk* 10,6–9). Anyone terminating the marital partnership sins against the joint interests of the spouses and of the children, breaks the promise which they gave on concluding the marriage, and breaches the relationship with Jesus Christ. However, the misconduct and omissions, all the guilt in the process of separation, as serious as it may be, can be forgiven in sincere repentance in the sacrament of penance, and the individual can be reconciled with God and with the community of the Church. The spouses are also not obliged to maintain their partnership at all costs. Ecclesial law speaks in this case of a “separation of table and bed”, and calls on the partners to make provision for one another, and particularly for any children that they may have had together (cf. Can. 1154).

Whilst the separation from the spouse is perceived in most cases as an also culpable event, taking up a new union, and any a civil remarriage, is also as a rule not judged by practicing Catholics as constituting guilt towards the first spouse. On the contrary, many faithful regard the second marriage as a frequently unexpected opportunity to dare to make a new beginning after the failure of the first marriage, to avoid the errors and omissions of the first marriage and to experience mutual self-bestowment and love which they painfully missed in the first (sacramental) marriage.

The ecclesial regulations which are currently in place regard the sexual consummation of the new partnership as constituting guilt. These regulations are to a certain degree contentious with regard to the doctrine on marriage of the II Vatican Council. Marriage is in fact not simply a sexual relationship, but a personal relationship based on mutual love, including sexual self-bestowment. This procedural view of marriage as a relationship event contradicts an isolated view and evaluation of sexual acts.

Since the marriage bond of sacramental marriage lives on after separation, and still gives rise to responsibilities vis-à-vis the spouse and the joint children, a church remarriage is not possible. The Church can however recognise the moral obligations emerging from a new union, in particular if essential elements of marriage are practiced in this new union such as faithfulness to one another, exclusivity, mutual responsibility, etc. For instance, the *Codex iuris canonici* from 1983 speaks of moral duties resulting from unions which are not legally recognised by the Church (cf. Can. 1071 § 1 No. 3; Can 1148 § 3). Such a union – particularly when it has a legal and public character such as a civil marriage – constitutes a moral value which may not be arbitrarily destroyed without the partners incurring serious guilt.

The call to exercise sexual restraint in the new union can be morally questionable if it places at risk the existence of this union, which has frequently given rise to children. It must therefore be seriously questioned whether one must always and fundamentally judge the sexual consummation of such a union as a serious sin, or whether there is not a need to reach a differentiated moral and theological evaluation in such cases.

*The significance of conscience*



The breakdown of sacramental marriage and the annulment of the union are a breach of Jesus' command. This does not however yet answer the question of personal guilt and responsibility (cf. also Catechism of the Catholic Church, No. 1735). There is a big difference as to whether a partner was left without guilt or whether he/she deliberately committed adultery, whether the marriage breaks down because a partner proves to be a notorious adulterer or because both partners have become alienated from one another over a prolonged period. There is also a difference as to whether, once the first marriage has broken down, the second civil marriage proves to be permanent, or a person also fails in their second or third civil marriage. The guilt will not only lie with one partner in most cases. It is frequently difficult to subsequently reconstruct motives and evaluate situations morally and legally. What causes and reasons have ultimately led to the breakdown of a marriage can hardly be stated objectively, that is from the outside. Particularly, the intimate sphere of the marital partnership is rightly not revealed even to close relatives and friends. The two partners are also not always clear as to what decisions, acts and frequently long-term developments have ultimately led to the breakdown of the marriage. In relationships which are as strongly determined by the respective personalities of the partners as a marital partnership, the experience is not infrequently made that the individual is not always clear as to the true motives and intentions of their acts, and is often not adequately able to assess the consequences of their actions. This leads to omissions and mistakes which as such appear to tend to be pardonable being able, in times of crisis, to cause the partner serious injury and further weaken the trust which is already damaged. In the process of separation, the highly painful (but not always unavoidable) experience of many is therefore that they are no longer in charge of themselves and that the development of their marriage becomes beyond their control. It is therefore only possible for the partners to answer the question of guilt after a mature examination of conscience – and that also not until a considerable time has passed during which they have gained an inner distance.

The evaluation of a new union, the question of how binding and reliable it can become, whether it has endured, and above all how the obligations emerging from this new partnership can be reconciled with the duties towards the partner from the (sacramental) marriage and towards the joint children, also cannot be answered without involving those concerned. The individual must certainly take the law of God as an orientation when reaching his or her conscience-based judgments. This does not however answer the question of how a specific situation is to be evaluated and how the individual deals with conflicting moral obligations. The concrete situation in which the individual needs to act always entails a surplus towards the general. Moral action hence requires an evaluation of this concrete situation into which the generally-valid standards must be translated.

This is why the Church has always defended the dignity of the personal conscience. "Conscience is the most secret core and sanctuary of a man. There he is alone with God, Whose voice echoes in his depths. In a wonderful manner conscience reveals that law which is fulfilled by love of God and neighbor" (*Gaudium et spes*, No. 16). In crises, the conscience is the place where man wrestles with God and with His instructions, as did our ancestor Jacob on the Jabbok in days gone by (cf. *Gen* 32,23–31), to recognise how he can do justice to love

of God and neighbour in a concrete situation. This wrestling is also recognisable in *Gaudium et spes* (No. 16): “In fidelity to conscience, Christians are joined with the rest of men in the search for truth, and for the genuine solution to the numerous problems which arise in the life of individuals from social relationships. Hence the more right conscience holds sway, the more persons and groups turn aside from blind choice and strive to be guided by the objective norms of morality.” Each person has a personal relationship with God which the Church must also respect, and which prohibits any form of pressure, or indeed coercion, being imposed on conscience.

It is presumably the task of the Church to form the conscience of the faithful. This takes place in the family, in the Catechesis and in religious instruction, in youth pastoral work and in work with adults, and above all in the Sunday sermon, but also in pastoral assistance in crisis situations, in marriage guidance and life counselling, and not lastly in the sacrament of penance. Particular significance attaches here to preparation for marriage, which is to enable couples to understand the Church’s doctrine on marriage, and above all is to encourage them to test their conscience so that they enter into and experience marriage in responsibility for one another and in responsibility before God. A Christian’s conscience is also formed in the sphere of the Church; it has a personal and an ecclesial character. The conscience-based judgment of the individual is not an arbitrary act, and it is also not merely subjective; rather, it follows reasons which the Christian – where expedient and necessary – can also make understandable in the domain of the Church.

#### *The ecclesial dimension of reconciliation*

As the Apostle Paul writes, the service of reconciliation is the service which Christ Himself assigned to the Church (cf. *2 Cor* 5,18–19). It is the task for the bishop to emulate the example of the good shepherd, that is Christ Himself, and lead the lost sheep of the Church back into the fold (cf. *Lk* 15,3–7). This admonition of Christ also applies to the way in which pastoral care deals with those whose marriage has broken down and who have had a civil divorce and remarried. They must not feel marginalised in our churches and groups. We must help them pastorally in the difficult times, give them a place in which they can deal with the painful experience of separation, support them in the recognition of their guilt and in their efforts to make good the damage wherever they can, and above all promote reconciliation between the spouses, so that, if they are no longer able to resume the marital partnership, they can go their separate ways without anger and mutual resentment. Those whose marriage has broken down should have the experience in the church community that “God never tires of forgiving us (...).With a tenderness which never disappoints, but is always capable of restoring our joy, he makes it possible for us to lift up our heads and to start anew” (*Evangelii gaudium*, No. 3).

Continuing on this path of recognising one’s own guilt and wherever possible making good the damage that one has done leads to the sacrament of penance and to reconciliation with God and with the community of the Church. Faithfulness to God’s commandments and willingness to forgive, as well as justice and mercy, are linked to one another in the sacrament

of penance. Even if someone has taken on serious guilt, such as a murder which they cannot undo and the consequences of which remain permanently, they can be released from their guilt and reconciled with God and the Church if they repent of their act and are willing to begin a new life and lead it according to God's commands. Many ask to what degree this can also apply analogously to faithful who have had a civil divorce and remarried. We as bishops are called upon to open up possibilities to also release those from their guilt who honestly repent, who may not be able to undo this guilt without contracting new guilt, but are doing everything they can to obtain God's forgiveness.

It would certainly be wrong to indiscriminately admit to the sacraments all faithful whose marriages have broken down and who have divorced and remarried under civil law. What is needed, rather, is differentiated solutions that do justice to individual cases and then apply in instances where the marriage cannot be annulled. On the basis of our pastoral experience, we would therefore like to explicitly emphasise the question which Cardinal Walter Kasper posed in his address before the College of Cardinals on 20/21 February 2014: "But if a divorced and remarried person is truly sorry that he or she failed in the first marriage, if the commitments from the first marriage are clarified and a return is definitely out of the question, if he or she cannot undo the commitments of a second marriage without new guilt, if he or she strives to the best of his or her ability to live out the second civil marriage on the basis of faith and to raise their children in the faith, if he or she longs for the sacraments as a source of strength in his or her situation, do we then have to refuse or can we refuse him or her the sacrament of penance and communion, after a period of reorientation?"<sup>10</sup>

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<sup>10</sup> Walter Kardinal Kasper, loc. cit, 65 et seq.