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Indissolubility, Divorce and Holy Communion

An Open Letter to Archbishop Saier, Bishop Lehmann, and Bishop Kasper

Your joint pastoral letter regarding ministry to the divorced and "remarried" (hereinafter *PL*), dated July 10, 1993, and part IV of the accompanying principles of pastoral care (*PPC*) have been translated and published by *Origins: CNS Documentary Service* (March 10, 1994), pp. 670-76. Our letter is addressed to you personally, but is being sent also to certain other prelates and published, not only because this matter concerns the entire Church but also because of the publicity it already has received.

We focus on only one of the things you treat: a divorced and

“remarried” person’s possible decision of conscience that he or she may receive Communion. While we respect your desire to help the divorced and remarried, we believe your handling of this matter cannot be genuinely helpful, but is injurious not only to those whom you wish to help but to the whole Catholic Church.

I

Your pastoral initiative is not concerned with “remarried” individuals who unilaterally decide, whether in good or bad faith, to receive Communion. Rather, you are establishing a way in which “remarried” individuals can obtain an *admission* to the sacraments which they and others will be able to regard as legitimate.

With respect to divorced and “remarried” individuals, you make it clear that “there can be no general, formal, official admission because the church’s position on the indissolubility of marriage would thereby be obscured” and that “There should be no indiscriminate admission or indiscriminate exclusion” (*PPC*, IV, 4).

But you also specify and authorize a way in which “remarried” individuals can gain admission to the sacraments: they are to decide for themselves, “in a personal review of . . . conscience [Gewissensentscheidung]” (*PPC*, IV, 4), whether or not they may receive Communion. You *require* that in this review and decision they apply eight criteria (“An examination of the following criteria is therefore indispensable” [*PPC*, IV, 3]) and engage in dialogue with a priest (“The participation of a priest in this clarifying process [Klärung] is necessary” [*PPC*, IV, 4]).

You also indicate that the admission to the sacraments gained in this way has ecclesial significance and will be recognized in the Church as legitimate: “pastoral dialogue can help those involved to reach a personal and responsible decision according to the judgment of their own consciences [Gewissensentscheidung] that must be respected by the church and the congregation” (*PL*, IV). “The priest will respect the judgment of the individual’s conscience, which that person has reached after examining his own conscience and becoming convinced his approaching the holy eucharist can be justified before God” (*PPC*, IV, 4). “The priest will defend such a decision of conscience against prejudice and suspicion . . .” (*ibid.*)

Our response to your initiative focuses on that decision of conscience and the beliefs on which it can depend. Those who suppose that conscience can determine good and evil autonomously or that it merely registers moral feelings would say the decision need not be either correct or erroneous. But Catholic teaching, recently reaffirmed in *Veritatis Splendor* (62–63), always has been that in every instance conscience

either is correct or in error. We shall examine, however, not the thoughts and good or bad faith of those making the decision, but what you yourselves can think about the decision's correctness, and about your responsibility in authorizing individuals to make it and in directing that they then be granted admission to Communion.

Since, as you say, "The standard for the church is the word, will and example of Jesus" (PL, II), our examination will proceed in the light of Jesus' word: "Whoever divorces his wife and marries another commits adultery against her; and if she divorces her husband and marries another, she commits adultery" (Mk 10.11-12).

That word of Jesus is recognized as decisive not only by the divorced who have resolved not to remarry but also by the "remarried" who reach their decision of conscience thus: *Sexual acts with my present partner would be adulterous, and adultery is always wrong. But if I abstain from such acts and am not guilty of some other mortal sin, I may receive Communion.* When the "remarried" promise to live as brother and sister (see PPC, IV, 2), you obviously can suppose that their decision of conscience is reached in that way and think it correct; as pastors, you also obviously can responsibly inform "remarried" persons that it is fitting for them so to judge and act, and can responsibly give effect to that decision by directing that such persons be admitted to the sacraments (ibid.), even if their receiving them could occasion mistaken and uncharitable judgments by others.

II

As you say, however, "remarried" individuals who engage in sexual acts also sometimes will reach a decision of conscience that they may receive Communion. You specify diverse situations, beginning: "This is especially the case when the conscience is convinced that the earlier, irreparably destroyed marriage was never valid" (PPC, IV, 4). Such individuals could reach their decision of conscience thus: *Since my irreparably destroyed "marriage" never was a real marriage, I am free to be married to my present partner. And, while I did not obtain an annulment from a Church tribunal and did not marry my present partner in the Church, this partnership is a valid marriage. So, I am not committing adultery and, provided I am not guilty of some other mortal sin, I may receive Communion.*

Though we believe there are very serious problems in your authorizing the making of that decision and giving ecclesial effect to it, we will not examine those problems. Instead, we shall focus on the problems raised by cases in which the "remarried" individual's decision of conscience concedes that the first relationship was a valid marriage.

You do make provision for such cases. For, while you say that

individuals, having met the requirements you set regarding criteria and process, may have a clear conscience about receiving Communion *especially* if they are convinced that their earlier partnership was not a valid marriage, you at once add: "The situation would be similar when those concerned already have come a long way in reflection and penance. Moreover, there could also be the presence of an insoluble conflict of duty, where leaving the new family would be the cause of grievous injustice" (PPC, IV, 4). Plainly, if the first relationship were thought to have been invalid as a marriage, staying in the second relationship would not seem to generate a conflict of duty.

We set aside your questionable assumption that an insoluble conflict of duty can exist in some cases and, in regard to all the cases in which "those concerned already have come a long way in reflection and penance," consider only the possible grounds on which you could believe the decision of conscience to be correct.

If this decision of conscience is to be correct, the individual making it must not ground it on a false belief. But consider a person who previously contracted a sacramental marriage whose validity is not in question, consummated it, obtained a divorce, and "remarried"; and who currently lives in sexual intimacy with a second partner. On what belief can such an individual attempt to ground a decision of conscience that he or she may receive Communion? There are only three possibilities.

First: *In accord with the Lord's word, I admit I am committing adultery, and agree that adultery is a mortal sin. However, even persisting in mortal sin is not inconsistent with receiving Communion. So, I may receive Communion.* Is it open to bishops to think that the decision of conscience thus reached can be correct? No. Insofar as the decision depends on the belief that persisting in mortal sin is consistent with receiving Communion, it cannot be correct, and it would be wrong for a bishop to teach the belief on which it depends. For that belief contradicts St. Paul's warning to examine oneself before receiving Communion (1 Cor 11.27-29), as that warning has been understood in the teaching of the Catholic Church (see, e.g., DS 1646-47, 1661).

Second: *According to the Lord's word, I am committing adultery. However, I need not be committing a mortal sin, since extramarital intercourse is not always grave matter.* Therefore, provided I am not guilty of some other mortal sin, I may receive Communion. Is it open to bishops to think that the decision of conscience thus reached can be correct? No. Insofar as the decision depends on the belief that extramarital intercourse is not always grave matter, it cannot be correct, and it would be wrong for a bishop to teach the belief on which it depends. For that belief contradicts scriptural teaching about the various

forms of extramarital intercourse (see, e.g., 1 Cor 6.9–10), as those judgments have been understood in the teaching of the Catholic Church (see, e.g., DS 1544; *Veritatis Splendor*, 49, 81).

Third: *After my first marriage failed or was destroyed, I was divorced and, at some point, that marriage dissolved. While my present relationship does not meet the Church's official, canonical requirements, it has come to have the moral reality (sittliche Realität) of marriage, and so is valid. Therefore, I am not committing adultery, and, provided I have followed the three German bishops' directions in carrying out my personal review of conscience and am not guilty of some other mortal sin, I may receive Communion.* Again we ask: Is it open to bishops to think that the decision of conscience thus reached can be correct?

You do seem to think so, for you regularly speak of remarriage and second marriage, and even suggest as an appropriate example of “witness of everyday Christian life” that such individuals “share the experiences of their unsuccessful first and not infrequently more successful [menschlich besser] second marriages in discussions [das Gespräch der Kirche] about marriage and family” (*PPC*, IV, 1). Moreover, you avoid saying the second relationship is invalid and say instead it “is not recognized as ecclesiastically valid” (*PPC*, IV, int.). Considered together, these expressions suggest that you think the second relationship can be a valid marriage, though not officially recognized as such by the Church.

However, insofar as the decision depends on the belief that the first marriage dissolved and the second relationship is valid as a marriage; it cannot be correct, and it would be wrong for a bishop to teach the belief on which it depends. Taken in reference to a valid, consummated, sacramental marriage, that belief contradicts Jesus' word about marriage, divorce, and adultery, as that word has been understood by the Catholic Church.

III

Very likely you will object at this point: The preceding paragraph begs the question by uncritically assuming the dogmatic foundation of the former pastoral practice, which we have found to be unhelpful and so are replacing on the basis of a different dogmatic foundation. This foundation's acceptability is supported by critical historical research, which shows that indissolubility does not exclude the possibility of remarriage in exceptional situations.

But, as you say: “The church cannot assume the right to disregard the word of Jesus regarding the indissolubility of marriage” (*PL*, II). Jesus' word, *whoever divorces and “remarries” commits adultery*, is exceptionless: “whoever” indicates that the proposition is universal.

Moreover, that word is not a mere unconditional prohibition of divorce (“bedingungsloses Scheidungsverbot” [PPC, II, 1]). Rather, it is an assertion that obtaining a divorce cannot succeed in dissolving one’s marriage. For, if Jesus’ word merely forbade divorce, the “remarriage” could be a marriage, and the sexual relations pertaining to it could be marital, not adulterous. So, Jesus’ word is that marriage is indissoluble without exception. Consequently, to vindicate your pastoral initiative, you must teach, at one and the same time, both that valid, sacramental, consummated marriages sometimes dissolve and that marriage is indissoluble without exception. Since those propositions are contradictory, that position is untenable, and your pastoral initiative is indefensible.

To this you might reply: Very clear and logical! But the clarity is specious and the logic manifests ignorance of history. To begin with, Jesus’ word about indissolubility refers to marriage “in the beginning,” not just to sacramental marriage. Yet St. Paul, while understanding Jesus’ prohibition to be unconditional, authorized exceptions in one kind of case (see 1 Cor 7.10–16). Subsequent history reveals many additional instances of the same sort of thing: various leaders of the church, including some popes, admitted the real possibility of divorce and remarriage in particular cases, and assumed that their doing so was compatible with Jesus’ word. There also are the *porneia* clauses (see Mt 5.32, 19.9). Whatever they mean, they were taken in some times and places to allow for divorce. Even the Council of Trent apparently took care to avoid condemning that view and practice, for, rather than condemning anyone who teaches that marriage can be dissolved because of adultery, Trent condemns anyone who says the Church errs in having taught and in teaching that the bond of marriage cannot be dissolved on that ground (see DS 1807). So, you can conclude, the historical data require an account of Jesus’ word about indissolubility which leaves room in particular cases for exceptions which should not exist but, unfortunately, do, including the exceptions for which your pastoral initiative makes arrangements, insofar as possible.

Not only do we recognize the force of that historical argument, but as persons having divorced and “remarried” friends, relatives, and even family members, we feel its appeal. On this view, as you say: “Jesus’ word is therefore no crushing law, but rather an offer, an invitation, an exhortation and a gift, which is to realize the original sense of marriage in lifelong fidelity” (PL, II). In forming their marriage covenant, a Christian couple undertake to remain faithful, despite everything, until death, and Jesus is present in their covenantal relationship so that they can keep their commitment. Nevertheless, even Christian marriages fail,

and parties to that failure even go so far as to attempt remarriage. Therein, you might say, lies the adultery of which Jesus speaks.

At this point your initiative departs from past pastoral practice: holding that conversion remains possible, you offer the divorced individual—though now living in a new, ongoing, and sexually intimate relationship—a possibility of obtaining an admission to the sacraments which he or she, and others too, will regard as legitimate. To obtain it, the individual must put behind himself or herself what you call the “shadows of the past” or what one might call the “adultery,” literal or figurative, which definitively sealed his or her marriage’s failure. Thought of in this way, the exceptions for which you make room appear compatible with Jesus’ word on indissolubility.

Still, the dogmatic foundation of the pastoral practice which your initiative is meant to improve upon provides its own account of the historical data. Admittedly, this account, like any other, must strain to cover them all, and must characterize as abuses and mistakes some practices during the first half of the Church’s history. By this account, nevertheless, Jesus’ word is neither a “crushing law” nor merely “an offer, an invitation, an exhortation and a gift.” Jesus’ word is, indeed, those good things but, besides, it is a mysterious *truth*: marriage simply cannot fail, nor can the partners themselves or anyone else on earth destroy it, for marriage is without exception indissoluble in earthly society, just as sand is without exception indissoluble in water. Still, in covering the data, this account limits indissolubility thus understood to marriage of a specific kind: valid, sacramental, and consummated marriage.

This account’s characteristic conception of indissolubility, together with the pastoral practice implementing it, has prevailed, as you well know, throughout the Roman Catholic Church since well before the Reformation. Therefore, the notion of indissolubility-with-room-for-exceptions, which you require, is incompatible with the notion of indissolubility-excluding-the-very-possibility-of-exceptions, used by the whole Catholic Church in her teaching and pastoral practice since before the Reformation.

You might deny the incompatibility of the two notions and say that the one you require holds true only of particular cases, while that used by the whole Catholic Church holds true of marriage in itself. We reply: An indissolubility which holds true only of marriage in itself holds true of nothing, since marriage and its properties are realized only in particular marriages.

Still, you might rejoin: While marriage in itself always and necessarily remains indissoluble, the apparent logical implication of

indissolubility for particular cases need not follow. After all, reality is not always logical: for instance, human persons by nature are two-legged, but some people are born without, or lose, their legs. This rejoinder, however, will not work. Unlike lacking and having legs, dissolubility and indissolubility are properties which cannot be observed directly; they are known to belong to things of a certain kind only because all behave consistently under specified conditions; and so they can be used to determine whether or not an individual belongs to a certain kind. For instance, salt is soluble in water, while sand is not, and so one can distinguish between salt and sand by testing a sample in water. Thus, if this or that particular marriage is dissolved, any marriage is dissoluble, not indissoluble.

Your pastoral initiative therefore requires a notion of indissolubility incompatible with the notion used by the Roman Catholic Church since before the Reformation. If you persist in this initiative, you cannot consistently affirm what the Church has believed for centuries about the indissolubility of marriage *in the same sense in which the Church has believed it*.

Instead, you must hold that the belief of the whole Church, from the bishops down to the last of the laity, has been in error on this matter of faith and morals—a position excluded by Vatican II (see *LG* 12). Neither can you consistently affirm *in the same sense in which Trent taught it* what that Council straightforwardly taught, in a canon which you neglect to mention, about the indissolubility of marriage: “If anyone says that the marriage bond can be dissolved by reason of heresy, domestic incompatibility, or wilful desertion by one of the parties: let him be anathema” (DS 1805). Indeed, to be consistent you must even deny the canon of Trent which you do mention (DS 1807; *PPC*, II, 2), and say the Catholic Church has erred and errs in teaching *in Trent’s sense* that marriage cannot be dissolved on the ground of adultery.

IV

In the two preceding sections, we have argued that there is no true belief that could ground the decision of conscience which your pastoral initiative authorizes people to make and to which it gives ecclesial effect. Still, could not your initiative be a pastorally responsible way of tolerating and responding to “remarried” individuals’ objectively *incorrect* decisions of conscience assumed to be made in good faith? There are three reasons for answering no.

First, since the decision is objectively incorrect, you hardly can assume responsibly that it is made in good faith; for all the beliefs that might be thought to ground it are excluded by well-known Catholic teachings.

Second, while pastors sometimes can rightly tolerate an error of

conscience made in good faith, to authorize the making of a decision is to cooperate formally in making it, not to tolerate it. You surely will agree that pastors, especially in a published document, cannot responsibly cooperate formally in the making of decisions they know to be erroneous, since doing so would violate their pastoral duty to teach and preach the truth and to correct error.

Third, since anyone erring in good faith believes his or her decision of conscience to be well-grounded, those authorized to make an erroneous decision by their pastors would be likely to draw the logical conclusion that at least one of the beliefs that could ground it must be true; other faithful who think the decision could be correct will draw the same conclusion. You would be unable, however, to explain publicly that the decision of conscience must be in error, since doing so would greatly impede individuals' making it in good faith. Thus, authorizing individuals to make the decision in question inevitably would dispose all the faithful to assent to one or more of the false beliefs that could ground the decision. If you tried to correct one or more of those false beliefs, you would more strongly dispose the faithful to assent to the other or others. But if you tried to correct all the false beliefs without admitting that the decision of conscience whose making you authorize must be incorrect, you would dispose the faithful to suppose—as they already are far too likely to suppose—that conscience can determine good and evil autonomously and without regard to faith's teachings, or that conscience, merely registering moral feelings, need not be true or false, but only peaceful and self-satisfied.

V

Your Excellencies, Esteemed Colleagues, and dear Brothers in Jesus:

We realize that you are capable and learned men who have devoted many years and much work to the theology of marriage, as have we. We realize, too, that you love the Church, as we do, and are circumspect, so that you would never have taken your pastoral initiative were you not persuaded of its soundness. We are conscious that you and we use quite different theological methodologies, and we expect that you will be far less impressed by our sort of argumentation than you might be if you shared our methodology. Therefore, much as we hope and pray for such an outcome, we hardly expect you to read this letter, agree that you have made a mistake, withdraw your pastoral initiative, and replace it with teaching and pastoral guidance which we would regard as sound.

Why, then, have we taken the trouble to write? In the hope that you and other concerned leaders and members of the Church will think through the implications of what you have done. The methodology we

use is helpful in distinguishing confused ideas and drawing out implications that the confusions had obscured. Our analysis also makes clear the significance of the fact that you are bishops speaking and acting officially and publicly, no longer only theologians or pastors quietly handling particular cases. Then too, even if you find little that impresses you in our analysis, it should show you how Catholics who do not share your methodology (including most of the faithful) will draw from your pastoral initiative conclusions that you, we are confident, did not intend.

Even if you think the indissolubility-with-room-for-exceptions, which your pastoral initiative requires, somehow is compatible with indissolubility-excluding-the-very possibility-of-exceptions, we hope you will agree that very few other Catholics will see their compatibility. So, your pastoral initiative will be pastorally injurious, even to very many Catholics who welcome it, because your documents do not clearly tell the faithful which belief, notwithstanding the Church's well-known relevant teachings, can ground the decision of conscience made with your authorization and given effect by you. Therefore, even on the hypothesis that there is some such true belief, your pastoral initiative leaves the faithful in much the same position as if there were none: it disposes them to assent to one or more of the relevant false beliefs, and/or to conclude that all the relevant Catholic teachings are questionable, and/or to infer that truth is irrelevant to conscience, which need only be at ease with itself.

What, then, is to be done? You may be tempted to try to smooth over the tension between your pastoral initiative and what most Catholics, even those who reject the Church's teaching about divorce and "remarriage," believe that teaching to be. Far from helping, however, any such attempt will cause greater injury. When the leaders of a church try to solve problems by embracing contradictory propositions, ordinary people regard their effort as sham.

It should, instead, be openly admitted that there is a conflict between two notions of indissolubility. It should be openly admitted, too, that, while you see that conflict as paradox, there are capable and learned people who see it as contradiction. Please consider the importance of the issue and the urgency of resolving it. In our opinion, nothing short of a definitive judgment, collegially arrived at, will serve the purpose. We beg you to consider that possibility prayerfully, and if you find merit in it, to recommend it to the Holy Father.

18 March 1994

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