

Catholic Doctrine on Divorce and Remarriage: A Practical Theological Examination

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Abstract

This essay uses practical theology as a method to investigate the disconnect between church teaching on divorce and remarriage without an annulment and the lived experience of the faithful, and argues for a reformulation of the doctrine. First, it presents the interrelationship between sociology and the *sensus fidelium* as a methodological framework for doing practical theology; second, it explores the sociological data on divorce and remarriage; third, on the basis of historical-theological justification, it argues for the reformulation of church doctrine; finally, it posits that such reformulation is an authentic methodological and normative development of Catholic tradition.

Keywords

annulment, communion, divorce, Karl Rahner, remarriage, re-reception, Richard Osmer, *sensus fidelium*

This essay examines the Catholic doctrine on divorce and remarriage employing the method of practical theology outlined by Richard Osmer. That method embraces four separate but interrelated processes: first, there is a descriptive process that gathers information; second is an interpretive process that enables us “to better understand and explain why these patterns and dynamics are occurring;” third is a normative process that deduces from description and interpretation “ethical norms to guide our responses” to situations “in the light of the gospel and of human

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experience;¹ and fourth, a practical process that determines “strategies of action that will influence situations” in the light of the gospel and of human experience.² The descriptive and interpretive processes describe and explain what is; the normative and practical processes determine what ought to be.

The thesis of the essay is straightforward and simple. The actual situation in the Catholic Church with respect to divorce and remarriage without annulment is a disconnect between the official teaching of the church and the belief of a large majority of Catholic faithful; that disconnect signals a re-reception of the church’s teaching on divorce and remarriage in line with the historical re-receptions of other important moral doctrines; any re-reception of doctrine in light of the Gospel and human experience influences both doctrine and practice in the direction of what ought to be. Following Karl Rahner, we argue throughout that, to recognize the church’s contemporary situation and to perform the required theological reflection, “practical theology certainly requires sociology.”³ This argument develops in four cumulative sections. First, it presents the interrelationship between sociology and the *sensus fidelium* as a methodological framework for doing practical theology; second, it explores the sociological data on divorce and remarriage without annulment that calls for pastoral reflection and action; third, on the basis of historical-theological justification, it argues for the reformulation of magisterial norms controlling divorce and remarriage; finally, it posits that such reformulation is an authentic methodological and normative development of Catholic tradition.

Divorce and Remarriage: What Is and Why

We begin this section by highlighting the interrelationship between sociology, the science of “what is,” and the scriptural and historical foundations of the theological concept of *sensus fidei*, the “what is” of the Catholic situation, to establish a methodological framework for practical theology. This framework verifies a disconnect, which we demonstrate in detail in section two, between the actual lived reality of Catholics who are divorced and remarried without annulment and the teaching of the church that creates their situation.

Sensus Fidei, Sensus Fidelium, and Sociology

No Catholic theologian would deny that ecclesial faith provides the primary source for theological reflection, and that real faith always includes real action according to it. The

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1. *Gaudium et Spes* (December 7, 1965), 46, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html (hereafter cited as *GS*).
 2. Richard R. Osmer, *Practical Theology: An Introduction* (Grand Rapids, MI: Eerdmans, 2008), esp. 1–30.
 3. *Ibid.*, 105.

Letter of James is usually advanced as *the* foundation for this Catholic claim that faith includes action. “What good is it, my brothers and sisters,” James asks if you say you have faith but do not have works? Can faith save you? . . . faith by itself, if it has no works, is dead, (2:14–17, NRSV throughout). James, of course, is not the only New Testament book connecting faith and praxis. His text reverberates with loud echoes of Matthew. From his Sermon on the Mount—“You will know them by their fruits” (7:16) and “not everyone who says to me ‘Lord, Lord,’ will enter the kingdom of heaven, but he who does the will of my Father in heaven” (7:21)—to the great last judgment scene (25:31–46), Matthew is clear: genuine faith includes the good fruit of action. One can conclude from the presence of genuine faith to good action; conversely, for those who profess genuine faith, one can conclude from action to the faith that underpins it. Sociology can play an important part in that process by illuminating action, making it possible for theologians to conclude to the faith that grounds and sustains it.

Sensus fidei is a theological concept which denotes “the instinctive capacity of the whole church to recognize the infallibility of the Spirit’s truth.”⁴ It is a charism of discernment, possessed by the whole church, which receives a teaching to be held in both faith and praxis. The *sensus fidei* of the whole church creates a shared *sensus fidelium*, a shared belief among all or, at least, a majority of believers. Aquinas explained *sensus fidei* in scholastic language, teaching that the faithful understand a teaching *per modum connaturalitatis*, that is, they incline naturally in faith to adhere to what they believe is in harmony with the true meaning of the word of God.⁵ Robert Bellarmine added his more direct opinion that “what all the faithful hold as a matter of faith is necessarily true and of faith.”⁶ One of the contentious debates in the development of the Second Vatican Council’s *Lumen Gentium* was over who should be consulted about Catholic doctrine. Vatican theologians argued that it was only the Magisterium who determined doctrine, a claim that had become common since the definition of papal infallibility by the First Vatican Council in 1870. Conciliar bishops and theologians responded with the more historically accurate claim that the church’s faith was preserved in the faith of *all* believers, lay and clerical together. They argued that, although the Magisterium spoke *for* the church, it was also obliged to speak *from* the church and that, when it ignored a clear *sensus fidelium* in the whole church, it was being unfaithful to the church’s rule of faith articulated by Vincent of Lerins in the fifth century: “what has been believed everywhere, always, by all.”⁷ *Lumen Gentium* puts the church’s position beyond doubt. “The body of the faithful *as a whole*,” it taught,

4. John E. Thiel, *Senses of Tradition: Continuity and Development in the Catholic Faith* (New York: Oxford University, 2000), 47.

5. Thomas Aquinas, *Summa Theologiae*, 2a–2ae 2, 3, ad 2. See J. de Guibert, “À propos des textes de Saint Thomas sur la foi qui discerne,” *Révue des Sciences Religieuses* 9 (1919): 30–44; C. H. Joyce, “La foi qui discerne d’après Saint Thomas,” *Révue des Sciences Religieuses* 6 (1916): 433–55.

6. Cited in Avery Dulles, “*Sensus Fidelium*,” in *America*, November 1, 1986, 240–243 at 240.

7. Vincent of Lerins, *Commonitorium Primum* 2 (Migne, *PL* 50.640), our translation.

anointed as they are by the Holy One (cf. 1 John 2:20; 2:27), cannot err in matters of belief. Thanks to a supernatural *sensus fidei* which characterizes the people *as a whole*, it manifests this unerring quality when, ‘from the bishops to the last of the faithful,’ it manifests universal agreement in matters of faith and morals.⁸

In other words, it manifests the *sensus fidelium*.

These texts make two things clear. First, a shared *sensus fidelium* of virtually the whole church is a gift of grace; its source is the Spirit of God. Second, this gift is given to the *whole church*, not only to a hierarchical few. “The entire People of God is the subject that receives.”⁹ The sentence following the text from *Lumen Gentium* cited above muddies the clarity somewhat, which is not uncommon in the documents of Vatican II that were sometimes the result of theological compromise. “By this appreciation of the faith ... the People of God, guided by the sacred teaching authority (*Magisterium*), and obeying it (*cui fideliter obsequens*), receives ... truly the word of God.” This translation by Austin Flannery underscores the attitude Vatican theologians demand of believers toward the ecclesial *Magisterium*: the people of God are to be guided by the *Magisterium* and are to *obey* it.¹⁰ The translation of the Latin *obsequium* by the English *obedience*, however, is debated and, therefore, not compelling. In the 1983 Canon Law Society’s official English translation of the *Code of Canon Law*, *debitum obsequium* is translated as *due respect* (c. 218), and *religiosum obsequium* as *religious respect* (cc. 752, 753).¹¹ In the 1997 Canon Law Society’s official English translation of the *Code of Canon Law*, however, *debitum obsequium* is translated as *due submission* (c. 218), and *religiosum obsequium* as *religious submission* (cc. 752, 753).¹² There is a wide gulf between obedience and submission on the one hand, and respect on the other hand, and the translations by Flannery and the 1997 *Code of Canon Law* bridge the gulf in favor of passive obedience rather than respectful dialogue. Francis Sullivan’s reading of *obsequium* appears to us to be more accurate:

As I understand it, then, to give the required *obsequium religiosum* to the teaching of the ordinary *Magisterium* means to make an honest and sustained effort to overcome any

8. *Lumen Gentium* (November 21, 1964), 12, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html (hereafter cited as *LG*), emphasis added.

9. Hermann J. Pottmeyer, “A New Phase in the Reception of Vatican II: Twenty Years of Interpretation of the Council,” in *The Reception of Vatican II* ed. Giuseppe Alberigo, Jean-Pierre Jossua, and Joseph A. Komonchak (Washington, DC: Catholic University of America, 1987), 27–43 at 30.

10. Austin Flannery, *Vatican Council II: The Conciliar and Postconciliar Documents* (Collegeville: Liturgical, 1992), 363. Cf. *LG* 12.

11. *Code of Canon Law, Latin-English Edition* (Washington, DC: Canon Law Society of America, 1983).

12. *Code of Canon Law, Latin-English Edition: New English Translation* (Washington, DC: Canon Law Society of America, 1999).

contrary opinion I might have, and to achieve a sincere assent of my mind to this teaching.¹³

In the church still emerging from the Second Vatican Council, which is a communion, any effort to evaluate a magisterial teaching will automatically include open dialogue, uncoerced judgment of conscience, and free consensus. That is the way a shared, authentic, and universal *sensus fidelium* is formed.

A final, crucial question with respect to *sensus fidelium* arises here: how are we to understand the term “whole church” in the documents of Vatican II? Does it have to be 100 percent agreement? Or can it be 75 percent, or the 68 percent we shall note with respect to divorce and remarriage without annulment, or the 2014 and 2015 synods’ rule of 66.6 percent for the approval of any proposition? Looking back over the fifty years since Vatican II, we know that the percentage of Catholics opposing the church’s teaching on divorce and remarriage without annulment has been steadily increasing, especially among Western, younger Catholics. Extrapolating from that steady increase to the next fifty years, we consider it safe to predict that the church will have developed its teaching on the question in that time. We are sustained in this prediction, not only by the sociological statistics but also by knowledge of the historical development of the Catholic moral doctrines on usury, slavery, and religious freedom. Theological history shows that in none of these developments was the Magisterium or its moral theologians leading the way. They were, rather, as John Noonan notes, “catching up with what [was] already established” in the social reality in which believers lived and worked out their following of Jesus.¹⁴ They were catching up with the *sensus fidelium* and praxis of believers in a modernizing world. So it is now with respect to divorce and remarriage without annulment in the contemporary Catholic Church.

The economic world and its bankers had accepted usury, then understood as taking interest on a loan, long before the Magisterium accepted it; liberal democracies, acknowledging and seeking to promote the dignity of all human beings, had outlawed slavery and established religious freedom long before their acceptance by Vatican II in 1965.¹⁵ We predict that, as the understanding of the sexual dignity of men and women

13. Francis A. Sullivan, *Magisterium: Teaching Authority in the Catholic Church* (Dublin: Gill and Macmillan, 1985), 164. Although Sullivan does assert that the English translation of *obsequium* is submission (159), his definition of *obsequium*, which recognizes some people may be “unable to give their sincere assent to some particular teaching of the magisterium” (164) implies, in our understanding, respect for that teaching rather than submission to it. See John P. Beal, James A. Coriden, and Thomas Joseph Green, eds., who note, “an exact translation of *obsequium* is difficult but ‘submission’ is not the best one because it exaggerates the force of the Latin.” Beal, Coriden, and Green, *New Commentary on the Code of Canon Law* (New York: Paulist, 2000), 916.

14. John T. Noonan, Jr., *A Church That Can and Cannot Change* (Notre Dame, IN: University of Notre Dame, 2005), 211.

15. For slavery, see *GS* 4 and 29; for religious freedom, see *Dignitatis Humanae* (December 7, 1965), 2 and passim, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html (hereafter cited as *DH*).

and their inalienable right to personal, religious, and therefore also moral freedom continue to develop, a concomitant development of the doctrine on divorce and remarriage without annulment will take place similar to the developments of the doctrines on usury, slavery, and religious freedom. That judgment has been fortified by the synod's ambiguous hint at the use of the previously prohibited¹⁶ *internal forum* in the case of communion for the divorced and remarried without annulment.¹⁷

Reception and Non-Reception

There is another ecclesial process that illuminates the whole church's faith at any time in its history, namely, the process of reception. Reception is a process by which virtually¹⁸ all the members of the church assent to a teaching presented to them as ecclesial faith, thereby assimilating the doctrine into the life of the whole church.¹⁹ Reception does not make a teaching true, but it confirms that the teaching is both accepted as true in virtually the whole church and is in agreement with the tradition on which the church stands. A non-received teaching is not thereby necessarily false or invalid; it is simply irrelevant to the life of the church. As culture, time, and place enculturated the Gospel, the good news of what God has done in Jesus the Christ, these factors also bring about the enculturation of every doctrine and every reception of doctrine.²⁰ The act of

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16. See John Paul II, *Familiaris Consortio* (November 22, 1981), 84, http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html (hereafter cited as *FC*); and *Congregation for the Doctrine of the Faith, Concerning the Reception of Holy Communion by Divorced and Remarried Members of the Faithful* (September 14, 1994), 4–6, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_14091994_rec-holy-comm-by-divorced_en.html.
 17. See Synod of Bishops, *The Final Report of the Synod of Bishops to the Holy Father, Pope Francis* (24 October 24, 2015), 85–86, http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20151026_relazione-finale-xiv-assembly_en.html. While Pope Francis's recent apostolic exhortation, *Amoris Laetitia*, did not explicitly change Catholic teaching and praxis with respect to the situation of Catholics divorced and remarried without communion, it certainly offered a new key for a changed praxis. That key is not passive *obedience* to the teaching of the church but an accompanied active *discernment*, so valued in his Jesuit tradition, followed by a free and inviolable decision of conscience. We shall return to this claim at the end of our essay.
 18. In this essay, we embrace the ambiguity of the word *virtual*, and argue that it can be specified only by dialogue and consensus in the church. We have no doubt that 86 percent of any population constitutes the vast majority of it, but is 75 percent or the 66 percent required by the Synods on the Family in 2014 and 2015? Only dialogue and consensus can decide.
 19. The foundational work on reception was done by Yves Congar, "La réception comme réalité ecclésiologique," *Revue des Sciences Philosophiques et Théologiques* 56 (1972): 369–403, and Alois Grillmeier, "Konzil und Rezeption: Methodische Bemerkungen zu einem Thema der ökumenischen Diskussion der Gegenwart," *Theologie und Philosophie* 45 (1970): 321–52. See additional bibliography in Richard R. Gaillardetz, *Teaching with Authority: A Theology of the Magisterium in the Church* (Collegeville: Liturgical, 1997), 252–53.
 20. See *Dei Verbum* (November 18, 1965), 11–20, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651118_dei-verbum_en.html; Congregation

reception does not receive the tradition of the past unchanged; the past is always re-received in the present.²¹ There are many examples in Catholic history of both reception and non-reception.

Already in the New Testament, both Jesus and those he sends are to be received (Matt 10:40–41; Mark 6:11; Luke 9:5). This underscores a theological truth that should never be forgotten, namely, reception in the Catholic Church is primarily the reception of the *person* of Jesus the Christ, never only the reception of doctrines about him. The word of God is also to be received (Mark 4:20), as is the message of Jesus (Matt 19:11–12; John 3:11; Rev 2:41) and the Gospel (1 Cor 15:1; Gal 1:9–12), leading Giuseppe Alberigo to define the church as “the communion of those who receive the gospel.”²² John Zizioulas summarizes the importance of reception in the church when he comments that “the Church was born out of a process of reception and has grown and existed through reception.”²³

It is common to distinguish two broad types of Catholic theologians, usually called traditionalist and revisionist theologians. We do not believe that designation accurately describes and distinguishes them and, therefore, we use a different designation, hierarchical and communional theologians. Hierarchical theologians tend to be staunch advocates of magisterial teaching; communional theologians, while recognizing, appreciating, and respecting the authority of the Magisterium on moral matters, do not accept it as the ultimate determinant of moral truth regardless of the arguments proposed, and theological history amply justifies their caution. Reception is understood differently by hierarchical and communional theologians. The former tend to reduce it to magisterial fiat and believers’ obedience, in keeping with the hierarchical model of church still favored by them, “a wholly pyramidal conception of the Church as a mass totally determined by its summit.”²⁴ Embracing the communion model of church re-introduced into the Catholic world by the Second Vatican Council,²⁵ the latter tend to believe that reception requires dialogue, judgment, and consensus among the whole body of believers. Reception, Francis Sullivan avows, “is not a matter of blind obedience to formal authority, but of the divinely-assisted recognition of the truth of what is taught.”²⁶

for the Doctrine of the Faith, *Mysterium Ecclesiae* (June 24, 1973), 5, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19730705_mysterium-ecclesiae_en.html; John Zizioulas, “The Theological Problem of Reception,” *Centro Pro Unione* 26 (Fall 1984): 3–6 at 6.

21. Pottmeyer, “A New Phase in the Reception of Vatican II,” 27–43.
22. Giuseppe Alberigo, “The Christian Situation after Vatican II,” in Alberigo, Jossua, and Komonchak, *The Reception of Vatican II*, 1–24 at 3.
23. Zizioulas, “The Theological Problem of Reception,” 4.
24. Yves Congar, “Reception as an Ecclesiological Reality,” *Concilium* 77 (1965): 43–68 at 60.
25. See, for example, Jean-Marie R. Tillard, *Church of Churches: The Ecclesiology of Communion* (Collegeville: Liturgical, 1992); Michael G. Lawler and Thomas J. Shanahan, *Church: A Spirited Communion* (Collegeville: Liturgical, 1995); Walter Kasper, *The Catholic Church: Nature, Reality and Mission* (New York: Bloomsbury T&T Clark, 2015).
26. Sullivan, *Magisterium*, 112.

Based on his vast historical and theological knowledge, Yves Congar points out that obedience is called for “if the church is conceived as a society subject to monarchical authority,” and dialogue and consensus are required when the church is seen as “a communion of churches.” “It is certain,” he continues, “that this second conception was the one that prevailed effectively during the first thousand years of Christianity, whereas the other one dominated in the West between the eleventh-century reformation and Vatican II.”²⁷ Edward Kilmartin agrees, emphasizing that the patristic and medieval notion of reception was “a tributary of the dominant ecclesiology of that age: a communion ecclesiology.”²⁸ Reception of doctrine is not the task of the Magisterium alone but “of the *whole* people . . . from the bishops to the last of the faithful.”²⁹ In the case of infallible statements, “the assent of the Church can never be lacking to such definitions on account of the same Spirit’s influence, through which Christ’s *whole* flock is maintained in the unity of the faith and makes progress in it.”³⁰ If “Christ’s whole flock” is involved in receiving infallible teaching, it is a safe theological conclusion that the whole flock is involved also in the process of receiving non-infallible teaching.

There are many well-known examples of non-reception in history, which need only be listed here without elaboration. Between 1150 and 1550 the church taught that “seeking, receiving, or hoping for anything beyond one’s principal—in other words looking for profit—on a loan constituted the mortal sin of usury.”³¹ The Council of Vienne (1311–12) condemned the taking of interest in the most severe terms.³² Usury was forbidden as contrary to natural law, church law, and the Gospel by the ecumenical councils, Lateran II (1139) (DS 716) and Lateran III (1179) (DS 753), and unanimously by popes and theologians of the time. Its peaceful reception was altered by the historic rise of capitalist economies and the approval of interest by lay and clerical believers alike. A similar process occurred with teaching on slavery. As late as 1860, the church “taught that it was no sin for a Catholic to own a human being; to command the labor of that other human being without paying compensation . . . to sell him or her for cash.”³³ In 1866, the Holy Office, now the Congregation for the Doctrine of the Faith (CDF), issued an instruction about slavery. “Slavery itself, considered as such in its essential nature, is not at all contrary to the natural and divine law, and there can be several just titles of slavery.”³⁴ Gradually, however, as European democracies came to

27. Congar, “Reception as an Ecclesiological Reality,” 62.

28. Edward Kilmartin, “Reception in History: An Ecclesiological Phenomenon and Its Significance,” *Journal of Ecumenical Studies* 21, no. 1 (1984): 34–54.

29. *LG* 12, emphasis added.

30. *LG* 25, emphasis added.

31. John T. Noonan, Jr., “Development in Moral Doctrine,” *Theological Studies* 54 (1993): 662–77 at 662, <https://doi.org/10.1177/004056399305400404>.

32. H. Denzinger and A. Schoenmetzer, ed., *Enchiridion Symbolorum Definitionum et Declarationum de Rebus Fidei et Morum* (Freiburg: Herder, 1965), 906 (hereafter cited as DS).

33. Noonan, “Development in Moral Doctrine,” 664.

34. Cited in Charles E. Curran, “Authority and Dissent in the Roman Catholic Church,” in *Vatican Authority and American Catholic Dissent*, ed. William W. May (New York: Crossroad, 1987), 27–34 at 29.

appreciate and advance the dignity of the human person, this teaching was non-received and abandoned at the end of the nineteenth century. A third example of non-reception has to do with Catholic teaching on religious freedom. From the middle of the fourth to the middle of the twentieth century, a 1600-year tradition, the Catholic Church taught that only Christian faith had the right to freedom of expression and worship, and that those who did not share that faith could be punished, even by death, for their false belief. In 1864, Pius IX condemned “that erroneous opinion,” stating that “freedom of conscience and worship is each man’s personal right which ought to be proclaimed and asserted in every rightly constituted society.”³⁵ Against the loud objections of a vocal Vatican minority, this tradition was un-received by the Second Vatican Council and re-received in a way that affirmed as a sacred religious right the freedom to believe as one freely chooses (*DH* 2–3). These cases are exemplary when we consider what the church might learn from the sociological data about divorce and remarriage without annulment.

Margaret Farley asserts, correctly, that moral norms cannot become effective in the church merely “from receiving laws or rules.” Reception “entails at the very least a discernment of the meaning of laws and rules in concrete situations.”³⁶ Such discernment requires reflection on human experience, personal, social, and moral, and the social sciences throw revealing light on that experience. We agree wholeheartedly with Farley’s further assertion that “it is inconceivable that moral norms can be formulated without consulting the experience of those whose lives are at stake.”³⁷ It is equally inconceivable that doctrines can be formulated without consulting the faith of the whole church which is articulated in them. We argue that so it should be too with the moral norms related to divorce and remarriage without annulment.

Divorce and Remarriage: Contemporary Sociological Data

We move now, as a concrete illustration of *sensus fidelium* and reception in the church, to examine the data of sociological research with respect to the question of divorce and remarriage without annulment. Scholastic theology provided a timeless norm for a timeless church, but twentieth-century theology, understanding that the church is not timeless but historical, judged that timeless norms could not suffice as the theology of a time-conditioned church.³⁸ The Second Vatican Council demanded that Christians scrutinize “the signs of the times” and interpret them “in the light of the gospel” (*GS* 4), and scholastic theology, with its ahistorical conceptual system, could not stand up

35. Pius IX, *Quanta Cura* (December 8, 1864), <https://w2.vatican.va/content/pius-ix/la/documents/encyclica-quanta-cura-8-decembris-1864.html>, trans. Claudia Carlen, *The Papal Encyclicals 1740–1878* (Raleigh: McGrath Publishing, 1981), 383, emphasis added.

36. Margaret A. Farley, “Moral Discourse in the Public Arena,” in May, *Vatican Authority and American Catholic Dissent*, 168–86 at 177.

37. *Ibid.*

38. See Congregation for the Doctrine of the Faith, *Mysterium Ecclesiae*, 5.

to such scrutiny and gave way. The question continues to be “gave way to what?” The partial answer of this essay is founded in the teaching of the council that “in pastoral care sufficient use should be made, not only of theological principles, but also of the findings of secular sciences, especially psychology and sociology.”³⁹ This implies that, when theologians seek to understand *what* is actually received and believed, sociological research is as indispensable a tool as the philosophy of Aristotle was for Scholasticism. The church praises sociological research, teaching that “methodical research in all branches of knowledge . . . can never conflict with the faith, because the things of the world and the things of faith derive from the same God” (*GS* 36). John Paul II teaches that “the Church values sociological and statistical research,” but immediately adds the proviso that “such research alone is not to be considered in itself an expression of the *sensus fidei*” (*FC* 5). The Pope is correct. Empirical research does not create *sensus fidei* or faith which is a gift of God, but it surely does reveal *what* the *sensus fidei* is. How could what is believed ever be determined without sociological survey? Without sociological surveys to illumine the niches and crannies of human life and the doctrines that grow in them, the work of theologians appears, at best, as no more than interesting speculation or, at worst, as abstract anachronism. If “the body of the faithful as a whole cannot err in matters of belief” (*LG* 12), that infallibility must include the beliefs that believers *actually* believe. It is that actual belief that is illuminated by sociological survey.

John Paul II’s words cited above are intended to suggest that the *theological* reality, *sensus fidei*, is not reached solely by demonstrating sociologically a majority reception or non-reception of a teaching. The church is not a political democracy, nor does it determine moral doctrine by consensus in which majority head count controls reality; neither, however, is it a monarchy. The church is, rather, a communion of believers who accept the apostolic faith handed down to them in a tradition that stretches back to the Jesus story recorded in their sacred scriptures. Those very scriptures or, more precisely, the way Christians read and interpret them, illustrate why majority rule can never be the sole rule of faith. The authentic Catholic approach to reading and interpreting the scriptures today is an historical-critical approach, the literal meaning of the texts being the meaning intended by the writers at a particular time, place, and culture.⁴⁰ The approach

39. *GS* 62. See also *GS* 44: “Thanks to the experience of past ages, the progress of the sciences, and the treasures hidden in the various forms of human culture, the nature of man himself is more clearly revealed and new roads to truth are opened.”

40. Pius XII, *Divino Afflante Spiritu* (September 30, 1943), http://w2.vatican.va/content/pius-xii/en/encyclicals/documents/hf_p-xii_enc_30091943_divino-afflante-spiritu.html; Pontifical Biblical Commission, *Instruction Concerning the Historical Truth of the Gospels* (April 21, 1964), https://www.bc.edu/content/dam/files/research_sites/cjl/texts/cjrelations/resources/documents/catholic/pbcgospels.htm; *Dei Verbum* (November 18, 1965), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651118_dei-verbum_en.html (hereafter cited as *DV*); Pontifical Biblical Commission, *The Interpretation of the Bible in the Church* (March 18, 1994), <https://www.wewn.com/library/CURIA/PBCINTER.HTM>.

of the majority of Christians, Catholic and Protestant alike, is different; the literal meaning of the text is the meaning they find in and through modern language translations, ignoring the time, culture, place, and meaning of the writer. Interpreting documents written in another time and another culture is a difficult task, requiring competence in languages, cultures, social rules, and histories that are not one's own. Only those believers who understand the specialties involved are qualified to be judges. A majority opinion that results from a lack of education and of theological competence can never be permitted to be the exclusive rule of faith.

The same argument applies to the moral norms of the church. They are best understood by believers who grasp the philosophical and theological precision of the language in which they are articulated. Moral norms and their meanings can be properly evaluated, Avery Dulles argues, only by believers who understand the historical, philosophical, and theological competencies involved. To determine personal *sensus fidei* and social *sensus fidelium*, therefore, "we must look not so much at the statistics, as at the quality of the witnesses and the motivation for their assent."⁴¹ We agree. *Sensus fidei*, the connatural capacity to discern the truth into which the Holy Spirit of God is leading the church, must be carefully discerned by all who are competent. John Paul II is correct: a head count alone does not necessarily reveal the faith of the church. A head count, however, of the vast majority of *all* believers, including the theologically-competent believers discerning the statistics through the lenses of their theological competencies, most certainly reveals the actual faith of the whole church. What sociology can and does show is that, in the case of the moral doctrine related to divorce and remarriage without annulment, the contemporary *sensus fidelium* of both theologically competent and non-competent believers shows a dramatic development and is at one.

Many sociological research projects inform us about the faith-praxis of Catholics in the United States.⁴² We cite only three, and focus only on data related to divorce and remarriage. William D'Antonio and his colleagues conducted three surveys among American Catholics, in 1987, 1993, and 1997. They report increasing agreement with the statement that a person can be a good Catholic without obeying the Magisterium's teaching on divorce and remarriage. In all three studies, the level of agreement with

41. Avery Dulles, "*Sensus Fidelium*," 242.

42. Patrick H. McNamara, *Conscience First: Tradition Second* (Albany: State University of New York, 1992); Robert A. Ludwig, *Reconstructing Catholicism for a New Generation* (New York: Crossroad, 1995); William V. D'Antonio, James D. Davidson, Dean R. Hoge, Ruth A. Wallace, *Laity American and Catholic: Transforming the Church* (Kansas City: Sheed and Ward 1996); James D. Davidson, Andrea S. Williams, Richard A. Lamanna, Jan Stenftenagel, Kathleen Maas Weigert, William J. Whalen, and Patricia Wittberg, *The Search for Common Ground: What Unites and Divides Catholic Americans* (Huntington, IN: Our Sunday Visitor, 1997); William V. D'Antonio, James D. Davidson, Dean R. Hoge, and Katherine Meyer, *American Catholics: Gender, Generation, and Commitment* (Lanham: Rowman and Littlefield, 2001); Dean R. Hoge, William D. Dinges, Mary Johnson, and Juan L. Gonzales, Jr., *Young Adult Catholics: Religion in the Culture of Choice* (Notre Dame: University of Notre Dame, 2001).

that statement increased incrementally from 57 percent to 62 percent to 64 percent. The authors comment that the majority of American Catholics see divorce and remarriage without annulment as neither “defining a good Catholic today” nor “definitive of a good Catholic.” A 1996 Gallup study replicated these data: 61 percent of Catholics believed that those who are divorced and remarried without annulment are still good Catholics.⁴³

D’Antonio and his colleagues comment that their data “depict a trend away from conformity and toward personal autonomy,” in sexual issues.⁴⁴ They further note that this trend is most marked in “post-Vatican II Catholics,” those aged thirty-eight and younger,⁴⁵ and is confirmed by the responses to a question about the locus of moral authority. In 1999, only 19 percent of respondents assigned to church leaders the moral authority for deciding whether to get remarried without an annulment, whereas 45 percent assigned it to the individual.⁴⁶ Dean Hoge and his colleagues also documented this trend from conformity to personal autonomy. In their study, 73 percent of Latinos and 71 percent of non-Latinos agreed that, in the realm of morality, the final authority about good and bad is the individual’s informed conscience.⁴⁷ They comment that “this reliance on the individual authority is the same found in past research on Catholic young people.”⁴⁸ It is also found in other sectors of the church besides America.⁴⁹ Such data do two important things: they reveal what the *sensus fidelium* of Catholics actually is and how it is at variance with the belief proposed by the church’s Magisterium. These data cannot be ignored by theologians who wish to be taken seriously, where claims about “what the church believes” are so easily contradicted by the data of sociological research.

Responding to Pope Francis’s request for consultations for the recent Synods on Marriage and the Family, Spanish Univision Communications conducted a global survey in December 2013 and January 2014. The survey gathered data from 12,038 self-identified adult Catholics in the eleven countries with the world’s largest Catholic populations: Brazil, Mexico, Philippines, United States, Italy, Colombia, France, Poland, Spain, Democratic Republic of the Congo, and Argentina, in that order. Uganda was added as a twelfth country to achieve a better African representation. The study sought “to determine where Catholic opinion currently lies on some of the more

43. George H. Gallup, Jr., *Religion in America 1996* (Princeton: Princeton Religion Research Center, 1996), 44.

44. D’Antonio, et al., *American Catholics*, 99.

45. *Ibid.*, 84.

46. *Ibid.*, 76.

47. As we shall see later in this essay, Pope Francis agrees with them. See Francis, *Amoris Laetitia* (March 19, 2016), 303, https://w2.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf (hereafter cited as *AL*).

48. Hoge, et al., *Young Adult Catholics*, 59–60.

49. See Michael Hornsby-Smith, *Roman Catholicism in England: Customary Catholicism and Transformation of Religious Authority* (Cambridge: Cambridge University, 1991); John Fulton, ed., *Young Catholics at the New Millennium* (Dublin: University College, 2000).

controversial issues facing the church in the modern era, and specifically the extent to which Catholic public opinion [or faith] mirrors Catholic doctrine.”⁵⁰ We again cite only the data related to divorce and remarriage without annulment. They reveal that the disconnect reported in the United States between official Catholic teaching and the belief of Catholics is experienced worldwide.

A first question asked: “Do you agree or disagree with Catholic Church policy on divorce that says ‘An individual who has divorced and remarried outside of the Catholic Church is living in sin which prevents them from receiving Communion?’” The two African countries were in majority agreement with church teaching, Uganda at 78 percent and the Democratic Republic of the Congo at 72 percent, which illuminates the positions taken by African bishops at the synods. In the other ten countries, a large majority, on average 68 percent, of the Catholic population disagrees with the church’s policy on admission to the Eucharist for those who are divorced and remarried without annulment.

Sociological research today demonstrates three things about divorce and remarriage in the United States: first, the national divorce rate remains high, at about 40 percent; second, divorce has serious negative effects on American families, and therefore American society; third, Americans now live in a culture of divorce in which many young adults despair of the possibility of achieving a happy, stable marriage.⁵¹ A Pew Research Study revealed in 2007 that, by lopsided margins, Americans “believe that, if married parents are very unhappy with one another, divorce is the best option, both for them and their children.”⁵² Catholics are not immune. Though research in earlier periods found Catholic marriages to be generally more stable than Protestant marriages,⁵³ studies using more recent data suggest a growing convergence between

50. Univision Communications, *Global Survey of Roman Catholics* (New York: February 2014), <http://pelicanweb.org/2014RCSurveyExecutiveSummary.pdf>.

51. See Judith S. Wallerstein and Joan B. Kelly, *Surviving the Breakup: How Children and Parents Cope with Divorce* (New York: Basic Books, 1980); Judith S. Wallerstein and Sandra Blakeslee, *Second Chances: Men, Women, and Children a Decade After Divorce* (Boston: Houghton Mifflin, 1989); Judith S. Wallerstein, Julia M. Lewis, and Sandra Blakeslee, *The Unexpected Legacy of Divorce: A 25 Year Landmark Study* (New York: Hyperion, 2000); Andrew J. Cherlin, P. L. Chase-Lansdale, and C. McRae, “Effects of Parental Divorce on Mental Health Throughout the Life Course,” *American Sociological Review* 63 (1988): 239–49, <https://doi.org/10.2307/2657325>; N. Zill and C. Schoenborn, “Developmental, Learning, and Emotional Problems: Health of Our Nation’s Children, United States, 1988” (Washington, DC: National Center for Health Statistics, No. 190, 1990), <http://files.eric.ed.gov/fulltext/ED327335.pdf>.

52. Pew Research Center, *As Marriage and Parenthood Drift Apart, Public is Concerned about Social Impact: Generation Gap in Values, Behaviors* (July 1, 2007), <http://www.pewsocial-trends.org/2007/07/01/as-marriage-and-parenthood-drift-apart-public-is-concerned-about-social-impact/>.

53. Harold T. Christensen and Kenneth E. Barber, “Interfaith versus Intrafaith Marriage in Indiana,” *Journal of Marriage and the Family* 29 (1967): 461–69, <https://doi.org/10.2307/349583>; Robert T. Michael, “Determinants of Divorce,” in *Sociological Economics*, ed. L. Levy Garboua (Beverly Hills: SAGE, 1979), 223–68.

Catholic and Protestant rates of instability.⁵⁴ Another study reports that although about 50 percent of divorced Catholics remarry, only about 5 percent of them do so in the church after receiving a declaration of annulment.⁵⁵ Almost two out of every three (65 percent) American Catholics believe that one can be a good Catholic without obeying the church's teaching on divorce and remarriage.⁵⁶ This issue of divorce and remarriage is a major reason for Catholics to sever connection to the church; only 60 percent of divorced and remarried Catholics, compared to 80 percent of first-marriage Catholics, remain attached to the church.⁵⁷ More recently, a 2015 Pew survey asked US Catholics whether the Catholic church should allow couples remarried without an annulment to receive communion; 62 percent indicated that it should do so.⁵⁸ At the very least, these statistics cry out for pastoral reflection and action.

Divorce and Remarriage: Reformulated Norms

Sociology establishes the need for pastoral reflection and action, such as reformulated norms, to guide the divorced and remarried without an annulment; history, both ancient and contemporary, provides the theological justification for such reformulation. Having established a framework for practical theology grounded in the interrelationship between the social sciences and the theological implications of the social sciences reflected in the *sensus fidelium*, we now consider the historical-theological justification from Scripture and tradition, including recent tradition at the Synod of Bishops in 1980 and again in 2015, and Pope Francis's *Amoris Laetitia*, for revising such norms.

At the 1980 Synod on the Family, Archbishop Derek Worlock of Liverpool pointed out the changed circumstances in the modern world: the changed role of women and the movement away from patriarchal marriage to companionate marriage in which the spouses are equal; the desire of men and, especially, women for a more satisfying personal fulfillment in their marriages; women's greater economic independence with the diminished need to remain in loveless and sometimes abusive marriages; and the

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54. Justin McCarthy, "Religious Commitment, Affiliation, and Marriage Dissolution," in *The Religious Dimension: New Directions in Quantitative Research*, ed. Robert Wuthnow (New York: Academic, 1979), 179–97; Evelyn L. Lehrer and Carmel U. Chiswick, "Religion as a Determinant of Marital Stability," *Demography* 30 (1993): 385–404, <https://doi.org/10.2307/2061647>.
 55. Michael Hout, "Divorced and Remarried Catholics in the United States: Demography, Attachment, and Participation" (working paper). A summary version appeared as Hout, "Angry and Alienated: Divorced and Remarried Catholics in the United States," *America*, December 16, 2000, <http://americamagazine.org/issue/392/article/angry-and-alienated>.
 56. William V. D'Antonio, "The American Catholic Laity in 1999," *National Catholic Reporter*, October 29, 1999, http://www.natcath.org/NCR_Online/archives/102999/102999i.htm. See also William V. D'Antonio, et al., *American Catholics: Gender, Generation and Commitment* (New York: Altamira, 2001).
 57. Hout, "Divorced and Remarried Catholics."
 58. PewResearchCenter, "U.S. Catholics Open to Non-Traditional Families" (September 2, 2015), <http://www.pewforum.org/2015/09/02/u-s-catholics-open-to-non-traditional-families/>.

increased availability of reliable means to regulate fertility. He pleaded with the synod for a nuanced re-reception of the traditional teaching about divorce and remarriage that would take account of changed circumstances and yield a more compassionate approach to remarried Catholics in second marriages.⁵⁹ Such re-reception in the *sensus fidei* of both the theological and popular traditions is well documented by the statistics that we cited in section two, but no such re-reception has been forthcoming in the official magisterial tradition.

Scripture and Reformulated Norms

In 1994, the CDF sent a letter to the world's bishops articulating Catholic doctrine about divorce and remarriage, claiming "fidelity to the words of Jesus Christ."⁶⁰ The implication was and still is that, because the doctrine is based on fidelity to the words of Jesus, it is irreformable. There can be no doubt that Jesus forbade divorce and remarriage. His prohibition is reported five times in the New Testament, in 1 Cor 7:10–11; Mark 10:10–12; Luke 16:18; Matt 5:32 and 19:6–9; interestingly John has no interest in divorce. The New Testament, however, reports more than the words of Jesus, and all it reports *in its entirety* is accepted by the Catholic Church as the word of God (*DV* 11). Besides the prohibition of divorce and remarriage cited by the CDF, it also reports interpretive re-receptions of Jesus' remembered prohibition by both Paul and Matthew. The kind of selective reading advanced by the CDF does not reflect the *entirety* of the New Testament.

As early as the year 54 CE, Paul answers questions posed to him by his Corinthian community. One of those questions was a question about divorce as practiced in both the Jewish and Greek traditions of the time, and Paul responds with a command from the Lord:

¹⁰ To the married I give this command—not *I but the Lord*—that the wife should not separate from her husband ¹¹ (but if she does separate, let her remain unmarried or else be reconciled to her husband) and that the husband should not divorce his wife. (1 Cor 7:10–11, emphasis added)

The custom of divorce was deeply rooted in both the Jewish and Greek traditions, and it is not difficult to imagine Corinthians wanting to know what they were supposed to do now that they were Christians. Paul leaves them in no doubt: the wife is not to be separated from her husband and the husband is not to dismiss his wife, for such is the command of the Lord.

Having responded to the question of divorce and remarriage in the case of two believers, Paul proceeds to the discussion of a case that must have been prevalent in the early Christian communities, as it is still prevalent in mission territories today—the

59. Francis X. Murphy, "Of Sex and the Catholic Church," *Atlantic Monthly*, February 1981, <http://www.theatlantic.com/magazine/archive/1981/02/of-sex-and-the-catholic-church/305451/>.

60. Congregation for the Doctrine of the Faith, *Concerning the Reception*.

case of a mixed marriage in which one spouse is a believer and the other a non-believer. Paul has two pieces of advice for the spouses in such marriages, each of them hinging on the attitude of the non-believer. The first advice relates to the case in which the non-believer is willing to continue to live with the believer: in this case, the non-believing spouse is not to be dismissed. The advice is completely different in the case in which the non-believer is unwilling to live with the believer. “But if the unbelieving spouse desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace” (1 Cor 7:15). There is no suggestion that the marriage between a believer and a non-believer is not valid; there is no suggestion that Jesus’s prohibition does not apply. There is only the suggestion that Paul is making an exception to that prohibition in the case of a mixed marriage: “*I say*, not the Lord” (7:12, emphasis added). The Roman Church sanctioned this approach to dissolving a valid marriage in the twelfth century, continues to enshrine it in its Canon Law today, and calls the process the Pauline Privilege (c. 1143).

Some thirty years after Paul, in the late 80s, Matthew also re-receives Jesus’s words with his own Jewish exception for his Jewish-Christian community (5:32; 19:9). Again, there is Jesus’s remembered prohibition: “Therefore what God has joined together, *let no one separate*” (19:6, emphasis added). And, again, there is an interpretive nuance: “Whoever divorces his wife, *except for unchastity [porneia]*, and marries another commits adultery” (19:9, emphasis added). Exegete Raymond Collins notes, and we agree, that the meaning of *porneia* in that exceptive phrase “is not self-evident to modern interpreters.”⁶¹ We ask here, however, not what is the meaning of *porneia*, but does the phrase originate in the teaching of Jesus or of Matthew? Given the absence of the phrase in Paul, Mark, and Luke, we accept the majority scholarly opinion that the latter is the case. We wish here to underscore only one conclusion from that. Matthew did not hesitate to interpret the words of Jesus in light of the needs of his own church, a church composed of Jews who had been “converted” to Christianity but who still adhered to the Jewish law, including the law of divorce for *‘erwat dābār* or *porneia* (Deut 24:1–4). Of the five New Testament reports of Jesus’s prohibition of divorce and remarriage, then, three (or 60 percent) of them also report exceptions to it. Deuteronomy 24:1–4 permitted a husband to dismiss his wife for *‘erwat dābār* or *porneia*, but Jesus contradicted this permission. Jesus prohibited divorce and remarriage, but Paul and Matthew contradicted this prohibition. The patristic church sided with Matthew, interpreting *‘erwat dābār* or *porneia* as adultery, and obligating husbands to dismiss their adulterous wives but, revealing the patriarchy of the time, not permitting wives to divorce their adulterous husbands.⁶²

61. Raymond F. Collins, *Divorce in the New Testament* (Collegeville: Liturgical, 1992), 205. Those who desire to survey the opinions may consult Joseph Fitzmyer, “The Matthean Divorce Texts and Some New Palestinian Evidence,” *Theological Studies* 37 (1976): 197–226, <https://doi.org/10.1177/004056397603700201>; A. Myre, “Dix ans d’exegese sur le divorce dans le Nouveau Testament,” in *Le Divorce* (Montreal: Fides, 1973), 139–62.

62. See *The Apostolic Fathers*, trans. Francis X. Glimm, et al. (Catholic University of America, 1962), 264; Basil, “Moralia,” *Patrologia Graeca* 31, 699–888 at 849, 852.

To be noted in Matthew's text is the phrase we have underlined above. The verb is in the subjunctive: "*let* no one separate;" it is not in the imperative, "one *cannot* separate, cannot put asunder." Jesus suggests that divorce is wrong, but neither here nor anywhere else does he suggest that it is impossible. Divorce was legal in both the Judaism of Jesus's time and in the Roman Empire, where it continued to be legal even after Constantine declared Christianity the official religion of the Empire in 313. The dismissal of an adulterous wife was sanctioned, the unjust dismissal of a wife was held to be wrong, but marriage was never held to be indissoluble.⁶³ Talk of indissolubility happened twelve centuries after Jesus, when the original Christian ideal of fidelity was transformed into an ideal of indissolubility.

There are divergent accounts in the New Testament of Jesus's words about divorce and remarriage because it was re-received by different Christian communities who had different concerns about marriage and divorce that needed to be addressed. Matthew's community had concerns about the continuing validity of Torah, whereas Paul's had growing concerns about marriages between believers and non-believers. The re-reception of the words of Jesus shaped by contextual need, and validated by the early church, continued into the twelfth century church of Gratian in respect to what makes a marriage indissoluble, and into the sixteenth century under Popes Paul III (1537), Pius V (1561) and Gregory XIII (1585) with respect to the circumstances of polygamy and slavery.⁶⁴ This consistent re-reception of the words of Jesus by the church makes any argument based exclusively on the words of Jesus in Mark at best incomplete and at worst selective and dishonest. It also makes any contemporary re-reception of the doctrine surrounding divorce and remarriage without annulment both possible and situated within the Catholic tradition.

Tradition and Reformulated Norms

The present doctrine of the Catholic Church on the indissolubility of marriage further demonstrates that fidelity to the words of Jesus is far from the only criterion for ecclesiastical judgments about divorce and remarriage. The church norm is that only the marriage "which is ratified [as sacrament] and consummated cannot be dissolved by any human power other than death" (c. 1141). The two conditions that make a marriage absolutely indissoluble in the eyes of the church—that it be simultaneously sacramental *and* consummated—are not received from Jesus or any New Testament writer. They are both the result of interpretive, cultural, and historical re-reception of the words of Jesus in times, places, and cultures long after Jesus, despite the teaching of the *Catechism of the Catholic Church* that "the marriage bond has been established by God himself in such a way that a marriage concluded

63. See Theodore Mackin, *Divorce and Remarriage* (Mahwah, NJ: Paulist, 1984), chaps. 4–7.

64. See Michael G. Lawler, *Marriage and Sacrament: A Theology of Christian Marriage* (Collegeville: Liturgical, 1993), 92–93.

and consummated between baptized persons can never be dissolved.”⁶⁵ No Catholic theologian would debate that marriage was created by God. That the marriage bond, however, is indissoluble only when the marriage is sacramental *and* consummated is nowhere in the recorded teachings of Jesus; it is a teaching of the twelfth-century canonist Gratian received by the church as a truth of revelation.

The theological point here is clear. Despite its constant reference to the words of Jesus, the church’s doctrine and practice with respect to divorce and remarriage is not founded exclusively on the words of Jesus. Much of it is founded on the re-reception of the words of Jesus nuanced in historical cultures, times, and places that were not Jesus’s culture, time, or place. Because that has been true so often and for so long in Catholic history, there is no reason why, in response to careful and honest reading of both the New Testament and Catholic history and to what sociology shows to be the virtually universal contemporary *sensus fidelium* with respect to divorce and remarriage, it could not be yet again. The great Jesuit New Testament scholar, Joseph Fitzmyer, repeated in 2008 what he had already suggested thirty-two years earlier in 1976:

If Matthew under inspiration could have been moved to add an exceptive phrase to the saying of Jesus about divorce . . . or if Paul likewise under inspiration could introduce into his writing an exception on his own authority, then why cannot the Spirit-guided institutional church of a later generation make a similar exception in view of problems confronting Christian married life of its day?⁶⁶

Why not, indeed, especially as sociological research shows that such a re-reception of the words of Jesus prohibiting divorce and remarriage is widespread among Catholic faithful.

The Orthodox Church has an approach to this question known as *oikonomia*, received from its revered theologians Basil and John Chrysostom. While holding as firmly as the Catholic Church to the belief that Jesus presents Christians with a demand for fidelity in marriage, the Orthodox acknowledge that sinful men and women often do not measure up to the Gospel. They acknowledge that marriages sometimes fail and that when they fail it makes no sense to claim they are still binding. A dead marriage, they explain, is as dead as a dead spouse. When a marriage is dead, *oikonomia* impels the church to be sad but also to be compassionate and forgiving, even to the point of permitting the remarriage of an *innocent* divorced spouse.⁶⁷ The Council of Trent in the sixteenth century was asked to condemn this Orthodox practice, but it refused to do so because it could not be proved to be contrary to the Gospel.⁶⁸ On a vote of

65. *Catechism of the Catholic Church*, 1640, http://www.vatican.va/archive/ccc_css/archive/catechism/p2s2c3a7.htm, emphasis added.

66. Joseph A. Fitzmyer, *First Corinthians*, Anchor Yale Bible (New Haven, CT: Yale University, 2008), 298. Fitzmyer had already made this suggestion in 1976 in his essay “The Matthean Divorce Texts,” 224–26.

67. See Lawler, *Marriage and Sacrament*, 85–87.

68. DS 1807, 1807n.

179–20, the 1980 Synod of Bishops asked Pope John Paul II to consider this Orthodox approach for light it might shed on Catholic practice. Thirty-six years later, despite insistent suggestions by bishops and theologians that this might be a fruitful line to pursue, and a documented *sensus fidei* among Catholics, that request continues to be ignored.

There was passionate debate on the question of divorce and remarriage without annulment at both the 2014 and 2015 Synods on the Family but, despite the well-documented re-reception of the doctrine in virtually the whole church, there was not enough support for another authoritative re-reception of the doctrine. In September 2014, Bishop Johan Bonny of Antwerp had written about the relevance of conscience or internal forum to the solution of all moral problems, including the question of divorce and remarriage without annulment: “Someone,” he wrote,

who is competent in the matter under consideration and capable of forming a personal and well-founded judgment—which necessarily presupposes a sufficient amount of knowledge—may, after a serious examination before God, come to other conclusions on certain points. In such a case he has the right to follow his conviction provided that he remains sincerely disposed to continue his inquiry.

We must recognize, he continued, “according to the traditional [Catholic] teaching, that the ultimate practical norm of action is conscience which has been duly enlightened by all the factors presented in *Gaudium et spes* (n. 50, par. 2; n. 51, par. 3).”⁶⁹ There was extensive debate at the synod about the possibility of the admittance of the divorced and remarried to Eucharistic communion via a personal internal forum or conscience solution on the part of divorced and remarried individuals themselves, but it could not gather enough votes to be passed. Close examination, however, of the synod’s Final Report reveals two important references to conscience or internal forum in paragraph 85.

There is, first, a suggestive citation of Pope John Paul II’s judgment in *Familiaris Consortio*:

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.⁷⁰

69. Johan Bonny, “Synod on the Family: Expectations of a Diocesan Bishop” (September 1, 2014), 5, <http://www.associationofcatholicpriests.ie/wp-content/uploads/2014/09/SYNOD-ON-FAMILY-ENG.pdf>.

70. Synod of Bishops, *XIV Ordinary General Assembly: The Vocation and Mission of the Family in the Church and in the Contemporary World, The Final Report of the Synod of Bishops to the Holy Father, Pope Francis* (October 24, 2015), 85, http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20151026_relazione-finale-xiv-assemblea_en.html, citing FC 84.

Second, there follow two recommendations for the consideration of individual conscience: first, It is therefore the duty of priests to accompany such people in helping them understand their situation according to the teaching of the church ... Useful in the process is an *examination of conscience* through moments of reflection and penance; and second, the instruction that, while supporting a general rule, it is necessary to recognize responsibility with respect to certain actions or decisions is not the same in all cases. Pastoral discernment, while *taking into account a person's properly formed conscience*, must take responsibility for these situations.⁷¹

Both John Paul II and the synods clearly were aware of and respected the Catholic teaching on the authority of one's properly formed conscience, which goes back to Thomas Aquinas in the thirteenth century. "Anyone upon whom the ecclesiastical authorities," he argues, "in ignorance of the true facts, imposes a demand that offends against his clear conscience, should perish in excommunication rather than violate his conscience."⁷² That became and continues to be the official Catholic position on the authority and inviolability of one's individual conscience, reaffirmed at the highest level by the Second Vatican Council's *Dignitatis Humanae*:

In all his activity a man is bound to follow his conscience faithfully, in order that he may come to God for whom he was created. It follows that he is not to be forced to act contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.⁷³

The inviolable authority of "a properly formed conscience" is a long-standing, solemn teaching of the Roman Catholic Church. To be properly formed, the *Catechism* teaches, an individual's conscience must pay attention and respect to the teachings of the Bible, the church and its theologians, human reason and the sciences it creates, a competent counselor, and the judgments of its fellow Christians.⁷⁴ Only when it is so formed must it be followed even if its judgment is erroneous. It applies, many at the synod argued and we agree, to divorced and remarried individuals seeking with pastoral assistance a solution to their moral situation.⁷⁵

Catholic teaching on the authority and inviolability of an informed personal conscience has been reaffirmed, and its relevance to the situation of Catholics divorced and remarried without annulment has been settled, definitively we judge, by Pope Francis's Apostolic Exhortation, *Amoris Laetitia*, his response to the reports of the 2014 and 2015 synods. Francis agrees with the judgment of John Paul II cited above

71. Synod of Bishops, *XIV Ordinary General Assembly*, 85, emphasis added.

72. Thomas Aquinas, *In IV Sent.* dist. 38, q. 2, art. 4.

73. *DH* 3. See also *GS* 16.

74. *Catechism*, 1783–5, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s1c1a6.htm.

75. See Michael G. Lawler and Todd A. Salzman, "Conscience and Experience: Choosing the True and the Good," *Irish Theological Quarterly* 81 (2016): 34–54, <https://doi.org/10.1177/0021140015616531>.

about the differences in situation in which the divorced and remarried find themselves. He disagrees, however, with John Paul on whether or not those differences allow for the use of internal forum to pastorally discern, in conversation with the priest, what may facilitate “fuller participation in the life of the Church and on what steps can foster it and make it grow.” Situations can be so different, Francis confesses, that neither he nor anyone else can “provide a new set of rules, canonical in nature and applicable to all cases” (*AL* 300). He quotes Thomas Aquinas’s well-known argument that the devil is in the details: the more we descend into the specific details of a situation the more general principles are found to fail (*AL* 304). The solution to the different situations of the divorced and remarried without annulment is not a set of invariant moral norms, “stones to throw at people’s lives” Francis calls them (*AL* 305), but a gradual, careful, and guided honest discernment leading to a final judgment of personal conscience that one ought to do this or not to do that (*AL* 300–5). The church is called, he recalls, “to form consciences, not to replace them” (*AL* 37). For those who know Catholic theological history, this is far from a new doctrine but an ancient and consistent one, albeit one that has been seriously silenced in the past two hundred years.

The logic of traditional and theological honesty, we argue, is the key to the reformulation of the norms controlling divorce and remarriage without annulment that “de-integrate” so many believing Catholics in the first place. Pope Francis’s “logic of integration,” we further argue, is the key to the pastoral care of the divorced and remarried without annulment and to their full re-integration into the Catholic Church. We agree that his suggested internal forum solution to the questions surrounding divorce and remarriage without annulment in the Catholic Church—a gradual, careful, and guided honest discernment leading to a final judgment of personal conscience that one ought to do this and not to do that (*AL* 300–5)—is the sure Catholic key to that re-integration.

What Ought to Be

This essay has been an exercise in practical theology, described by Karl Rahner in its Catholic expression as the “theological discipline which is concerned with the church’s self-actualization here and now—both that which *is* and that which *ought to be*.”⁷⁶ It illuminated that *which is*, both the contemporary Catholic doctrine about divorce and remarriage without annulment and the *sensus fidelium* of the whole church with respect to that doctrine. It sought to understand that doctrine and uncovered that, contrary to the church’s claim that its doctrine is in fidelity to the words of Jesus and therefore cannot be changed, its doctrine is in fact a succession of accommodations of Jesus’s words to the requirements of different historical times, places, and needs. Beginning in the earliest Jewish and Gentile churches and continuing in the ongoing Western and Eastern Churches, there is a long Catholic tradition of accommodation

76. Karl Rahner, “Practical Theology within the Totality of Theological Disciplines,” in *Writings of 1965–1967 I*, TI 9 (London: Darton, Longman, and Todd, 1972), 101–14 at 102, emphasis in original.

and re-reception of the words of Jesus to different historical and cultural circumstances. It suggests that, on the basis of this evidence, there is no sound theological reason why the kind of accommodation and re-reception historically practiced should not happen again in the contemporary church with respect to the norms controlling divorce and remarriage without annulment in order to remove the present disconnect between official Catholic doctrine and *sensus fidelium*, and solidify that which ought to be in the whole church. For that to happen the Catholic Magisterium will have to cease its selective reading and partial transmission of the New Testament reports on divorce and remarriage, be true to its own historical tradition and endorse the re-reception signaled in the contemporary *sensus fidelium*, and pursue strategies to ensure that its re-reception of the tradition about divorce and remarriage without annulment becomes as accepted in the contemporary church as Paul's, Matthew's, Gratian's, Paul III's, and Pius V's re-receptions of Jesus's words were accepted in theirs.

Consideration of both the relevant sociological research that describes the situation of couples who are divorced and remarried without annulment and theological consideration of the church teaching that creates it suggest that a re-reception⁷⁷ of the doctrine in line with previous re-receptions of doctrine in the church is under way. The re-reception can be detected in both what we choose to call the theological tradition, comprised of theologians whose grasp of the philosophical and theological precision of the underpinnings in which the Catholic doctrine is embedded enables them to understand its meanings and implications, and the "popular tradition," comprised of believers who often do not grasp the precision of the language and, therefore, often misunderstand the doctrine. The theologian's role, we argue, is not merely to hand on the traditional doctrine but, testing and retesting it for relevance and significance in the contemporary church, to speak *from* the actual faith situation of church believers. It is this faith tradition that should help to form the consciences of the faithful and to reform magisterial teaching on divorce and remarriage without an annulment.

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77. See Thiel, *Senses of Tradition*, 100–28.