

Remarriage in the Church: Pastoral Solutions

A statement by the board members of the Association
for the Rights of Catholics in the Church (ARCC)

A vast number of U.S. Catholics who stay away from the sacraments (and hardly ever go to Mass) do so because they think they are in "a bad marriage." That is, they were divorced and, without getting a declaration of nullity from the Church, they married again. The good news is that they may very well be in a good marriage, annulment or no. The bad news is that no one has bothered to give them the good news.

We, the board members of ARCC, who, by and large, represent a mainstream in American Catholicism, feel it is time for us to bother -- to report the news that people who are remarried without an annulment need not stay away from Mass and the sacraments. We feel we have a duty to bring our informed understanding to this issue, an issue that has, up to now, been the subject of much misunderstanding, a misunderstanding leading to needless alienation from the Church, and a ruinous decimation (or, more accurately perhaps, a quadrimation) of Church membership. This need not be.

Some priests have been doing a very good job by helping couples regularize their so-called irregular marriages through the annulment process, and outside that process, as well, in something called "the internal forum." But many pastors are doing this in a quiet manner, in a mode that is decidedly unfair to those who are not "in the know." Everyone should be in the know. We of ARCC feel we have a duty to let them know. In the spirit of Vatican II, we have a duty to make the Church work, for everyone, even and especially for those who are wounded or wandering.

The Fathers of Vatican II described our Church as a pilgrim Church. By that, they meant that we have all had to make our way through history, sometimes proudly, sometimes painfully, sometimes striding, sometimes limping, in a not always successful effort to follow the Gospel. The war-making popes of the late medieval era and the early renaissance limped very badly indeed. Some led lives of luxury and licentiousness, building palaces for their mistresses and handing on the overflow from Crusade treasuries to their illegitimate sons and daughters. Let those of us who never limp cast the first stone.

Many of us limp in many ways. Some of our limping behavior has to do with our marriages. Many of us are children of divorce ourselves. Some of us grew up with only one, struggling parent, and, though we don't really know how to make a good marriage (because we've never seen one, up close), we get married. Sometimes, these marriages do not last. Sometimes, some of us find ourselves abandoned, or locked in a marriage with a partner whom we find "intolerably incompatible." As Anne Thurston wrote in "Living with Ambiguity," *Doctrine and Life* 44 (1994): 538, "There are relationships which become destructive for all involved and where . . . it is not possible to talk of such marriages as 'symbolizing the union between Christ and the Church.'" And so we get a divorce. Then, many of us (three out of four women, five out of six men) marry again within three years -- for companionship, for sexual intimacy and for the support that marriage provides. Sometimes we do so in order to make a better home for our children. Are we a living contradiction to the Catholic ideal -- that marriage is supposed to be for life?

Not necessarily. As pilgrims in a pilgrim church, we pick ourselves up, we ask ourselves what we've done wrong, and we try again. We don't want to live alone. We'd like to have children. We'd like to be good Catholics. And we'd still like to believe that marriage is for life. The late Paulist Father James Young, who did a great deal of pioneering work with divorced and remarried Catholics in the years after Vatican II, wrote in 1986: "The remarried are not people who promote divorce. Almost unanimously, they profess a high regard for lifelong marriage, and insist they would never wish a divorce on anyone . . . To come close to divorced people is to look through a painful window at the dark underside of American life and at the many forces that make lasting marriage difficult. For most, remarriage is a second chance to live and love again, another chance to salvage a broken life." ("Catholic Remarriage," p. 40).

Knowing all this, we of ARCC look with some skepticism at Pope John Paul II's call to divorced and remarried Catholics to "come home" in the year 2000 (an invitation echoed by many bishops around the world in anticipation of the Jubilee Year). The appeal strikes us as unrealistic, perhaps even thoughtless. In the pope's view, many Catholics who are divorced and remarried cannot get annulments, and, therefore, according to Church discipline, they are unworthy to receive the Eucharist. So the pope's invitation -- "Come home" -- has an unwritten postscript: "But don't expect to stay for supper."

We believe that many of the divorced and remarried can come home, and stay for the Lord's supper, without getting a Church annulment.

How so? In the first place, the divorced and remarried are still in the Church. It is true that, for 93 years, those in this country who remarried after divorce were excommunicated -- in accordance with a policy set in place by the U.S. bishops meeting at the Third Plenary Council of Baltimore in 1884. In June 1977, however, the American bishops lifted that excommunication after they pondered a huge falling off in Church attendance, a falling off that was also keeping the children of these couples away from the Church. Pope Paul VI confirmed that action later in 1977 (Provost, p. 147).

Now, the official Church position, as set forth by Pope John Paul II in his 1981 apostolic exhortation, *Familiaris Consortio*, n. 83, is that men and women who are divorced and remarried (without a Church annulment) are "in the Church," but not "in full communion with it." We believe the pope takes this position because he wishes to avoid scandal, a notion predicated perhaps on the opinion that any change in the Church's traditional teaching will make us stumble in the faith. No. Quite the opposite. We believe it is the Church's inability to make some disciplinary changes that has driven a substantial number of otherwise good Catholics to stumble -- into institutional indifference or alienation. The real scandal may be the unnecessary rigidity of some pastors who are still leaning on lessons they learned in the seminary 40 years ago.

In fact, reputable theologians and canonists are challenging the doctrinal soundness and pastoral utility of barring from the sacraments many who have remarried without an annulment. This sacramental ban, say some Church scholars, is based on a partial reading (or perhaps no reading at all) of the history of marriage (and remarriage) in the Church.

The Church in History.

As many commentators on Vatican II have pointed out, the Fathers of Vatican II gave us a new view of the Church-in-history. They saw the Church as ever-growing, ever-changing, and, in doing so, they helped humanize the Church in remarkable new ways. This move was not a concession to human weakness. It was based on the theology of the Incarnation. God chose to enter human history, and, in so doing, told us that it was more than okay to be human. Those who would like to see the Church bless the human, and take a human approach to the remarriage issue like to cite the changes that have occurred in the Church's teaching-and-practice concerning marriage over the centuries. They say that knowing some of this history may help us see things in a better perspective.

Joseph Martos is the author of a highly regarded work on the sacraments called *Doors to the Sacred, A Historical Introduction to Sacraments in the Catholic Church*. In that work, he writes, "During the first three centuries of Christianity, churchmen had no legal say in the matter of marriages, divorces, and remarriages." Furthermore, he wrote, "There was no liturgical ceremony for marriage as there was for baptism and the Eucharist." It wasn't until the year 400 or so, that Christians were bidden to seek an ecclesiastical blessing on their marriages. (It is interesting to note that the only ones obliged to do that were married bishops, married priests and married deacons.) As far as we know, the idea of marriage as a sacrament was first proposed by St. Augustine, the first and only patristic author to write extensively about sex and marriage. Even after Augustine, through the seventh century, "Christians could still get married in a purely secular ceremony." Marriage was declared a sacrament for the first time by the Synod of Verona in 1184. The Church didn't deem marriage definitely indissoluble until the Council of Florence in 1439. (Martos , pp. 409-434.)

As for indissolubility, Christians have always been aware of what Jesus was remembered to have said about divorce, but we haven't been quite sure what those words meant. A leading Catholic Biblical scholar, Raymond F. Collins, says there are eight versions of Jesus' teaching on divorce, and there is no easy way of identifying which one reflects that teaching in its pristine form. (*Divorce in the New Testament*, pp. 213-14.)

Perhaps this is a good thing. At their core, Jesus' teachings were mostly about freedom. When he spoke of law, he usually did so to insist that we live according to its spirit and not its letter. The one group he most inveighed against were those Pharisees who insisted that everyone, including Jesus himself, follow the letter of the law. When those Pharisees challenged Jesus for healing a man on the Sabbath, he responded with great common sense, asking "Is man for the Sabbath, or the Sabbath for man?"

Over the centuries, a good many Christians have been inclined to slip into a pattern of over-interpreting "a word of the Lord," using his words in ways that deadened his own declaration, that he had come that we may have life and have it more abundantly. Were Jesus' words about divorce prescriptive? According to many Catholic scholars, they were probably not. St. Paul himself made one exception. As time passed, other Church elders (including some of the Fathers of the Church) chewed over Jesus' words. Interpretations grew apace. Inevitably, the interpretations were conditioned by the times.

The words of Jesus in Matthew 5:32 and 19:9 were thought by early exegetes to condone divorce in the case of adultery. Those verses led to freedom for the innocent party to remarry. But early Church leaders made unfair use of that interpretation. The local council of Elvira in Spain in the early 300s prohibited a woman from remarrying if she left an unfaithful spouse, but said nothing to prohibit a man from doing so. In the East, Basil of Caesarea wrote in 375 that a woman who was unjustly deserted by her husband would be regarded as an adulteress if she remarried, but a man who was unjustly deserted by his wife could be forgiven if he remarried. On the other hand, there are some feminist scholars today who say that Jesus' prohibition against divorce was itself culturally-conditioned; his condemnation of divorce was an effort to counteract an abuse he observed among Jewish men of his time, who would divorce their wives, making them automatically unfit for another, because, we are told, no self-respecting Jew would marry a divorced woman.

It is interesting to note how the Eastern Orthodox churches, where married men can become priests (but not bishops), developed their own traditions. They have a long tradition affirming that a validly contracted marriage is dissolved only by physical death. Nevertheless, these churches recognize divorce in the face of unbearable marital discord, which they say is a kind of death. According to Lewis J. Patsavos, a canonist from the Greek Orthodox Seminary of the Holy Cross in Brookline, Massachusetts, the Orthodox Churches do not dissolve a dead marriage. Rather, the churches "formally acknowledge that the legitimate marriage is without foundation and has been dissolved ipso facto." The Eastern Orthodox see divorce and remarriage as the exception, not the rule, but when they do, says Patsavos, they do so in imitation of "the mercy and understanding exercised so profusely by our Lord during His life."

The Western Church has taken a different tack, particularly since the Council of Trent (1545-1563) which laid down rules and regulations along lines that would have been unrecognizable to members of the early Church, East or West. Since Trent, the Church has publicly proclaimed the indissolubility of marriage, a large body of law on marriage, and a correspondingly large legal apparatus to deal with it. All the while, popes were granting divorces to everyone but Catholics.*

More than 400 years after Trent, some of the Fathers of the Second Vatican Council (1962-1965), took issue with many of Trent's legalisms, and the Council itself produced sixteen documents that set the Church in a new pastoral direction. Anomalously, the Church's legal apparatus surrounding marriage remained in place, possibly because of an unwillingness to challenge the settlements of the last 400 years. That situation, however, is changing. Bishops from around the world (for example, the bishops of Japan) have been calling for less strict norms than those enunciated by Pope John Paul II in his support of the revised 1983 Code of Canon Law. In 1994, three of the ranking bishops in Germany issued a joint letter to their people which said they were taking a new look at the remarriage question. They did not argue with official Church teaching about the forever aspect of sacramental marriage. They did say there ought to be "room for pastoral flexibility in complex, individual cases." ("Pastoral Ministry: The Divorced and Remarried," pp. 670-673).

That view is shared by a significant number of American Catholic theologians and canonists, according to Sister Margaret Farley, RSM, in her "Divorce, Remarriage and Pastoral Practice," in *Moral Theology, Challenges for the Future*. There, she writes:

. . . [T]he polarization between opinions of many theologians and canonists on the one hand and traditional positions taken by Vatican officials on the other, now seems extreme. The perception of a need for change is fueled by western culture's massive contemporary experience of the breakdown of marital relationships and by the gradual recognition of legitimate differences in cross-cultural interpretations of marriage and family. (p. 213)

In her essay, Farley cites a number of theologians and a variety of pastoral practices that "lean strongly in the direction of allowing first efforts at marital union (first marriages) to end and second efforts (in new marriages) to be sustained by full participation in the sacramental life of the church."

Most North American Catholics, practicing or not, are hardly aware of this trend. They don't read articles in the theological journals, the secular press doesn't report on them, and they have been all too well trained to learn from Rome, and only from Rome, about disputed marriage questions.

What should Catholics do? First, we should grow up. Many of us have been too ready to accept the prohibitions enunciated in Church law, and we have been so other-directed in matters of Church discipline that we have had a hard time making our own decisions. And we should remember that Church laws on marriage are a matter of discipline, not dogma. One way to grow up is to use that distinction between discipline (which is reformable) and dogma (which isn't reformable) to assert what we believe are our rights.

What are our rights? On the remarriage issue, we have the right to seek an annulment. When we have problems with the annulment process, we also have a right (and a duty to ourselves and our families) to explore other alternatives.

The Annulment Process.

The process is somewhat more lengthy than it was, thanks to some new conditions introduced in the 1983 Code of Canon Law. Since then, decisions in one tribunal are subject to automatic review by another, appellate, tribunal -- which leads of course to more delays. In some other respects, the new Code makes the annulment process easier. Tribunals can more readily accept the word of the individual seeking an annulment, sometimes even without the testimony of the other spouse. Tribunals are making greater and greater use of one annulling impediment, which they term "lack of due discretion" at the time of marriage. Many marriages that have gone awry can come under this rubric. Under it, and 13 other causes of nullity, U.S. diocesan tribunals are now petitioning from Rome, and receiving, some 58,000 annulments every year.

Roman officials have reportedly said that 58,000 annulments is "too high a number." We're not quite sure what "too high a number" means. Historically, Church annulments were rare. As late as the mid-1960s, for example, only a few hundred annulments were given throughout the world. In 1996, however, the Church granted some 72,000 annulments, worldwide (80 percent of them to U.S. Catholics). Too many? In human terms, as evidence of something profoundly wrong with love-and-marriage patterns in U.S. society, we say that, yes, that many annulments is troubling. We find ourselves even more troubled when we hear that only an estimated ten percent of U.S. Catholics who are eligible to apply for annulments ever do so.

What about the other 90 percent? Do we simply wring our hands over all those apparent failures and falls -- and the consequent alienation from the Church that often follows? No. We can also do something for the 90 percent. If the papacy isn't ready to confront this issue with any measure of realism, we dare to speak for the wider Church. We presume to advocate a number of things that can help otherwise faithful Catholics find a way to full membership in our community.

ARCC's Ambivalence.

We of ARCC, laity and clergy alike, are ambivalent about the annulment process. For one thing, the kind of loop-hole theology that marks the intricacies of the process can make the Church a laughing stock. Sheila Rauch Kennedy, an Episcopalian, spoke for many Catholics when she wrote a furious book, *Shattered Faith*, attacking her husband, Joseph Kennedy, and the Catholic Church for colluding on what she deemed a deceitful annulment process. Sheila (and her children) obviously felt there had been a true marriage. She wondered how the Church could dare say there wasn't? She also believed that a Church annulment would make the children illegitimate. That's a common notion, but it's false. The Church's actions here -- for all the legal niceties of canon law -- have nothing to do with a child's legitimacy in civil law. Still and all, we think the ambiguity generated by the annulment process raises questions about the Church's honesty. We can say, echoing a former U.S. president, "We are not crooks." But who believes that?

Furthermore, insisting on the annulment process in every case "may well be immoral." The quote comes from Franciscan Father Barry Brunsman, author of *New Hope for Divorced Catholics*. Why immoral? Because it's a process that can only work for a tiny percentage of the world's Catholics. Dioceses in many nations, says Father Barry, do not even have marriage tribunals. Some U.S. dioceses do not have competent tribunals, and good, competent tribunals can process only a fraction of the potential marriage cases in their area. This is because either they do not have the time and the staff to handle the work, or because many who qualify for annulments do not speak English or do not have the sophistication to fill out the forms, find documents, or stay on top of a process that can take months, and often years. Father Barry says there are now at least 9 million U.S. Catholics in second marriages, and the numbers are increasing every year. He wonders how the Church can make mandatory a process that is so impossible for many. No one, according to a long-standing moral principle, is obliged to do the impossible.

When the annulment process is done properly, however, it can help those who have the wits to understand it (and the strength to undergo it). The process does force those who have been through it to think more seriously about who they are and where they have come from and where they are going. And it may help them get on with their lives more wisely. They might even feel more secure; they will have a written declaration that assures them and their family and friends and the larger Catholic community that they've done the right thing. Today's Catholics might also be pleasantly surprised (depending on where they live) to find that the people in the marriage tribunals of their dioceses have found ways to make the annulment process kinder and gentler and a little easier than it once was.

Trouble is, even in places where everything is up to date, declarations of nullity still take too long. Maybe this is by design: making the process difficult may deter many from bothering at all. But is this the proper stance for the Church to take? We would like to feel we are members of a Church that still tries to model itself after our Lord, who insisted there was more joy in heaven over one returned sinner

than the ninety-nine who never wandered away. The Prodigal Son wasn't left waiting at the gate; his father came running up the road to meet him. We do not believe that we should put a limit (or a waiting period) on our love and acceptance of our own prodigals, our own fellow pilgrims, who, if they still believe, should try to go on living as Catholics, as best as they can, even and especially in a second marriage. The annulment process used to take years, sometimes even decades. Some must still wait 18 months, or more, for a decision. Still, we do not think any Catholics in good faith should have to wait 18 months before they can receive the Eucharist in good faith.

We of ARCC know there are pastoral solutions available for those waiting for an annulment, solutions that can also apply to those who are divorced and remarried but who cannot (or will not) seek one. In the remaining portion of this essay, we wish to outline what those pastoral solutions are, to help Catholics with so-called irregular marriages work out their moral dilemmas, either alone, or, better, with the assistance of their pastors or counselors who can guide them as they try to discern their status in the Body of Christ.

The Internal Forum Solution.

There is a pastoral solution that is compassionate, reasonable, and theologically sound. It's called the "internal forum solution." Never heard of it? We're not surprised. It has been one of the better-kept secrets in the Catholic Church. Parish priests use it all the time, in a confidential setting, including, sometimes, the confessional. That's why it's called "the internal forum." (The external forum is the annulment process we've just described.)

The internal forum is something private, something we work out in prayer and reflection on the state of our own consciences. Sometimes, in order to do that, we may need to seek the help of a priest, in or out of the sacrament of reconciliation. Sometimes, we may seek the advice of a therapist, or another Catholic couple, or members of our own families.

Father Barry says that the internal forum solution comes under canon law. He paraphrases Canon 1116 in the 1983 Code of Canon Law:

. . . [I]f a person has a right to get married before God but cannot get access to proper authority within one month, they can use any authority, even just two witnesses. This is sometimes called "the desert island" canon. It is often used when two Roman Catholics find themselves in an area without priests because of political persecution or remoteness. Some canon lawyers also apply this canon to the case where a couple live next door to the rectory and has a right to get married before God but the priest refuses to care for them. (*New Hope for Divorced Catholics*, p. 81)

Father Barry thinks that such a marriage can be considered within the Church. He is only one of many pastoral-minded priests and bishops in the land who hold this view. They also cite the moral principle of *epikeia*, a kind of common-sense virtue which tells us when the law applies and when it doesn't. American Catholics are, by and large, unfamiliar with this concept. We are accustomed to seeing everything spelled out for us. *Epikēia* says we shouldn't expect to see everything spelled out. *Epikēia* is the Church's official way of saying, "This is the law; now use your common sense."

Those who read the Catholic press in this country surely know there's a split between priests and bishops who follow the letter of the law and those who sometimes opt for common sense instead. Some do not know that there have been many behind-the-scenes clashes on the internal forum question among our priests and bishops, with the follow-the-law clergy on one side and the common-sense clergy on the other. We can, however, cite some of the recent, open clashes.

Items:

- In June 1972, Bishop Robert Tracy of Baton Rouge, Louisiana, encouraged couples in his diocese to come back to the sacraments if they were convinced that they were truly married and that their prior marriages were either not valid or simply dead -- even without a decision from Tracy's marriage tribunal. We understand that at that time other bishops around the country (in Boise, Idaho, and Portland, Oregon, to name two) were also admitting couples to a full Eucharistic life who were exercising the internal forum solution suggested by Bishop Tracy.

That was too much for Cardinal John J. Krol of Philadelphia, then president of the U.S. bishops. He announced that a study on this question was under way by the newly-formed National Conference of Catholic Bishops and by the Holy See. He referred to a letter from Rome saying that, until the matter was decided in Rome, "dioceses are not to introduce procedures that are contrary to current discipline." In September 1972, the NCCB's administrative board sent the results of its study on the question to Rome.

- On April 11, 1973, Cardinal Franjo Seper, the head of the Congregation for the Doctrine of the Faith (CDF) in Rome, wrote back to the president of the NCCB. He spoke about the danger of any new moves (he did not mention Bishop Tracy by name) that would undermine Church teaching on the indissolubility of marriage. In other words, he said Rome did not approve of any changes in "the external forum." But then he went on to urge that pastors bring divorced and re-married Catholics back to the sacraments by "applying the approved practice of the Church in the internal forum." What did Cardinal Seper mean by this "approved practice?" He may have been thinking of what came to be Canon 1116. Or he may have simply been aware that moral theologians had been advocating the internal forum solution for centuries, according to the principle of epikeia.

The leadership of this country's National Conference of Catholic Bishops wanted something clearer. What did Cardinal Seper mean by "the approved practice of the Church?" On March 21, 1975, Archbishop Jerome Hamer, OP, secretary of the CDF, delivered this response to Cardinal Krol's successor in that elective office, Cardinal Joseph Bernardin: " . . . [T]his phrase must be understood in the context of traditional moral theology. These couples may be allowed to receive the sacraments on two conditions, that they try to live according to the demands of Christian moral principles and that they receive the sacraments in churches in which they are not known so that they will not create any scandal."

In other words, following their own informed consciences, according to Archbishop Hamer, those in second marriages could return to full Eucharist life. (He didn't say, and couldn't have meant, "only those who are living as brother-and-sister may go to communion." If a couple wasn't having sex, why would anyone think it scandalous that they were going to Communion?) But, said Hamer, these couples in irregular marriages should not trouble the consciences of others by making a big show of it. To receive the Eucharist, they might well have to associate themselves with another parish .

But there was a faction among the U.S. bishops that tried to get Vatican approval of even more explicit guidelines. In 1977, an NCCB committee wrote up some uniform procedures regarding the internal forum, proposing that all such matters be approved by the bishop or his delegate, who would have to arrive at a moral certitude that the couples in question were really challenging the validity of their first marriages before they could be admitted to the sacraments. The Vatican balked at that, pointing out that marriage tribunals were already providing this moral certitude "in the external forum." Asking a bishop to approve particular applications of the internal forum was really an attempt to make the internal forum into some kind of external forum. In attempting to keep the two forums separate, the Vatican was giving U.S. Catholics more freedom than the NCCB committee was willing to grant.

We of ARCC applaud this Vatican move to preserve the internal forum. We could have been content to see Catholics follow "the long approved practice of the Church in the internal forum," as cited by Cardinal Seper and Archbishop Hamer in their responses for the Congregation for the Doctrine of the Faith (CDF). But we have problems with the added admonition that couples who use the internal forum solution should receive the sacraments in churches where they are not known, "so that they will not create any scandal." We argue with that strategy. What would create the scandal? The spectacle of seeing an apparently-happily-married couple going to Communion? Or the notion that those who see them going to Communion would conclude that the Church has changed its teaching on permanence and fidelity in marriage?

In their "Notes on Moral Theology 1995, Pastoral Care of the Divorced and Remarried," Father Kenneth R. Himes and Father James A. Coriden deny the implication: "Even many Catholics who have undergone the torment of divorce do not want the Church to change its teaching on permanence and fidelity in marriage. What they seek is understanding and support for themselves and others when their lived reality falls short of the beauty and truth of the teaching." They add: In the CDF response... no evidence is cited to gauge the risk of scandal that will result from permitting the remarried to receive the Eucharist. Therefore, it is at least equally plausible that an "across-the-board denial of the

sacraments to divorced people who have remarried gives scandal by weakening the witness of the Church to the compassion and forgiveness of Christ" (Himes and Coriden, p 118, quoting the moral theologian Kevin Kelly, in "Divorce and Remarriage in the Church," *The Tablet* 248 (1994) p. 1374).

Furthermore, we suspect it is psychologically damaging for the couple in question, acting in good conscience, to receive the Eucharist surreptitiously. The Eucharist is part of a celebration of the community. The couple needs the acceptance and approval of the community, that is, of the people of God. If the couple does not experience that approval -- a testament to an expanding faith in God's all-embracing love, a faith that looks to the power of God to recreate everyone -- then the couple may have a hard time remaining faithful to each other, and to the Church.

The late Msgr. Stephen Kelleher, once the head of the marriage tribunal for the Archdiocese of New York, seemed to agree with this position when he wrote about the internal forum. (He called it the Welcome Home solution.)

It is my conviction that once a marriage becomes irrevocably intolerable and existentially dead, each party to the marriage, regardless of his religion, has a clear right to divorce, to marry a second time and to be accepted in the religious community of his choice. For the Catholic, this means principally that he will be fully welcomed at the Eucharistic celebration, that he may receive Holy Communion on an equal basis with other Catholics.... The Welcome Home solution is the only human and Christian solution for our time in history. ("Divorce and Remarriage for Catholics," p. 190)

The point is that there has been some liberalizing movement within the Church -- with many theologians and canon lawyers urging a more realistic, more pastoral approach on the marriage-and-remarriage issue, while those of a more legal bent (not always the pope and his advisers in Rome!) hold fast to an "ancient" teaching, a decree of the Council of Florence in 1439. The approved authorities, as they used to say in textbooks on moral theology, are divided.

We have a sense here of *déjà vu*. Much the same thing happened during the birth control debates of the 1960s, when the pope's own commission met over a four-year period to reconsider the Church's traditional ban on contraception. The papal teaching wasn't that old at all; it went back to 1930. The commission recommended a change in the view that contraception was sinful in every instance. But Pope Paul VI responded in his 1968 encyclical *Humanae vitae* by re-affirming the teaching of three previous popes. By then, four years into what had become a heated worldwide debate, many Catholics had already decided for themselves. If contraception was immoral, then the pope couldn't give couples permission to employ it. If it wasn't immoral, then they didn't need his permission. They made this confident decision by following a long-standing tradition in the Church called probabilism. If Catholics found differing opinions in the Church on any moral issue, with reputable authorities on opposite sides, they didn't have to follow the stricter view -- because the law was truly "in doubt." And doubtful laws do not oblige. (See Kaiser, *The Politics of Sex and Religion*, p 215.)

But Rome keeps insisting on its rigorous opinion regarding Catholics in second marriages. As recently as 1997, Pope John Paul II and his chief theological adviser, Cardinal Josef Ratzinger said that those living in an irregular union could come to the sacraments only if they lived "as brother and sister." In other words, if they didn't make love. In this matter, we think, along with a good many Catholic moralists, that the pope and his adviser were perhaps forgetting the psychological and theological

insights on marriage that were worked out at the Council. The Fathers of Vatican II put lovemaking at the heart of marriage, when they wrote, "Such love, merging the human and divine, leads the spouses to a free and mutual gift of themselves . . . Such love pervades the whole of their lives. Indeed, by its generous activity, it grows better and grows greater."

This was part of a chapter on marriage in the Council's crowning document, *Gaudium et spes*, a passage that vetoed the notion that looked upon marriage as primarily a legal contract, stressing property and inheritance. As a sacrament in Christ, marriage is a matter of a complete mutual exchange, body and soul. The Fathers of Vatican II emphasized the deeply human character of married love, which has "affective overtones enriching the expressions of body and mind with a unique dignity and ennobling these expressions as special ingredients and signs of the friendship distinctive of marriage. This love is uniquely expressed and perfected through the marriage act." The word "uniquely" is a rendering of the Latin word *singulariter*, a word which does not mean conjugal love is expressed and completed only through the marital act. It means that the act does this beyond all other acts and in a way most typical of the love it expresses and completes. Furthermore, the Council Fathers warned couples not to break off love and intimacy when "they find themselves in circumstances where at least temporarily the size of their families should not be increased."

In other words, said the Council Fathers, there is something right about sex if you are married. In fact, as St. Paul said in 1 Corinthians, there's something wrong if you're married and don't have sex. Married people know this. Married priests in the Eastern rites know this. Protestant clergy know this. If some priests and bishops do not know this, those who are married have a duty to help them understand.

Some Practical Advice.

Let's say that faithful Catholics are mature enough to think about employing the internal forum solution. Here's how it works. Let's say Tom was married before. But he was divorced, and then he remarried. Let's say he married another Catholic. Call her Matilda. Or maybe he and Matilda haven't gotten married yet, but would like to. Tom and Matilda still believe in God, the Father almighty, creator of heaven and earth, and in Jesus Christ, His only son, our Lord, who was born of the Virgin Mary, crucified under Pontius Pilate and so on. In other words, they're still Catholics. They have this need to be right with the Lord, and they want to share in their Catholic community's Eucharistic celebration.

But they have this divorce-and-second-marriage thing, and they want the Church's blessing, but, for any number of reasons, they cannot go through the annulment process, or do not want to. (Some, for instance, feel the process demeaning or an invasion of privacy, and some cannot afford the legal fees, even though they are low, as legal fees go.) The bottom line is that their conscience is clear about this second marriage.

We may be going too fast here. How do Tom and Matilda know their conscience is clear? Because they know Tom's first marriage is dead, and that there's no possibility of going back to it. Tom is sorry for his inability to do better the first time, Tom is fulfilling his legal obligations to the children of his first marriage, and they both firmly believe that they will live a better Christian life in this marriage,

and Tom wouldn't dream of leaving Matilda any more than Matilda would dream of leaving Tom. They believe this marriage is good, and, so far as they can tell, something God wants for them, now.

The canon lawyers who are currently urging greater use of the internal forum solution make a good deal out of the distinction between two kinds of previous marriage: 1) a marriage that was "invalid" but whose invalidity is difficult to prove before a diocesan marriage tribunal, and 2) one that was valid but is now dead, and as non-functional as a blind man's binoculars. As one pastor put it in James Bowman's book, *Bending the Rules*, "People know there was a [first, valid] marriage. There just wasn't enough Christ in it to make it for life." In practice, the distinctions make little difference to those who have to make a decision in good conscience. Tom and Matilda still have to make up their own minds that they are doing the right thing. They may not have the legal acumen to figure out which one of the Church's 14 causes of nullity might apply in Tom's case. But they do know when marriage number one has died. Almost from the beginning, Eastern Orthodox churches have continued to embrace their sons and daughters who have experienced various forms of marriage death. But there can be more than one kind of marriage death.

Moral death. Moral death takes place when the love of one of the parties is either destroyed or ceases of its own accord after some period of time. Certain human actions can destroy affection. Such actions as incest, murder, violence, or betrayal can cause love to be changed into repulsion. A spouse may disappear, go away for a long time (in body or in spirit), or plunge into alcoholism, drug abuse or a homosexual union. In these cases, counselors urge caution and a great deal of discernment. They ask whether there has been a real death or merely exhaustion, temporary loss of hope, or severe anger -- conditions that might be cured by counseling, or time, or events that bring about a radical change in the couple's relationship.

Psychological death. There are some disorders of the mind or brain for which there is no cure -- Alzheimer's disease, for example, or the permanent after-effects of drug abuse. In the Western Church, healthy spouses of such terminally ill people have a hard time persuading their pastors to apply this norm, or giving themselves the freedom to do so without feeling some sense of betrayal, even when they continue to provide care for their ailing spouse. But Orthodox Christians have no such problem. Their bishops can and do declare such marriages dead, and they will preside at a second wedding.

Political death. Political death takes place when a person is taken into slavery, sentenced to life imprisonment, or chooses a political career that takes an individual permanently from the marriage. This theory was used in the U.S. during the time of slavery. Many slaves of Irish or French masters wanted to become Catholics. Those who had been married in Africa, but practically separated forever from their spouses, were given permission by Rome to be baptized and remarried in the Church -- based on the theory of political death.

At a point when Tom and Matilda feel secure in the judgment that Tom's first marriage is truly dead, they have several different ways to go.

If they are already re-married:

1) They can simply celebrate Mass, and say, with everyone else in the congregation, "Lord, I am not worthy to receive you. Only say the word and I will be healed." And then they march up to

communion, and find the comfort in Christ's sacramental presence that he has always wanted them to have, ever since he presided over the Last Supper and said to the Apostles, "Do this in memory of me." These days, priests and Eucharistic ministers will rarely refuse communion to anyone. Canon 915 says that only those who "obstinately persist in manifest, grave sin" should be banned from the Eucharist. It is unwise for any ministers of the Eucharist to make that judgment. They should know that Catholics have a right to the Eucharist, which is so much at the heart of our faith.

Two reputable U.S. canon lawyers, the late Msgr. Stephen J. Kelleher and Father Lawrence G. Wrenn, who once headed up the marriage tribunals in the Archdiocese of New York and the Diocese of Hartford, Connecticut, respectively, have maintained that every Catholic (even one whose first marriage has died) retains the right to marry and a right to receive the Eucharist, even if an annulment has not been granted. They cite canon law. Canons 213, 843.1 and 912 state the right of the faithful to the sacraments, and to the Eucharist in particular.

Furthermore, as Fathers Himes and Coriden, put it :The people who are the Church need the sacraments not only because they are holy but because they are sinful. Sacraments are not rewards for a life well lived but a means to deepen one's love of God and desire for conversion. Restricting the sacraments to those who are completely integrated into the life of the Church overlooks the example of Jesus who seems to have been generous in sharing his table with all who approached him, even public sinners. ("Pastoral Care," p. 115.)

There is a growing theological opinion in the Church which holds that the Lord's Supper is for the hungry, not for those who are full. We are followers of Jesus, who told us his Father wanted mercy, not sacrifice. And of a Jesus who ate and drank on a regular basis with sinners. Is the Church being unfaithful to his memory if the sinners who belong to it partake of his body and blood in the Eucharistic banquet that he bid us repeat in his memory?

2) Catholics in distress over their marital situation find any of a number of good, compassionate and, above all, knowledgeable priests or ministers and they tell them their situation. They tell them where they're coming from. They tell them they want to pursue the internal forum solution. The counselors or confessors will probably ask them some key questions, and the couple in distress will give some honest answers. The counselors will not wave a magic wand and say, "Okay. You're free to do whatever you want to do." They will say, "Okay, it is your conscience. You can't play hide and seek with God. But if you're convinced you're doing the right thing, then come back to the Lord's Table."

This second way (going to a priest, or someone in the Catholic community whose opinion is respected) has one advantage: it may give an uncertain couple an important sense that they are not deceiving themselves, willing as they are to submit their judgment to the (presumably more objective) validation of another.

If they want to enter into a second marriage:

Let's say Tom and Matilda are not married yet, but headed that way. Can they employ the internal forum solution and ask the priest to bless them in their prospective marriage? There's nothing wrong with their asking. There's nothing wrong with his giving. He is accustomed to blessing homes, cars, boats, planes, even dogs. He can bless a couple in their loving commitment to each other. What he

cannot do is bless them in a public rite that gives the impression that he is witnessing to a new, sacramental marriage. Some suggest that a couple can get married before a justice of the peace, and then have the immediate family come over to the church for a quiet blessing there. They point out that first getting married civilly and then going to church for the priest's blessing is close to standard practice in about 70 percent of the Catholic world (in Mexico, for example, and in many Latin American countries).

But, because priests in the Western Church are ministers in a Church that has no tradition of blessing marriages while the first spouse is still living (if no annulment has been granted), we can't expect them to challenge the official Church in a public way. They will not be able to do that until some of the Church's best theologians prevail on a future pope and his advisers to come up with some policies that move the Church in a more loving, more compassionate direction. We hope the Church can find a way to hold on to its belief that marriage should be permanent and, at the same time, recognize that some marriages die.

We of ARCC do not believe this hope is unrealistic. For more than 20 years organizations like the Catholic Theological Society of America and the Canon Law Society of America have been pushing for reforms in marriage legislation. Some theologians urge the complete abolition of the annulment system; in the meantime, they suggest that pastors make more use of the internal forum solution.

We of ARCC do not say that all those Catholics in second marriages should or should not do anything on our say-so alone. They should think for themselves and exercise their own consciences as members of the Church, and as the Fathers of Vatican II bid them do in another matter, in the Council's Declaration on Religious Liberty. We have no automatic solutions here, we wave no magic wands. We do offer some encouraging words, words that should give heart to many who have lost heart. We meet these people at work, we party with them, we break bread with them at family reunions. If we talk seriously with them about their situations, we shortly learn that they live in pain (sometimes deeply repressed pain) because they have been made to feel they are no longer good Catholics. "I used to be a Catholic," they will say, sadly. But, often enough, after we get to talk to them, we find they are better Catholics than those who would exclude them. On their face, their second marriages seem to be more real, more loving, more fruitful than their first marriages. Furthermore, we salute them for having the faith and the hope and the love -- and the courage -- to try again after their first marriage foundered. For this reason, we of ARCC dare to speak out on behalf of these people of God, and we hope to welcome them to the Eucharistic banquet.

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Note

*In 1884, Leo XIII divorced two Jews so that one, married to a Catholic in a civil ceremony, could become a Catholic and the marriage could be ratified in the Church. In April 1924, Pius XI dissolved the marriage of a baptized Protestant and a Jew so that the Protestant could marry a Catholic. Shortly after that, he dissolved the marriage of a Protestant and a pagan. And, on November 6, 1924, he divorced a non-baptized man from his Anglican wife so he could marry a Catholic, without any

mention of the man's conversion. Pius XII went even further. In 1947, he divorced a non-baptized woman from her Catholic husband, who had been married to her by a Catholic priest, so that she could become a Catholic and have her marriage to another Catholic validated. Three years later, the pope allowed the Catholic party in the first marriage to marry again. On March 12, 1957, Pius XII dissolved the marriage of two Moslems so that one could become a Catholic. Never before had the Church broken the marriage of two unbaptized parties. These divorces, or dissolutions, were granted under the so-called Pauline Privilege, or the Petrine Privilege -- "in favor of the faith." On February 7, 1964, Paul VI applied the Petrine Privilege by granting a divorce to a Jew who had been married to another Jew, but was now married to a Catholic, even though the Jew had openly stated that he did not wish to convert. "Favor of the faith" was now being granted, apparently, for any kind of benefit the pope would allow. For a fuller account, along with citations on these cases, see Peter DeRosa, *Vicars of Christ, the Dark Side of the Papacy*.

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