

**"THEOLOGICAL REFLECTIONS ON THE FAMILY IN THE
LEAD UP TO THE 14TH ORDINARY GENERAL ASSEMBLY
OF THE SYNOD OF BISHOPS ON THE FAMILY"
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I. INTRODUCTION

The Synodal process initiated by Pope Francis in October 2013, to study, discuss, reflect and decide on the Church's care and concern for the family in the contemporary world, is undoubtedly a Spirit-inspired event. As the term 'synod' itself has traditionally signified, the Church is 'on a journey', a journey in which the Holy Spirit is the sole, primary guide, as promised

by Jesus. All through her long history, the Church has had her ups and downs, but no one can deny that the Holy Spirit ever abandoned the Church. The same Spirit while guarding the Church from error, has also enabled her to constantly renew herself in order to be relevant to the successive generations by responding to the 'signs of the times'. Among the many such 'signs', through which God speaks to the world and the Church, is surely the family in contemporary society. If we are serious that the family is the basic cell of society and the world itself (and eventually of the Church herself), then, the Pope's choice of this theme as pivotal for the Church's evangelizing mission in the world today, should be obvious.

What is unique in this current Synodal process is its ability to attract the participation of all the members of the Church in her reflections to discern what the Holy Spirit is saying with regard to family in the contemporary world. Following the spirit of the Second Vatican Council, in launching this unprecedented Synodal process, Pope Francis has made sure not only to promote the collegiality of the bishops, but also to get the pulse of the entire People of God, thus, to enhance the traditional theological concept of *sensus fidelium*. Given below are the main elements of what we are referring here to as 'the Synodal process':

- The Questionnaire about the Family in the Contemporary World that was sent to all the Episcopal Conferences in October/November 2013 for a feedback from their respective local churches.
- The feedback thus received was collated, and that became the Working Paper (*Instrumentum Laboris*) for the Extraordinary Synod of October 2014.
- The celebration of the Extraordinary Synod in October 2014, under the theme "The Pastoral Challenges of the Family in the Context of Evangelization". At the end, the Synod Fathers voted on each and every item of the Official Final Report (*Relatio*).
- The sending of the Official Final Report (*Relatio*) of the Extraordinary Synod back to the local churches for their

further reflection and comments. These reflections, comments and recommendations are due to be gathered and collated, and eventually, they will become the Working Paper (*Instrumentum Laboris*) for the forthcoming Ordinary Synod of bishops which is due in October 2015.

- The celebration of the Ordinary Synod in October 2015, under the theme “The Vocation and Mission of the Family in the Church and in the Contemporary World”. Hopefully, at the end, the Synod will once again vote each and every one of its own comments and recommendations that would be handed over to the Pope, as usually is done at the end of a Synod.
- These Synodal comments and recommendations will obviously serve as a basis for the would-be-official teaching of the Church which the Pope hopefully will declare through an Apostolic Exhortation.

Ever since this unprecedented Synodal process was launched in order to clearly discern what the Holy Spirit is telling the Church, the secular media has been relentlessly highlighting only a few controversial themes as if they were the only items that matter to the Christian community. Unfortunately, this effort to hijack the Church’s agenda by the secular media, and thus, to distort the main purposes of the Synod, has had its powerful impact even among the members of the Church. **The collection of essays in this special *FABC Paper* is meant to be an antidote to such media gimmicks. It aims to draw the attention of all the baptized as to what the current Synodal process really means and stands for, and then, to some of the main issues that are being included in this process. In no way do the five essays presented here claim to be exhaustive or complete, or even the final word on the issues at stake. Nor are they in a thematically flowing order, as such. Rather, they are meant solely to stimulate the readers, particularly the Asian bishops and their flocks, with regard to some of the major themes of the Synodal process.**

At the end of their Final Report, the Fathers of the recent Extraordinary Synod said:

These proposed reflections, the fruit of the synodal work which took place in great freedom and with a spirit of reciprocal listening, are intended to raise questions and indicate points of view which will later be developed and clarified through reflection in the local Churches in the intervening year leading to the XIV Ordinary General Assembly of the Synod of Bishops, scheduled for October 2015, to treat The Vocation and Mission of the Family in the Church and in the Contemporary World. These are not decisions taken nor are they easy subjects. Nevertheless, in the collegial journey of the bishops and with the involvement of all God's people, the Holy Spirit will guide us in finding the road to truth and mercy for all. This has been the wish of Pope Francis from the beginning of our work, when he invited us to be courageous in faith and to humbly and honestly embrace the truth in charity.

In officially concluding the Extraordinary Synod in October 2014, Pope Francis himself repeated the same sentiments of the Synod when he invited the whole Church (all the baptized together with their shepherds) to seriously and prayerfully reflect and discuss what has gone thus far in this current Synodal process so that the entire Church may be able to listen and discern what the Spirit wishes to say to her, by the time the process winds up with the Ordinary Synod in October 2015. It is in response to these magisterial calls that we undertook to reflect in the form of five essays, on some of the crucial pastoral issues that came up in the Synodal process. If they (which form the contents of this special *FABC Paper*) could evoke interest and contribute to, in some way towards the wider and more informed participation of God's People in the Synodal process, then, the main purpose of the writer is achieved.

II. ON FAMILY: A TRULY 'EXTRAORDINARY' SYNOD OF BISHOPS

The Roman Catholic Church, since the Second Vatican Council (Vatican II) has had thirteen Ordinary Synods and three Extraordinary Synods. The former category of Synods consists

basically of Bishop-representatives elected by their respective Episcopal Conferences while the latter type consists mainly of the Presidents (or their special delegates) of the Episcopal Conferences. The Pope has the prerogative of appointing a certain number of Bishops-delegates for any of these two types of Synods. Heads of the Roman Dicasteries also form part of many Synods. A Synod of Bishops as it is understood in the post-Vatican II era, whether Ordinary or Extraordinary, is a consultative body to the Pope, which can vote on propositions to be presented to the Pope. But it is the Pope who finally drafts the end-result document, known as an Apostolic Exhortation. In the Catholic Church such a document has teaching authority, and the degree of such authority among papal documents is second only to a Papal Encyclical Letter. Last year, Pope Francis, in an unprecedented move, simultaneously called for an Extraordinary Synod (October 2014) and an Ordinary Synod (October 2015) in order to consult, discuss, and last but not least, to orient the course of the Catholic Church with regard to the main theme “Pastoral Challenges to the Family in the Context of Evangelization”. The Extraordinary Synod began on 5th October 2014 and ended on 18th October 2014 with the Beatification Mass of Pope Paul VI who was the first Pope to visit Sri Lanka in December 1970. Its Final Statement though not a definitive document is now presented to the Episcopal Conferences to be circulated around for wider consultation and reflection, the results of which would become eventually the ‘Working Document’ for next year’s Ordinary Synod of Bishops in October on the same theme.

Although the technical term “Extraordinary” is used to refer to this sort of a Synod (as we had just a few days ago) that consists mainly of the Presidents of the Episcopal Conferences, this particular Synod was not only technically, but also literally “extraordinary”! Discussed below briefly under the sub-headings that follow are the reasons why it was literally “extraordinary”:

1. Family is a main concern of the Church

As the theme of the Synod itself suggests, Pope Francis by calling this particular Synod which is the first of his pontificate (and the one that would follow next year) has shown what his main priorities for the Church are, as its universal visible shepherd. From the time of St. John Chrysostom in the fourth century, the family has been called “the domestic Church” in the Catholic tradition, a phrase that has been often used by many today. To begin with, this concept flows from the basic fact that the Church is “a family of families”. Any human being, by the very fact of his/her birth to the world, normally belongs to a family. Thus, biologically he/she would have parents and siblings, and other relatives. However, a Christian when he/she is baptized, becomes a member also of the wider family, the Church. Thus, it is no exaggeration to say that a Christian has two families: the biological family and the wider Christian family. But using the same basic fact of reality *vice versa*, one can say that not only the Church is “a family of families”, but the family itself is “a domestic Church”. Of course, historically speaking, the first gatherings of the early Christians were in houses (*oikos*) as we see in the New Testament itself. In addition to this historical fact, the term “domestic Church” necessarily implies that a Christian family ought to be a re-presentation (or a concrete realization in a given situation) of the wider Church. It is the basic Christian unit, the basic building block that is instrumental in constructing or building up the wider Church.

Thus, Pope Leo XIII (1878-1903) revived this traditional understanding of the family as the domestic Church when he said “The Family was before the Church, or rather, the first form of the Church on earth”. The Second Vatican Council re-echoed the same view when it called family “the domestic Church” (*Lumen Gentium*, No:11). Pope Paul VI (1963-1978) wrote: “There should be found in every Christian family the various aspects of the entire Church”. In his *magna carta* on family, the Apostolic Exhortation, *Familiaris Consortio* (1981), Pope John Paul II re-affirmed that the Christian family is “the domestic Church” (No:21). Pope Francis, in his one and only Apostolic Exhortation thus far, *Evangelii Gaudium* (2013) says: “The Family is the

fundamental cell of society where we learn to live with others....” (No:66).

Therefore, in short, any renewal of the Church as a whole has to begin from the family. In taking up such a basic but realistic theme, this Synod surely is “extraordinary”.

2. The Church’s Maternity towards her members in the Pastoral Field

The Church is not only a teacher but also a mother to her faithful, as the title of Pope John XXIII’s popular Encyclical Letter *Mater et Magister* (1961) already had indicated. The present Pope, too, has continued to insist that the Church is a mother in the sense that any mother does not love only those morally upright children but also those who have not been that moral in their lives, those who have failed to live the moral ideal! A mother loves all her children, but more so, children who tend to have lost their way! Since there have been so many people all over the world who have failed to live the Christian ideal of marriage and family in one way or the other, especially during the last few decades, the need for the mother Church to reach out to such children of hers is surely the right thing. Although monogamous, heterosexual marriage is the ideal Christian marriage, during the last few decades there have been all sorts of deviations from this ideal. Thus we have today: civil unions, cohabitations, trial marriages, civil marriages of those who have got divorced,...etc. In addition to these deviations, in some countries today, there is also a clamour to get homosexual unions recognized as ‘marriages’! Since marriage is the foundation of any family here on earth, depending on the type of marriage, there has also been different types of families that have come into being in recent times. Ideally, a Christian marriage is an association of persons comprising of a woman and a man married to each other, and who are the parents of children to whom both are biologically parents. But many families today, especially in the West, have deviated from this ideal. For example, today, we have quite a number of single-parent families and also families wherein the parents are of the

same sex (homosexuals adopting children). Then, there are the families based on a civil union with children whose parents were previously married in the Church. Surely, all these types are clear deviations from the ideal Christian marriage and family. But what about their relationship to the Church? Are they to be welcome in the Church? Or simply because they happened to be members of such families that have failed to live up to the Christian ideals, should they be kept outside the life of the Church? Since Jesus came mainly to call not the righteous but sinners (those who failed to live the ideal), is it not correct to assume that the Church as the Sacrament of Christ (the visible sign of Jesus Christ in today's world) ought to reach out to these very people who have failed to live the ideal of marriage and family? It is precisely in such reaching out that the Church manifests herself as a mother. Obviously, the Church as the representative of Christ's continuing active-presence in the world, cannot simply consider only those who live the ideal marriage and family lives as her children. She has to (imitating her Master and Lord) reach out to those who have failed to live up to this ideal. The many discourses of the present Pope go along this particular line of thought, and the recent Extraordinary Synod itself was called to reflect, discern and see how the Church ought to go about in being a mother to such lost children of hers who live in the periphery of ecclesial life.

As such, this Synod was never meant to change doctrine on marriage but to see how the Church's doctrine could be applied in the contemporary lived pastoral reality. After all doctrine by itself in its own speculative sphere has no meaning if it is not applied to or relevant to the lived reality of persons! As the Lord Himself said, the Sabbath is made for man, and not man for the Sabbath! Doctrine, therefore, is for persons in the first place. Of course, the often rattled off phrase by some before and during the Synod "doctrine cannot change" is also not totally correct, simply because within the Catholic tradition, there are changeable and unchangeable doctrines even with regard to family and marriage. For example, the doctrine that a Christian family is always a gathering of a father and a mother (and not

two fathers or two mothers, as in homosexual unions) is unchangeable. Also the doctrine that a Christian marriage is always a heterosexual and monogamous marriage is unchangeable; so is the doctrine that a valid sacramental marriage is indissoluble. However, there are changeable doctrines which are mostly to do with ecclesiastical discipline. This latter type has changed all along history or the Catholic tradition. For example, marriage as a sacrament was officially accepted by the Church only in the 12th century! Till then, the Church was reluctant to accept it as a sacrament, and so, there were only six sacraments. Another example of evolving doctrine will be the need to have a Church ceremony for marriage (the canonical form) in order to check the many clandestine marriages that were common at that time, which came into being only at the Council of Trent (1545-1563). **So, there are doctrines even on marriage that cannot change, and there are also doctrines on marriage that do change, and in fact, have changed or evolved in the course of history.**

It is also important to point out here that even the cherished Catholic doctrine that a Christian marriage is indissoluble has gone through its own evolution even within the New Testament itself. This Catholic belief on indissolubility which surely goes back to the Lord's teaching itself, has had its own nuances and adaptations in the application of it to the different pastoral contexts of Mathew, Mark and Paul. Thus, according to the crying pastoral needs of his community, Mathew while reaffirming the teaching on indissolubility, has nevertheless introduced what is known as the *porneia* exception clause, not once, but twice in his gospel (Mt.5:31; 19:9). Similarly, Mark, who was writing to the gentile Christian community in Rome had his nuances to this teaching, as he tries to accommodate a woman's right to divorce a husband which was prevalent in the society to which he was writing but was unheard of in the Jewish society to which Jesus taught the doctrine of indissolubility (Mk.10:11-12). Then, Paul, writing to the Christians of Corinth, while reaffirming the dominical teaching of indissolubility, also makes his own pastoral adaptation to that teaching according to the

needs of the Corinthian community (1 Cor.7:12-15). Besides, all these examples from the New Testament itself, we have had plenty of adaptations all through Church's history both in moral theological and canonical practice of the Church with regard to Catholic understanding of marriage. Simply put, this understanding was not what it was from the time of Jesus, but it has gone through its own evolution through the work of the Holy Spirit within the tradition, according to the differing pastoral contexts, down through the ages, as the Vatican II itself taught (*Dei Verbum*, No:8). After all, our tradition is a living tradition, and only a living tradition can and does change. As such, one cannot simply rattle off the hackneyed but erroneous statement, taking things completely out of context: "doctrine cannot change"!

It was Pope John XXIII who said: "the deposit of faith (of doctrines) is one thing, but their expression is another!" Later, Vatican II repeated the same teaching:

The recent studies and findings of science, history and philosophy raise new questions which effect life and which demand new theological investigations. Furthermore, theologians, within the requirements and methods proper to theology, are invited to seek continually for more suitable ways of communicating doctrine to the men of their times; for the deposit of Faith or the truths are one thing and the manner in which they are enunciated, in the same meaning and understanding, is another(*Gaudium et Spes*, No:62).

Pope Francis' call to reflect, discern and see what we could do with regard to pastoral practice thus, is not mainly to change doctrine (especially the unchangeable/non-reformable doctrines), if necessary, according to the contemporary pastoral contexts, but to find new avenues within the inherited Christian tradition that would make the Church a 'mother' to those who have failed to live the ideal married or family life, even if necessary, changing Church's changeable (reformable) doctrines (known as Church discipline), and where necessary, reformulating them in ways that contemporary humans would

be able to understand and put into practice. In this sense, too, the recent Synod was really “Extraordinary”. However, it is necessary to state clearly here that neither the Pope nor any participant at the Synod ever talked about the changing of our cherished unchangeable doctrines, such as the indissolubility of marriage, during this Synod. Their preoccupation was to safeguard this dominical teaching but at the same time searching for ways and means to apply it to ever changing lived reality and finding ways to express state it afresh.

3. The Enhanced Participation of Bishops in the Synod

In his very opening talk to the recent Synod, Pope Francis encouraged all participants, especially the bishop-participants to speak freely. He pointed out that all must speak clearly with freedom to say everything that the Spirit is prompting them to say. He also insisted on the need to listen with humility. “Speaking clearly with frankness and listening with humility are the keys to collegiality”, he said. Pope Francis also made this Synod literally “Extraordinary” by allowing all possible space to freedom of expression which of course, is a fresh breath of air with regard to the collegiality of bishops, since the Second Vatican Council. He wished to exercise his responsibility as the Successor of Peter, but together with the College of Bishops, and not in isolation, so that the true voice of the Holy Spirit could be heard, discerned and listened to. That is why he reassured the bishops: “Have no fear, as this is done with Peter and under Peter”! This new attitude of enhanced collegiality of bishops is surely a recovery of what the Second Vatican Council taught with regard to the Church’s authority to teach in and through the Successor of Peter in communion with the College of Bishops (Cfr., *Lumen Gentium* Nos:22,23). In fact, in its turn, Vatican II did not invent such collegiality in teaching, but re-discovered what was already there in our Catholic tradition.

Re-echoing the above Vatican-II teaching on collegiality, at the Vigil Service at St. Peter’s Square on the day before the Synod was officially inaugurated, the Pope said: “Already our coming together as one around the Bishop of Rome is an event of grace,

in which the Episcopal collegiality manifests itself in a journey of spiritual and pastoral discernment". At the very opening session, the Relator General of this Synod, the Hungarian Cardinal Peter Erdo in his presentation of the collated responses to the pre-Synodal questionnaire (*Relation ante Disceptationem*) said that as a result of sending that questionnaire world wide, there was a much greater participatory response than at the earlier Synods. He also pointed out that the same results made it possible to incorporate into his presentation of the Working Document for the Synod ideas that had already circulated among bishops. This clearly is a sign of greater participation of not only bishops but also lay people.

The well-known Italian theologian Archbishop Bruno Forte who was also the Special Secretary to this Extraordinary Synod, stressed the importance of open dialogue and mutual respect. "It is important to put ourselves in front of each other with respect and to listen to each other" he said. Recalling how Pope Paul VI's efforts following the Second Vatican Council call for involving the voices of all the baptized in discussions, Archbishop Forte admitted that the bishops are still learning how to do this.

4. An Inclusive Synod

Although this is surely not the first Synod where all walks of Church life participated, including the laity, it certainly will go down in post-Vatican II Church history as the first Synod that had a wide-consultation of the whole Church even before the Synod began. The questionnaire that was circulated among all the local Churches by the Vatican in preparation for this Extraordinary Synod was in fact an open consultation on issues to do with family and married life, including those issues that were at least implicitly considered till fairly recently as taboo for open discussion, such as the pastoral care of those who live together without marrying, of those who were divorced and remarried civilly, of same sex unions, of single-parents, and regulation of births. In many countries the respective Episcopal conferences following the Pope's initiative did have wide

consultations within their local Churches, that included lay consultations, too. As Cardinal Erdo said in his presentation of the collated results of that questionnaire, it was surely an unprecedented wide consultation, almost bringing to the fore once again in the Church the cherished Catholic belief of *sensus fidei* and *sensus fidelium*. After all, as the great theologians Yves Congar, Henri de Lubac and others taught, together with the Vatican II, the Holy Spirit always present in the Church will never allow the whole Church as a single body together to fall into error with regard to doctrine and morals (*Lumen Gentium*, No:12). The implication here is though the hierarchical teaching authority comprising of the Pope together with the Bishops have the unique privilege of having the final word in teaching faith and morals, it cannot and should not ignore its duty to consult all the baptized in the Church in such matters of faith and morals (Cfr., *Dei Verbum*, Nos.8-10; *Gaudium et Spes*, Nos.33, 43). This Synod, surely made a clear effort to do just this, and in that sense too, it was “extraordinary”.

Moreover, unlike in earlier Synods, the Pope himself asked the participants to feel free, especially asking the bishop-members not to say only those things that would please the Pope but even things that the Pope would not like to hear, provided the bishops were convinced in faith and in conscience of what they were to say. This is an unprecedented freedom in the post-Vatican II era but something that was a characteristic hall mark of early Councils and Synods. In fact, at the end of the Synod, Pope expressed his heart-felt gratitude to all the participants for their courageous expressions of their deep faith convictions: “I can happily say that with a spirit of collegiality and synodality, we have truly lived the experience of a Synod, a path of solidarity, a journey together”.

One also needs to note that with this Synod, Pope Francis went down in history as someone who wanted explicitly to be inclusive in discussions and decision-making. His appointments to the Synod offices, and to the Synod itself, were not to do with those bishops who toed slavishly only his line of thinking. Cardinals and bishops who were known to be quite opposed to

his own views were fearlessly and courageously nominated by the Pope in the list of bishop-participants that he was privileged to nominate. We need to say honestly that this too is a very clear, welcome deviation from the earlier post-Vatican II Synods. Thus, here too, we need to notice that the aim was to be all-inclusive so that the Holy Spirit had enough space to move about rather than being suffocated into one line of thinking.

5. An Inconclusive Synod

This was not a decision-making Synod, nor was it a Synod that passed propositions that would have been later handed over to the Pope to write an Apostolic Exhortation as the other Synods were used to doing. Rather, it was mainly to set a well-reflected agenda for the next Ordinary Synod in October 2015 where the bishop-participants would be voting on different propositions to be handed over to the Holy Father to write his own Apostolic Exhortation which would be the final official magisterial teaching in this process of the two Synods, one following the other. As the Pope himself said in his final discourse to the Synod, with the end of this Synod begins a long period of intense and prayerful reflection of the whole Church on various aspects of Family living in the contemporary world according to the teachings of Jesus Christ. In that sense, this Extraordinary Synod is inconclusive in the sense that it is only one of the stages of the long and well-thought-out process of all-inclusive decision-making wherein the Holy Spirit has been allowed his due space.

6. The Charisma of Pope Francis

At the Vigil Service in preparation for the Extraordinary Synod at St. Peter's Square, the Pope outlined three precious guidelines for the participants in their search for what the Spirit was prompting when he said:

From the Holy Spirit we ask for the Synodal Fathers, first of all, the gift of listening: listening to God, until we breathe the will to which God calls us. Besides listening, "we invoke the willingness for a sincere discussion, open and fraternal, which

leads us to take charge with pastoral responsibility of the questions that this change of time bears with it. We will let our hearts flow, without losing our peace, but with the serene trust that in His time the Lord will not fail to lead us back to unity. Is not the history of the Church recounted perhaps with many similar situations, that our fathers were able to overcome with obstinate patience and creativity? The secret is in a look: and this is the third fit that we implore with our prayer. Because if we really intend to verify our step on the terrain of the contemporary challenges, the decisive condition is to maintain our gaze fixed on Jesus Christ – *Lumen Gentium* – to remain in contemplation and adoration of His face”.

It is important to note that all throughout this Synod, Pope Francis who was so enthusiastic in calling it in the first place, was present but silent, all the time intensely and patiently listening to the interventions of all the participants. He spoke at the Inauguration and the Conclusion of the Synod, both those speeches becoming classic in post-Vatican II Catholic Synodal history. In his homily at the opening mass of the Synod, based on the scripture readings of the Vineyard of the Lord, the Pope said: “Synod Assemblies are not meant to discuss beautiful and clever ideas, or to see who is more intelligent.... They are meant to better nurture and tend the Lord’s vineyard, to help realize his dream, his plan for his people. In this case, the Lord is asking us to care for the family, which has been from the beginning and integral part of his loving plan for humanity”.

In his strong-worded concluding speech, the Pope expressed his gratitude to all the participants, and said that he felt the presence of the Holy Spirit all through the Synod which he compared to a “journey”. What went down on record of this speech (which received a standing ovation for more than four minutes from the participants) are what the Pope called the five “tensions and temptations” one encounters during this sort of a “journey”:

1. A temptation to hostile inflexibility, that is, wanting to close oneself within the written word (the letter) and not allowing oneself to be surprised by God, by the God of surprises (the

spirit); within the law, within the certitude of what we know and not of what we still need to learn and to achieve. From the time of Christ, it is the temptation of the zealous, of the scrupulous, of the solicitous and of the so-called “traditionalists” and also of the “intellectuals”.

2. The temptation to a destructive tendency to goodness (“il buonismo” in Italian) that in the name of a deceptive mercy binds the wounds without first curing them and treating them; that treats the symptoms and not the causes and the roots. It is the temptation of the do-gooders, of the fearful, and also of the so-called “progressives” and “liberals”.
3. The temptation to transform stones into bread, to break the long, heavy, and painful fast (Luke 4:1-4); and also to transform the bread into a stone and cast it against the sinners, the weak, and the sick (Jn.8:7), that is, to transform it into unbearable burdens (Lk.11:46).
4. The temptation to come down off the Cross, to please the people, and not stay there, in order to fulfill the will of the Father; to bow down to a worldly spirit instead of purifying it and bending it to the Spirit of God.
5. The temptation to neglect the *depositum fidei* (the deposit of faith), not thinking of themselves as guardians but as owners or masters (of it); or, on the other hand, the temptation to neglect reality, making use of meticulous language and a language of something to say so many things and to say nothing! They call them “byzantinisms”, I think these things!

Then, the Pope said that these “temptations” must not frighten us or disconcert us or even discourage us, as we go on the rest of the “journey” during the coming year. Truly, this was an “extraordinary” Synod, in this sense, too!

III. IS THE CHURCH CALLED TO BE A “BEAMING LIGHTHOUSE” OR A “GUIDING TORCHLIGHT”?

The recently concluded Extraordinary Synod on Family will surely go down in history as one of the few Episcopal gatherings after the Second Vatican Council that came very close to being a real Synod in the true traditional sense of that word. The sense

of collegiality among the bishops, the freedom to express one's views even when they were contrary to the positions held by the Bishop of Rome, the burning zeal of the gathering as a whole to genuinely respond to the crying pastoral issues that were to do with Christian family living,....etc. were conspicuous. And these were precisely the characteristics that were considered typical of Synods in the Early Church. Although there were many issues on which the worldwide Catholic Episcopate was unanimous at the recent Synod, there were some issues (especially with regard to the pastoral practice in the cases of the divorced and remarried and of those in homosexual living), on which there were clear divisions of opinion. As Cardinal Peter Erdo, the General Relator of the Synod in his opening *Relatio Ante-Disceptationem* (Report before the discussion) clearly stated, no one, in response to the pre-Synodal questionnaire had questioned the unchangeable doctrines of the Church, such as the indissolubility of marriage. He emphasized: "Therefore, not doctrinal, but rather practical questions – inseparable from the truths of faith – are in discussion in this Synod, of an exquisitely pastoral nature".

It is no exaggeration to say that the main division with regard to the Synodal discussions boiled down to the vital question: should the Church's teachings on Family be portrayed as "a beaming lighthouse" in a morally dark world or should they be portrayed as "a guiding torch" that illumines the paths of peoples in a morally dark world? One needs to notice that both these metaphors presume that the contemporary morality in the wider secular world is dark but they differ in how to go about in such a world with the Church's illuminating official teachings on Family.

The Church is called to be the Light to the World

The Vatican-II document on the Church, *Lumen Gentium* (LG) begins by asserting that Christ is "the light of the nations". Since Church is the sacrament of Christ in the world, she has a light that is brightly visible in her countenance (LG 1). She is the visible sign of salvation here on earth (LG 48, GS 43). Much later,

Pope John Paul II in his *Redemptoris Missio* (RM) would reaffirm how the Church serves the Kingdom of God by spreading throughout the world the gospel values (RM 20), and would also highlight the fact that she is the “sign and instrument of salvation” (RM 9). This fundamental Catholic belief of the Church as Christ’s living presence in the world, as Christ’s sacrament in the world, is concretized mostly in and through her teachings which obviously ought to be “a light to the nations”, just as Jesus himself was (Lk. 2:32). It is worth noting here how Cardinal Erdo’s *Relatio Ante-Disceptationem* to the Synod itself states: “The crystal clear and whole truth of the Gospel gives the light, meaning and hope which humanity needs today”.

However, most of the available recent statistics demonstrate clearly that there is an ever-growing gap between what the Church teaches (in her effort to be a light to the world), especially with regard to family, marriage and human sexuality, and what her faithful really believe and practice. Even the worldwide responses to the questionnaire that was circulated prior to the recent Synod clearly show the existence of such a gap. The central question of the recent Synod thus boiled down basically to: how could the Church reach out to her members through her official teachings on Family, marriage and human sexuality? Should the Church begin with doctrine or should she start from the reality in which people live in varied contexts all over the world? Combing through the Synodal interventions and comments on the Synod by the very participants themselves, one notices apparently two main exclusive approaches suggested by the Synod Fathers as to how the Church ought to go about in her pastoral practice:

- To portray the Church’s teachings as a bright lighthouse
- To portray the Church’s teachings as a guiding torch-light

Portraying the Church’s Teachings as a Bright Lighthouse

On the one hand, as Cardinal Raymond Burke and some others have been publicly insisting, the Church needs to be a lighthouse beaming out the truth that has been entrusted to her. Cardinal Burke has been quoted as saying: “If a ship is in distress or a

whole culture is in distress, you need a lighthouse and it had better be beaming brightly”.¹ That is, she needs to be bold and prophetic in proclaiming her message of salvation, especially by firmly adhering to her doctrine/teachings. Accordingly, in a morally dark world, what one really needs as an anti-dote is strong light, i.e., firm, sure and consistent moral teachings. There should be no question of giving into the ‘worldly ways’ and diluting doctrine when it comes to family matters because such ‘worldly ways’ are proved by now to be wrong beyond any doubt, in addition to being contrary to the gospel values. It is people who ought to change, and not the doctrine of the Church. The danger in following this approach in an exclusive way is that it could become mere abstract teaching not having much to do with the lived reality of the people. However, such upholding of doctrine as a beaming light surely has the prophetic and witnessing value as taught in the gospels. Jesus’ teaching “You are the light of the world”, and a light is not kept hidden (Mt.5:14-16; Lk.11:33) will fit in well to what this approach holds.

Portraying the Church’s Teachings as a Guiding Torch-light

On the other hand, there has also been quite a number of voices at the Synod who wished the Church to get into the shoes of the people and walk with them. For example, Fr. Antonio Spadaro, SJ, who was a Synod Father, held the view that the Church should not be a lighthouse beaming out the truth but holding a torch and walking with the people.² According to this group, the Church should hold her cherished doctrine/teachings just as a torchlight, and show the way to the contemporary peoples who are groping in moral darkness. Their point was that while the Church should not change her cherished unchangeable doctrine on marriage and family, she should surely re-formulate such doctrine to suit today’s lived realities in the world (when and where necessary), and change her pastoral practice according to the *signs of the times* and the genuine pastoral needs of the

¹ As quoted in *The Tablet*, 18 October 2014, 5.

² Cfr., Christopher Lamb, “Open to the Voice of the Future”, *The Tablet*, 11 October 2014, 4.

people. Doctrine, accordingly, is surely the ideal, but in this real world, many do not and cannot live up to the ideal. And so, the Church should inspire, guide and enable such people to grow up to the ideal, gradually. The danger in exclusively following this pastoral approach is that it can give the impression of diluting doctrine according to diverse pastoral situations. However, the Biblical words “Thy word is a lamp unto my steps, and a light unto my feet” (Ps.119:105) seem to inspire this position. Moreover, the example of Jesus himself especially in his gentle dealing with the woman at the well who had five husbands (Jn.4:1-30) clearly supports such an approach.

It was obvious that Pope Francis and the main officials of the recent Extraordinary Synod were promoting this second approach. Thus, in his opening *Relatio Ante-Discepcionem*, Cardinal Erdo spelt out the main task of the Synod, more or less according to this type of being a light (torchlight) when he said:

In a real way, we are called upon, above all, to put ourselves alongside our sisters and our brothers in the spirit of the Good Samaritan (cf. Lk 10:25-37): being attentive to their lives and being especially close to those who have been “wounded” by life and expect a word of hope, which we know only Christ can give us (cf. Jn. 6:68).³

He also said that it is precisely when faced with the ‘signs of the times’ that the gospel of the family offers itself as a remedy, a “true medicine” that is to be proposed by “placing oneself in the corner of those who find it more difficult to recognize and live it”. Participating in a Vatican Press Conference on the very opening day of the Synod, the Special Secretary for the Extraordinary Synod, Archbishop Bruno Forte said: “It is easy to speak of the divorced and remarried in the abstract, but it is entirely different to walk with them”. Interestingly, the *Relatio Post-Discepcionem* (No:23), the *Relatio Synodi* (No:28) and also in the Message of the Synod, one finds the image of Church as a guiding torch of light (*una fiaccola*).

³ Cfr., Zenith Daily News Bulletin, 6th October 2014.

The Need for a Synthesis

Although everything in our contemporary world is not negative, we are surely living in a world dominated by hedonism, especially when it comes to sexual and marital matters. There is surely what Pope Benedict XVI called “a banalizing of human sexuality” in the contemporary popular secular culture. As already mentioned, both the paths mentioned above seem to assume this as a given. In such a ‘dark’ world, surely, the Church’s vocation is to be a light. But how? The Church certainly needs to be prophetic in proclaiming her teachings received from Christ Himself, but at the same time, the Church has to speak to people in a merciful way, in their lived contexts, as Jesus Himself did in His day. A good example will be Jn.8 where Jesus while upholding the teaching against adultery, did forgive the woman who is said to have been caught in the very act of adultery: “No one has condemned you. Go, and sin no more” (Jn.8: 2-11). Of course, as the division among the Synod Fathers itself implied, there is a difference between these two pastoral approaches if they are taken in isolation:

The lighthouse stands firm, is visible, but does not move itself. The torch of light, on the contrary, gives light while moving itself among the people, enlightens that part of humanity where it is, their hopes, and also their sorrows and anxieties (cfr.GS, N.1). The torch of light is called to accompany people in their lives, accompanying from within their experiences, enlightening meter by meter, not blinding them with a light that is too strong.⁴

So the response to the question raised in the main title of this article is not simple. It cannot amount to a simplistic ‘either or’ solution; rather it has to be ‘this and that’ solution. And that would amount to: the Church today needs **both** the above-mentioned approaches in the pastoral field, namely, she needs to

⁴ Antonio Spadaro, “Una Chiesa in Cammino Sinodale: Le Sfide Pastorali sulla Famiglia”, *La Civiltà Cattolica*, 165 (1 Novembre 2014), 224. The translation from Italian to English is mine.

be both a beaming lighthouse, in prophetically upholding her teaching/doctrine, and she also needs to enter into the concrete lived situations, maternally, and hold a torch to those who walk in the darkness. After all, both these approaches have a firm basis in the Catholic moral tradition, and they are not mutually exclusive.

Looking forward to the October 2015 Synod

The unique dialogical process re-introduced to the Church by Pope Francis that is aimed at getting involved the whole Church, will reach its conclusion when the Pope hopefully will write his Post-Synodal Apostolic Exhortation, at the end of the Ordinary Synod in October 2015. During the remaining process what everyone needs to remember first of all is that the Church's doctrine is for people, and not the people for doctrine. After all, did not the Lord Himself warn us: "The Sabbath is made for man, and not man for the Sabbath" (Mk.2:27)? It was in this same spirit that one needs to read Pope Francis' words to the Congregation for the Doctrine of the Faith on 31st January 2014:

Since the early times of the Church the temptation has existed to understand the doctrine in an ideological sense or to reduce to an ensemble of abstract and crystallized theories (cf. Apostolic Exhortation *Evangelii Gaudium*, 39-42). In reality, doctrine has the sole purpose of serving the life of the People of God and it seeks to assure our faith of a sure foundation. Great, in fact, is the temptation to appropriate to ourselves the gifts of salvation that come from God, to domesticate them – perhaps even with a good intention – to the views and the spirit of the world. And this is a temptation that is constantly repeated.⁵

At the recent Synod, one notices that this was not only a 'temptation' for some Synod Fathers but it also raised an anxiety among them who were of the opinion that not only the Church's doctrine was unchangeable but also it cannot be even re-formulated. They were anxious about any 'tampering' with what

⁵ Cfr., Zenit Daily News Bulletin, 1st February 2014.

they often called “the truth” because truth simply cannot be sacrificed for any pastoral approach however merciful that approach be.⁶ In fact, the pastoral approach that calls the Church to be a beaming lighthouse in proclaiming her doctrine tends to imply that her doctrine needs to just shine forth without any diminishing of its doctrinal light through changes or re-formulations. However, quite a number of Synodal interventions did call for a new approach, if not a re-formulation, of what they saw as the “too harsh language” of the Church in communicating her doctrine. For example, they felt that phrases like “intrinsically disordered”, “contraceptive mentality”, “living in a public and permanent state of adultery”, ... etc. should either be avoided or re-placed with amicable, people-friendly language. Cardinal Wilfred Napier of South Africa was quoted as having wondered: “When we talk about ‘irregular situations’ are we putting people off? Is there another way of putting it and a new approach that may be more advantageous?” During this period of serious reflection between the two Synods, these are some vital points that should not be avoided in whatever pastoral approach we may adopt.

Moreover, Pope Francis’ words at the conclusion of the recent Synod are most illuminating in substantiating the need to have an inclusive, new approach that encompasses both the main pastoral approaches that emerged at the recent Synod. In that concluding discourse, true to his role as ‘pontefice’ (“the bridge-builder”) the Pope welcomed all the opinions expressed at the Synod floor, as voices of the one Spirit. Then, in his inimitable style, he mentioned the five possible “temptations”, the first two of them having to do with holding on to extreme opinions, the so-called ‘traditionalist’ and ‘progressive’.⁷ But the Pope, who is reported as having remained silent throughout the Synod sessions, in this concluding discourse made sure to eloquently caution everyone not to get locked in within any of the five “temptations”. This, hopefully, is the supreme rule of thumb

⁶ Lamb, 5.

⁷ Cfr., Zenit Daily News Bulletin, 19th October, 2014.

during this year when the whole Church is invited to prayerfully reflect and invoke the Spirit to guide the Church. But that Spirit to be really the Holy Spirit, and for Him to act and inspire the whole Church, there needs to be space, and that space can be created only if we, the members of the Church – especially, the decision-makers – unlock ourselves from the above-mentioned ‘temptations’ and also from our other fixed ideas, and be open to each other, listen to the Spirit present in us, the whole Church. It is in this sense that a synthesis of the two main pastoral approaches of the recent Synod could be a way forward, during the remainder of the Synodal process, in the light of the Holy Spirit. Thus, we may conclude: **the Church is called to be both a beaming light and a guiding torch for her members in their varied contexts, through her doctrine and pastoral approaches. After all, doctrine and life are inseparable!**

IV. CAN THE CATHOLIC DOCTRINE ON MARRIAGE AND FAMILY CHANGE?

Introduction

The recently concluded Extraordinary Synod on “The Pastoral Challenges to the Family in the Context of Evangelization” is considered one of the important phases of a long process to reflect, discern and decide how the Catholic Church’s pastoral practice ought to be with regard to not only the families that try to live the ideal of Christian marriage and family life as taught by the Church but also (if not, especially) with regard to those who have failed to live up to that ideal.⁸ It is very much in keeping with the main line of contemporary Church policy followed by Pope Francis, of trying to reach out to the marginalized, those in the periphery of the Church and the

⁸ This latter type is fast increasing today, according to various surveys all over the world, but especially in the Western world. Some call them the “Church’s New Faithful”. Cfr., Linda Woodhead, “Endangered Species”, *The Tablet*, 16 November 2013, 6-7. Others call them “a new state of life in the Church”. Cfr., Basilio Petrà, “The Divorced and Remarried: A New State within the Church?”, *INTAMS* 16(2010), 194-207.

world. One of the main points that kept on emerging not only in the responses to the pre-Synodal questionnaire (that was circulated among the members of the Church through the respective Episcopal Conferences), and in the discussions that surrounded the Synod, but also during the Synod proper, was: “Can the Catholic doctrine on marriage and family change?” Quite a number of participants used the phrase “doctrine can never change” as a weapon (both inside and outside the Synod hall) where and when possible to neutralize the efforts to renew the pastoral practice of the Church with regard to family and marriage, as so consistently desired by Pope Francis and the Synod officials. In this article, our main aim is to delve into the question: Can the Catholic doctrine on marriage and family change? In the process, we will also deal with a few issues that are intrinsically linked to this important question. We will set out to respond to this vital question under the following five sub-headings:

1. What is ‘doctrine’?

The word ‘doctrine’ comes from the Latin word “doctrina”. It means teaching or instruction. It is used both in the active sense of the imparting of knowledge or the act of teaching (1Tim.4:6,16), and in the passive sense of what is taught (Acts 2:42).⁹ Jesus taught with authority what He had received from the Father, and the eternal salvation of human beings depended on the way this teaching was accepted (Lk.9:26). After the resurrection and ascension of Jesus, His apostles saw to it that what they received from Him was handed down faithfully to those who heard them and to the later generations. It was in fact the “good news” or the gospel, and from it stemmed the new way of life of the Christian.¹⁰ As it has come down to us, the use of the term ‘doctrine’ today generally refers to a tradition and a community, and it is in a sense an “activity”, a process of

⁹ M.E.Williams, “Doctrine” in Berard L.Marthaler, et.al. (Eds.), *The New Catholic Encyclopedia*, Vol.4 (Second Edition), Washington DC: The Catholic University of America, 2003, 802.

¹⁰ Ibid.

transmission of the collective wisdom of a community rather than a passive set of statements.¹¹ This itself implies that doctrines, by definition, have static and dynamic elements in them.

As John Henry Newman pointed out so convincingly, throughout history Christian doctrine develops within the Church.¹² Writing much later, the well-known historian, John T. Noonan comments on Newman's understanding of the development of doctrine as follows:

What was meant by development was illustrated in the *Essay on Development* by analogy: by analogy to the beliefs of a child as these beliefs matured in the mind of the child become adult; by analogy with the thought of a poet, whose verse contained more than was explicit in his mind as he composed; by analogy with any organic life as it grows from bud to flower; and by analogy to the course of an idea embraced by a society, an idea whose detailed consequences can be grasped only as the idea is lived out in the society. By all these comparisons, Newman confessed that change had occurred in the doctrine of the church, but he maintained that the changes had been rooted in the original revelation and were a perfection, not a distortion, of it. True development, he wrote, "corroborates, not corrects, the body of the thought from which it proceeds".¹³

The Second Vatican Council (Vatican II) clearly taught that the Christian tradition evolves when it said:

¹¹ Cfr., Alister E. McGrath, "Doctrine and Dogma" in Alister E. McGrath (Ed.), *The Blackwell Encyclopedia of Modern Christian Thought*, (Re-print), Oxford: Blackwell Publishers Ltd., 1996, 112.

¹² For example, Cfr., John Henry Newman, "An Essay on the Development of Christian Doctrine" in Charles Frederick Harold (Ed.), New York: Longmans, 1949.

¹³ John T. Noonan, Jr., "Development in Moral Doctrine" in Charles E. Curran (Ed.), *Readings in Moral Theology, 13: Change in Official Catholic Moral Teachings*, New York: Paulist Press, 2003, 294-295.

The tradition that comes from the apostles makes progress in the Church with the help of the Holy Spirit. This happens through the contemplation and study made by believers, who treasure these things in their hearts (see Luke 2:19,51), through a penetrating understanding of the spiritual realities which they experience, and through the preaching of those who have received through Episcopal succession the sure gift of truth. For as the centuries succeeded one another, the Church constantly moves forward toward the fullness of divine truth until the words of God reach their complete fulfillment in her.¹⁴

At the very opening of his *Veritatis Splendor* (1993), Pope John Paul II implicitly refers to the evolution of Papal magisterium itself on moral matters, especially, “in the areas of human sexuality, the family and social, economic and political life”, when he talks of a “a constant deepening of knowledge with regard to morality”.¹⁵ The Pope while repeating the conciliar teaching on the dynamic character of tradition (Cfr., DV, No:8), goes on to say:

Within Tradition, *the authentic interpretation* of the Lord’s law develops, with the help of the Holy Spirit. The same Spirit who is at the origin of the Revelation of Jesus’ commandments and teachings guarantees that they will be reverently preserved, faithfully expounded and correctly applied in different times and places. This constant “putting into practice” of the commandments is the sign and fruit of a deeper insight into Revelation and of an understanding in the light of faith of new historical and cultural situations.¹⁶

Then, in the very next article in the same Encyclical, the Pope says:

In her reflection on morality, *the Church* has always kept in mind the words of Jesus to the rich young man. Indeed, Sacred

¹⁴ *Dei Verbum* (1965), No:8.

¹⁵ Pope John Paul II, *Veritatis Splendor* (1993), No:4.

¹⁶ Pope John Paul II, *Veritatis Splendor* (1993), No:27.

Scripture remains the living and fruitful source of the Church's doctrine; as the Second Vatican Council recalled, the Gospel is "the source of all saving truth and moral teaching". The Church has faithfully preserved what the word of God teaches, not only about truths which must be believed but also about moral action, action pleasing to God (cf. 1 Th.4:1); she has achieved a *doctrinal development* analogous to that which has taken place in the realm of the truths of faith. Assisted by the Holy Spirit who leads her into all the truth (cf. Jn.16:13), the Church has not ceased, nor can she ever cease, to contemplate the "mystery of the Word Incarnate", in whom "the light is shed on the mystery of man".¹⁷

Thus, keeping in line with this consistent magisterial teaching, theologians hold that Church doctrine (including her moral doctrine) keeps on evolving without losing their original essence.¹⁸ That is to say that there are dynamic and static elements in the tradition with regard to Christian doctrine: that is, there are changeable doctrines and there are also non-changeable doctrines (customarily referred to as "the deposit of faith"). This is simply because the Catholic tradition is a living tradition wherein the Holy Spirit keeps on renewing and deepening the Church's understanding of divine revelation. Actually, the gospel of John teaches us very clearly that the Holy Spirit reveals truths to us gradually, eventually leading us to the truth (Cfr., Jn.14:25-26; 16:12-13).

Moreover, it was Pope John XXIII who said that the deposit, or truths, of faith (of doctrines) is one thing, but the way it is stated is another.¹⁹ Later, Vatican II repeated the same teaching:

¹⁷ *Veritatis Splendor*, No:28. (Italics in the original text).

¹⁸ For a fine, exhaustive balanced collection of essays on this topic, see Charles Curran (Ed.), *Readings in Moral Theology, No:13: Change in Official Catholic Moral Teachings*, New York: Paulist Press, 2003. Also, see John T.Noonan, Jr., *A Church That Can and Cannot Change: The Development of Catholic Moral Teaching*, Notre Dame (Indiana): University of Notre Dame, 2005.

¹⁹ Cfr., Pope John XXIII, *Gaudet Mater Ecclesia*, The Opening Speech at the Second Vatican Council, 11th October 1962, as re-produced in AAS 54 (1962).

The recent studies and findings of science, history and philosophy raise new questions which effect life and which demand new theological investigations. Furthermore, theologians, within the requirements and methods proper to theology, are invited to seek continually for more suitable ways of communicating doctrine to the men of their times; for the deposit of Faith or the truths are one thing and the manner in which they are enunciated, in the same meaning and understanding, is another(*Gaudium et Spes*, No:62).

The important point to be derived from this particular magisterial teaching is that even the unchangeable doctrines can be reformulated to suit our contemporary recipients without of course changing the essence of those doctrines. All of us are well aware how the contemporary world has changed with a rapidity that was never heard of before. We also would agree that spouses are not mere static 'human' objects, unchangeable and uniform "groups of cells" who come together in a marriage, but that they are dynamic subjects with their own unique and diverse personalities. That is to say that the human beings of today's world though the same essences as they always have been (human nature) are nevertheless very different from the by-gone ages, having their own ways of speaking and expressing through an evolving culture/language. Besides, each and every human being has his/her unique personality or character. Consequently, expressions, including theological/doctrinal expressions that were perfectly understandable to by-gone generations may not be understandable to contemporary generations.²⁰ In other words, today, even theological/doctrinal expressions do indeed need new ways of expressing, new up-to-date language forms, so that today's men and women may understand what is thus expressed. It is not a question of diluting or even relativizing the theological expressions of the non-changeable doctrines of the Church, but rather, it is a

²⁰ As an example, one may cite here the evolution that the English language has gone through, say from the time of William Shakespeare or the Victorian times in England. This is simply because English is a living language.

question of looking for new expressions within new paradigms, but of course without changing the essence of the theological/doctrinal expressions (the deposit of faith) that have been passed down to us through our cherished Catholic tradition. That is to say, as both Pope John XXIII and Vatican II intended, it is a question of simply **re-formulating** even our non-changeable doctrines of the deposit of faith, of course always within the inherited tradition. Thus, 're-formulating', here, does not mean at all a 'changing' (in the sense of changing the very meaning or essence of the received doctrine), but re-stating the same in a more legible, intelligible, understandable, relevant way to the contemporary concrete contexts. This is no novelty at all because as we shall see later in this article, it was precisely this sort of an exercise of re-formulating the original dominical teaching on the indissolubility of marriage that we see in the New Testament itself, in the writings of Mark, Mathew and Paul.

In this regard, what the well-known Church historian Norman Tanner of the Gregorian University, Rome, has written may be of great relevance here. In a recent article, Tanner has pointed out the need for re-thinking and re-formulation of doctrine, even those doctrines that are to do with our very fundamental Christian faith as expressed in the *Credo*. Taking the Christian doctrine on the perfect divinity and perfect humanity of Jesus Christ as expressed at the Council of Chalcedon, Tanner says:

.....some 'rethinking' of the Definition of Chalcedon is surely desirable. Updating has been a constant tradition in the Church. As we have seen, the Creed of Nicaea was re-thought as Constantinople's version; the Council of Ephesus reaffirmed the Nicene Creed while citing Mary's role in our salvation; and Chalcedon reaffirmed the three earlier councils before proceeding to its own teaching on Christ's humanity and divinity. Later councils and other authorities within the Church confirmed this existing magisterium (explicitly or implicitly), then added refinements appropriate to their own

times. The kind of 're-thinking' and development is found most extensively in the decrees of Trent and Vatican II.²¹

Tanner goes on to write:

Language certainly needs to be updated, but in a way respectful of earlier formulations and of God's radical transcendence. Finally and obviously, the Definition of Chalcedon focuses very much on a particular doctrinal controversy regarding the human and the divine in Christ. It was never intended to be an all-embracing theological treatise. For this reason, too, there is plenty of scope for 'rethinking' and wider consideration.²²

At the recent Synod, the recurring calls to search for "a new language" that is positive, accommodating and welcoming, to communicate Church's doctrine by a number of Synod Fathers, is clearly a pointer to such re-formulation of doctrine in a way understandable to today's world.

2. The Evolution of Doctrine on Marriage and Family

While keeping to the best of Catholic tradition, it should be obvious that any doctrine by itself in its own speculative sphere has no meaning if it is neither applicable nor relevant to the lived reality of persons. Moreover, persons live not only in varied contexts, but also within changing contexts. After all, change itself is an indispensable part of human existence. Consequently, a series of relevant questions emerge: Are all doctrines static? If so, how could they be relevant to a dynamic concept of human beings, and that too, in changing contexts (both in space and time), as we have in contemporary anthropology? Should doctrines have relevance to human persons? Can they exist by themselves, cut off from human reality, in a Platonic world? As the Lord Himself taught, the Sabbath is made for man, and not man for the Sabbath (Mk.2:27)! Doctrine, therefore, is not for

²¹ Norman Tanner, "Orthodoxy in Nicaea-Constantinople and Chalcedon", *Concilium* 2 (2014), 54-55.

²² Tanner, 55.

itself, but is primarily for living, dynamic persons whose contexts do change with regard to both time and space. As such, the often rattled off phrase by some before, during and after the recent Synod “doctrine cannot change” is seriously erroneous, simply because it implies that all Christian doctrines are unchangeable or static. A more serious but unfortunate implication of such a phrase is that the Catholic tradition is a dead tradition! Consequently, the Holy Spirit would not have any place in such a static tradition because there won’t be anything new to be revealed or to be understood anew in the ‘already revealed’ tradition! This, as we have already seen above, is not the official Catholic magisterial position.

Moreover, within the Catholic tradition itself, as we saw above, there are changeable and non-changeable doctrines. This is true even with regard to family and marriage. For example, the doctrine that a Christian family is always a gathering of a father and a mother (and not two fathers or two mothers, as in homosexual unions of today) is a non-changeable Catholic doctrine. Also the doctrine that a Christian marriage is always a heterosexual and monogamous marriage is non-changeable; so is the doctrine that a valid sacramental marriage is indissoluble. However, there are changeable doctrines which are often expressed through ecclesiastical discipline. This latter type has changed all along history or the Catholic tradition. For example, marriage as a sacrament was officially accepted by the Church only in the 12th century.²³ Till then, the Church was reluctant to accept it as a sacrament (as an ecclesial reality that could signify internal grace),²⁴ and so, there were only six sacraments that were officially recognized. Another example of evolving doctrine is the requirement to have a public Church ceremony to solemnize marriage with all its canonical requirements (what is now technically known as “the canonical form”). This was introduced by the Council of Trent (1545-1563) through its

²³ Walter Kasper, *Theology of Christian Marriage*, New York: Crossroad, 1981, 31-32.

²⁴ Cfr., Theodore Mackin, *Marriage in the Catholic Church: The Marital Sacrament*, New York: Paulist Press, 1989.

decree *Tametsi* (1563) hardly five centuries ago, in order to check the many clandestine private marriages that were prevalent at that time. **So, it should be clear that there are doctrines even on marriage and family that cannot change, and there are also doctrines on marriage and family that can and do change, and in fact, have changed or evolved in the course of Church's history.**

It is also important to point out here that even the cherished Catholic doctrine that a Christian marriage is indissoluble²⁵ has gone through its own evolution in the sense of being reformulated, **even within the Canon of the New Testament itself.**²⁶ Scripture Scholars are of the opinion that the gospel phrase (on indissolubility) closest to the original *logion* in its most ancient form is preserved in Luke 16:18.²⁷ This essential Catholic belief on indissolubility which surely goes back to the Lord's teaching itself, has had its own nuanced re-formulations and adaptations in the concrete pastoral application of it to the different concrete pastoral contexts of Mathew, Mark and Paul in the New Testament.²⁸ Thus, according to the crying pastoral needs of his Jewish Christian community, Mathew while reaffirming the teaching on indissolubility, has nevertheless introduced what is known as the *porneia* exception clause, not once, but twice in his gospel (Mt.5:31; 19:9).²⁹ Similarly, Mark, who was writing to the Gentile Christian community in Rome

²⁵ Although I will be referring to this particular Catholic doctrine of indissolubility quite regularly as an illustration, in no way was the recent Extraordinary Synod convened exclusively to discuss this doctrine, as some media reports tended to imply. Of course, it was one of the important items in the agenda of the Synod.

²⁶ Cfr., Mackin, *Divorce and Remarriage*, 43-70.

²⁷ Theodore Mackin, *Marriage in the Catholic Church: Divorce and Remarriage*, New York: Paulist Press, 1984, 47. Also, Kasper, *Theology of Christian Marriage*, 51.

²⁸ Cfr., Raymond F. Collins, *Divorce in the New Testament*, Collegeville (Minnesota): Liturgical Press, 1992.

²⁹ There are various opinions and interpretations as to what this term *porneia* meant for Mathew, but the undeniable fact remains that there was an exception (or at least a reformulation of the original teaching) made whatever the real reason for that exception may have been.

had his pastoral nuances added to this original dominical teaching on indissolubility, for example, when he tries to accommodate a woman's right to divorce a husband which was prevalent in the society to which he was writing but was unheard of in the Jewish society to which Jesus originally taught the doctrine of indissolubility (Mk.10:11-12). Then, Paul, writing to the Gentile Christians of Corinth, while reaffirming the teaching of indissolubility, also makes his own pastoral re-formulation of that teaching according to the needs of that Corinthian community (1 Cor.7:12-15). Besides all these examples from the New Testament itself, we have had plenty of contextually nuanced re-formulations of the teaching on indissolubility all through Church's history both in moral theological and canonical practice of the Church with regard to Catholic understanding of marriage.³⁰ In fact, the Catholic doctrine on marriage as taught by the magisterium itself has been evolving.³¹ The same can be said about the Church's teaching on family, as is so evident from the recent Vatican publication of the monumental Compendium on magisterial teachings on marriage and family that spans across some seven centuries.³² In the Introduction to this Compendium, the President of the Pontifical Council for Family, Archbishop Vincenzo Paglia writes that the texts bear witness to "the continuity of a tradition that, from the time of biblical Revelation, develops in an original and profound way throughout all of human history, in the nexus between epochs and cultures and ecclesiastical experiences, pastoral concerns and theological reflections".

³⁰ Cfr., Mackin, *Divorce and Remarriage*; Kasper, *Theology of Christian Marriage*, 54-62.

³¹ Cfr., Joseph A. Selling, "Magisterial Teaching on Marriage 1880-1968: Historical Constancy or Radical Change?" in Réal Tremblay and Dennis J. Billy (Eds.), *Historia: Memoria Futuri, Mélanges Louis Vereecke*, Roma: Editio Academiae Alphonsianae, 1991, 351-402.

³² Cfr., Pontifical Council for the Family, *Enchiridion della Famiglia e della Vita: Documenti Magisteriali e Pastoralis su Famiglia e Vita*, Vatican Città del Vaticano: Libreria Editrice Vaticana, 2014.

Acknowledging this evolution of the Church's doctrine of indissolubility of marriage, the International Theological Commission, in its Propositions on the Doctrine of Christian Marriage in 1977 stated that one cannot exclude the fact that "the Church can further define the concepts of sacramentality and consummation by explaining them even better so that she can present the whole doctrine on the indissolubility of marriage in a deeper and more precise way".³³ Simply put, the ecclesial understanding of the teaching on indissolubility in the given concrete living contexts has surely not been always absolutely static nor what it was from the time of Jesus, but it has gone through its own evolution³⁴ through the work of the Holy Spirit within the tradition, according to the differing pastoral contexts, down through the ages, as the Vatican II itself taught (Cfr., *Dei Verbum*, No:8). However, it is necessary to state here categorically that the essence of the dominical teaching on indissolubility has never been questioned nor diluted in any of those adaptations or nuanced re-formulations. After all, our tradition is a living tradition, and only a living tradition can have both static and dynamic elements.

3. The Church's Maternal Care for those who have failed to live the Ideal

The Church is not only a **teacher** but also a **mother** to her faithful, as the title of Pope John XXIII's popular Encyclical Letter *Mater et Magistra* (1961) already had indicated. The present Pope, too, has continued to insist that the Church is a mother in the sense that any mother does not love only those morally upright children but also those who have not been that moral in their own lives, those who have failed to live the moral ideal! A mother loves all her children, but more so, those children who tend to have lost their way! Since there have been so many people all over the world who have failed to live the

³³ The International Theological Commission, "Propositions on the Doctrine of Christian Marriage", No:44 as cited by Philippe Delhay in Charles E. Curran and Julie Hanlon Rubio (Eds.), *Readings in Moral Theology, No.15: Marriage*, 349.

³⁴ Cfr., Collins, 214-231.

Christian ideal of marriage and family in one way or the other, especially during the last few decades, the need for the mother Church to reach out to such children of hers is surely the right thing. Although monogamous, heterosexual marriage between two baptized persons is the ideal Christian marriage, during the last few decades there have been all sorts of deviations from this ideal. Thus we have today: civil unions, cohabitations, trial marriages, civil marriages of those who have got divorced, inter-faith marriages,...etc. In addition to these 'deviations' from the ideal, in some countries today, there is also a clamour to get homosexual unions recognized as 'marriages'! Since marriage is the foundation of any family here on earth, depending on the type of marriage, there has also been different types of families that have come into being in recent times. Ideally, a Christian marriage is an association of persons comprising of a woman and a man married to each other, and who are the parents of children to whom both are biologically parents. But many families today, especially in the West, have deviated from this ideal. For example, today, we have quite a number of single-parent families and also families wherein the parents are of the same sex (homosexuals adopting children). Then, there are the families based on a civil union with children whose parents were previously married in the Church. In Asia, there is a growing trend of inter-religious marriages that give birth to inter-religious families. Surely, all these types are clear deviations from the ideal Christian family. But what about their relationship to the Church? Are they to be welcome in the Church? Or simply because they happened to be members of such families that have failed to live up to the Christian ideals, should they be kept outside the life of the Church? Since Jesus came mainly to call not the righteous but sinners (those who failed to live the ideal), is it not correct to assume that the Church as the Sacrament of Christ (the visible sign of Jesus Christ in today's world) ought to reach out to these very people who have failed to live the Catholic ideals either of marriage or of family? It is precisely in such reaching out that the Church manifests herself as a mother. Obviously, the Church as the representative of Christ's continuing active-presence in the

world, cannot simply consider only those who live the ideal marriage and family lives as her children. She has to (imitating her Master and Lord) reach out to those who have failed to live up to these ideals. The many discourses of the present Pope go along this particular line of thought, and the recent Extraordinary Synod itself was called exclusively to reflect, discern and see how the Church ought to go about in being a mother to such lost children of hers who live in the periphery of ecclesial life.³⁵

4. Doctrine VS Pastoral Practice

At this stage, we need to also delve into the issue of pastoral practice.³⁶ There is a naïve view not only among some theologians but even among some members of the hierarchy of the Church that doctrine (including moral doctrine) and pastoral practice are two very different things. That is why both within and without the Synod hall, some were making a clear-cut distinction (if not a separation) between what is doctrinal and what is pastoral, as if they were two different water-tight-compartments. Their point in a nutshell was: “Of course, the doctrine cannot change, but let us see what we could do in the pastoral practice, during this Synod”. The serious implication here was that the doctrinal and pastoral could be separated, and then, that the former cannot change at all because it is so important while the latter could change because it is something secondary. Gallagher had already warned about such an unrealistic, erroneous dichotomy:

³⁵ This is obvious not only from the very theme of the Synod which was “The Pastoral Challenges of the Family in the Context of Evangelization”, but also from the *Relatio ante disceptationem* of the General Relator of the Synod, Cardinal Péter Erdo. Cfr., Cardinal Peter Erdo, “Report Prior to Discussion” (*Relation ante disceptationem*), as reproduced in *Zenit Daily Dispatch: The World Seen From Rome*, October 6, 2014.

³⁶ For a fine discussion on what “pastoral theology” is, see Sean O’Riordan, “The Present State of Pastoral Theology” in Raphael Gallagher and Sean Cannon (Eds.), *Sean O’Riordan: A Theologian of Development*, Roma: Editiones Academiae Alfonsianae, 1998, 195-205.

There is still a tendency to reduce moral theology to a discourse about norms, and to say that being 'pastoral' is a secondary matter of applying these norms in particular situations. The art of being pastoral in moral theology is far from being a secondary matter. It brings us to the centre of the meaning of human life itself, and how this can be understood in reference to Christ.³⁷

Thus, such a dichotomy between what is moral doctrine and what is pastoral is not correct at all, as Pope John Paul II has pointed out in his encyclical *Veritatis Splendor*.³⁸ Both doctrinal and pastoral aspects of Church life not only feed each other but they flow from one to the other. Or else, none of them has any meaning, in the sense of what the Lord Himself said: "The Sabbath is for man, and not man for the Sabbath". All doctrines, norms and disciplines within the Church are meant for the very salvation of her members. It is precisely this basic Catholic belief that is so well expressed in the very last Canon of the 1983 Code of Canon Law when it says: "Salvation of souls must always be the supreme law in the Church".³⁹

Although this Synod was convoked to discuss exclusively the Church's pastoral approach to those who have failed to live up to the ideal proposed by the Church, discussions on doctrine could not be (and should not have been) avoided in the Synod hall because doctrine and pastoral practice are intrinsically linked. Yet, at this particular Synod, the stress obviously ought to have been on pastoral practice. As such, rather than creating an abstract, speculative dichotomy between the doctrinal and pastoral aspects of ecclesial life, the main aim was to see whether the existing doctrines (and the norms that flow out from them to the pastoral field) do address the real needs of the present lived pastoral context, because this context has gone through drastic

³⁷ Raphael Gallagher, "The Art of Being Pastoral as a Moral Theologian: The Importance of *Gaudium et Spes* for the Renewal of a Tradition", *Asian Horizons* 7:3 (September 2013), 490.

³⁸ Cfr., Pope John Paul II, *Veritatis Splendor* (1993), Nos:104,113.

³⁹ Code of Canon Law (1983), No:1752.

changes since those doctrines and norms were originally formulated within a by-gone context that was very different from what it is today.

To put it simply and bluntly, the question that ought to be asked is: by her doctrine and pastoral practice, does the Catholic Church address the real persons of the contemporary world or an imagined group of persons who in reality happened to live once upon a time in a by-gone context? The responses to the pre-Synodal questionnaire, the interventions of the Bishops themselves at the recent Synod, and last but not least, common sense itself, tell us plainly that today there is a vast and growing gap between the Church's doctrine on family and marriage and the lived reality.⁴⁰

5. The Application of Church doctrine to Concrete Lived Realities

Turning our attention to the classical Catholic concept of law may enable us to understand in an analogical way what we are trying to highlight about doctrines, especially when it comes to their applications to concrete life situations. After all, as already mentioned, there is an intrinsic link between doctrine and law because normally the latter flows from the former, in the concrete practical/pastoral levels. Both Aristotle and Aquinas insisted that general laws when applied to particular situations, go through changes according to the contextual circumstances:

For Aristotle it is the law itself which is inherently weak and imperfect, precisely because it is universal and general in its formulations. Worldly reality is too rich and varied to be comprehended by a general law, with the result that on

⁴⁰ Cfr., Cardinal Peter Erdo, "Report Prior to Discussion". The same 'gap' is implicit even in the "Working Document" (*Instrumentum Laboris*) of the Synod. Cfr., "The Pastoral Challenges of the Family in the Context of Evangelization", *Instrumentum Laboris*, Città del Vaticano: Libreria Editrice Vaticana, 2014, especially Chapter III, 61-84. Also, see Johann Bonny, "We have to keep it Real", *The Tablet*, 13 September 2014, 4.

occasion the general law has to be corrected and improved in order to bring it into line with real life.⁴¹

Re-echoing this Aristotelian view, Thomas Aquinas would write later:

Laws are made for human actions. But such actions are individual and concrete situations, and they are infinitely variable. Hence, it is impossible to establish a ruling of law which is never defective. Lawmakers consider what normally happens and draw upon that to frame a law; but in certain cases the observance of that law would be against justice and against the common good which is what the law aims at.⁴²

In other words, speaking in an analogical sense once again, general doctrines when applied in particular situations need to take into account the concrete, particular circumstances.⁴³ That is to say, doctrines are one thing, but their application to particular contexts is another. As an historical illustration, we may mention here that it was at the Council of Trent that the doctrine of indissolubility of a sacramentally valid, consummated marriage was officially defined. Although this Council defined the doctrine of indissolubility unambiguously, “it did not intend to summarize or systematize the whole of the Church’s tradition or to provide an all-embracing doctrine on the indissolubility of marriage”.⁴⁴ Kasper holds that this Tridentine decision on the doctrine of indissolubility “does not, however, release the Church from its obligation to look again and again, within the constantly changing historical situation, for a legal order in marriage that is in accordance with the Gospel”.⁴⁵

⁴¹ John Mahoney, *The Making of Moral Theology: A Study of the Roman Catholic Tradition*, (Second Re-print), Oxford: Clarendon Press, 1990, 236.

⁴² Thomas Aquinas, *Summa Theologiae*, IIa-IIae, q.120, art.1, as cited by Mahoney, *The Making of Moral Theology*, 237.

⁴³ Let us not forget that even in classical moral theology, even in the evaluation of a human act, the circumstances surrounding that act needed to be taken into consideration besides, the act-in-itself and the intention of the agent.

⁴⁴ Kasper, *Theology of Christian Marriage*, 62.

⁴⁵ Kasper, *Theology of Christian Marriage*, 62.

Pope Francis' call to reflect, discern and see what we could do with regard to pastoral practice, through a long, unprecedented ecclesial process, thus, is not exclusively aimed at changing doctrine (especially the non-changeable elements of doctrines) as such, but to find new avenues within the inherited Christian tradition that would make the Church a 'mother' to those who have failed to live the ideal married or family life. Of course, in the long Synodal process, it might become necessary (as it had happened so often in Church's history), **to change the Church's changeable doctrines** (known as Church discipline), or/and **to reformulate the Church's non-changeable doctrines** in ways that contemporary humans would be able to understand and put them into practice. However, we need to keep in mind here that neither the Pope nor any participant at the recent Synod ever talked about the changing of our cherished non-changeable doctrines, such as the indissolubility of marriage. Their preoccupation was to safeguard this original dominical teaching but at the same time to search for new ways and means to express and apply it meaningfully to the ever changing lived reality. In fact, at the very opening session of the Synod, Cardinal Peter Erdo, the Relator General, referring to the responses to the pre-Synodal Questionnaire, said that the doctrine of indissolubility was never called into question by anyone in the responses received. He went on to say: "This doctrine is uncontested and for the greater part observed also in the pastoral practice of the Church with those whose marriages have failed and who seek a new beginning. Therefore, not doctrinal, but rather practical questions – inseparable from the truths of faith – are in discussion in this Synod, of an exquisitely pastoral nature".⁴⁶ Perhaps, it may not be out of place to give a citation from Pope Francis' address to the Congregation for the Doctrine of the Faith in January 2014:

⁴⁶ Cfr., Staff Reporter, "Synod 14: Cardinal Erdo Presents Synod's Main Points for Development Report Says Church can Be Remedy for Protecting Family Unit", *Zenit Daily Dispatch: The World Seen From Rome*, October 6, 2014.

Since the early times of the Church the temptation has existed to understand the doctrine in an ideological sense or to reduce it to an ensemble of abstract and crystallized theories (cf. Apostolic Exhortation *Evangelii Gaudium*, 39-42). **In reality, doctrine has the sole purpose of serving life or the People of God and it seeks to assure our faith of sure foundation.** Great, in fact, is the temptation to appropriate to ourselves the gifts of salvation that comes from God, to domesticate them – perhaps even with a good intention – to the views and the spirit of the world. And this is a temptation that is constantly repeated.⁴⁷

The very theme of the Synod, namely, “The Pastoral Challenges of the Family in the Context of Evangelization” indicates clearly that this Synod was never meant to change the non-changeable doctrine on marriage but to see how the Church’s doctrine could be applied in the contemporary down-to-earth lived pastoral reality, especially in those difficult and complicated new situations of today. Already, Pope Paul VI had expressed the difficulty of applying universal doctrines/norms of Church’s social teachings to diverse concrete situations in the world:

In the face of such widely varying situations it is difficult for us to utter a unified message and to put forward a solution which has universal validity. Such is not our ambition, nor is it our mission. It is up to the Christian communities to analyze with objectivity the situation which is proper to their own country, to shed on it the light of the Gospel’s unalterable words and to draw principles of reflection, norms of judgment and directives for action from the social teaching of the Church.⁴⁸

In his *Evangelii Gaudium* (2013), Pope Francis upheld and re-echoed the same views, implying that the concrete analysis of a

⁴⁷ “Pope Francis’ Address to Congregation for the Doctrine of the Faith” as reproduced in *Zenit Daily Dispatch: The World Seen From Rome*, February 1, 2014. (Bold highlighting is mine).

⁴⁸ Pope Paul VI, *Octogesima Adveniens* (1971), No:4.

given pastoral situation and the application of the Church's doctrine to that situation can vary from context to context.⁴⁹ Here one can safely deduce that the expression and formulation of doctrine can vary, too, according to the concrete pastoral context, even though the doctrine itself may not change in its non-changeable basic substance (the deposit of faith). In fact, during the recent Synod with regard to the specific issue of the reception of the Eucharist by the divorced and the re-married people, quite a number of participants expressed the desire to see the Church's doctrine applied in what they called "a case by case approach" rather than in a universally valid normative method. For this to happen, one needs to start with the lived reality of persons ('life'), and then, move on to 'teaching', as Bishop Johann Bonny of Antwerp (Belgium) in his very outspoken and convincing article before the recent Synod, stated.⁵⁰ This is, precisely the method followed by Jesus himself (Cfr., Jn.8:2-11; Mk.2:23-27; Lk.14:1-6; Lk.13:10-17). The *vice-versa* of beginning with doctrine ('teaching'), and then, moving to lived reality, was the method followed by the Pharisees but not by Jesus, a method that upholds doctrines (at any cost) as more important than the persons who are called to live them. As such, one's starting point is crucially important: is it from doctrine or from people who are called to live those doctrines?

Conclusion

The mere using of the phrase "doctrine cannot change" as a slogan (as we have been hearing both inside and outside the Synod hall last October and thereafter), is no healthy Catholic response to the present Pope's call for renewal in pastoral practice, as one could perceive from what was said above in this article. On the one hand, we need to reflect, and carefully discern what exactly the changeable doctrines are within the rich corpus of inherited Catholic teachings on marriage and family; they can be and should be rethought and changed when and where necessary according to the pastoral needs of the believers. On

⁴⁹ Cfr., Pope Francis, *Evangelii Gaudium* (2013), Nos:184, 16.

⁵⁰ Bonny, "We have to keep it Real", 6.

the other hand, since by definition, those non-changeable doctrines that cannot be changed, should be always safeguarded and handed on to future generations of believers as we ourselves had received them; but as we have seen above, they can surely be re-formulated (without losing the substantial essence of them) so that they, too, be relevant to and put into practice by the contemporary believers. Such changes and re-formulations of doctrine have been part and parcel of our Catholic tradition, as we have seen. Today, then, what is needed is a careful and prayerful discerning of “the signs of the times” revealed by the Holy Spirit in our contemporary world, and then, to respond to them in a serious and responsible manner, in re-examining the inherited doctrines of our Catholic faith with regard to marriage and family, during the coming year of reflection, as wished by Pope Francis. Of course, in seeking pastoral solutions, we need to leave some open space for the Holy Spirit to act, the Spirit that makes all things new, rather than forcing that Spirit into our own rigid, pre-determined, never-changing doctrinal/legalistic frameworks. The important distinction between changeable and non-changeable doctrines may be a crucial key in this regard.

V. DEVELOPMENT OF OFFICIAL CATHOLIC MORAL TEACHINGS ON MARRIAGE DURING THE PAST 50 YEARS

Introduction

It is universally agreed that the Second Vatican Council⁵¹ was a watershed for the renewal of Catholic living. Although there have been various debates with regard to the interpretation of the conciliar teachings during the past 50 years,⁵² there have also been clearly marked developments in the official teaching with regard to Catholic doctrine, based often on those very conciliar teachings. For example, Margaret Farley expresses the basic

⁵¹ Henceforth will be referred to as V-II.

⁵² Cfr., Massimo Faggioli, *Vatican II: The Battle for Meaning*, New York: Paulist Press, 2012.

radical changes in the Church's understanding of human sexuality in vivid language when she writes:

In the twentieth and twenty-first centuries, [these] foundations of sexual ethics began to be questioned. New biblical, theological and historical studies of the roots of moral norms, new understandings of sexuality itself and new shifts in economic and social life all contributed to major developments even in Catholic ethics. The dominant historical motifs all underwent significant changes. The idea that the procreation of children is the sole justification of sexual activity is gone (the shift is visible in the documents of Vatican II, in *Humanae Vitae* and subsequent church teaching). The view of sexuality as fundamentally disordered is also pretty much gone from Catholic thought. Although moral theologians still underline the potential of sex for sinfulness (as in sex abuse, rape, exploitation, adultery and so forth), the preoccupation with its destructive power that used to dominate Catholic discussion of sex has been seriously modified.⁵³

Since marriage is the fundamental and necessary framework within which human sexual acts are legitimately expressed, in view of the above-mentioned changes in the Church's understanding of human sexuality, it is important to note that the understanding of the concept of marriage too, has gone through developments in recent decades. In order to highlight the radical changes the concept of marriage in general has gone through in the Catholic tradition during the past 50 years, it suffices to consider the description of marriage in one of the popular Moral Manuals that were used in seminaries to teach moral theology to the future priests, just prior to V-II:

Marriage is the lawful contract between man and woman by which is given and accepted the exclusive and perpetual right to those mutual bodily functions which are naturally apt to generating offspring. The primary purpose of the contract is

⁵³ Margaret A. Farley, "Love shaped and grounded in faith", *The Tablet*, 27 September 2014, 11.

the generation and education of offspring; its secondary purpose is mutual help and allaying of concupiscence (c.1031, I). When entered into by baptized Christians it is a sacramental contract, inasmuch as the contract has been raised by Christ to the dignity of a Sacrament.⁵⁴

It is sufficient to contrast this pre-V-II Manualistic definition of marriage with the description of it in *Gaudium et Spes*⁵⁵, Nos:47-51. Although one does not find a clear-cut definition of marriage as such in GS, it is referred to therein by a range of rich Biblical and Personalistic phrases (based on modern human sciences) such as an “intimate community (*consortium*)⁵⁶ of love and life”, an “irrevocable personal consent”, an “intimate union”, “a life-long partnership”, ... etc. Some of the salient radical changes in GS (in contrast to the pre-Vatican-II concept of marriage) are⁵⁷:

- The use of Personalistic and biblical terms to describe marriage, instead of non-personal juridical terms.
- The use of the biblical term ‘covenant’ (*foedus*) to describe Marriage instead of the impersonal juridical term ‘contract’ (*contractus*).
- No hierarchy of ends of marriage is mentioned. Rather, the inherent link between these two ends is highlighted: “Marriage and married love are by their character ordained to the procreation and bringing up of children” (Nos:48, 50). Earlier, they were just two isolated ‘ends’ which existed independently from each other; in fact, GS calls marriage “a communion of love and life” (No:48).
- The recuperation of the value of the dignity of sexual pleasure within marriage – this is a return to the Bible. After

⁵⁴ Henry Davis, *Moral and Pastoral Theology*, Vol. IV, Eighth Edition (Revised and Enlarged), London: Sheed and Ward, 1959, 53.

⁵⁵ Hereafter referred to as GS.

⁵⁶ It is difficult to get an exact English word that corresponds to this Latin word in the original text of GS.

⁵⁷ Cfr., Vimal Tirimanna, “Vatican II’s Teaching on Marriage: An Antidote to Contemporary Problems”, *Vidyajyoti Journal of Theological Reflection*, 77:7 (July 2013), 537-552.

all, sexual pleasure was created by God, and He saw all of His creation 'good'.

In the post-V-II official documents (except in the 1983 Code of Canon Law), one notices all these main conciliar teachings being continued and further developed. Thus, in his well-known but controversial encyclical *Humanae Vitae*⁵⁸(1968), Paul VI gives one of the finest descriptions of what marriage is:

Marriage, then, is far from being the effect of chance or the result of the blind evolution of natural forces. It is in reality the wise and provident institution of God the Creator, whose purpose was to effect in man His loving design. As a consequence, husband and wife, through that mutual gift of themselves, which is specific and exclusive to them alone, develop that union of persons in which they perfect one another, cooperating with God in the generation and rearing of new lives.⁵⁹

The document *Persona Humana* (1975) issued by the Congregation for the Doctrine of the Faith also marked a turning point in the development of the Church's doctrine on marriage. Basing itself firmly on GS's Personalistic vision of human sexuality and the ever growing understandings of the human person and human sexuality by the human sciences, such as anthropology, psychology and sociology, this document (PS) provided for the first time an official doctrinal framework that can truly be called inter-disciplinary. The later major official documents, such as *Familiaris Consortio*⁶⁰ (1981) and the *Catechism of the Catholic Church*⁶¹ (1992) would continue generally to teach along the lines of GS, HV and PS, thus, following their dominant Biblical, Personalistic and inter-disciplinary approaches. For example, all of them continue to call marriage a 'covenant' though the Code of Canon Law (1983) makes a faint but

⁵⁸ Hereafter referred to as HV.

⁵⁹ HV, No:8.

⁶⁰ Hereafter referred to as FC.

⁶¹ Hereafter referred to as CCC.

superficial attempt to follow GS by calling marriage a ‘covenant’ only in its opening Canon on marriage (No:1055), but immediately succumbs to the pre-V-II concept of ‘contract’ in the rest of the Code “no less than forty times”.⁶² According to Orsy, this is mainly because though the dignity of the human person as promoted by V-II has made its strong inroads into the canonical tradition the trends upholding the primacy of the Church as institution are still visible in the 1983 Code.⁶³

In what follows, we will highlight some of the salient specific developments in the official teachings on marriage during the past 50 years, developments that have ensued from the radical changes of the V-II’s vision on human sexuality and marriage in general, under the following sub-titles:

A Few Specific Developments in the Official Catholic Teachings on Marriage

1. Approval of Natural Family Planning

We begin with the gradual process in which the Church’s full official approval of natural family planning bore fruit in HV. In the immediate aftermath of the discovery of the fertile and infertile periods of a woman’s reproductive cycle in the 1920’s⁶⁴, Pope Pius XI cautiously and implicitly gave his nod to what is known today as “natural family planning”, first in his encyclical *Casti Connubii* in 1930 when he wrote:

Nor are those spouses considered as acting against nature who in the married state use their right in the proper and natural manner, even though on account of natural causes, either of time or of certain defects, new life cannot be brought forth. For in matrimony as well as in the use of the matrimonial rights

⁶² Ladislav Orsy, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, Wilmington: Michael Glazier, 1986, 47.

⁶³ Orsy, *Marriage in Canon Law*, 37.

⁶⁴ Cfr., Karl H. Peschke, *Christian Ethics: Moral Theology in the Light of Vatican II*, Vol. II (Revised Edition), Bangalore: Theological Publications in India, 1992, 502; John T. Noonan, Jr., *Contraception: A History of its Treatment by the Catholic Theologians and Canonists* (Enlarged Edition), Cambridge: Harvard University Press, 1986, 442-443.

there are also secondary ends, such as mutual aid, the cultivating of mutual love, and the quieting of concupiscence which husband and wife are not forbidden to consider so long as they are subordinated to the primary end and so long as the intrinsic nature of the act is preserved.⁶⁵

When, Pope Pius XII explicitly approved it in his Address to the Italian mid-wives in 1951,⁶⁶ the official Church teaching surely went through development if not a radical change from the teachings of St. Augustine that dominated the Church till Vatican-II. For Augustine, every act of sexual intercourse had to have the explicit intention to procreate, and with both Pius XI and Pius XII, this teaching is gradually turned upside down: a couple could use the rhythm method, which means they need not have any more explicit or even an implicit intention as such to procreate⁶⁷ when they copulate. HV is the first post-V-II document to not only officially and openly approve the use of the rhythm method, but even to recommend it for Responsible Parenthood, which is a clear development in the official teaching.⁶⁸ Accordingly, “married people may take advantage of the natural cycles immanent in the reproductive system and engage in marital intercourse only during those times that are infertile”, says Pope Paul VI. This teaching is consistently repeated in later official teachings.⁶⁹

2. Responsible Parenthood

GS had already made reference to the “responsible transmitting of life” with regard to married spouses (Nos:51, 87). In his HV,

⁶⁵ Pope Pius XI, *Casti Connubii* (1930), as cited in Joseph A.Selling, “Magisterial Teaching on Marriage 1880-1968: Historical Constancy or Radical Change?” in Réal Tremblay and Dennis J.Billy (Eds.), *Historia: Memoria Futuri, Mélanges Louis Vereecke*, Roma: Edizione Academiae Alphonsianae, 1991, 375.

⁶⁶ Cfr., Selling, “Magisterial Teaching on Marriage”, 380-386; Noonan, *Contraception*, 445-447.

⁶⁷ For St. Augustine (whose teachings on marriage dominated the pre-V-II Church), every conjugal act should have an explicit intention to procreate.

⁶⁸ Cfr., HV, Nos:11,16.

⁶⁹ Cfr., FC, No:32, 34; CCC, Nos: 2368,2370.

Paul VI puts more flesh on to this term and talks of “responsible parenthood”:

With regard to physical, economic, psychological and social conditions, responsible parenthood is exercised by those who prudently and generously decide to have more children, and by those who, for serious reasons and with due respect to moral precepts, decide not to have additional children for either a certain or an indefinite period of time.⁷⁰

Already, the previous year (1967), he had used this concept with regard to the increasing world population in his celebrated encyclical *Populorum Progressio* when he wrote:

Finally, it is for parents to take a thorough look at the matter and decide upon the number of their children. This is an obligation they take upon themselves, before their children already born, and before the community to which they belong – following the dictates of their own consciences informed by God’s law authentically interpreted, and bolstered by their trust in Him.⁷¹

Responsible parenthood, then, means not merely the reduction of the number of children a couple may have but also the spacing of the births of their children, but always following the legitimate means advocated by the Church, namely, the natural family planning methods, based on the fertile period of a woman’s cycle, according to one’s properly formed conscience. Thirteen years later, John Paul II refers to the same concept in passing, when he speaks of the use of natural rhythms whereby a couple shares responsibility for their children (FC 32). The CCC (1992), too, refers to the concept of responsible parenthood in Nos: 2367 and 2368.

3. ‘Ends’ become ‘Meanings’ of Marriage

While cautioning that this “responsible parenthood” has to be in constant dialogue with the objective moral order (No:10), HV

⁷⁰ HV, No:10.

⁷¹ Pope Paul VI, *Populorum Progressio* (1967), No:37.

explicitly states that only natural family planning methods are to be used in the exercising of this 'responsibility' by the spouses (No:16). All artificial methods of birth control are condemned (No:14), and this condemnation is based on an original argument that Paul VI introduces to magisterial teachings: first of all, he calls the traditional 'ends' of marriage by a new term, "meanings" ('significance'). Accordingly, there are two "meanings" of marriage: 'unitive' and 'procreative'. Then (using what GS already said about the inherent link between mutual love of the spouses and procreation), he goes on to argue that these two meanings are inseparably linked by God, and that that link cannot be broken by human beings.⁷² All the subsequent magisterial documents have consistently used this solid argument of Paul VI to show the immorality of the use of artificial contraceptives.⁷³

For our purposes in this article, one needs to notice not only this new argument against artificial contraceptives, but also the unique evolution of the term 'meanings'. First, St. Augustine had spoken about the three 'goods' of marriage⁷⁴, and then, St. Thomas spoke about the hierarchical ordering of the two 'ends' of marriage: procreation as the 'primary' end and mutual love as the 'secondary' end. V-II continued to speak of 'ends' of marriage, but without any hierarchical ordering of them. And here, HV marks another stage of evolution of these terms in calling them 'meanings' of marriage. In FC, Pope John Paul II, too, continues to use the term 'meanings' to refer to the traditional 'ends', thus confirming a clear development in the Church's official teaching.⁷⁵ The Code of Canon Law (1983), which came into effect two years later, is in full harmony with the post-Vatican-II omission of the earlier predominant

⁷² HV, No:12.

⁷³ Cfr., FC, No:32; CCC No:2366. This original argument of Paul VI is also used by the official Church to forbid the use of most of the modern reproductive technologies.

⁷⁴ For Augustine, the three goods were: offspring, spousal fidelity and the unbreakable relationship between the spouses.

⁷⁵ FC, No:32; CCC, No:2366.

hierarchy of ends; in fact, one notices that “the good of the spouses” precedes the “the procreation and education of children” in its present formulation (Canon 1055).

4. The Intrinsic Link between Love (mutual love) and Life (procreation)

In HV, Paul VI’s comments on married love are in total harmony with what GS had taught three years before, when he says: “This love is above all fully human, a compound of sense and spirit” (No:9). Calling this love a “very special form of personal friendship”, he says that this love is also “fecund” (No:9), thus, highlighting the intrinsic link between the married love and the life it generates. This highlighting of the intrinsic link between the two ends (now become ‘meanings’ in HV) and attributing such a link as going back to God himself, is itself a development in the doctrine, in the sense, in the pre-V-II era, the two ends were not clearly linked. Rather, they were perceived as two hierarchically ordered, isolated ends, each of which apparently could exist independently from the other, either above or below the other (in a hierarchy).

In FC, John Paul-II too refers to this intrinsic link when he writes: “the couple, while giving themselves to one another, give not just themselves but also the reality of children, who are a living reflection of their love, a permanent sign of conjugal unity and a living and inseparable synthesis of their being a father and a mother” (No:14). He goes on to elaborate this point further:

Fecundity is the fruit and the sign of conjugal love, the living testimony of the full reciprocal self-giving of the spouses. “While not making the other purposes of matrimony of less account, the true practice of conjugal love, and the whole meaning of the family life which results from it, have this aim: that the couple be ready with stout hearts to cooperate with the love of the Creator and the Saviour, who through them will enlarge and enrich His own family day by day”. (FC 28).

Re-echoing the radical teaching of GS 50 that “marriage is not instituted merely for procreation”, and developing it further, FC

says: "However, the fruitfulness of conjugal love is not restricted solely to the procreation of children, even understood in its specifically human dimension" (No:28). Given the long history of some 1,600 years since St. Augustine, during which the Church taught consistently that the main aim of marriage is to procreate (at times even implying that it is the sole aim of marriage),⁷⁶ this is surely another clear development of doctrine.

5. Marital Love as a Reflection of God's Love itself

A recent article on the just-concluded Extraordinary Synod, by Antonio Spadaro begins with the sentence: "Love between a man and a woman is the image of the love of God".⁷⁷ Such a statement would have been shocking for any moral theology professor or student just before the V-II. Thanks to the fundamental suspicion of human sexuality that the Catholic tradition inherited from the Patristic times, human sexual love, even in the years prior to the Council, did not feature positively in Catholic moral theology. The love between a man and a woman (*eros*) was looked at with suspicion as something that deviates humans from God.⁷⁸ And this in spite of the rich biblical view of it, especially in the Song of Songs. What was indispensable in the pre-V-II era was that the marital contract was validly entered into, and within such an exclusively juridical framework within which marriage was perceived, "one could be forgiven for assuming that a man and a woman who hated one another could be married, as long as each gave to the other the right over her or his body!"⁷⁹ However, with V-II things changed

⁷⁶ For Augustine, every sexual act has to have the explicit intention to procreate, while for Thomas Aquinas and the Catholic teaching thereafter till Vatican-II, the primary end of marriage was procreation.

⁷⁷ Antonio Spadaro, "Una Chiesa in Cammino Sinodale: Le Sfide Pastorali sulla Famiglia", *La Civiltà Cattolica*, 165 (1 Novembre, 2014), 213.

⁷⁸ For a detailed study of how sexual pleasure was treated in the Catholic Tradition, see Shaji George Kochuthara, *The Concept of Sexual Pleasure in the Catholic Moral Tradition*, Roma: Editrice Pontificia Università Gregoriana, 2007.

⁷⁹ Michael G. Lawler, *Marriage and Sacrament: A Theology of Christian Marriage*, Collegeville: The Liturgical Press, 1993, 19.

radically. Thus, No:48 of GS begins by defining marriage as an “intimate communion of life and conjugal love” (*intima communitas vitae et amoris coniugal*). In Nos: 48-51, we notice how this marital communion is described in intimate, personal terms. The essence of this communion is perceived as the conjugal act, and it is described in No:48 as “the human act by which parties give and receive each other”. In GS 49, we read:

Our Lord himself graciously made whole, perfected, elevated this love with a special endowment of grace and charity. Such a love associating the human with the divine, leads married people to give themselves to each other freely, with tenderness of affection and action; it pervades their lives and grows by its own generous exercise. It is something far beyond the erotic attraction which, selfishly indulged, quickly and miserably vanishes.

Ever since GS restored marital love to its due place within the Catholic tradition, all the magisterial documents have been very positive about married love. This conciliar restoration of married love to its due place and its linkage with the divine reached its zenith in the official teachings with Pope Benedict XVI who wrote in *Deus Caritas Est* (2005): “True, *eros* tends to rise ‘in ecstasy’ towards the Divine, to lead us beyond ourselves; yet for this very reason it calls for a path of ascent, renunciation, purification and healing”.⁸⁰ The Pope goes on to insist that oblation or self-effacing love (*agape*) for one another as taught by Jesus and the love between a man and a woman (*eros*) “can never be completely separated”⁸¹. Thus, he clearly negates the antithesis between *agape* and *eros* that was popular within Church circles a few years before the Council. Rather, a love so total and pervasive as in the mutual giving of each other in the marital act transcends the horizon of human love (*eros*) and readily participates in divine love (*agape*).

⁸⁰ Pope Benedict XVI, *Deus Caritas Est* (2005), No:5.

⁸¹ *Ibid.*, No:7.

6. Different types of Heterosexual Unions that fall short of the Ideal Christian Marriage

Between the Second Vatican Council (which ended in 1965) and the Synod on Family in 1980, there had been a lot of radical changes with regard to the understanding and the lived reality of human sexuality and marriage in the contemporary secular world. In a short span of just 15 years, a wide variety of new forms of hetero-sexual relationships such as trial marriages, 'de-facto marriages' (popularly known as 'living together'), civil marriages and divorced and re-married unions, had increasingly come into being.⁸²

The Church's moral teachings are meant for living human beings who keep on changing not only in their understanding of their very human existence but also in their very human behaviour. Thus, with regard to marriage, today, there are not only the above-mentioned new forms of hetero-sexual unions but there are also open homo-sexual unions who even demand that those relationships, too, be recognized as 'marriages'! The Church's teaching has been (even reluctantly) addressing all such groups at least gradually, though the Church continues to faithfully uphold a monogamous, heterosexual, sacramental marriage as the ideal form of marriage. That is why an official Church document like FC tries to address most of these groups from a pastoral point of view, for the first time in the Church's history (Nos:79-84).⁸³ Interestingly, one could gather what sort of an evolution had taken place in the very concept of marriage itself in lived human reality, by the very fact that the teachings of V-II do not have any of these groups even mentioned, some 50 years ago.⁸⁴

⁸² Of course, one may rightly attribute these drastic changes to the so-called 'sexual revolution' of the 1960's, among other socio-historical factors and causes.

⁸³ The recently concluded Extraordinary Synod devoted a lot of attention not only to such diverse forms of heterosexual unions but also to homosexual unions, thus, indicating yet another radical development in the Tradition.

⁸⁴ Even the reality of divorce and re-marriage gets scarce mentioning in GS, simply because it was not a common phenomenon then, as it is now.

7. The Divorced and the Re-married Catholics

For centuries, the Church has been consistently teaching that the divorced and remarried Catholics were “living in sin”, to be precise, living in the sin of adultery. The magisterial documents during the past 50 years, too, continue to faithfully and eloquently express this cherished Catholic doctrine of the indissolubility of marriage, as something going back to Jesus himself. However, with regard to the pastoral treatment of those divorced and re-married Catholics, there are some radical developments in the official teachings. In order to get an idea of how the divorced and remarried were perceived within the Church in the pre-V-II era, let us simply state how the 1917 Code of Canon Law perceived them:

Bigamists, that is, those who, notwithstanding a conjugal bond, attempt to enter another marriage, even a civil one as they say, are by that fact infamous; and if, spurning the admonition of the Ordinary, they stay in the illicit relationship, they are excommunicated according to the gravity of the deed or struck with personal interdict.⁸⁵

However, the 1983 Code of Canon Law, no longer calls pejoratively the divorced and remarried as ‘bigamists’; neither does it contain threats of punishment or an excommunication according to the gravity of the deed. It simply states: “The impediment of public honesty arises from an invalid marriage after the common life has been initiated, or from notorious or public concubinage”.⁸⁶ Here, we notice a clear development in canonical practice of the Church with regard to the divorced and remarried.

⁸⁵ Canon 2356 of the 1917 Code of Canon Law as re-produced in Edward N. Peters (Curator), *The 1917 Pio-Benedictine Code of Canon Law: In English Translation with Extensive Scholarly Apparatus*, San Francisco: Ignatius Press, 2001, 748. All the following references to the 1917 Code are taken from this version of Peters.

⁸⁶ Canon 1093 in the Code of Canon Law, 1983. Also, Cfr., Cardinal Walter Kasper, *The Gospel of the Family*, New York: Paulist Press, 2014, 27.

Moreover, in 1977, the International Theological Commission while upholding the traditional Catholic arguments against the divorced and remarried receiving the Eucharist, nevertheless, toed a soft pastoral line evoking some of the duties that ensue from the fact of their baptism, when it said:

They are not dispensed from the numerous obligations stemming from baptism, especially the duty of providing for the Christian education of their children. The paths of Christian prayer, both public and private, penance, and certain apostolic activities remain open to them.⁸⁷

This fresh opening of channels that link the divorced and remarried to the ecclesial community were further enhanced just four years later by Pope John Paul II when he wrote:

The Church, which was set up to lead to salvation all people and especially the baptized, cannot abandon to their own devices those who have been previously bound by sacramental marriage and who have attempted a second marriage. The Church will therefore make untiring efforts to put at their disposal her means of salvation. (FC 84)

Then, under the same heading “Divorced Persons who have Remarried”, the Pope enumerates how such persons can be made to consider that they are not separated from the Church, but rather that they “share in her life”: encouraging them to listen to the word of God, to attend the Sacrifice of Mass, to persevere in prayer, to contribute to works of charity and to community efforts in favour of justice, to bring up their children in the Christian faith, to cultivate the spirit and practice of penance and thus implore, day by day God’s grace (FC No:84). Finally, the Pope calls upon the Church to pray for them, to encourage them and show herself a merciful mother, and thus, sustain them in faith and hope (FC 84).

⁸⁷ The International Theological Commission, “Propositions on the Doctrine of Christian Marriage” (1977), No:5.4.

Referring to the above-mentioned Statement of the International Theological Commission in 1977, and to what Pope John Paul II teaches in FC, Orsy says that “from a theological point of view both see the divorced and remarried as constituting a special group in the church, with their own rather well defined status”, in the sense that they are not separated from the Church as they were originally perceived, say for example, by the 1917 Code⁸⁸, but they are now considered as in communion with the Church. Orsy goes on to comment:

Clearly, the two documents testify that the church is moving away from a severe and rigid stance, judging the divorced and remarried as public sinners, and is moving toward appreciating them, provided they are of contrite heart, as recipients of God’s grace. The very content of the documents indicates that we are in the midst of a development that has not reached its final goal yet.⁸⁹

Surprisingly, however, CCC which was released in 1992, says that such people are living in “a situation of public and permanent adultery”.⁹⁰ No other magisterial document, to our knowledge, has used such strong language against the divorced and remarried Catholics in the post-V-II period. That the CCC takes a sterner stand with regard to the re-married Catholics than the FC can easily be perceived if one were to compare FC No:84 with CCC No:1650. Not only the Church’s “motherly concern” but also the many areas in which such Catholics could take part in Church life as mentioned by Pope John Paul II are missing in the CCC. However, some fifteen years later, Pope Benedict XVI repeats what Pope John Paul II had been saying, namely, that the re-married Catholics belong to the Church, and the invitation extended to them to participate in Church life

⁸⁸ Cfr., Canon 855 of the 1917 Code of Canon Law.

⁸⁹ Orsy, *Marriage in Canon Law*, 290.

⁹⁰ CCC, No:2384.

except for the reception of the sacraments.⁹¹ This assurance given to the re-married Catholics that they belong to the Church and the invitation to participate in the life of the Church (by two Popes), according to Kasper, is “a new tone”.⁹²

In referring to the re-married Catholics, the Final Report of the recent Extraordinary Synod on Family used even more humane and cordial terms when it said “the church has the responsibility of helping them understand the divine pedagogy of grace in their lives and offering them assistance so they can reach the fullness of the God’s plan for them”.⁹³ Moreover, it called for “encouraging them to participate in the life of the community” (No:51). While it never referred to the traditional Catholic objection of “scandal” that would be caused if re-married people were to receive communion, instead appealed to see something positive in such a pastoral approach: “The Christian community’s care of such persons is not to be considered a weakening of its faith and testimony to the indissolubility of marriage, but, precisely in this way, the community is seen to express its charity” (No.51). This, surely is a stepping-stone to a new development.

8. Mixed Marriages

The term ‘mixed marriage’ in ordinary parlance as well as in a broad sense in Canon Law, refers to marriages between Catholics and non-baptized persons (disparity of cult marriages) and those between Catholics and baptized non-Catholics (mixed

⁹¹ Pope Benedict XVI, *Sacramentum Caritatis* (2007), No:29. The surprisingly stern stand of the CCC is not seen anywhere in other recent magisterial documents on this issue.

⁹² Kasper, 27.

⁹³ The Final Report of the Extraordinary Synod of Bishops on the Family (October 2014), No:25, as re-produced in *Origins*, 44:24 (13 November 2014), 399. When this long Synodal process of reflection and decision-making on Family ends with the would-be post-Synodal Apostolic Exhortation at the end of the Ordinary Synod in October 2015, one can rightly be optimistic of further developments with regard to the official teachings on this issue.

religion marriages).⁹⁴ Commenting on the latter type, Siegle re-evokes a vivid picture of the earlier Catholic attitudes towards such marriages:

Over the years many different policies have developed with respect to mixed marriages. Norms were given for the performance of such marriages in the rectory or sacristy of the church; later developments found such marriages performed in the church but outside the altar rail, and in some dioceses without flowers on the altar, without music and without lighted candles. As time went on permissions were granted for the wedding to take place inside the altar rail, with music (but not singing) and with flowers on the altar. New norms now permit the celebration of mass and the reception of holy communion on the part of the Catholic.⁹⁵

An analysis of the canonical attitudes before and after the V-II indicates a clear development in the tradition with regard to such marriages. For example, the 1917 Code refers to what was known as “mixed religion marriages” as follows:

Most severely does the Church prohibit everywhere that marriage be entered into by two baptized persons, one of whom is Catholic, and the other belonging to a heretical or schismatic sect: indeed, if there is a danger of perversion to the Catholic spouse and children, that marriage is forbidden even by divine law.⁹⁶

⁹⁴ Cfr., Thomas P. Doyle, “Title: VII, Marriage” in James A. Coriden et al. (Eds.), *The Code of Canon Law: A Text and Commentary*, New York: Paulist Press, 1985, 800. Some authors use this term exclusively to mean the marriages between Catholics and baptized non-Catholics. See for example, Orsy, *Marriage in Canon Law*, 180. For our purposes in this article, we use it to cover both ‘disparity of cult’ and ‘mixed religion’ marriages.

⁹⁵ Bernard A. Siegle, *Marriage: According to the New Code of Canon Law*, New York: Alba House, 1986, 149.

⁹⁶ Canon 1060 of the 1917 Code.

Even a very superficial comparison of the above with the reference to the same type of marriages in the 1983 Code shows a drastic softening of the language and of the tone used:

A marriage between two baptized persons, one of whom was baptized in the Catholic church or was received into it after baptism and has not defected from it by a formal act, the other of whom belongs to a church or an ecclesial community not having full communion with the Catholic church, without the express permission of the competent authority, is forbidden.⁹⁷

Moreover, in the 1917 Code, it was the non-Catholic party (whether baptized or non-baptized) who had to give promises (and that too, in writing) “to remove the danger of perversion from the Catholic spouse”, and to baptize all children and bring them up in the Catholic faith, in order to get a permission (in the case of mixed communion marriages) or a dispensation (in the case of a disparity of cult marriages).⁹⁸ But the 1983 Code has changed this canonical stance radically, and so, now it is the Catholic party himself/herself that has to give a promise that he/she will do everything possible not to endanger his/her own Catholic faith, and to do all within his/her power to baptize the would-be-children and to bring them up in the Catholic faith.⁹⁹ Doyle comments on the change that occurred in the aftermath of V-II with regard to the conditions for granting permission or dispensation for such marriages:

The non-Catholic party is no longer required to make any promises. Rather, the Catholic party is to declare that he or she is prepared to remove all danger of departing from the faith and promise to do all in his or her power to see that any children are baptized and raised as Catholics. The responsibility for fidelity to the Church rests with the Catholic

⁹⁷ Canon 1124 of the 1983 Code.

⁹⁸ Canon 1061 of the 1917 Code.

⁹⁹ Canon 1125 of the 1983 Code. Moreover, the non-Catholic party is to be informed clearly of such obligations undertaken by the Catholic spouse.

party and not the non-Catholic spouse, although the non-Catholic is obliged to respect the Catholic's situation.¹⁰⁰

Orsy believes that the document on Religious Freedom (*Dignitatis humanae*) of V-II which "stressed the right of all human persons to follow the light of their conscience and their right to profess publicly their religious convictions" had a role in this change.¹⁰¹

As we know, the disparity of cult marriages which are now often called by the term 'inter-faith marriages' are on a phenomenal increase in recent decades, not only in the so-called non-Christian parts of the world, but elsewhere too. FC addresses them just after talking about Mixed Communion marriages in No:78 when it says:

Today in many parts of the world marriages between Catholics and non-baptized persons are growing in numbers. In many such marriages the non-baptized partner professes another religion, and his beliefs are to be treated with respect, in accordance with the principles set out in the Second Vatican Council's Declaration *Nostra Aetate* on relations with non-Christian religions. But in many other such marriages, particularly in secularized societies, the non-baptized person professes no religion at all, in these marriages there is a need for Episcopal Conferences and for individual Bishops to ensure that there are proper pastoral safeguards for the faith of the Catholic partner and for the free exercise of his faith, above all in regard to his duty to do all in his power to ensure the Catholic baptism and education of the children of the marriage. Likewise the Catholic must be assisted in every possible way to offer within his family a genuine witness to the Catholic faith and to Catholic life.

¹⁰⁰Doyle, "Title: VII, Marriage", 802.

¹⁰¹ Orsy, *Marriage in Canon Law*, 36. One might also add the impact of the value of other religions as taught in *Nostra Aetate* (1965), at least with regard to the changes in the Church's understanding of disparity of cult marriages.

Surprisingly, following a different theological trend, the CCC expresses the fervent wish for the eventual conversion of the non-Catholic party to the Catholic religion.¹⁰²

Conclusion

As we have seen above, the understanding of marriage and its ramifications in practical living has surely undergone radical developments, during the past 50 years, within the official Church teachings. Only a living organism can grow (develop), and growth always implies change. That is to say that the Catholic moral tradition is indeed a living organism that keeps on developing.¹⁰³ Commenting on such developments in the official Catholic moral teachings, not only with regard to marriage but also with regard to other moral issues, the renowned historian Noonan perceives the Catholic Church to be a vigorous, living organism answering new questions with new answers, and enlarging the capacity of believers to learn through experience and empathy what love demands. He contends that the impetus to change comes from a variety of sources, including prayer, meditation on Scripture, new theological insights and analyses, the evolution of human institutions, and the examples and instruction given by persons of good will.¹⁰⁴

Such changes then, are nothing but an *aggiornamento*, a renewal, a responding to the ‘signs of the times’ in history. Neither are they deviations from or dilutions of the tradition; rather, often if not always, they mark a going back to the original sources of the tradition, especially to the Biblical teaching and the early Church life (i.e., *ressourcement*)¹⁰⁵, as the leading French theologians like

¹⁰² CCC, No:1637.

¹⁰³ Cfr., *Dei Verbum* (1965), No:8; Pope John Paul II, *Veritatis Splendor* (1993), No:4,27,28.

¹⁰⁴ The back-cover summary in John T.Noonan, Jr., *A Church That Can and Cannot Change: The Development of Catholic Moral Teaching*, Notre Dame (Indiana): University of Notre Dame, 2005.

¹⁰⁵ For a comprehensive understanding on ‘ressourcement’, see Massimo Faggioli’s fine essay at <http://www.stanfordvatican2.net/readings/april-8-francis/faggiolichapt2.pdf>. (accessed on 2nd September 2014).

Henri de Lubac, Jean Daniélou, Yves Congar, Marie-Dominique Chenu,...etc. were aiming at in their own studies prior to the V-II. As long as the Holy Spirit promised by Jesus is present in the Church, He will be progressively making the Church understand God's revelation better.¹⁰⁶ In other words, the Church's understanding of her own teachings will keep on growing, thanks to the same Spirit.

VI. A CRITICAL EVALUATION OF SOME OF THE SUGGESTED PASTORAL SOLUTIONS WITH REGARD TO THE DIVORCED AND RE-MARRIED CATHOLICS

Although the current Synodal process initiated by Pope Francis in October 2013¹⁰⁷ cannot be reduced to an exclusive discussion on the pastoral practice with regard to the divorced and re-married Catholics, the participants of the recent Extraordinary Synod were sharply divided on this very issue. As the theme of that Synod, "The Pastoral Challenges of the Family in the Context of Evangelization" itself suggests, this ecclesial process is mainly to reflect seriously in the light of the gospel teachings and decide mercifully according to the teachings of Jesus how the Church ought to reach out pastorally to the burning issues on family as part of her Evangelizing mission in the contemporary world. While there was near agreement among the participants on many other issues to do with this main theme and its ramifications, when it came to the pastoral care of the Catholics who are either divorced and re-married or in active homosexual unions, there were clear divisions in the Synod hall. The specific issue with regard to the former that divided the assembly was the issue of the reception of the Eucharist by them. In this essay, we wish to deal exclusively with this latter concrete issue because at present, this issue is more crucial for many Churches in Asia than the issue of homosexual marriages. We

¹⁰⁶ Cfr., John 14:25-26, 16:12-13; *Dei Verbum* (1965), No:8; Pope John Paul II, *Veritatis Splendor* (1993), Nos:27-28.

¹⁰⁷ The current Synodal process began with the questionnaire sent by the Vatican to the whole Church in the first week of November 2013.

will first introduce briefly the issue at stake without negating its complexity, by referring to the official teaching on the re-married Catholics, and then, will concentrate mainly on the different pastoral solutions that have been in vogue or recently proposed, and will also evaluate them critically. The purpose is to see the pros and cons of the available pastoral solutions, so that we could seriously consider the existence of any possibility of at least some re-married Catholics receiving the Eucharist as the Final Report of the recent Synod itself wished: “The Synod Fathers also considered the possibility of giving the divorced and remarried access to the Sacraments of Penance and the Eucharist”.¹⁰⁸ **This essay is not the final word on this highly complicated issue, but it is only a paving of way for a sincere and serious theological/pastoral reflection, as requested by Pope Francis himself.**

Official Teaching on the Reception of the Eucharist by the Divorced and Re-married Catholics

Following the teaching of Jesus on the indissolubility of marriage, traditionally, the practice of refusing sacraments, especially the sacrament of the Eucharist to the divorced and re-married, has predominated the Catholic pastoral practice. Even the celebrated post-Synodal Apostolic Exhortation of Pope John Paul II, *Familiaris Consortio* repeated the same traditional teaching. True, faithfully following what was said by the Synod Fathers at that Synod on Family in 1980, this particular document did make a clear-cut moral distinction between three types of the divorced and re-married Catholics when it said:

Pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations. There is in fact a difference between those who have sincerely tried to save their first marriage and have been unjustly abandoned, and those who through their own grave fault have destroyed a canonically valid marriage. Finally, there are those who have

¹⁰⁸ The Final Report of the Extraordinary Synod of Bishops (2014), No:52 as reproduced in *Origins*, 44:24 (13th November 2014),401.

entered into a second union for the sake of the children's upbringing, and who are sometimes subjectively certain in conscience that their previous and irreparably destroyed marriage had never been valid.¹⁰⁹

An obvious logical deduction of what the Pope himself says above is that there cannot be a single, general pastoral solution for all the divorced and remarried cases given their vast diversity. However, at the end of the same No:84, the Pope emphatically repeated the traditional teaching of the Church as a general solution for all remarried cases, namely, that none of them could be admitted to the reception of the Eucharist (that is, in spite of his own initial appeal to the pastors to make a careful discernment of moral differences among various cases of the remarried Catholics). He gave three main reasons on his part for such a re-emphasis on the traditional Catholic teaching:

However, the Church reaffirms her practice, which is based upon Sacred Scripture, of not admitting to Eucharistic Communion divorced persons who have remarried. They are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist. Besides this, there is another special pastoral reason: if these people were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church's teaching about the indissolubility of marriage.¹¹⁰

The Pope also says: "By acting this way, the Church professes her own fidelity to Christ and to His truth. At the same time she shows motherly concern for these children of hers, especially those who, through no fault of their own have been abandoned by their legitimate partner" (FC 84). The Pope, however, assures such re-married Catholics that they truly belong to the Church, and invites them to participate in the non-sacramental life of the

¹⁰⁹ Pope John Paul II, *Familiaris Consortio* (1981), No:84. Henceforth, in this essay, this document will be referred to as FC.

¹¹⁰ FC, No:84.

Church (FC No:84). Later, a similar pastoral attitude is repeated by Pope Benedict XVI in 2007:

Yet the divorced and remarried continue to belong to the Church, which accompanies them with special concern and encourages them to live as fully as possible the Christian life through regular participation at Mass, albeit without receiving communion, listening to the word of God, Eucharistic adoration, prayer, participation in the life of the community, honest dialogue with a priest or spiritual director, dedication to the life of charity, works of penance, and commitment to the education of their children.¹¹¹

However, the *Catechism of the Catholic Church* (CCC) which was released in 1992, takes a sterner tone towards the re-married Catholics, and does not even mention the Church's "motherly concern" for such people which John Paul II explicitly spoke about in FC eleven years earlier, and which was repeated by Benedict XVI fifteen years later.¹¹² Moreover, in addition to barring such people from the reception of the Eucharistic communion, the CCC also explicitly insists that they "cannot exercise certain ecclesial responsibilities". Unfortunately, it does not clearly mention what those 'responsibilities' are.¹¹³ Pope John Paul II's appeal to the pastors in FC that they make a careful discernment of situations for the sake of truth, and his highlighting of the possibility of some re-married persons being "subjectively certain in conscience that their previous and irreparably destroyed marriage had never been valid", are also surprisingly omitted in the *Catechism*.¹¹⁴

Thus, in the post-Vatican II period, the Church's official pastoral practice with regard to the re-married Catholics has developed

¹¹¹ Pope Benedict XVI, *Sacramentum Caritatis* (2007), No:29.

¹¹² This omission of "the motherhood" of the Church is all the more important because in the same *Catechism* it is mentioned nine times elsewhere! In the rest of this essay, this *Catechism* will be referred to as CCC.

¹¹³ CCC, No:1650.

¹¹⁴ CCC, No:1650.

to be stricter. But at the same time, the number of the divorced and re-married Catholics keeps on growing in an unprecedented way. And as the responses to the pre-Synodal questionnaire as well as the interventions of the Synod Fathers at the recent Extraordinary Synod insisted, not all of such re-married Catholics may be “living in sin”. As such, a viable pastoral solution that simultaneously respects the doctrine of indissolubility and also evinces the evangelical concept of mercy (*misericordia*) has to be found if the Church’s God-given mission of salvation is to be realistically carried out in the contemporary world. This, precisely, is one of the main tasks of the current Synodal process set in motion by Pope Francis. Perhaps, the fact that the Church’s pastoral practice towards the re-married Catholics had not been as clear or uniform as we often tend to think (especially, if we consider the Church life of the first millennium), may offer a few openings in this important pastoral search for a solution.

The Divorced and Re-married in the Early Church

Of course, it is well-known that even before the Great Schism of 1094 that made a clear-cut division of the Church, there was a diversity of pastoral practices, especially in the East on this issue.¹¹⁵ Holding on to the gospel teaching of indissolubility of marriage, the Eastern Church considered such marriages as illicit, and often imposed penance on those who entered into such marriages successively; they followed a canonical-pastoral process of penance that enabled the re-married Catholics who repented later, to reconcile fully with the Church, including the reception of the Eucharist. St. Basil the Great is an authoritative witness of this Eastern pastoral practice, as we shall see later in this essay. Commenting on the early Patristic tradition, during the talk he gave to the College of Cardinals in February 2014 at the special invitation of Pope Francis himself, Cardinal Walter Kasper said:

¹¹⁵ In other words, such divergences in pastoral practice were accepted by the Universal Catholic Church, at least in the first millennium.

The response of the church fathers was not uniform. So much is nevertheless certain, that in individual local churches there existed the customary law, according to which Christians, who were living in a second relationship during the lifetime of the first partner, had available to them, after a period of penance, admittedly no second ship – no second marriage – but indeed a plank of salvation through participation in communion. Origen reports on this custom and describes it as “not unrealistic”. Basil the Great and Gregory of Nazianzus referred to this praxis too. Even Augustine himself, who was otherwise strict in this matter, appears, at least in one passage, not to have excluded every pastoral solution. Out of pastoral concern “to prevent something worse”, these fathers were willing to tolerate something that, in itself, is unacceptable. There was, therefore, and there are good reasons for assuming that this praxis was confirmed by the Council of Nicea (325) against the rigorism of the Novatianists.¹¹⁶

Commenting on Canon 8 of the Council of Nicea in 325 AD, the much-respected Church historian Norman Tanner writes:

...it is significant that canon 8 of the First Ecumenical Council of the Church, Nicea I in 325, by insisting that Christians remain “in communion” with those who have entered into second marriages, seem to imply that Catholics who are divorced and have remarried may be admitted to receive Communion at Mass. Later this ceased to be the official position of the Catholic Church, but it is very important to remember that this more generous and welcoming approach appears to be the earlier and more conservative teaching.¹¹⁷

It is clear then, that the Church’s pastoral practice on the reception of the Eucharist by the re-married Catholics has evolved down through the centuries, and this evolution has taken two quite different ramifications in the Eastern and

¹¹⁶ Cardinal Walter Kasper, *The Gospel of the Family*, New York: Paulist Press, 2014, 31.

¹¹⁷ Norman Tanner, “Second Marriages”, *The Tablet*, 17th September 2014, 19.

Western Churches, according to different cultural, political and religious contexts within which the respective Churches were. As such, the vital question raised by some theologians and bishops now is whether similar evolution is not still possible in the Church's pastoral practice towards the Divorced and Re-married, taking into account the contemporary contexts.¹¹⁸ **After all, we are in front of a serious pastoral dilemma. On the one hand, there is the clear-cut gospel teaching of Jesus Himself that marriage is indissoluble. On the other hand, within the New Testament itself, we notice certain adaptations made to the same dominical teaching, according to the pastoral contexts of the early Christian communities. Add to this latter, the overall merciful attitude of Jesus in the gospels which had also been practiced with regard to the re-married couples within the early Christian tradition (before the divisions in the Catholic Church as East and West), and even now in some of the Eastern Churches. As such, various unavoidable pastoral questions arise, as we saw at the recent Synod.** In fact, the Final Report of the recently concluded Extraordinary Synod has kept the issue opened as we read in No:52, and called for a thorough study of the issue:

The subject needs to be thoroughly examined, bearing in mind the distinction between an objective sinful situation and extenuating circumstances, given that "imputability and responsibility for an action can be diminished or even nullified by ignorance, inadvertence, duress, fear, habit, inordinate attachments, and other psychological or social factors" (Catechism of the Catholic Church, 1735).

Although in the Final Report of the recent Synod, the issue of openness to the reception of the sacraments by some re-married couples under certain circumstances could not harness the required two-thirds-majority, it was passed by the Synod by an absolute majority (104 *placet* as against 74 *non-placet*). Moreover, as commentators point out, the fact that the 'Message of the Synod' was approved by a massive 158 out of 174 Synod Fathers

¹¹⁸ For example, see Kasper, 27.

is itself an indication of the openness of the Synod Fathers to find a viable pastoral solution to this burning pastoral issue. That message gives a theological clue to the issue of the re-married Catholics receiving sacraments when it says:

The vertex that gathers and sums up all of the threads of communion with God and with neighbors is the Sunday Eucharist, when with the entire Church the family sits at the table of the Lord. He gives himself to all of us, pilgrims in history journeying towards the goal of the final encounter when “Christ will be all in all” (Co.3.11). For this reason, in the first stage of our synodal journey, we have reflected on the pastoral accompaniment and the admission to the sacraments of divorced and remarried persons.¹¹⁹

Thus, it should be clear that the Synodal Fathers were not only aware of the grave pastoral issue at stake, but were also open to finding a viable pastoral solution with regard to the re-married Catholics. Since the Synodal process is still on, and since all Catholic faithful are invited to reflect seriously on this issue by the Pope himself, we will now turn our attention to some of the pastoral solutions that have been already in vogue in the Church and some others that have been newly proposed.

A Critical Evaluation of Some of the Pastoral Solutions Proposed

Since the pastoral issue of the divorced and re-married is an ancient one, there had been various pastoral solutions suggested all along history, as to how Catholics in such unions could receive the Eucharist. In what follows, we will discuss ten of them briefly, and give our own critical evaluation on each of them:

1. To Live as Brother and Sister

This has been a long-standing traditional pastoral solution to the divorced and re-married Catholics. Accordingly, if such couples

¹¹⁹ Antonio Spadaro, “A Church on a Synodal Journey: Pastoral Challenges of the Family”, *Catholic News Update Asia*, VIII: 103 (12 November 2014).

even if they live under the same roof, sharing every other aspect of life as husband and wife, but refrain from performing the conjugal act, then, they could receive the sacraments. Unfortunately, people who get re-married to live in this way (popularly known as living as 'brother and sister') are very rare today. Besides, even if a few couples succeed in being so, as the English moral theologian Kevin Kelly had somewhat humourously pointed out some years ago, "unless a couple had a 'brother and sister' logo on their door-post, neighbours and fellow parishioners would be none the wiser and so the alleged scandal would presumably still be given".¹²⁰ This is simply because the rest of the community has no objective certainty to believe that such a couple is really living as 'brother and sister'.

2. To separate Bed and Board

This traditional pastoral solution is very similar to the one above in the sense the crux of the matter is that the re-married couple refrains from performing the conjugal act. Its difference from the previous 'solution' is that the couple does not live together under the same roof, if not in the same room. Of course, in such a very rare case, the outsiders won't have much trouble in knowing that they do not live sexually as husband and wife. In that sense, this 'solution' avoids completely the element of scandal, though it is highly unrealistic because very few couples if at all will get re-married to live separately.

3. To Receive Spiritual Communion

This too, has been a traditional solution¹²¹, and is recommended even today by quite a number of parish priests and confessors. The Letter of the Congregation for the Doctrine of the Faith in

¹²⁰ Kevin T. Kelly, "Divorce and Remarriage: Conflict in the Church", *The Tablet*, 29th October, 1994, 1374.

¹²¹ In the well-known "Visits to the Blessed Sacrament" composed by St. Alphonsus Liguori, the theme of Spiritual Communion was an essential item.

1994, too, recommends it for the re-married Catholics.¹²² But in our contemporary world, this, too, is not without its weaknesses. At a time when almost every Catholic who participates in any Eucharistic celebration goes forward to receive communion, those who participate in mass regularly, but do not go to receive communion at all, such as the divorced and re-married, will easily feel as not belonging to the community, because they will be easily 'ear-marked' by the rest of the community as never going forward to receive communion. In this sense, such couples, in the long run, may feel as 'second class' believers who attend the banquet of the Lord, but who are not allowed to partake in the banquet meal. It surely amounts to a mockery of the popular Catholic belief that Eucharist is a meal.

There is also a common sense question: if such people could receive Jesus fully through spiritual communion, then, why cannot they receive the same Jesus in and through the sacramental species? The argument that such divorced and re-married people objectively contradict the relationship between Jesus and his Church as signified by the Eucharist, and so, they cannot receive the same Eucharistic Jesus, is somewhat challenged by this practice of spiritual communion with regard to the re-married. That is, if such people really contradict objectively that relationship of Jesus and the Church, then, how could they receive the same Eucharistic Jesus spiritually?¹²³

There is also another serious theological objection: the Church is the primary sacrament of Jesus, and exists to continue his living presence in our world, through her efficacious sacramental action. If so, when we say that the same Jesus could be received through spiritual communion, we tend to be reductive in a sense. That is: "If we exclude divorced and remarried Christians, who are properly disposed, from the sacraments, and refer them to the extrasacramental way of salvation, do we not then place

¹²² Congregation for the Doctrine of the Faith, "Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful", 14th September 1994, No:13.

¹²³ Cfr., Kasper, 30.

the fundamental sacramental structure of the Church into question?"¹²⁴ The Mid-Term Report of the recent Synod too, raised the same question.¹²⁵ The Final Report repeats the same: "Some Synod fathers maintained that divorced and remarried persons or those living together can have fruitful recourse to a spiritual communion. Others raised the question as to why, then, they cannot have access 'sacramentally'".¹²⁶

Moreover, we may thus imply that the same Jesus could be received without the sacramental actions of the Church, without her sacraments, too. To highlight our point here, let us cite a dangerous and erroneous parallel: could we tell people that they need not approach the sacrament of reconciliation to receive God's absolution, but could receive it through spiritual confession?!

Last but not least, we need to also keep in mind that spiritual communion as a concept was popularized by the Jansenistic rigorists who discouraged the faithful from receiving communion, especially in the 17th and 18th centuries. It was Pope Pius X who popularized the frequent reception of the Eucharist in the early 20th century. Ever since, Church has encouraged the faithful to approach this sacrament after going through a genuine conversion through a good sacramental confession, to receive its special healing and nourishing effects for the Christian pilgrimage here on earth.

4. Internal Forum Solution

Quite a number of Synod Fathers appealed for greater efficiency and a speeding up of Marriage Tribunals as a way forward pastorally with regard to the divorced and re-married Catholics, even at the recent Synod.¹²⁷ This will surely benefit a good

¹²⁴ Kasper, 30.

¹²⁵ Mid-term Report of the Extraordinary Synod (2014), No:48.

¹²⁶ Final Report of the Extraordinary Synod (2014), No:53.

¹²⁷ In fact, many of the Episcopal Conferences worldwide also made such an appeal in their responses to the pre-Synodal Questionnaire. Cfr., "The Pastoral Challenges of

number of people who are in a position to meet the juridical demands required, and thus, establish in the Tribunal (the External Forum) that there indeed had been no marriage at all from the beginning (i.e., cases for annulment). **However, the issue at stake that some of the Synod Fathers were calling attention to was about those cases of re-married Catholics who cannot prove that there was no first marriage at all in an External Forum (in the Tribunal) but who are certain in their conscience(the Internal Forum) that there was never such a marriage. In fact, as we saw above, Pope John Paul II himself recognizes such cases of the re-married Catholics, in No:84 of FC.**

Traditional Catholic canonical practice recognizes that there is a distinction between the external and internal forums.¹²⁸ With regard to our own theme, Siegle writes:

The problem concerns primarily the conflicting situation that arises when a marriage is invalid before God, but the invalidity cannot be proven before a human tribunal. Secondarily it concerns situations in which a sacramental marriage was broken and an individual, now remarried, desires to receive the sacraments while remaining faithful to a second union. This is the case of those who are divorced and remarried and who are now anxious to return to full communion with the Church but cannot do so either because their first marriage, invalid as it was, ended in divorce and there is now another marital union.¹²⁹

It is in such cases, that what was traditionally known as “the internal forum solution” was frequently applied in the pastoral field in the past:

the Family in the Context of Evangelization”, *Instrumentum Laboris* (2014), Nos:98-101. Also, the Final Report of the Extraordinary Synod, Nos:48-49.

¹²⁸ Cfr., *Code of Canon Law*, 1983, No:130.

¹²⁹ Bernard A. Siegle, *Marriage According to the New Code of Canon Law*, New York: Alba House, 1986, 197.

Very few responsible Catholics would deny the positive value of law in safeguarding the integrity of marriage and family life and the ideal of indissolubility. But various situations exist that cannot be resolved satisfactorily by an external forum judgment, since the key facts may be known only in the intimacy of the marriage by the partners themselves. In such cases, another legitimate pastoral option exists, known as the internal forum solution (I.F.S.).¹³⁰

That is to say that a re-married spouse who is certain in his properly formed conscience that his/her previous marriage was never valid but cannot prove so in a marriage tribunal with all the juridical requirements demanded there, can receive the Eucharist after a careful and prayerful discernment taking into consideration what the Church's magisterium teaches seriously. This was normally done with the assistance of a conscientious pastor. One needs to notice that there is no question of dissolving a valid marriage here: "Marriage as we know it is indissoluble, but there must be a marriage first in order to speak of indissolubility. We cannot take apart something that has not been molded together".¹³¹ Rather, it is a matter of declaring the nullity of marriage not in a marriage tribunal (external forum) but in one's properly formed conscience (internal forum). This pastoral solution was officially approved by the Vatican at least twice in the 1970's. While censuring the diocesan bishops from admitting to the sacraments those who were invalidly married, Cardinal Seper, the Prefect of the Congregation for the Doctrine of the Faith (CDF) in 1973 stated:

In regard to admission to the Sacraments, the Ordinaries are asked on the one hand to stress observance of current discipline and, on the other hand, to take care that the pastors of souls exercise special care to seek out those who are living in an irregular union by applying to the solution of such cases,

¹³⁰ Gerald S. Twomey, *When Catholics Marry Again: A Guide for the Divorced, Their Families, and Those who Minister to Them*, Minneapolis (Minnesota): Winston Press, 1982, 52.

¹³¹ Siegle, 196.

in addition to other right means, the Church's approved practice in the internal forum.¹³²

Two years later, the same CDF re-approved it, and explicitly explained what the phrase "the approved practice of the Church in the internal forum" really means, in a letter signed by its secretary, Archbishop Hamer to Archbishop Bernadin of Chicago:

I would like to state now that this phrase [*probate praxis Ecclesiae*] must be understood in the context of traditional moral theology. These couples [Catholics living together in irregular marital unions] 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.¹³³

Thus, we need to be clear that this was an approved pastoral practice of the Church that respects the supreme moral norm of Christian living, namely, acting according to one's properly formed conscience.¹³⁴ However, in the contemporary world where people tend to equate their feelings to conscience, where any conscience whether properly formed or not is used to justify any and every decision in one's life, this solution has the risk of ending up in subjectivism, that could easily lead up to moral relativism. Perhaps, this growing contemporary risk may have been the reason that prompted Pope John Paul II himself not to mention this as a possible pastoral solution in his FC though in the previous decade it was twice officially approved by the CDF. As a matter of fact, later, this pastoral approach was discouraged by the CDF head, Cardinal Ratzinger, when he implicitly

¹³² As cited in Kenneth R. Himes and James A. Corriden, "Pastoral Care of the Divorced and Remarried", Notes on Moral Theology 1995, *Theological Studies*, 57:1 (March 1996), 101.

¹³³ As cited in Himes and Corriden, 101. See also, Siegle, 198.

¹³⁴ Cfr., *Gaudium et Spes* (1965), No:16; *Dignitatis Humanae* (1965), Nos:1-3, 14.

forbade its use in his Letter to the Bishops of the Catholic Church in 1994.¹³⁵

On the positive side, this pastoral solution upholds the subjective pole of morality without denying its objective pole. As Bishop Peter Cullinane of New Zealand wrote recently the opposition to any change in the Church's practice concerning the reception of Holy Communion by people in irregular situations is often based on its apparent contradiction of the objective moral order of indissolubility: "It is one thing to uphold the Church's teachings and the need to align our lives to them; it is another to say that whether people may receive Holy Communion or not depends only on their objective situation".¹³⁶ As we know, beginning with Jesus in the gospels, the Christian tradition has insisted the primacy of subjective (interior) morality without negating the objective (external) morality. In this sense, too, this pastoral solution of internal forum has its own merits, provided the safeguards against its abuse are well in place.

5. Failure to Believe what the Church Believes with regard to the Sacrament of Marriage

This is a reality that has emerged in the last couple of decades mainly due to the ever-growing secularization of traditional Catholic societies of the by-gone eras. Consequently, today, on the one hand, there are many nominal Catholics, persons who are validly baptized, but who do not practice or believe what the Church teaches, as is so evident in the Western countries. But on the other hand, by canonical definition, a marriage between two baptized persons, by that very fact of baptism, has to be a sacrament. Thus, Canon 1055 of the 1983 Code says: "Between baptized persons no valid matrimonial contract can exist that is

¹³⁵ Cfr., Congregation for the Doctrine of the Faith, "Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful" (1994), Nos:7,8. Of course, the term "Internal Forum Solution" is never explicitly mentioned in this document.

¹³⁶ Peter Cullinane, "Second Marriages", *The Tablet*, 27th September 2014, 19.

not, by that fact, a sacrament.”¹³⁷ But does this canonical assertion hold good when a baptized person who does not believe in what the Church teaches (including what she teaches on the sacrament of marriage), enters into a marriage with another baptized person? After all, every sacrament demands at least a basic faith to believe what the Church teaches. Vatican Council – II insisted that the sacraments “not only presuppose faith, but by words and objects they nourish, strengthen and express it. That is why they are called ‘sacraments of faith’”.¹³⁸ The same view is repeated by *Ordo Celebrandi Matrimonium* (1969) which said: “Pastors should first of all strengthen and nourish the faith of those about to be married. The sacrament of matrimony presupposes and demands faith”.¹³⁹ The CCC says that sacraments “presuppose faith” (No:1123), and that when they are “celebrated worthily in faith, the sacraments confer the grace that they signify” (No:1127). Lawler describes the anomaly that arises when all baptized are taken for granted as “believers”:

Today, the faith-situation of the baptized is anything but clear, and the Church and its theologians recognize two kinds of baptized, believers and nonbelievers. The two are easily distinguished theologically on the basis of the presence or absence of active personal faith. They ought never, therefore, to be as easily equated in law as they are in the Code.¹⁴⁰

Cardinal Kasper expresses the issue at stake well when he says:

...*Familiaris Consortio* says that some of the divorced and remarried are subjectively convinced in conscience that their irreparably broken previous marriage was never validly contracted. For as a sacrament of faith, marriage presupposes faith and consent to the essential characteristics of marriage –

¹³⁷ *Code of Canon Law* (1983), Canon 1055/2.

¹³⁸ *Sacrosanctum Concilium* (1963), No:59.

¹³⁹ *Ordo Celebrandi Matrimonium* (1969), No:7.

¹⁴⁰ Michael G.Lawler, *Marriage and Sacrament: A Theology of Christian Marriage*, Collegeville: The Liturgical Press, 1993, 28.

unity and indissolubility. But can we, in the present situation, presuppose without further ado that the engaged couple shares the belief in the mystery that is signified by the sacrament and that they really understand and affirm the canonical conditions for the validity of their marriage? Is not the *praesumptio iuris* [presumption of validity], from which canon law proceeds, often a *fictio iuris* [legal fiction]?¹⁴¹

In fact, some 35 years ago, the Synod of Bishops (1980) expressed their view on this issue when they passed the following proposition by a near-unanimous vote (201 *placet* and 3 *non-placet*):

We have to take into account the engaged couple's degree of faith maturity and their awareness of doing what the Church does. This intention is required for sacramental validity. It is absent if there is not at least a minimal intention of believing with the Church.

At the recently concluded Synod too, this issue came up a quite a few times.¹⁴² This pastoral dilemma of the Church is a blessing in disguise in a way, because it has coerced the Church to reconsider her exclusively juridical-pastoral stance on marriage itself. Kasper illustrates the point well when he says:

Because marriage as a sacrament has a public character, the decision about the validity of a marriage cannot simply be left to the subjective judgment of the parties concerned. However, one can ask whether the juridical path, which is in fact not *iure divino* [by divine law], but has developed in the course of history, can be the only path to the resolution of the problem, or whether other, more pastoral and spiritual procedures are conceivable. Alternatively, one might imagine that the bishop could entrust this task to a priest with spiritual and pastoral experience as a penitentiary or Episcopal vicar.¹⁴³

¹⁴¹ Kasper, 28.

¹⁴² Cfr., *Instrumentum Laboris* (2014), No:96.

¹⁴³ Kasper, 28.

Could this be another way out for quite a number of re-married Catholics especially in the developed Western world where one finds many nominal Christians? In fact, this is one of the proposals made by the recent Synod: "Among other proposals, the role which faith plays in persons who marry could possibly be examined in ascertaining the validity of the Sacrament of Marriage, all the while maintaining that the marriage of two baptized Christians is always a sacrament".¹⁴⁴

6. Recourse to a Non-Judicial Canonical Procedure

This is a recent theoretical/pastoral adaptation of the Internal Forum solution. This is what is proposed by Cardinal Kasper and also by a few participants at the recent Synod. At the very beginning of the recent Synod, the *Relatio Ante-Disceptationem* of Relator of the Synod, Cardinal Erdo, himself, said:

Divorced and civilly remarried persons belong to the Church. They need and have the right to receive care from their pastors (cf. *Sacramentum Caritatis*, 28). They are invited to listen to the Word of God, to participate in the Church's liturgy and prayer and perform the good works of charity. The Church's pastoral care must be extended to them in a very special way, taking into account the unique circumstances of each person. Consequently, in each particular Church, at least one duly prepared priest is needed, who can offer counsel, without charge, as a first step for the parties in ascertaining the validity of their marriage. Indeed, many spouses are unaware of the criteria for the validity of their marriage, much less the possibility that a marriage can be invalid. After divorce, this verification must be carried out in a pastoral dialogue on the causes of the failure of the previous marriage and identifying possible grounds for nullity, while avoiding every appearance of a formal bureaucratic process or any economic interest. If all this is done in a serious manner in search of the truth, the

¹⁴⁴ Final Report of the Extraordinary Synod, No:48.

declaration of nullity process for the parties will be truly a liberating experience in conscience.¹⁴⁵

The *Instrumentum Laboris* (the Working Document) of the Extraordinary Synod (which was mainly based on the responses to the pre-Synodal consultation of all the Episcopal conferences) describes a rather broad consensus in favour of simplifying marriage cases from the pastoral point of view.¹⁴⁶ In No:101, it states:

Both responses and observations recognize the extensiveness of the pastoral problem of a breakdown in marriages and raise the question whether it is possible to deal with this matter through a judicial process only. Some advance the idea of working through administrative channels. In certain cases, some suggest ascertaining a person's conscience in assessing the invalidity of the marriage bond. The question is whether other pastoral means are available to the clergy involved in the process of verifying the validity of the marriage.

In fact, just a month prior to the Extraordinary Synod, on 20th September 2014, Pope Francis instituted a special Study Commission for the reform of the canonical marriage nullification process. In the meantime, many a Synod Father raised the possibility of a non-judicial canonical procedure by resorting to administrative channels, for resolving the nullity cases, not in lieu of the marriage tribunals, but as something complementary to it. Accordingly, it was suggested that it would be the responsibility of the bishop to decide which requests for nullity could be dealt with through administrative channels.¹⁴⁷

¹⁴⁵ The *Relatio Ante-Disceputationem* ("Report Prior to Discussion") of Cardinal Péter Erdő, as given in "The World Seen from Rome" in *Zenit Daily Dispatch*, 6th October 2014. Henceforth, this news source will be referred to simply as *Zenit*.

¹⁴⁶ Cfr., "The Pastoral Challenges of the Family in the Context of Evangelization", *Instrumentum Laboris*, Città del Vaticano: Libreria Editrice Vaticana, 2014, Nos:98-102.

¹⁴⁷ Report of the Extraordinary Synod session of the afternoon of 8th October 2014, as given in *Zenit*, 9th October 2014. See also No:52 of the Final Report of the same Synod which referring to the reception of the Eucharist by the re-married Catholics, says: "Access to the sacraments might take place if preceded by a penitential practice,

The idea was to accommodate those cases that cannot be covered by matrimonial tribunal procedure, due to the impossibility of proving nullity in the external forum.

Moral theologians and Canonists have consistently warned that “we must not too quickly equate the language of Jesus with the canonical or legal language about indissolubility”.¹⁴⁸ After all, as Kasper has highlighted, the issue has become acute within the Latin Church mainly because of its predominantly juridical perception of what a Catholic marriage is.¹⁴⁹ Perhaps, in response to this point, the Synod Fathers also expressed the wish that “more space must be allowed for a sacramental rather than a juridical form of logic” in resolving the divorced and re-married cases.¹⁵⁰ Thus, in the Final Report of the recent Synod, we read:

In streamlining the procedure of marriage cases, many synod fathers requested the preparation of a sufficient number of persons – clerics and lay people – entirely dedicated to this work, which will require the increased responsibility of the diocesan bishop, who could designate in his diocese specially trained counselors who would be able to offer free advice to the concerned parties on the validity of their marriage. This could be done in an office or by qualified persons (cf. *Dignitatis Connubii*, art.113, 1).¹⁵¹

determined by the diocesan bishop”. Of course, it calls for a serious, thorough study of the issue.

¹⁴⁸ John R. Donahue, “Divorce: New Testament Perspectives”, *The Month* (April 1981), 118. See also, Lawrence G. Wrenn, *Divorce and Remarriage in the Catholic Church*, New York: Newman Press, 1973, 134; Richard A. McCormick, “Indissolubility and the Right to the Eucharist: Separate Issues or One?” in the *Proceedings of the Canon Law Society of America, 37th Annual Convention*, 1975, 35.

¹⁴⁹ Kasper, 38.

¹⁵⁰ Report of the Extraordinary Synod session of the morning of 6th October 2014, as given in *Zenit*, 7th October 2014.

¹⁵¹ The Final Report of the Extraordinary Synod (2014), No:49.

7. The Application of the Law of Graduality

This could be one of the sub-categories flowing from a non-judicial way of dealing with the re-married Catholics. After all, this is a pastoral solution that goes back to the official patron of moral theology, St. Alphonsus Liguori, himself. Within the exclusively Casuistic framework of doing moral theology in his day (17th and 18th centuries AD), St. Alphonsus used this pastoral concept especially in the confessional whenever it was clear that a penitent was unable to reach instantly, the moral perfection as demanded by the gospels. Basing himself on simple human behavioural patterns, St. Alphonsus held that a person could grow gradually closer to the ideal Church teaching with the passing of time and with the help of God's grace, provided the person is open to that grace and is doing everything possible to him/her in his/her given specific circumstances. A common contemporary example in this regard would be a cohabiting couple that gradually decides to get married in the Church.

Although casuistic moral theology of St. Alphonsus' day is no longer at the centre of the Church's pastoral practice today, interestingly, Pope John Paul II (1981) and the *Vade Mecum for Confessors* (1997) recommended it in the pastoral field. However, in view of the prevailing danger of moral relativism, both these documents also warned not to confuse this cherished Catholic pastoral doctrine of the 'law of graduality' with the erroneous idea of the 'graduality of law'.¹⁵² That is to say that the concept of the 'law of graduality' does not mean that different moral laws apply at different times and circumstances in a person's life. Rather, it is a 'graduality' that puts a person on a path that would lead him/her to fully but gradually accepting the Church's teaching, as he/she progresses in his/her moral growth. After all, often, there is a gap between the moral ideal and the lives lived in reality, not only with regard to issues of marriage but also with regard to other moral issues.

¹⁵² Cfr., FC, No:34; Pontifical Council of the Family, *Vademecum for Confessors Concerning Some Pastoral Aspects of the Morality of Conjugal Life* (1997).

Theoretically, it amounts to not starting from the moral ideal as such, but from the life lived in a given concrete situation. This, surely is closer to the behaviour of Jesus in the gospels.

Although quite a number of interventions at the recent Extraordinary Synod also proposed the use of this traditional Catholic moral concept in finding a pastoral solution for some cases of the re-married Catholics, there was also a vociferous opposition to it. Interestingly, if one were to study the reasons given by most of those who vehemently opposed the use of this concept at the recent Synod, it becomes obvious that they were not aware that this is a cherished concept of our very Catholic moral tradition, recommended even by recent official magisterial teachings.

8. The application of the Eastern concept of *Economia*

As we saw above, there is evidence that some of the early Church Fathers followed a pastoral practice of tolerance, clemency and forbearance, after a period of penance, with regard to the divorced and re-married.¹⁵³ Thus, we read what St. Basil the Great had to say about *digamy* (second marriage) and *trigamy* (third marriage) as follows in his fourth letter:

As regards trigamy and polygamy the rule is the same as in the case of digamy but keeping due proportion. For the digamous it is one year, though some others impose two years. The trigamous are barred from communion for three years and often for four years. For such a marriage is no longer called marriage but polygamy, or rather restrained fornication. For the Lord also told the Samaritan woman, who had five husbands one after the other, "He whom you have now is not your husband" (Jn.4:18), meaning that those who cross the limit of digamy are not worthy to be called husband or wife. It is the custom to segregate the trigamous for five years, but there is no canon to this effect; we follow our predecessors. It is surely proper not to exclude them completely from the Church, but to let them be listeners for the space of two or

¹⁵³ For a succinct description of the early tolerant pastoral attitude, see Kasper, 37.

three years, and thereafter they may be permitted to be among the standers but forbidden to receive Holy Communion. Thus, on showing some fruit of repentance, they are to be restored to the condition of those entitled to communion.¹⁵⁴

St. Basil takes up the matter again in his ninth canon. The Oriental Canon Law specialist, George Nedungatt describes it as follows:

This canon does not require the parties involved in a second or third marriage to separate before being admitted to the canonical penance: first, as “hearers” or those who are admitted to the liturgy of the word but must leave before the liturgy of the Eucharist; second, as “standers”, those who were not sent away after the liturgy of the word but were not allowed to receive the Eucharist; and “weepers”, those who were to implore the prayers of the Christian faithful. At the end of the prescribed public penance the penitents were admitted to full communion. It is to be noted that the condition of a man abandoned by his wife is different from that of the man who abandons his wife: the former may enter into a second union with another woman, for which he is not considered an adulterer.¹⁵⁵

One needs to note immediately that the Orthodox Church practice does not dilute the concept of indissolubility, but while upholding it firmly, it tries to realistically accommodate human fragility and respond to that fragility with mercy and forgiveness as recommended by the gospels. The very insistence

¹⁵⁴ Basil the Great, Canonical Epistle 4, PG 32, 673. Translation by George Nedungatt, in a Book Review that is to be published soon in *Asian Horizons (The Dharmaram Journal of Theology, Bangalore)*.

¹⁵⁵ George Nedungatt in a Book Review that is to be published soon in *Asian Horizons (Bangalore)*. In the last line of this quotation, the reader needs to note the vital distinction made which is also referred to by Pope John Paul II in No:84 of his FC. The important inescapable implication is that one cannot make a general, blanket Church policy that suits all the divorced and re-married cases; rather, as many Fathers of the recent Extraordinary Synod consistently insisted, there needs to be a case by case pastoral approach.

of repentance through concrete signs and actions also corroborate this point.¹⁵⁶ Kasper describes the evolution of the pastoral practice in the Orthodox Churches:

The Orthodox churches preserved the pastoral point of view of the early church tradition. In accordance with their principle of *oikonomia*. However, since the sixth century, following Byzantine imperial law, they have gone beyond the position of pastoral tolerance, clemency, and forbearance and they recognize – besides the provisions concerning adultery – additional grounds for divorce, which are based on the moral and not only the physical death of the marriage bond.¹⁵⁷

In the Orthodox practice, the concept of ‘*economia*’ is generally accepted as an image of the divine *economia* of love and kindness as is exemplified in the New Testament. Its basic meaning implies prudent “handling” or “housekeeping” in God’s house (*oikos*) by the housekeeper (normally the bishop). It is a discretionary deviation from the letter of the law in order to adhere to the spirit of the law and charity, with regard to the matters of God’s household. But one also needs to note that the Orthodox concept of *economia* has never been sufficiently, systematically or officially defined as it is practiced in their Churches. However, as already indicated, in the canon law of the Orthodox Church, it would amount to “the suspension of the absolute and strict applications of canon and church regulations in governing and the life of the Church, without subsequently compromising dogmatic limitations. The application of *economia* only takes place through the official church authorities and is only applicable for a particular case”.¹⁵⁸

¹⁵⁶ For a detailed description of the practice, see Marco Paleari, “Teologia e prassi delle Chiese Ortodosse” in A. Fumagalli, A. Conci and M. Paleari, *Il Cuore Ferito. Perdere <<un>> Amore, Restare <<nell>>’Amore. Tre Prospettive Cristiane sui Matrimoni Falliti*, Cinisello Balsamo (MI): Edizione San Paolo, 2010, 74-107. See also, Basilio Petrà, *L’Etica Ortodossa: Storia, Fonti, Identità*, Assisi: Cittadella Editrice, 2010, 193-222.

¹⁵⁷ Kasper, 38.

¹⁵⁸ P. Rodopoulos, “Oikonomia nach Orthodoxem Kirchenricht”, in *Studies I*, Thessalonica, 1993, 231, as cited by Bishop Athenagoras Peckstadt in his Paper on

Scholars point out that when the Council of Trent defined officially the concept of indissolubility of marriage some 400 years ago, the understanding was that this definition did not mean the condemnation of the Eastern Church's practice of *economia*.¹⁵⁹ Haering goes on to say:

In any case the statements of the Council of Trent leave dogmatic space open for the existential question of what the Western Church in an age of ecumenism, can learn on this and similar questions from the spirituality and practice of the Orthodox Church, and what best serves its pastoral mission in the world of today or indeed in considerable parts of the Catholic Church in order to show itself loyal to the father of the household who is able to link old and new from his divine treasury of wisdom.¹⁶⁰

This is also the opinion of many bishops and theologians of the Church today as was evident in the *Instrumentum Laboris* of the recent Synod which refers to some responses to the pre-Synodal questionnaire as suggesting the further examining of the practice of some of the Orthodox Churches "which opens the way for a second or third marriage of a penitential character".¹⁶¹

Although this pastoral solution appears very attractive, one should not forget that we are dealing here with two very different ecclesial traditions which have evolved their respective theological and canonical disciplines in their own unique ways. Hence, the need for a serious, critical study of the Orthodox discipline in this regard is indispensable.

"Marriage, Divorce and Remarriage in the Orthodox Church" at the International Congress held at the Catholic University of Leuven, held from 18th to 20th April 2005.

¹⁵⁹ Bernard Haering, *No Way Out? Pastoral Care of the Divorced and Remarried*, Slough: St.Paul Publications,1990, 42. See also, Giancarlo Pani, "Matrimonio e <<Seconde Nozze>> al Concilio di Trento", *La Civiltà Cattolica*, 165 (4 Ottobre 2014), 19-32.

¹⁶⁰ Haering, 42.

¹⁶¹ *Instrumentum Laboris* (2014), No.95.

9. The Application of the Concept of *Epikeia*

Simply put, 'epikeia' is the ethical concept that comes to the rescue of a moral agent when he/she is faced with what appears to be a conflict of choosing between 'the letter of the law' and 'the spirit of the law'. For example, if/when I violate the prescribed speed limits in order to rush a sick friend of mine (who has just suffered a heart attack) to the hospital, it is *epikeia* that would justify my doing so.

In his *Nicomachean Ethics* [Book 6, Ch.10], Aristotle says that the worldly reality is too rich and varied to be comprehended by a general law, with the result that on occasion the general law has to be corrected and improved in order to bring it into line with real life. This correction and improvement of the law in a minority of cases is done simply by the individual's ignoring what the law says, and by his contravening the letter of the law in order to observe the spirit and above all the true purpose of the law. For Aristotle, then, it is the law itself which is inherently weak and imperfect, precisely because it is universal and general in its formulations, and as such, may not at times cover particular cases. It was precisely this flexibility inherent in the law because of its universal and abstract character (as highlighted by Aristotle) which was recognized by St. Thomas Aquinas when he wrote:

Laws are made for human actions. But such actions are individual and concrete situations, and they are infinitely variable. Hence, it is impossible to establish a ruling of law which is never defective. Lawmakers consider what normally happens and draw upon that to frame a law; but in certain cases the observance of that law would be against justice and against the common good which is what the law aims at In such cases,....it would be bad to follow the law laid down, but on the other hand, it would be good to ignore the wording of the law in order to do what is called for by justice and the common benefit. And this is what *epikeia* is for.¹⁶²

¹⁶² Thomas Aquinas, *Summa Theologiae*, II-IIae, q.120, art.1.

Mahoney commenting on this concept says:

What Thomas found so congenial about ‘the virtue which Aristotle terms *epikeia*’ was that it was so eminently reasonable. To act according to this virtue is not to abandon justice, nor is it opposed to severity in applying a law, nor indeed is it to pass judgment on the law itself, or even to take it upon oneself to interpret the intention of the law-giver in a matter considered doubtful. On the contrary, *epicheia* is itself an act of justice which in fact directs legal justice as a ‘kind of higher rule of human acts’ and which indicates when the wording of the law should not be followed in cases when to do so would be wrong.¹⁶³

Epikeia, in the teaching of Aristotle and Thomas, is a virtue, and as such, it is a quality of human judgment to be cultivated. One needs to note that the context of Thomas’ remarks above is that of the general theme of the virtue of justice and its many parts and applications. Elsewhere in his *Summa*, in his formal treatise on law, he delivers the same judgment in terms which take us beyond *epikeia* as a form of justice to consider, in the light of exceptional cases, the whole purpose and function of law.¹⁶⁴

The tradition of Catholic moral theology has given ample room to *epikeia*. Following Aristotle, who should be considered the *locus classicus* in the matter (as we saw above), St. Albert the Great, St. Thomas Aquinas, Bl. John Duns Scotus, Cajetan, Suarez, the *Cursus Theologicus* of the Salamanca Carmelites, St. Alphonsus Liguori (the official patron of Catholic moral theologians) and many 20th-century scholars have offered important explanations.¹⁶⁵ With reference to the divorced and remarried Catholics, quite a number of contemporary

¹⁶³ John Mahoney, *The Making of Moral Theology: A Study of the Roman Catholic Tradition*, (Revised & Re-printed), Oxford: Clarendon Press, 1990, 238.

¹⁶⁴ Cfr., Mahoney, 238.

¹⁶⁵ Angel Rodriguez Luno, “Can Epikeia be Used in the Pastoral Care of the Divorced and Remarried Faithful?”, *L’Osservatore Romano* (Weekly English Edition), 6-9 February 2000, 9.

theologians and bishops have cited the concept of *epikeia* as a moral principle that could be useful in pastorally resolving the exceptional cases to do with the re-married Catholics.¹⁶⁶ Thus, Cardinal Kasper, for example, points out how the Catholic tradition recognizes this principle: “It recognizes the Thomistic understanding of the foundational cardinal virtue – prudence – which applies a general norm to the concrete situation (which, in Thomas Aquinas’s sense, has nothing to do with situation ethics”.¹⁶⁷ He goes on to write:

In short, in our current matter, there is no general solution for all cases. It is not a matter of *the* divorced and remarried. Rather, one must take seriously the uniqueness of every person and every situation and, case by case, carefully distinguish and decide. In that way, the path of conversion and penance, as the ancient church frequently recognized, is not the path of the great masses, but rather the path of particular Christians, who are truly serious about the sacraments.¹⁶⁸

The traditional Catholic moral principle of *epikeia*, then, as a pastoral solution has the positive point of admitting the impossibility of any human law/discipline to cover all the permutations and combinations of re-married cases, and thus, pointing towards a case-by-case solution. Negatively, in our contemporary society, it could also easily lead to subjective relativism if the pastor concerned is not properly trained in his basic pastoral moral theology.

10. The Creation of a new Canonical-Juridical Category of the “Unjustly Abandoned” Catholics

One of the important distinctions that was made thus far in this Synodal process with regard to the re-married Catholics is the

¹⁶⁶ As we have already seen, even Pope John Paul II acknowledges that all the divorced and re-married Catholics cannot be pastorally treated in the same way. Cfr., FC, No:84.

¹⁶⁷ Kasper, 46.

¹⁶⁸ Kasper,

one between those who unjustly abandon their respective spouses and those who are unjustly abandoned by their respective spouses. Of course, the category “unjustly abandoned” as against those who unjustly abandon them has a history of its own in the Church’s pastoral practice, from the time of the Fathers. Even Pope John Paul II explicitly mentions this distinctive category in No: 84 of his FC as we already saw above. The vital question that has been raised in the current Synodal process is: should such people who are re-married be treated in the same way pastorally as those who unjustly abandon their spouses? In his *Relatio Ante-Disceptationem*, the Relator General of the Extraordinary Synod Peter Cardinal Erdo states:

As regards the divorced who are civilly married, many have said that the distinction needs to be made between the one who is guilty for the break-up of the marriage and the innocent party. The Church’s pastoral care should extend to each of them in a particular way.¹⁶⁹

Natural Justice itself would demand that the unjustly abandoned be given preferential pastoral treatment, over those who have been responsible for a break-up of marriage. The summary of the morning session on the third day of the recent Synod refers to the ‘unjustly abandoned’ when it says:

With regard to the question of divorced and remarried persons, it was highlighted that the Synod must certainly take the issue into consideration, with the prudence required for important matters, but must also combine the objectivity of truth with mercy for the person and for his or her suffering. It is necessary to remember that many faithful find themselves in this situation through no fault of their own.¹⁷⁰

¹⁶⁹ Peter Cardinal Erdo, *Relatio Ante-Disceptationem*, as re-produced in *Zenit*, 6th October 2014.

¹⁷⁰ The Summary of the Morning Session of 8th October 2014 of the Extraordinary Synod (2014) as reported in *Zenit*, 8th October 2014.

Quite a number of Canonists and moral theologians are in agreement that one of the dead ends faced by the Catholic Church in seeking a pastoral solution to the divorced and re-married Catholics is its own canonical-framework with regard to marriage which came into being with the Code of Canon Law of 1917. Placing herself within this framework, the Church perceives Catholic marriage mainly as a juridical entity for all practical or pastoral purposes. Since there seems to be little hope in the near future that the Church would be able to emancipate herself from the straight-jacket of this exclusive juridical framework within which all pastoral aspects are perceived by the Church, it may not be a bad idea to look into some pastoral solutions within the same juridical framework, at least for the time-being. It is in this sense that we raise the question: Could not the Church's canonical practice coin a new category "unjustly abandoned" (as against those who "unjustly abandon") just as it created canonical categories as "pauline privilege", "petrine privilege",.....etc. in responding to the relevant pastoral needs, in the course of her history? After all, as Pope Francis told the *Roman Rota* in January 2014, the juridical and pastoral dimensions are not in opposition to each other.¹⁷¹ On the contrary, the ecclesial law has an essentially a pastoral character as so clearly stated in the last canon of the present Code: "the salvation of souls must be the supreme law in the Church".¹⁷²

If the Church has the will to do so, she certainly also has the competence to do so!

Conclusion

Although the pastoral care of the divorced and re-married Catholics cannot be naively limited to the reception of the sacrament of the Eucharist alone, we cannot ignore the fact that

¹⁷¹ Cfr., Pope Francis, "The Juridical dimension and the pastoral dimension of the ecclesial ministry are not in opposition", *Address to Tribunal of Roman Rota*, as cited in *Zenit*, 25th January 2014.

¹⁷² Cfr., *Code of Canon Law* (1983), Canon 1752.

the reception of communion by them is an important issue for any conscientious pastor. First of all, as Pope John Paul II himself says in FC 57, “the Eucharist is the very source of Christian marriage”.¹⁷³ If so, no juridical argument could justify the denial of such nourishing food for those who mostly need it, such as the re-married Catholics.

Secondly, the gospels insist that Jesus came mainly for the sinners and not for the virtuous. It is those who have sinned who need his redeeming love and strength. As Pope Francis says: “The Eucharist, although it is the fullness of sacramental life, is not a prize for the perfect but a powerful medicine and nourishment for the weak”.¹⁷⁴ The same view was re-echoed in the recent Synod hall when some Synod Fathers themselves “emphasized that it is not the sacrament of the perfect, but rather of those who are on the way”.¹⁷⁵

Thirdly, though the recent official Church teachings have been very welcoming to the divorced and re-married Catholics in every other aspect of Church living, except the reception of the sacraments, it is precisely in not receiving the sacrament of the Eucharist today (when almost every other person goes and receives the Eucharist at mass), that such people feel more marginalized and ear-marked.

As such, the Church has the obligation to somehow find a pastoral way out to make at least some of the divorced and re-married Catholics in certain pastoral circumstances get the nourishing strength of the Eucharist. In no way, does this mean that all the re-married Catholics should be admitted to receive communion; rather, it is a matter of making the doors opened at least to some of those re-married Catholics who have a worthy

¹⁷³ The Catholic tradition has strongly and consistently upheld this unique role of the Eucharist in nourishing and healing the faithful, especially, those who are wounded by sin and its effects. For a fine summary of Thomas Aquinas’ views on this matter, see Liam G. Walsh, “Food for the Journey”, *The Tablet*, 12th April 2014, 6-7.

¹⁷⁴ Pope Francis, *Evangelii Gaudium* (2013), No:47.

¹⁷⁵ The Summary Report of the Morning Session on 7th October, as reported by *Zenit*, 7th October 2014.

reason to receive communion, under certain well-defined pastoral conditions. Although none of the above-mentioned pastoral solutions, as we saw, is perfect in every sense, a serious prayerful invoking of the Holy Spirit, and a sincere willingness on the part of the decision-makers to leave behind their entrenched theological/juridical/pastoral positions may surely open doors for innovative ways to find a solution, a solution that is at the same time faithful to the Tradition. However, one also needs to note carefully that no single pastoral solution may fit all the categories of the divorced and re-married Catholics, either. It has to be an application of some of the solutions or one of them, under certain circumstances. This is precisely what many a Synod Father called “a case by case treatment” of the divorced and re-married Catholics. Pope John Paul II’s advice to pastors to make “a careful discernment” (FC No:84) when dealing with various cases of the re-married Catholics should surely be the golden pastoral rule in this regard.

Those solutions considered above, surely will pave the way for further questioning, reflecting and deepening of the Catholic pastoral solutions, especially during this year between the two Synods, as requested by Pope Francis and the recently concluded Synod itself¹⁷⁶. **If the merciful attitude of Jesus our Saviour as so clearly shown in the gospels does not fit into our own current moral-pastoral-juridical framework of marriage (as it seems to be the case), then, the vital, unavoidable question arises: is it the merciful attitude of Jesus towards sinners that has to change to suit our framework or is it our own man-made juridical framework itself that has to change in order to suit that merciful attitude of Jesus?** The end-result of the current Synodal process is precisely to face this indispensable, challenging question squarely and give a substantial solution based on and within the cherished Catholic tradition. As the synthesis produced by the English-speaking Group B at the recent Synod said: “The Church must teach with clarity, but must also have the courage to knock on forbidden doors. Very

¹⁷⁶Cfr., The Final Report of the Extraordinary Synod (2014), No:62.

often when we find the courage to knock on forbidden doors what we discover surprises us: what we encounter inside is the loving presence of God which helps us to address the challenges of today, no longer on our terms, but in new ways which might otherwise have been unimaginable. Knocking on forbidden or unaccustomed doors involves risk and courage. Fear and anxiety of what we think are forbidden doors may mean excluding opening ourselves to the God who always surprises us".¹⁷⁷

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¹⁷⁷ The Synthesis of the Discussions of Group B (English Speaking) as cited in *Zenit*, 16th October 2014.