

*Summary of:*

**Recent Proposals for the Pastoral Care of the Divorced and Remarried:  
A Theological Assessment**

Corbett, OP et al.

*Nova et Vetera*, English Edition, Vol. 12, No.3 (2014): 601-630

**Background**

Next month, an extraordinary Synod of Bishops will convene in advance of the ordinary Synod to take place in the fall of 2015. Both of these Synods will be on the theme of “Pastoral Challenges to the Family in the Context of Evangelization.” At the heart of the debates which are already aflurry around the topic is the question of the possibility of Communion for divorced and civilly remarried Catholics who do not have an annulment. In February of this year, Cardinal Walter Kasper gave an address at the Consistory of Cardinals in which he put forward two major proposals on this topic, which have since been taken up by many others. The two proposals are:

1) Benedict XVI encouraged divorced and remarried Catholics to participate in spiritual communion, thereby insinuating that these individuals can, according to Kasper, receive the Eucharist. If these persons are truly repentant of the failed marriage, but cannot repair the previous relationship or break from the current one without incurring more guilt, these persons should not be refused penance and communion “after a period of reorientation.”<sup>1</sup>

2) that the process of annulment has become far too juridical and the Synod would do well to nix the canon law procedures and instead develop “other, more pastoral and spiritual procedures”<sup>2</sup>

In response to Kasper, eight theologians (7 Dominican friars and 1 lay professor at CUA) offered their assessment of these proposals in order to “aid the Church’s reflection on these key questions” and “serve as a scholarly reference for the Church’s pastors and a starting point for an ongoing discussion.”<sup>3</sup> It is their assessment that I am presenting today.

For the sake of clarity and brevity, I must state in advance that these proposals and the subsequent rebuttals are directed towards a very specific group of people: namely, those persons who have divorced and civilly remarried without seeking an annulment -and- who are repentant of that first marriage, incapable of resolving it -and- incapable of separating from the second ‘marriage’ because of complications (e.g. The good of the children). My short-hand for this case throughout will simply be: “said couples.” My summary will be very elementary in terms of the depth I am able to cover, but I want to at least touch on everything, however briefly, and then perhaps we’ll have a few minutes at the end if anyone has any questions about the article itself.

**Assessment**

In order to address Cardinal Kasper’s proposals, Corbett et al. first lay out some

<sup>1</sup> Ibid, 32.

<sup>2</sup> Walter, Kasper, *The Gospel of the Family*, trans. Madges (New York: Paulist Press, 2014), 28.

<sup>3</sup> Corbett, OP, et al. “Recent Proposals for the Pastoral Care of the Divorced and Remarried: A Theological Assessment”, *Nova et Vetera*, English Ed., Vol. 12, No. 3 (2014), 602.

carefully-selected premises that they believe are necessary in order to understand and correctly engage in debate on this topic.

**Premise 1: Sacramental marriage *cannot* be dissolved by any human power, including the pope.**

The Church has a very long history of teaching on the topics of adultery and divorce, which Corbett et al. summarize. Of note within this overview are times when the Church permits legal separation in certain cases, (e.g. adultery, or presumably though Corbett et al. do not mention it--abuse, as well) but unless that marriage is considered invalid, no remarriage has ever been permitted. A brief history of annulment controversies and corresponding correctives (through synods, councils, papal instructions, etc.) also follows, which though of interest we don't have time to cover now. The conclusion is simply that the Church has always taught the indissolubility of Sacramental marriage, that this quality comes from Christ, and that it cannot be changed or denied by the Church.

**Premise 2: Marriage is inherently public, not private.**

Corbett et al. claim that "some proposals for the Synods would move assessments about the existence of valid marriages into the subjective sphere of conscience or into private judgments, rather than addressing marriage as a public reality."<sup>4</sup> To back up this claim that marriage is inherently public, they make three primary observations:

A) First, that marriage is universally accepted as a public contract, requiring witnesses and subsequently protecting spouses as a unit under law.

B) Second, marriage is public because it serves the common good through the procreation and instruction of children. Of course, this aspect of marriage is not without its own controversy and these authors champion the fervent preaching of this fact, which they call "an essential element of and reason for marriage."<sup>5</sup>

C) Finally, sacramental marriage is especially public because it is a visible sign for the entire Christian community of the marital love between Christ and the Church. When Christian men and women freely enter into this covenantal relationship, they assume the public responsibility of serving the community by upholding this dimension of "sign."

**Premise 3: Chastity is a virtue.**

Perhaps the most crucial aspect of the entire article is section C-1, which boldly states: "At the heart of the present proposals is a doubt about chastity."<sup>6</sup> This modern-day crisis of chastity reveals itself in the rejection of the notion that "said couples" can and should live without conjugal relations in order to be received back into the Church (something which was expressly taught by many previous popes, including JPII and BXVI). Corbett et al. claim that our age has despaired of the fruitfulness of chastity, seeing it as a privation of good rather than a right ordering of sexuality and a virtue to be lived by all peoples regardless of state of life. For the divorced and "remarried," chaste living necessarily entails the cessation of adulterous fornication-- this is no harder a task than to ask single people to abstain until marriage, to expect homosexual persons to abstain, or to ask priests to remain celibate. For the sake of aiding all peoples in virtue, chastity must be upheld in all of these cases.

**Premise 4: "Second Marriage" is not permission to remarry after divorce.**

<sup>4</sup> Ibid., 607.

<sup>5</sup> Ibid. 608.

<sup>6</sup> Ibid.

Nicaea Canon 8 and other fourth-century texts specifically uphold the possibility of “second marriage,” a term which has been taken by some to mean “marriage after divorce.” This is how Eastern Orthodox Christians have interpreted the texts since the reign of Emperor Leo VI in the tenth century and is how many protestant and some Catholic theologians want to interpret the text today; however, the historical reality is that Canon 8 was written contra the heretical Novatianists, who claimed that *widows* were never permitted remarriage. It had nothing to do with cases of divorce and cannot be understood that way.

**Premise 5: The Reformation radically redefined marriage.**

Corbett et al. see the Reformation as the cause of the widespread cultural misunderstanding of marriage we have today. In Protestant churches, “clerical celibacy was said to be too difficult... The sacramental nature of Christian marriage was denied, as was its indissolubility. Civil divorce was introduced.”<sup>7</sup> Of particular note is the Anglican Communion, which has been a perfect case study in the “slippery slope” nature of admitting divorce and remarriage within the church. “It has liberalized divorce, allowed contraception, admitted those engaged in homosexual activity to communion and even (in some places) to the ordained ministry, and begun to bless same-sex unions.”<sup>8</sup> If the Church were to follow the Anglicans and permit “said couples” to Communion, Corbett et al. insist that this would lead to the logically necessary conclusion that “sexual activity outside of a permanent and faithful marriage is compatible with communion in Christ and with Christian life”-- a conclusion which the Catholic Church must reject.

**Addressing the Arguments:**

So finally, with all of this preparatory work laid out, the assessment addresses Kasper’s proposals directly. To refresh, the first proposal is that because BXVI encouraged spiritual communion for “said couples”, there is an open door to full communion. Corbett et al. reject this conclusion on the grounds that Kasper’s definition of “spiritual communion” is faulty. The phrase is, admittedly, ambiguous, and can be taken to mean either that someone actually receives the sacramental graces of Communion in faith and charity -or- that someone desires the Eucharist, but cannot receive physically due to the impediment of grave sin. Clearly, BXVI was invoking the second case, rather than the first. Expressing the desire to receive Christ in the Eucharist-- which includes attending (or even assisting at) mass and acknowledging the gravity of one’s sin-- is the first important step towards renouncing that sin. This is what is encouraged. The Eucharist is not first a means towards union with Christ, it is the sign of a union already achieved through initiation into the sacred mysteries and renunciation of mortal sin.

In order for “said couples” to receive Communion, they must first repent and be reconciled with Christ through penance, which must include ( this is quoting JP II) “a sincere and firm purpose of amendment.”<sup>9</sup> It cannot be said this is the case for those who are not willing to at least try to cease their adulterous relations.

Here I should pause to say that many times throughout this assessment, Corbett et al. make mention of cases in which cohabitating couples in civil second marriages truly desire to amend their lifestyle but fall into sin. In these cases, the sacrament of penance

<sup>7</sup> Ibid. 613

<sup>8</sup> Ibid. 614

<sup>9</sup> John Paul II, Encyclical Letter *Dominum et Vivificantem* (1986), §42

can be utilized properly and Communion is to be permitted-- what is crucial is the firm intention of amendment.

Finally, in addressing this first proposal, Corbett et al. raise the question of scandal. We have the habit of thinking of “scandal” in terms of shock value-- hence, cohabitation has lost its shock value and is no longer considered by many to be “scandalous.” But the CCC defines scandal as: “an attitude or behavior which leads another to do evil.”<sup>10</sup> The institutionalization of scandal means that sin has become not only socially common, but acceptable. This is the true scandal and must be avoided at all costs. It is the Church’s special duty to prevent scandal in this sense and therefore her special responsibility to not increase scandal by leading people to confusion and error about the Church’s teachings on marriage.

Next, they address Kasper’s other proposal, namely that annulment processes need to be “divorced” (pun intended) from cold, bureaucratic, canonical procedures and instead delegated to pastoral relationships. It seems that what Kasper has in mind here is a couple who have decided that their marriage is invalid based on their own consciences and seek confirmation of this fact from a priest-- this would replace the more formal, drawn-out process which he sees as far too impersonal to be of service. Let’s look at this more closely:

In an interview with *Commonweal* following his address, Kasper asserted that Pope Francis confided to him that “he believes that 50 percent of marriages are not valid.”<sup>11</sup> Regardless of the raucous this itself raises, Kasper would not have repeated this belief unless he shared it. This basis for this claim of his (and presumably the pope’s) rests in the belief that most people are poorly catechized and not capable of understanding the nature of what they ask and consent to in the Church. Almost flippantly, Corbett et al. respond by invoking the Donatist controversy which was resolved in the fourth century, stating: “valid sacraments do not depend on the minister being in a state of grace.”<sup>12</sup> Because the couple are themselves the ministers of the sacrament, nothing is defective in the sacrament itself as long as their consent is valid (that is, freely given... It has nothing to do with the level of catechesis they have received). What really is at stake here is whether or not the *consent* is valid with improper knowledge, and only consequently (but not primarily) the validity of the Sacrament. An easy answer is that according to Canon 1096 §2, any person beyond puberty is presumed capable of a basic understanding of the Sacramental nature of marriage and this is all that is required for valid consent.

But back to the article. Even more poignantly, I believe, is the second point made by Corbett et al. which is to remind us that especially in cases of divorce, couples are almost incapable of pronouncing sound, objective judgment on anything. Erroneously-formed consciences, outside temptations or simple lack of self-awareness are all factors which prohibit the couple (or especially the individual-- what about cases where one person believes the marriage is invalid but the other does not?) from being able to make judgments privately about their marriage. For this reason, an objective entity is needed-- precisely one that conforms to a set of impersonal standards. The validity or invalidity of a marriage does not rest on sentiment, but is a juridical fact. A declaration of nullity is the product of an objective search for Truth and Justice. For this reason, the prudent and

<sup>10</sup> CCC , §2284

<sup>11</sup> Boudway & Gallichio, “Merciful God, Merciful Church: An Interview with Cardinal Walter Kasper” *Commonweal*, *Commonweal Magazine*, 7 May 2014. Web. 23 Sept. 2014.

<sup>12</sup> Corbett, et al., 623

*pastoral* approach is one that does not rely on the couple to decide for themselves. A pastoral approach is not inherently opposed to a canonical one.

**So: what is to be done?**

At the end, Corbett et al. make their own set of proposals for the upcoming Synods, which I briefly mention here by way of conclusion. The six things they would like to see come out of these Synods are:

1. A renewed and deepened understanding of chastity as a virtue
2. A new, fresh, articulation of God's great love and mercy which *transforms*
3. An investigation of how to concretely teach *Familiaris Consortio* and other related documents at a pastoral level
4. Strengthening of marriage preparation
5. Strengthening of marriage tribunals and the elimination of non-essential duties
6. A firm articulation on how the Church's teaching does not condemn persons, but actions and is ordered towards the common good

Thank you very much.