1. Introduction

About ten years ago I attempted a categorization, in a somewhat organic manner, of the various attempts in the Catholic Church to address the serious pastoral problem posed by divorced spouses who had entered into new marriages and were seeking some type of admission to ecclesial communion.1 I identified two areas. The first concerned the possible solutions in the new canonical context opened by the Code of 1983 as well as in the pastoral context opened by the Roman Magisterium, highlighting points of friction between the Roman and episcopal Magisterium in the case of the Bishops of Oberrhein. The second concerned those solutions that were not supported by the Magisterium.

In this second area, I subsequently distinguished between proposed solutions that seemed limited or apparently painless in their impact on doctrine and the general perception of marriage at the level of the faithful and those which were based on the need to risk a greater impact in order to more adequately and correctly address the situation. The use of “pain” as a distinguishing category between the two kinds of solution was meant to indicate the fact that, in general, the second type had a detrimental effect on doctrinal and the ecclesial perception of marriage, lesser for some and greater for others. However, ten years later, I have the feeling that these distinctions no longer completely correspond to today’s reality.

Today, the theological and canonical debate has been mitigated: the tones have been softened; there has been a kind of natural selection. In general, the number of formally constituted marriages has diminished. There are also fewer sacramental marriages. Catholic couples who have remarried after a divorce and are now living within a second, civil, marriage, if they continue to want a contact with the Church, seem to accept more and more the forms of organized welcome that the Church all over the world institutes and carries out. Further, the writings of many theologians and canonists seem to want to agree with the established outreach in the sense that they do not critique it but rather try to ground and perfect it.2 In this article, I would like, instead, to challenge this approach and show how the current strategy not only has its ambiguities but also its limitations. If we wish to avoid certain negative consequences, it may be indispensable to make a further effort.

2. The Divorced and Remarried are in the Church and are Active Members of the Church

In ever greater numbers these days, the divorced and remarried who are interested in having a relationship with the Church do not feel excluded from it because they are more and more specifically addressed by the Church’s pastoral ministry. There are offices for them, people dedicated to those in their situation, and bishops who make themselves available for them. There are, and sometimes just for them, catechetical and spiritual offerings that do not demand any changes in their second marriage
but which accept it as a place in which to live their Christian existence.

I have stopped to reflect on how we have arrived at this point on many occasions already. Here, however, I will limit myself to a few essential observations. At the beginning of the twentieth century, the divorced and remarried were likened to bigamists—they were thus infames—and in order for them to receive penitential reconciliation and readmission to the Eucharist, the general rule—the solutio ordinaria—was the reconstitution of their first union.

Today, the Italian Church’s Directory of Pastoral Outreach to Families of 19933 establishes in section 215 (in colored, bold lettering, thus to be taken as the juridical and pastoral norm): “In the certainty that the divorced and remarried are and remain Christians and members of God’s people and that as such are not entirely excluded from communion with the Church,4 even if they are not in the fullness of ecclesial communion, forms of pastoral care and ministry may be implemented.” The divorced and remarried, therefore, are in true, even if imperfect, communion with the Church. What is more: they can also receive communion under determined conditions of the internal forum;5 we will return to this later. This remains true even if they have moments of human weakness and are not always able to be faithful to a non-conjugal living situation. In fact, some divorced and remarried couples can live tranquilly as other non-divorced couples if they accept to make every effort to avoid sexual relations and if their confessor considers that, interiorly, the couple is aware that their second union is not as true as their first.6

The local churches, the Nota says, are required to “institute pastoral forms of care and ministry”. This has truly happened. There are ever-increasing numbers of Italian dioceses that have or are starting to implement pastoral tools for the family. Many have chosen to organize specific programs for the divorced and remarried, a choice that is not always seen as the best, although it is often repeated. Regarding this situation, Giampaolo Dianin rightly emphasizes “our churches’...
pastoral resourcefulness” and recalls the presentation of many initiatives undertaken in 1999 on the occasion of a convention organized by the Family Office of the Italian Bishops’ Conference.

In effect, the acts of the convention offer “appendices” that are particularly interesting and useful from this point of view. In an initial section entitled “Experiences of Pastoral Accompaniment in Irregular Situations”, Pietro Boffi presents a few international initiatives – in line with the Magisterium’s indications – for assisting and accompanying couples in crisis, couples that are separated, and the divorced and remarried. These are Retrouvaille (established in 1977 and present in Canada and the United States), Notre Dame de l’Alliance (established in 1983, Rennes Diocese, France), and specific activities from the Diocese of Montreal, Canada (in recent years). Each initiative has its goals, methods, and success outlined.

In the second section, instead, there are presentations of Italian ecclesial experiences of pastoral ministry to those in irregular situations made by the dioceses that instituted the corresponding initiatives: the La Gioiosa service of the Diocese of Genoa; the Diocese of Ugento-Santa Maria di Leuca; the Caresto Retreat House in the Diocese of Urbino with its work as a family spirituality center; and Rome’s Anver Cooperative, which has the objective of “Together, Growing as Family”; the Como Diocese’s program In cammino; the Vicenza Diocese; the Diocese of San Benedetto del Tronto-Ripatransone-Montalto Marche; the Bergamo Diocese’s group La Casa; and the Ligurian ecclesial region. As can be seen, this is a wide range of presentations made by the various dioceses. Other initiatives have emerged since 1999 and are referenced in the bibliographic notes.

A general characteristic of these undertakings is that they are types of pastoral outreach aimed at creating and maintaining for the divorced and remarried a sense of active membership in the Church and the sense of the internal presence of these brothers and sisters in the Christian community. These programs almost always include journeys of faith and spirituality that give notable emphasis to Scripture, charitable service, and dialogue within the group as well as between the couple.

3. The Divorced and Remarried: A New State of Life in the Church?

We find ourselves thus faced with a strange situation: the Church affirms that baptized divorced persons who have remarried are active members of the Church and that they are in communion with the Church. Even further, the Church also invites them, as a couple, to participate in her programs, spiritual moments, Eucharistic celebration, and Christian education of their children. When they do not meet the conditions required for absolution and admission to the Eucharist – which we will return to more fully later – the Church invites them to spiritually appreciate the Eucharistic fast that they are held to, reminding them that their condition does not exclude them from grace. The model of participation that the Church, and therefore God himself, calls them to is one of real participation with some limitations of ecclesial service – especially regarding roles that have a representative character (catechist, godparent, member of a pastoral council, etc.) – together with some limitation of access to the sacraments.

They are therefore, on one hand, treated as faithful who have a recognized position in the Church and, on the other, as faithful who can no longer fully participate in the goods of the Church or serve in roles representing the Church. In some ways, the Church accepts them as a peculiar condition of state of life in the Church, a condition that does not arise casually because there are objective motives sustaining and legitimizing it.

In order to better grasp this point, it is again opportune to recall that for the Italian and universal Magisterium, the divorced and remarried can have good motives for not separating, reasons...
that are meaningful for the Church herself and therefore that point to the very will of God.\textsuperscript{14} Let’s look at the magisterial position a little more closely, however.

The first, and perhaps clearest expression is found in the \textit{Nota} at number 28, where it is stated that in the case of the divorced and remarried accepting “to restore their life according to the Lord’s will” and in which “their situation does not present a concrete reversibility because of the advanced age or illness of one or both, the presence of children who need assistance and education, or other analogous motives, the Church admits them to sacramental absolution and Eucharistic communion if, sincerely repentant, they dedicate themselves to interrupting their reciprocal sexual life and to transforming their tie into one of mutual friendship, esteem, and assistance. In this case they can receive sacramental absolution and Eucharistic communion, in a church where they are unknown, in order to avoid scandal.”

These words are literally repeated in the \textit{Direttorio}, 220, which precedes them with similar affirmations: “Only when the divorced and remarried cease being such can they be readmitted to the sacraments. It is, thus, necessary that they, repentant of having violated the sign of covenant with and faithfulness to Christ, be sincerely disposed to a form of life that is no longer a contradiction with the indissolubility of marriage either with physical separation and, if possible with a return to the original matrimonial situation, or with a commitment to the type of coexistence involving abstention from the acts proper to the conjugal life.”

The horizon set by the \textit{Nota}, which is fully taken up in the \textit{Direttorio}, is very interesting. In fact, the preoccupation that dominates the \textit{Nota} is mainly pastoral. It seeks to be as open as possible to divorced and remarried persons of good will.\textsuperscript{8} This is why the “actual” lack of a concrete possibility of reversing the situation is particularly underlined by the document.

The presupposition of the pastoral welcome expressed in the \textit{Nota} is that separation is not possible because there are clear grounds that do not allow the new union to be turned away from. There are then given some conditions that can make it impossible to end the second union: advanced age, illness, the presence of children that need various forms of assistance, and other similar reasons. It should be noted that the reasons given are objectively quantifiable: illness, age, children. The unlisted reasons should fall within the same lines. The statement, however, remains quite vague and can be applied to very different situations.

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\textsuperscript{6} See in particular \textit{Nota} 28.


\textsuperscript{9} Ibid. 199-200 (with a large bibliography).

\textsuperscript{10} Ibid. 221-259.


\textsuperscript{12} Besides the texts already noted here see also: Comunità di Caresto: \textit{Un cammino spirituale per i divorziati risposati}, Milan: Gribaudi, 2001; S. Caccia (ed.): \textit{La sfida della speranza oltre i fallimenti: l’attenzione pastorale alle famiglie in situazioni difficili e irregolari}, Milan: Centro Ambrosiano, 2005.

\textsuperscript{13} See \textit{Direttorio}, 219.


\textsuperscript{15} At the beginning of number 28 the \textit{Nota} states: “There is no lack of cases in which the divorced and remarried allow themselves to be illuminated by the demands of the Gospel and to be guided by the Church’s pastoral intervention, to the point of deciding to reorder their very lives according to the Lord’s will.”
The lack of concern to clarify these last points confirms that the problem of reconstituting the first union is not the main concern in the *Nota*. Rather, its interest lies in the pastoral attitude to be taken in dealing with these new couples. That is why it does not take into consideration the case in which conditions impeding the separation might be lifted, or even the case in which conditions are subjective and not just objective. It might even be said that the Church, after an initial evaluation, no longer tends to ask for the separation of divorced persons who have remarried and to consider their situation as a permanent fact. The Church does not develop pastoral outreach based on the provisory nature of such unions but rather develops precisely a ministry of permanent welcome to the new couples. In fact, it does not seem that the Magisterium (either in the *Nota* or successively) imposes any particular impediment to the marriage between two divorced persons who have remarried, in the case in which – because of the sequence of events – the celebration of a religious marriage becomes possible between the two.

This point is often overlooked but it is particularly meaningful. The *Code of Canon Law* of 1917, in regard to the resolution of impediments, including those of ecclesiastical origin, cited the impediment of crime against a spouse, which presented itself under four aspects (can. 1075). The first two concerned adultery; the second two, the murder of a spouse. We are interested here in the first two. The first referred to adulterers who consummated adultery by exchanging the promise to contract marriage, in the case of the death of the offended spouse. The second referred to adulterers who consummated adultery attempting at the same time a marriage, even if only by a civil act. Both types (in the Church’s eyes) suppose the permanent validity of the marriage of one or both the adulterers. The logic behind the two was to protect the valid conjugal bond as well as the life of the spouse (here we see the connection with the two successive aspects of the impediment, that is those concerning coniugicide). There was, therefore, the concern to not leave unsanctioned, or rather, not to reward in any way, adultery occurring *during a valid marriage*.

Between the two first types of adulterers considered by the CIC 1917, the first does not seem to correspond at all to the situation of the divorced and remarried. The second instead, cannot help but recall it. That is why, not by chance, Arturo Carlo Jemolo commented:

The second hypothesis is that of the *matrimonium attentatum*. In the eyes of the Church, as long as one spouse is alive, the other cannot ever contract a new matrimonial commitment. The fact of attempting to enter into such a tie with a *de praesenti* consensus, however – whether this is attempted before a pastor who has been deceived, an official of the civil state, or a minister of a non-Catholic rite – produces the impediment. Authors and judgments stake the claim that the *attack* on the valid marriage can also follow an *actu omnino privato*. It seems, however, to be understood in the sense that, according to local law, the private act might have some value.

The norm of canon 1075 of the CIC 1917 was successively adopted into the law of the Eastern Churches with canon 65, 1 of *Crebræ Allatae*, published in 1949. The two aspects concerning adultery just mentioned, however, have disappeared both from the new CIC (1983) as well as from the Code of Canons of the Eastern Churches (CCEO 1990) and only the aspects concerning the murder of a spouse remain.

Given that the second type of adultery has, in fact, become more common in traditionally Catholic countries than it was in 1917, precisely because of the introduction of laws on divorce, it becomes very likely that the ecclesiastical authorities intentionally wanted to eliminate such forms of the impediment of crime. In any case, whatever the determining motives of such a decision, unclear at this time because of limitations of documentation or research, it is certain that the Magisterium sought to distinguish the condition of the divorced and remarried from simple adultery, precisely as if it were a different type of adultery, or as if it might not have fully discharged the juridical-moral aspect of adultery.
In fact, as already stated, in the case in which the couple becomes married in the Church, there is no sanction envisioned for them. That the cohabitation of the divorced and remarried is not judged as adultery in a full sense can also be confirmed by the pastoral attitude adopted, in terms of admission to the sacraments, toward those who for just reasons continue to live together. We have seen that “the Church admits them to sacramental absolution and Eucharistic communion if, sincerely repentant, they dedicate themselves to interrupting their reciprocal sexual life and to transforming their tie into one of mutual friendship, esteem, and assistance. In this case they can receive sacramental absolution and Eucharistic communion, in a church where they are unknown, in order to avoid scandal.”

Not only is it not, therefore, demanded that they stop living their life together, they are further asked to give “mutual friendship, esteem and assistance” within the very sphere of their life together. Their possible failures – after accepting to live their life together without sexual relations – are sacramentally absolved as injuries (provided they are not habitually voluntary) to this commitment of acceptance. They are seen as an inevitable consequence of a situation that can be defined, by the moral manuals, as a proximate necessary occasion of sin.

This canonical as well as sacramental attenuation of the adulterous character of the new union between the divorced and remarried can be considered a realistic move by the Magisterium given that there is a difference between adultery, properly speaking, and the adultery of the divorced and remarried, which is that, in the latter case, there is no longer in fact or in form a conjugal life with the former spouse. Naturally, the question remains as to whether it is possible to reconcile this lesser adulterous character of the new union with the persistent affirmation that the valid matrimonial bond, considered in its abstract objectivity, remains active and binding until death.

Although this question remains open, the Church has adopted a pastoral position that, in fact, can allow remarried divorced persons to live together, to receive pastoral outreach that is specifically addressed to them, and, if they desire, even to have access to the sacraments as long as they consider themselves to be just friends and to sincerely avoid – as much as is in their power – sexual relations. In the case that they do not

16 Valide contrahe nequente matrimonium: 1. Qui, perdurante eodem legitimo matrimonio, adulterium inter se consummarunt et fidem sibi mutuo dederunt de matrimonio ineundo vel ipsum matrimonium, etiam per civilem tantum actum, attentaran; 2. Qui perdurante pariter eodem legitimo matrimonio, adulterium inter se consummarunt eorumque alter coniugicidium patravit; 3. Qui mutua opera physica vel morali, etiam sine adulterio, mortem coniugi intulèrent.


19 Nota 28.

20 On the contradictions of ordinary pastoral solutions see A. Bonardi: “Riflessioni sulla prassi ecclesiastica circa l’ammissione ai sacramenti di fedeli divorziati risposati”, in: Teologia 31 (2006), 222-248. He writes (234): “Consistency would mean…that the Church would demand that all forms of cohabitation, affect, and matrimonial collaboration cease, something that instead…it does not do, explicitly recognizing that there may even be valid reasons for not doing so, even more, that there may be a moral duty not to do so. How can one justify this addition or explanation that, although not considered by the Church as a threat to the marriage union, nevertheless certainly enters into a strong tension with it (to be certain it would be sufficient to ask the opinion of the betrayed spouse…), and shows how irreversible the situation might be that is created with a new consolidated relationship?”

21 In Catholic theology and magisterial teaching, death renders the remaining spouse entirely free to contract other sacramental marriages, even more than once.

22 See also the Apostolic Exhortation of 22 February 2007, Sacramentum Caritatis, 29, where Benedict XVI writes: “where the nullity of the marriage bond is not declared and objective circumstances make it impossible to cease cohabitation, the Church encourages these members of the faithful to commit themselves to living their relationship in fidelity to the demands of God’s law, as friends, as brother and sister; in this way they will be able to return to the table of the Eucharist, taking care to observe the Church’s established and approved practice in this regard.”
want to consider themselves as just friends, they must forgo absolution and communion, knowing however that their renunciation does not at all mean separation from a life of grace. There are those who, with good reasons, invite them to spiritual communion, an invitation that is not missing even from authoritative documents. Here I am alluding to Benedict XVI’s recent Apostolic Exhortation *Sacramentum Caritatis*, 29.

Thus, the Church’s pastoral outreach has aspects similar to the ancient Church’s attitude toward penitents. It can be recalled that, in antiquity, penitents were recognized as an *ordo* in the Church, but also, as long as they were part of that *ordo*, they were not considered capable of full ecclesial union. Entry into that *ordo* was considered an act of response to the call of God or the Church. The entire community was thus involved in this journey, especially through the prayer and witness extended toward achieving conversion in the penitent’s life. Nevertheless, even if there is a similarity between the condition of the *ordo paenitentium* and the situation of the divorced and remarried today, it bears saying that there seems to be rather more dissimilarity. The penitential system was, in fact, one of readmission to full ecclesial life while the pastoral outreach to the divorced and remarried seems mainly to aim at keeping them within the ecclesial sphere so that they do not feel excluded from it, helping them to live their reality in some true union with the Lord. In other words, the goal of such pastoral care does not seem to be the reestablishment of full ecclesial communion through penance but only the safeguarding of their sense of belonging to the Church, giving their situation some sort of *de facto* position within the Church.

Genuine communion, in fact, just as a sacramental absolution, can only exist on the conditions established by the Magisterium. As such, these are conditions that are independent to the pastoral ministry specifically dedicated to the divorced and remarried. Such initiatives come about precisely to address the situation of couples who would not find a place of welcome within the Church in any other way. This explains why the pastoral initiatives extended under the Magisterium’s auspices give mainly indications of Eucharistic fasting – accompanied, more or less, by the invitation to spiritual communion – to couples who do not accept the pastoral solutions suggested by the Magisterium.

Pastoral ministry, therefore, leads to the *de facto* acceptance of the condition of the divorced and remarried as a genuine “state of life” in the Church. The couples are left to their lives as couples, but are invited to reread their past and present history in light of the Word, without the demand of specific solutions and without, moreover, a precise goal. Naturally, nothing in the magisterial documents proposes this as a permanent state. Nonetheless, there also is nothing excluding it. This may explain why there are increasingly frequent and more precise positions taken by many theologians in favor of a more consistent assumption of the ancient *ordo paenitentium* model, so as to allow the full ecclesial readmission of the divorced and remarried, not only as individuals living together, but as a new couple.

There are a variety of positions taken by theologians. If there are those who simply think within the parameters given by the Magisterium, others exist who ask the Magisterium to modify its decisions thus far and who propose other ways of overcoming this situation.

4. Should the Church’s Welcome Become a Path of Readmission to Full Ecclesial Communion?

This proposal, which comes in various forms and which is sometimes even tied to elements of other doctrinal and pastoral proposals advanced in the past, is nothing new. Nevertheless, in recent years it has been gaining consensus. In this section I will recall some recent proposals and authors that are representative of this direction before advancing my consequent critical assessments.
First of all, we should recall the considerable effort made by Xavier Lacroix to develop a solution capable of combining the repentance of the divorced and remarried and the possibility of the Church to welcome them in a form of full communion. He envisions a model capable of expressing both the subjective dimension of repentance (individual confession) and the objective dimension of the contradictory relationship with the Church imposed by the new bond. He states:

The working hypothesis that is tied to other research, and which is submitted for discussion by my peers as well as for judgment by the competent ecclesial authorities, would be the following.

It would have to express both the consideration of the subjective and objective dimensions of that which presents difficulties: the subjective dimension of sin, responsibility, and the call to conversion of the heart; the objective dimension of the contradiction between the state of life and ecclesial norm, between the existence of the two bonds and the sacrament of the single covenant.

As regards sin and conversion, the most suitable place to come to awareness, through confession and expressing desire to advance along the path of obedience to the Lord, is the sacrament of repentance and reconciliation. If it is integrated in a program of spiritual accompaniment, over time it can make space for the journey toward truth that I spoke of above.²⁸

This integration of the sacrament of penance with the spiritual journey is, in reality, a kind of reproposal of the penitential model, albeit in a more modern form. Lacroix goes into many concrete details:

The heart of my proposal would be an articulation of the initiative of individual reconciliation through mediation and under conditions that remain to be determined, an initiative of ecclesial and communal repentance and reconciliation. This latter, certainly, could not occur without a sufficiently long period (many years) of Eucharistic fast, that would give it its complete scope, making it meaningfully possible. This would suppose a certain duration of time and would demand the accompaniment of the community. It would take place before the concrete ecclesial community to which they belong, after having been prepared and verified in a more limited context (like, for example, those preparing for baptism or the permanent diaconate). It would need to find words, acts, and rites within a framework that could be inspired by the practice of the Christian community of the second and third centuries for the reconciliation of the lapsed faithful (those who had denied their faith, just as the severe penitential rite that preceded the second marriage of the Orthodox²⁹).


²⁴ “The Synod of Bishops confirmed the Church’s practice, based on Sacred Scripture (cf. Mk 10,2-12), of not admitting the divorced and remarried to the sacraments, since their state and their condition of life objectively contradict the loving union of Christ and the Church signified and made present in the Eucharist. 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.”


²⁶ See X. Lacroix: “Face au divorce”, in: X. Lacroix: Oser dire le mariage indissoluble, Paris: Cerf, 2001, 205-234, here 216: “Excluding the death of the spouse or the declaration of invalidity of the first union, the current framework envisions only one possible end to the Eucharistic fast: renouncing the second marriage of the Orthodox²⁹).
It might be thought that this, therefore, is not just a rite but a true ecclesial initiative that really involves the commitment of the subjects. The principal moments could be the following:

– recognition of the transgression of one of the Lord’s important commandments;
– recognition of the infidelity to the singular bond implied in the sacrament of marriage;
– recognition of the wrongs committed and of past harm done, particularly toward the spouse and children of the first union, with reparations made when possible;
– a word of reconciliation and forgiveness toward the first spouse;
– recognition of the mysterious permanence of the first union;
– a firm commitment to living the present union in light of the Gospel.

I repeat that, before each of these acts can take place, there must necessarily be an explicit journey.

Lacroix’s proposal is taken up and corrected by Paul De Clerk of the Institut Catholique of Paris who holds that the Church should intervene not after the establishment of the second marriage but when the first marriage enters into crisis, offering – for those who want it – a service of accompaniment and discernment.

If then divorce is the result, the divorced spouses would be well aware – in light of this accompaniment – that they are not in full communion with the Church and that they must submit to a period of Eucharistic fast. “This call of conscience would lead them, after a certain time, to ask for the sacrament of reconciliation…” In the above-described context, this last point should have a public and ecclesial effect showing all Christians that these brothers and sisters have been fully reintroduced to communion with the Church and can once again, therefore, join in the Eucharistic communion.”

Once admitted to the Eucharist, they can enter into a second marriage, that is, a marriage that should appear, liturgically as well, as a second and different marriage from the first. “Officially reconciled with the Church through one of the major sacraments,” he says, “these persons could then participate again in the Eucharist. Because this is the most important sacrament of all, it is understood that they could then consider, if they so desire, a second matrimony, since it would be illogical to admit them to the Eucharist but exclude them from matrimony. It would then be necessary, as the Orthodox do, to recognize the value of their second union, recognizing it precisely as a second one and finding the liturgical forms to clearly show its difference from their first matrimony.”

As can be seen, De Clerck envisions a path to readmission that is not externally unlike that of Lacroix, but he sees it as open to the possibility of celebrating a second marriage, based on the Orthodox model. This is a point that completely reverses Lacroix’s logic, since, for Lacroix, the ritual of readmission to communion should go together with the subjective and objective reaffirmation of the validity and permanence of the first union.

Additionally, James Coriden, one of the leading American canonists, envisions the pastoral path to be taken regarding the divorced and remarried as follows:

The whole pastoral approach to divorced and remarried Catholics should begin with a process of discernment. When they approach the Church or when the Church’s pastoral agents reach out to them, the first step should be a prayerful and thoughtful encounter with a “pastoral diagnostician,” a knowledgeable person who can listen with sensitivity to the story of the original marriage, its failure, the process and context of the subsequent union, the faith, commitment, and motivations of the present partners. This pastor or pastoral agent can gently and gradually assist the couple toward the most appropriate of the options open to them. These options might include: leaving them in good faith, an extended examination of conscience, a period and process of penance (in a sort of ordo paenitentium), access to the sacraments of reconciliation and Eucharist (perhaps in another parish if there is a question of admiratio or scandal), or the initiation of a canonical
petition for declaration of nullity or dissolution. Ultimately the choice, aided by both the power of discretion and the virtue of epikeia, should be theirs. 37

As can be seen, Coriden attempts a synthesis between the value attributed to the judgment of conscience made by the divorced and remarried and the paths of objectivity through the figure of a pastoral diagnostician who would present the various options, including the penitential path proposed by Giovanni Cereti.

The proposals mentioned here take the model offered by the ancient structure of the ordo peneitentium into account. There is also, however, a proposal that develops a type of individual penitential path, at least so it seems, according to public rules without tying it to a communal journey of acceptance. It is the recent proposal made by the Italian moral theologian Alberto Bonandi. 38 I present it in detail here because it is an articulate, reflected, and serious position.

5. Should Individual Penitential Procedures Be Instituted According to Publicly Established Rules?

After having dedicated many pages to reflecting on the ecclesial practice outlined in Familiaris consortio and in documents of the Congregation for the Doctrine of the Faith, 39 Bonandi reaches the conclusion that it is “very difficult, if not impossible to model an ecclesial practice in relation to irregular situations (that is, of the divorced and remarried) that is consistent with all the indications on marriage coming from Scripture, tradition, the Code of Canon Law, and magisterial and theological teachings on the personalistic character of the union between husband and wife and that is also effective in relation to the faithful for whom it is intended.” This inevitable lack of any possible ecclesial practice is also a lack of the practice that is currently implemented: “Moreover, it is irrefutable, even if certainly based on good reasons, that the current ecclesiastic practice is not even implemented. It seems that, up to now, no one has formulated an optimum.” He adds, “this has to be said although we have to respect the current practice, which in any case must remain as a starting point, even if it is only a collection of various elements that are possibly not entirely homogeneous, well organized, or of equal value.” 40

made by the priest in the case of a second marriage of either divorced or widowed persons. See See B. Petra: Il matrimonio può morire?, 271-272.


32 The author inserts a note here that states that the time of Eucharistic fast “might be a year”, explicitly challenging Lacroix’s argument (“Face au divorce”, 226) that holds that, as stated above here, the attempt at ecclesial and communal reconciliation could occur only after many years.

33 P. De Clerck: “La réconciliation des divorcés: vers une solution?”, 298.

34 Lacroix writes: “Without a doubt, such an initiative would help the baptized divorced and remarried to realize the mystery of their first bond while, beyond any view to an explicit reconciliation…, they are tempted, defensively, to deny it. I emphasize that this is not a legitimization of the second bond. The initiative is not made on a juridical level. This is not about authorization, but rather – quite differently with an almost contrary meaning – about granting forgiveness. Forgiving is not excusing, much less justifying or legitimizing. I am not considering, as others have proposed, an exception to the law, or the recognition of a particular right. The law remains intact. Rather, faced with the present incapacity of living in conformity with it, it requires a word of forgiveness.” X. Lacroix: “Face au divorce”, 231.


37 Ibid. 171.

38 A. Bonandi: “Riflessioni sulla prassi ecclesiastica”, 239.


40 A. Bonandi: “Riflessioni sulla prassi ecclesiastica”, 239.
That being said, he proposes a solution, which is always “less than optimum”, that he envisions not as “ex ante, as an exception to the indissolubility of marriage, but as ex post, as a sage ecclesial practice toward those in irregular situations who present themselves to an ordained minister of the Church requesting the sacraments.”

He presents the proposal with the factitious case of a devout, divorced and remarried man who turns to an ordained minister because in his life journey – ten years after betraying his wife, then separating from and divorcing her – he has again returned to the Gospel and for a while now has been “nurturing a profound feeling of repentance and desire for reconciliation with God and the Church”. Faced with what the Church says regarding his condition, he responds that he does not feel like leaving his second wife or the children he has had with her and towards whom he feels, and objectively bears, serious responsibility, on top of which he does not feel as if he could positively assure his sexual continence.

At this point, according to Bonandi, an “ulterior path” could be possible. The man would be required to submit to the Church’s penitential discipline, to acquit all his duties toward the persons involved in his marriage and in his second union, to be clear that in no way would eventual admission to the Eucharist mean any type of (crypto)nullification of the first, valid marriage, and that the second union can never be elevated to a true and sacramental marriage.

Having accepted these things, according to Bonandi, the remission of sin and Eucharistic communion could be granted, “as a less-than-perfect choice in regard to the commitment required of Christians in marriage, on four conditions: (a) the recognition of the seriousness of the sin of infidelity (which recognition could/should be suggested/required, although in an appropriate way, even of the spouse who was abandoned without proper blame and has remarried) and of the inalterability of the one marriage; (b) the acceptance of the penance set by the priest; (c) complete seriousness in the commitment to the present union (which involves the entire life of those such as the woman he is living with and their children). In short, the Church’s reconciliatory practice would not demand “(ex post, after 10 years according to the typical case) either a break in the couple’s life (as effective cohabitation, affective communion, and sexual union) or the status of cohabitation as friendship. This does not mean (d) that the Church accepts their cohabitation as a ‘normal’ or normative condition of Christian life or as a public state in the Church. It only means (on the stated terms) the forgiveness of the sin committed and readmission to Eucharistic communion.”

According to Bonandi, this ulterior path would have the advantage of safeguarding, on the one hand, the validity of the first marriage and, on the other, of keeping “count of some irreversible aspects (not in a physical but a moral sense of genuine moral obligations that have been assumed and that cannot be dismissed)”. Moreover, the question of admission to the sacraments would not be left to the judgment of individual conscience but would go through the Eucharistic celebration and the priestly ministry, according to rules applicable to individual cases but, in any case, publically known to the community.

The penitential discipline then would be specified very precisely in a way that is helpful to note here:

The penitential path could begin before the celebration of the sacrament of penance, with a spiritual discussion. It obviously requires the participation of a priest (who in the initial and/or conclusive stage directly or indirectly refers to the bishop or his canon penitentiary). Moreover, this requires a certain period of time (to be established through experience) and includes some of the following penitential acts (following the traditional triple model of prayer, fasting, and almsgiving, scheduled to occur daily or weekly for several months): reading Scripture, praying the psalms or daily liturgy of the hours, participating in the Eucharistic celebration (without, however, receiving Communion) and courses of catechesis for adults, reciting the rosary, pilgrimage; a moderated
fasting from food and from entertainment, especially when preparing for Sunday liturgy, etc.; monetary offerings to the poor nearby or far away, assuming roles of social service in one’s professional area or as a volunteer, a commitment of forgiveness and reconciliation with one’s spouse, etc. Certainly, the path should be modified in reference to the confession of sins and thus the penitent’s effective condition.  

6. Critical Notes and Conclusions

All the authors I have mentioned here, in one way or another, are trying to build on the Church’s pastoral practice, clearing a path for accommodating the divorced and remarried couples who still seek to carry out their conjugal life. They are all significant and serious attempts. Nevertheless, one cannot help but see that their solutions create more problems than they resolve.

Let us begin by noting that some of these (Lacroix, Bonandi) are fully aware of and even radicalize the ambiguous and essentially contradictory logic that the Magisterium turns to in order to give some foundation to its pastoral solution. In fact, the Magisterium demands that the couple stop seeing themselves as and stop being a conjugal couple at the very moment that it recognizes that the two have good reasons for continuing to live together and taking care of one another. These authors actually demand that the couple stop considering themselves as a conjugal couple at the very moment they admit of their sexual relationship.

It is obvious that a common element of most of these positions is the acceptance of a split between admission to the sacraments and the consideration of the objective truth of marriage: admission would be entirely independent of the question of the conjugal truth. In fact, if – after a longer or shorter penitential path, assisted by a diagnostician or not – the conjugal life of the second union, in any case not considered a true marriage, is held to be legitimate then the question of truth becomes irrelevant.

This is precisely why a similar acceptance would have very consistent consequences that should not escape notice. First of all, it would change the aspect of adultery. Adultery would be committed not when someone who is married goes (in fact or desire) with someone besides his or her own spouse but only when someone who is married and living with his or her spouse does the same. Moreover, the Catholic doctrine of the conjugal act would change. It would become legitimate even when one is living together or as if married, not just when they are truly married. Cohabitation would thus assume a proper and accepted conjugal stability of its own; in a certain sense there would be a recognition – by sacramental admission (absolution and communion) – of de facto unions (“de facto” from a religious point of view, that is).

Bonandi is aware of this problem, at least in part. He recognizes that “access to the sacraments in these conditions [those of his proposal] could give the impression that the second relationship is licit and thus the relinquishing of the bond of the ‘first’ marriage, which the Church holds is the only one”. In order to respond to the objection he cannot find anything better to say than that the current practice is inconsistent with the doctrine of the valid and consummated marriage. Having accepted one – on publically known conditions – the other (his proposal) can also be accepted, always given that the conditions are publically known.

41 Ibid.
42 Ibid. 240.
43 Ibid. 241-242.
44 Ibid. 242.
45 Ibid. 243-244.
46 Ibid. 242-243.
47 See my article “La comunità cristiana dinanzi alle convivenze di fatto e ai divorziati risposati”, 229-234, where I speak of the “strange” negation/acceptance of the second union and acceptance/negation of the first “included in the Magisterium’s pastoral solution”.
48 It does not seem that Lacroix sees a problem here and it is not clear why.
49 A. Bonandi: “Riflessioni sulla prassi ecclesiastica”, 239.
It must be said that current practice at least strives to eliminate the conjugal character of the second union; Bonandi’s proposal does not do this and thus exposes itself to some very difficult questions: is the assurance offered by the existence of “publicly known conditions” capable of making true that which in itself – according to Catholic doctrine – is not? This last is an objection that also applies to the continual recourse that Bonandi makes to the fact that this is a “sub-optimal” way of acting. Does merely acknowledging that the way of acting is sub-optimal make true that which is not?

The only author among those discussed who avoids this split in some way is De Clerk. In fact, he maintains that there should be the possibility, after a penitential period, of the celebration of a second marriage, one that would be celebrated explicitly as “second”. The model on which he bases this idea is that of the Orthodox. There is only one problem with this, which is not at all insignificant. The Orthodox interpret the Matthean exceptions (Mt 5,32; 19,9) as real exceptions and understand the indissolubility of the marriage bond as moral and not ontic; this is an interpretation not held by Catholics. Sic stantibus theologiae rebus in the Catholic Church; it is not clear on what foundation the hypothesis of De Clerk is based. What is certain is the consequence: it would be a change – without explicitly confronting the issue – of the Catholic teaching on indissolubility.

It is my opinion that the search for apparently painless solutions generates far more problems and produces greater negative consequences than those which would occur with more radical solutions. Even though these may seem revolutionary, they can give the Church both the ability to recognize that marriages may fail and to maintain the stability of the general structure of the Catholic Church’s faith and moral teaching.

The Church has in the history of its anthropology, theology of matrimony, and law many elements that could enable a recognition of the reality of the failure of marriage. I have tried to show this many times before by studying the relationship between death and marriage in the Catholic tradition and afterwards by proposing an extension of the Church’s power to dissolve failed marriages. I allow myself to conclude by referring to these.\(^\text{51}\)


• Summary

The author investigates the peculiar situation of divorced and remarried in the Roman Catholic Church. While living in an irregular condition and in a union that is not really considered as a marriage, they enjoy wide pastoral acceptance. The Magisterium points out that they are not outside the Church and may have good reasons to continue to remain in their irregularity, and indeed states that they can live a life of grace even if they can’t be absolved and admitted to communion. Moreover, if they are willing to live their relationship in a non-marital way (i.e. without sexual relations), they can receive communion and the possible failures do not fundamentally alter this possibility. Somehow, one can therefore say that they now constitute a state of life in the Church. Many theologians, aware of the contradictions and ambiguities of this situation, suggested routes of readmission of the divorced and remarried to Eucharistic communion and (second) marriage, inspired by the ancient penitential practice (ordo paenitentium) and the Orthodox practice of remarriage. The author presents and discusses these approaches, highlighting some limitations and contradictions, and suggests conclusively more radical solutions to enable the Church to accept, also doctrinally and without contradictions, the reality of marital breakdown.