

DIVORCED AND REMARRIED CATHOLICS: DIMINISHED IMPUTABILITY?

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The topic for my talk tonight – the thesis that has become known in the last year or so as “the Kasper Proposal” – is, in my estimation, the gravest single moral and pastoral issue that has confronted the Catholic Church in the half-century that has now elapsed since the dispute over contraception erupted with renewed force at the end of Vatican Council II. As I am sure we are all aware, this issue already promoted heated discussion at the 2014 Extraordinary Synod of Bishops; and it will soon be coming up again with even greater force and urgency at the 2015 Ordinary session of the Synod.

A. Existing Catholic teaching vs. the revisionist proposal

The perennial doctrine and discipline of the Catholic Church was reiterated by Pope St. John Paul II in his 1980 Apostolic Exhortation *Familiaris Consortio*, #84. That is, a valid and consummated marriage between baptized persons is sacramental and indissoluble till the death of one of the spouses, so that the attempted remarriage of either of them in any non-Catholic ceremony following divorce is not valid, and falls under Christ’s explicit censure as being adulterous in nature. Therefore, absolution in the Sacrament of Penance and admission to the Eucharist is not possible for persons in such unions unless they make a firm commitment to practice continence, with care being taken in such cases to avoid possible scandal.

Now, the proposal of Cardinal Walter Kasper and others (whom I will call “revisionists” for convenience) is to mitigate this perennial doctrine and discipline in what they say would be a relatively few cases. They argue that Christ’s “mercy” requires this change. My mode of argument will be to consider only the most plausible scenario that revisionists are presenting in order to win over Catholic hearts and minds. For if it can be shown that even that situation will not justify the sacramental accommodation they are urging, then still less will other situations justify it.

We are asked to consider a Catholic woman whose husband, after some years of satisfactory and valid married life, has left her for another woman. There is no hope of reconciliation, since he is now civilly remarried with that woman. The Tribunal has turned down a petition for nullity, but the abandoned wife has also ‘remarried’ outside the Church and now has children by her new civil husband. She is raising the children Catholic, taking them to Mass on Sundays, and longs to receive the spiritual sustenance of the Eucharist. However, while she would be willing to practice the sexual continence required by the Church up till now as a condition for her readmission to the Eucharist, this is unacceptable to the father of their

children. He has made it clear that if she were to start sleeping alone, he would leave her. Therefore, since the children need an intact home, with their father and mother together, the woman feels that the “lesser evil” is to continue her intimate relationship with him.

Now, according to the Church’s firm and perennial teaching, this woman’s continued intimacy with her new partner for the sake of the children is a clear instance of “doing evil that good may come”, which is forbidden in Sacred Scripture (cf. Mt. 5: 18) and by the constant teaching of the Church. St. John Paul II devoted five articles of his Encyclical *Veritatis Splendor* (nos. 79-83) to a firm rebuttal and censure of this ‘*proportionalist*’ approach to moral questions. The woman’s difficult duty in this unhappy situation is to end her intimate relationship with the father of their children, and, then, if he does in fact walk out on her, do her best to work out whatever custody arrangements seem most likely to minimize the negative effects on the children of their parents’ separation. However, the revisionists are now asking, “Cannot the Church show greater *mercy* here? Could she not mitigate her stern discipline by authorizing the diocesan bishop to prescribe an itinerary of prayer, fasting and penance for this woman, and then to appoint a priest confessor to give her absolution for her objectively adulterous relationship, so that she would then have renewed access to the Eucharist while continuing in that relationship?” That, in a nutshell, is the great question confronting the Fathers of the upcoming Synod of Bishops in October this year.

B. The Final *Relatio* of the 2014 Synod

Now we must ask, in what precise terms was this question formulated at last year’s preparatory Synod gathering? We see the answer to this question in paragraph 52 of its final *relatio*, which reads in full as follows:

52. The synod Fathers also considered the possibility of giving the divorced and remarried access to the Sacraments of Penance and the Eucharist. Some synod Fathers insisted on maintaining the present discipline, because of the constitutive relationship between participation in the Eucharist and communion with the Church as well as her teaching on the indissoluble character of marriage. Others proposed a more individualized approach, permitting access in certain situations and with certain well-defined conditions, primarily in irreversible situations and those involving moral obligations towards children who would have to endure unjust suffering. Access to the sacraments might take place if preceded by a penitential practice, determined by the diocesan bishop. The subject needs to be thoroughly examined [Italian *approfondita* – “given deeper study”], 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).

Now, it is relevant that just 57% of the Fathers voted in favor of this paragraph – significantly less than the 2/3 majority required to make it a recommendation of the Synod as such. Also, it needs to be noted that a misleading spin was given to this paragraph #52 in media reports that said it actually *proposes* sacramental Communion for some divorced and remarried Catholics. This led to needless anguish and scandal; for countless members of the faithful were thus led to believe that more than half of these representatives of the world’s Catholic bishops,

in voting for #52, thereby abandoned the firm teaching and discipline of the Church. But the text of this paragraph does not propose any such revolutionary change. Rather, it reports the fact that the Synod Fathers expressed conflicting views on this question, and then recommends nothing more than that the issue needs to be “studied more deeply” (Italian *approfondita*). So quite a few Synod Fathers who voted for that paragraph were probably undecided about the matter. Furthermore, the fact that 40% of the Fathers voted against it indicates widespread and deep *opposition* to the revisionist proposal. They evidently considered the matter to be already closed by Pope St. John Paul II, so that re-opening it for “further examination” or “deeper study” of the question would be wrong.

In this context, revisionists often like to distinguish church *discipline* sharply from church *doctrine*, with the implication that the former can change while the latter cannot. But things are not as clear-cut as that. Merely human disciplinary laws can indeed change in accord with the prudential judgment of the Church’s hierarchy. But some disciplinary measures are inseparably linked to *divine* law – revealed truth – and thus cannot change. And one of these is that *those in mortal sin may not approach the Sacrament of the Eucharist*. St. Paul’s words in Sacred Scripture (I Cor 11: 27-29, cited in CCC #1385) are very clear: “Whoever eats the bread and drinks the cup of the Lord in an unworthy manner will be guilty of profaning the body and blood of the Lord.”

Returning to paragraph 52, we should also note with reassurance that it upholds the key Catholic doctrine of the indissolubility of marriage by calling the relationship of divorced and civilly remarried couples an “objectively sinful situation”. Since, therefore, there was virtual unanimity among the Synod Fathers on this point, we are naturally led to ask how 57% of them could still consistently think there is room for “deeper study” as to whether some people in that “objectively sinful situation” might nevertheless be admitted to Holy Communion. I think the answer is that those Fathers who voted in favor of #52 were not focusing on the *objective* character of the relationship in question. Rather, their appeal to CCC #1735 shows they were wondering whether the *subjective*, inward, psychological disposition of some of these folks might mitigate their guilt sufficiently to open up a possible path to Holy Communion. Now, this issue seems not to have received much attention from Catholic scholars, so I want to consider it here, in accordance with the recommendation of #52, and also with the corresponding Q. 38 of the questionnaire sent out by the Synod Secretariat in preparation for this year’s October session. In regard to divorced and civilly remarried Catholics, it asks, “What are the prospects in such a case? What is possible?”

Article 1735 of the *Catechism*, cited in paragraph 52 of the 2014 final *relatio*, states: “The 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”. At this point we need to recall the three well-known conditions for mortal sin, as confirmed by St. John Paul II in the 1985 Apostolic Exhortation *Reconciliatio et Paenitentia*, and cited in CCC #1857: “Mortal sin is sin whose object is grave matter and which is also committed with full knowledge and deliberate consent”. Now, we have seen that virtually all the Synod

Fathers last year agreed that the first condition – ‘grave matter’, the objective condition – is verified in the case of divorced and remarried Catholics. But what about the two subjective conditions, corresponding to the two faculties of the soul, intellect and will? This needs closer attention.

C. Would ‘penitents’ in the revisionist scenario lack full knowledge that their sin is objectively grave?

We can first consider the intellectual aspect of mortal sin. The requirement here is that there must be, as CCC #1859 puts it, full knowledge “of the sinful character of the act, of its opposition to God’s law”. Now, could some divorced and remarried Catholics perhaps be excused from mortal sin by virtue of *not knowing*, or at least not *fully* knowing, that their acts of intimacy are gravely sinful and in opposition to God’s law? Here we need to make a distinction between two possible ways in which a Catholic might “not know” that these acts are seriously opposed to God’s law.

The first way of “not knowing” really needs those quotation marks around “not knowing”. That is because I am referring here to divorced and civilly remarried Catholics who actually know very well that *the Church teaches* their relationship to be gravely sinful, but who simply *do not accept* that teaching. In other words, they are knowing *dissenters* from Catholic doctrine. While very probably telling themselves their dissent is a case of “following their conscience”, such Catholics are in fact presumptuously claiming to understand God’s law about marriage better than Christ’s Church does, even while still claiming to be loyal members of that Church. But of course, *dissent* from a point of Catholic moral doctrine is not at all what the Church’s magisterium and the *Catechism* have in mind when they teach that our guilt will be mitigated if we lack “full knowledge” of the gravely sinful character of one of our actions. On the contrary, such willful and knowing dissent increases, rather than diminishes, one’s guilt; for the sin against one of the Commandments is now rationalized in a new sin of pride that attempts to suppress the true voice of conscience. The Church could clearly never legislate to authorize Holy Communion for Catholics knowingly committing what she firmly teaches to be mortal sin, on the grounds that they reject that teaching as mistaken!

The second kind of not knowing – or not *fully* knowing – the grave sinfulness of one’s own civil marriage following a divorce would be genuine ignorance, or at least confusion, about the Church’s teaching, as distinct from rebellious dissent from it. But how common would that genuine ignorance or confusion be among the people we are considering here? Remember, these are folks who were previously married *in the Catholic Church*. Such marriages require months of preparation with a priest or deacon who has a duty to make sure the couple clearly understands Church teaching about the indissolubility of marriage, and Christ’s prohibition of remarriage after divorce. Not only that, but the Church requires engaged couples to sign a prenuptial form (in some dioceses under oath) in which they place themselves on record as

affirming that they intend to enter a life-long marriage in total fidelity to their spouse. So I think it would be fairly rare for couples *not* to be clearly aware, by the end of this process, that the Catholic Church forbids as gravely sinful any civil remarriage without a decree of nullity of the first marriage.

Nevertheless, since conformity to lax, worldly attitudes and values has become scandalously widespread among clergy and religious in not a few countries, it is probably true, unfortunately, that a good number of couples who entered their sacramental marriage with a full understanding of the sin in question subsequently become confused and lose that clear awareness, especially if they themselves divorce and remarry. This would largely be due to the baneful influence of priests, nuns – and even some bishops – who are unfailingly on hand to reassure them that their new relationship is not seriously wrong, that “God is merciful”, and that they can therefore go ahead and receive the sacraments. In short, given the current state of lamentable confusion in many parts of the Catholic world, it is quite possible that lack of full knowledge of the grave sinfulness of a second civil union may now be quite common among Catholics who are living in that situation, and that *their* subjective culpability may be accordingly diminished.

The trouble for revisionists, however is that they themselves are seeking to *purge* any such subjective confusion from the minds of Catholics taking part in their proposed program! The program itself would thus *rectify* that ‘lack of full knowledge’ which is one of the two circumstances that prevent something gravely immoral from being mortally sinful.

Let me explain. What Cardinal Kasper and the revisionists are proposing is that the Church officially establish, for certain Catholic couples in particularly difficult situations, a personalized and episcopally supervised process of “penance” that leads eventually to their official readmission to the Eucharist. But the very idea of doing “penance” presupposes that the penitent in question is *fully aware* that he or she has done something sinful, and indeed, acknowledges this with sorrow. Furthermore, following the revisionist proposal would also make these penitents fully aware that the sin for which they are doing this so-called penance is *objectively grave*, and so fulfills the first condition for mortal sin. I mean, the very fact of requiring an extended and personalized *process* of penance prior to receiving the Eucharist will make it crystal clear to the penitent that his or her sin involves *grave matter*. For, of course, if it were light matter – the stuff of mere venial sin – then even a normal and readily accessible sacramental confession would not be strictly necessary, much less the kind of custom-made extended “penitential process” that the revisionists now want the Church to introduce.

From our discussion so far I believe it has become clear that *nobody at all* who completed the extended ‘penitential’ process that revisionists want to set up would lack full knowledge of the objective gravity – the grave matter – of their sin of civil remarriage. That means all such ‘penitents’ would already have ‘two strikes against them’ as regards preparedness to receive Holy Communion: two of the three conditions for mortal sin would be fulfilled. What about the third and final condition?

D. Would ‘penitents’ in the revisionist scenario lack full consent to their sin?

Here we need to consider those mitigating conditions that lie in the will rather than the intellect. Mortal sin requires a full, free consent of the will to the gravely immoral action that is being carried out. Now, among the imputability-diminishing factors listed in #1735 of the *Catechism*, those that would affect the will are as follows: “duress, fear, habit”, and “immoderate affections”. These are followed by two more broad and non-specific terms: “other psychological or social factors”. The *Catechism* gives no footnote reference here to any magisterial source; so for further clarification we will have to rely on what orthodox Catholic moral theology has said on this topic.

Of the above factors, “habits” and many “immoderate affections” would not be relevant for present purposes. Theologians have in mind here ingrained or even compulsive bad habits and addictions that are rarely conquered overnight. But deciding to remarry, or to continue in an intimate relationship, is clearly nothing like that. The *Catechism* also mentions “social factors” that might mitigate imputability. One which might restrict the free will, rather than the intellect, would I suppose be what we now call *peer group pressure*, particularly in insecure and immature adolescents. But those who remarry after divorce are adults, and they do so because *they want to*, not because “society” pressures them into remarriage with bullying or threats of ostracism.

As regards “other psychological factors”, we should note two that might superficially seem to do diminish our free will, but in fact don’t. The first is when we feel strong reluctance to do something, but nevertheless decide it’s necessary. If the doctors tell you your gangrenous leg must be amputated to save your life, is your consent to that operation a fully free one? After all, you certainly *don’t want* to lose your leg! St. Thomas Aquinas and other approved moral theologians agree that *in view of the even worse alternative*, your consent to the amputation is full and free. The second type is our regret for having done something bad without wanting to, but after freely and inexcusably acting in a way which we knew ran a grave risk of *causing* that result. Consider a woman who is hit and killed by a drunk driver. There was no consent of his will to kill her; but he *did* fully and freely consent to go out, imbibe a whole lot of liquor, and then get in his car and try to drive home. So moral theology – along with common sense – agree that he remains gravely imputable for the woman’s death.

There are other psychological factors, however, that really do diminish imputability by impairing the consent of one’s will. Some of the “immoderate affections” mentioned in CCC 1735 would be *overpowering emotional states* of different types. A murder committed in a sudden fit of indignant rage is rightly considered less malicious than one that is coldly premeditated. But of course, no one goes through a wedding ceremony in a fit of rage! Other will-weakening emotions such as profound grief and suicidal depression would likewise be

inapplicable to the Kasper proposal. It is true that sexual passion, once aroused, momentarily weakens the will; but the decision to remarry and continue that intimate relationship is always one that is made calmly, and constantly renewed with deliberation over a period of time.

However, one other kind of strong emotion might seem more relevant to our topic. Could *fear*, perhaps, sometimes weaken the will to the extent of reducing from mortal to venial sin the civil remarriage of a divorced Catholic?

We need to make another distinction here. When it is a question of a *positive* law – one that depends on the free will of a legislator, as distinct from an intrinsic and unchangeable requirement of the moral law – approved Catholic theologians agree that a serious and well-grounded fear cancels out even the objective obligation itself, so that non-compliance with the law is not grave matter (or even light matter) in that situation. For instance, if a Catholic has been credibly tipped off that if he leaves his house on a certain Sunday morning to attend Mass, there will be assassins waiting near the church to gun him down, this reasonable fear of death objectively excuses him from the obligation of attending Mass that day – just as we are excused by illness. However this is not the case with actions that are intrinsically and gravely contrary to the moral law: orthodox Catholic theologians teach that we are obliged to face death rather than commit such acts. Now, the sin we are considering in this paper – sexual relations with someone who in God’s sight is already married to another – is in that category. Jesus explicitly calls it adultery. Therefore it would remain grave matter even under threat of death.

Nevertheless, what about possible diminished *imputability* in such a situation? Let’s recall the ‘test case’ we are considering: the civil spouse of a divorced Catholic woman threatens to abandon her if she breaks off intimate relations with him. So out of *fear* of the harm that will be done to her children if their parents are separated, she decides to continue that relationship. Will this kind of ‘fear’ excuse her from mortal sin?

According to approved, orthodox Catholic moral theology, it definitely will not. St. Thomas Aquinas, for instance, in considering the question “Whether fear hinders action”, teaches that, in fact, if there’s only moderate fear in a person’s soul, “without much disturbance of the reason, fear conduces to working *well*, insofar as it causes a certain solicitude, and makes a man take counsel and pay greater attention to what he is doing”. For St. Thomas, it is only when fear “increases so much as to disturb the reason [that] it hinders action on the part of the soul”.¹ In the previous article of the *Summa* St. Thomas talks about the physiological effects of the kind of fear he has in mind: “trembling, pallor and chattering of the teeth”.² Those of course are symptoms of *extreme* fear, or panic. Contemporary moral theologians have followed Aquinas here. The renowned Spanish Dominican Antonio Royo Marín says that actions carried out because of fear are a mixture of the voluntary and

¹ *Summa Theologiae*, I, II, Q. 44, a. 4.

² *Summa Theologiae*, I, II, Q. 44, a. 3.

involuntary, “but the voluntary prevails”³. And Fr. Bernard Häring, a prominent Redemptorist theologian, says this: “Fear which arises from without [i.e., from a perceived external danger] . . . can weaken or destroy freedom of the will only to the extent that it produces a partial or total paralysis of the powers of the soul. . . . [I]f fear arising from anxiety totally or partially unbalances the mind, then freedom is destroyed or diminished and consequently the guilt is entirely absent or diminished”.⁴

Now, does the state of mind of the woman in our test case scenario fit that description? Is her “fear” for the children’s welfare so extreme as to even partially “paralyze the powers of her soul”, “disturb her reason”, or “unbalance her mind”? Is an ongoing state of hysteria, trembling or panic the cause of her constantly renewed decision to keep sleeping with the father of her children? Of course not. Rather, her kind of ‘fear’ is like that of the man we considered earlier, who is told by the doctor that his leg must be amputated to save his life. His fear of death does not even partially paralyze his mind or disturb his use of reason: he agrees to the amputation with full, free consent. And that is clearly the kind of decision taken by the divorced and remarried woman we are considering.

It follows that she is freely choosing to do evil that good may come – something totally forbidden by both divine revelation and the natural moral law. We saw at the end of section C above that as regards fulfilling the conditions for mortal sin, Cardinal Kasper’s revisionist proposal already had two strikes against it: grave matter and full knowledge. Now we have seen that the woman in our test case will also be giving her *full and free consent* to the sin in question. Strike Three. The claim of ‘diminished imputability’ is unsustainable. So the people whom revisionists want to start admitting to the Eucharist will have to be presumed, on the basis of Catholic doctrine and theology, to be in mortal sin.

I would stress that what I have rebutted this evening is the *most plausible* version of the revisionist scenario. But how often would even this scenario exist in real life? Such Catholics would be admitted to the Eucharist on the flimsy pretext that their gravely sinful life-style choice supposedly does not involve the full consent of their will. But their particular sin is not something arduous or daunting that requires a lot of willpower, daring, or perseverance – like, say, hijacking an airliner or burgling a carefully guarded mansion. Quite the contrary: illicit

³ “. . . *pero prevalece lo voluntario*”. A. Royo Marín, O.P., *Teología Moral para Seglares* (Madrid: B.A.C. 1996, 7th edn.), vol. I, p. 66.

⁴ B. Häring, C.Ss.R., *The Law of Christ* (Westminster, MD: Newman Press 1963), vol. I, pp. 108-109. Substantially the same judgment about the relationship of fear to full consent of the will can be found in the widely used works of earlier approved moral theologians, for example: A Sabetti, S.J. & T. Barrett, S.J., *Compendium Theologiae Moralis* (New York: Frederick Pustet: 1929, 32nd edn.), p. 21; L. Fanfani, O.P., *Manuale Theorico-Practicum Theologiae Moralis* (Rome: Libreria Ferrari, 1950), vol. 1, p. 82; H. Davis, S.J., *Moral and Pastoral Theology* (London & New York: Sheed & Ward, 1949), vol. 1, p. 27; A. Tanqueray, *Synopsis Theologiae Moralis et Pastoralis* (Paris: Desclée, 1927), vol. 2, p. 106.

sexual intercourse with a loved one is something very easy and highly pleasurable. So how credible is it to claim that these acts consistently involve real fear of *any* degree, let alone the *grave* fear or panic that would be necessary to impede full consent of the will? Indeed, the admission of such folks to Communion under the excuse of diminished imputability would mean a subjectivist revolution in the Church's moral teaching and canon law. It would stand on its head the perennial principle enshrined in canon 1321, §3, which states, "When an external violation has occurred, imputability is presumed unless it is otherwise evident (*nisi aliud appareat*)".

We also need to consider the foreseeable logical and practical consequences of granting Holy Communion to those under discussion. At the present time (prior to the 2015 Synod), the Church has not so far officially given the permission revisionists are pleading for. So they can highlight *fait accompli* situations – folks out there who have *already made* their "mistake" of civil remarriage and are pining for the Church's "mercy" after the event. But think of the new situation that would be created once such revisionist legislation was in place and became common knowledge. The Church herself would then have deprived Catholics in valid but troubled marriages of an important incentive to persevere in trying to heal their relationship. Her actions would speak louder than her words, and everyone would rightly interpret the revised ecclesiastical legislation as an 'advance notice' along the following lines: "Are you convinced your first marriage is 'dead'? Well, go ahead with a divorce, and civilly marry a new partner if you like. Then, if you can't get your first marriage declared null and void, no problem! As soon as you have at least one child with your new partner, come along to the diocesan family life center and we'll set up a merciful penitential process for you to go through, after which you'll go to confession, receive absolution, and be able to receive Communion happily ever after while living intimately with your civil spouse!" Of course, if the Church were to send that message, there would no longer even be any pretence that such Catholics would not be giving their full and free consent to their illicit relationship. For they would often be deliberately planning for the new 'merciful' option well in advance! And, needless to say, the objective gravity of their sin would also soon be totally lost from sight.

So would the relevance and seriousness of the Church's marriage tribunals. Why would their officials (usually burdened with other pastoral duties as well) still feel motivated to carry out their investigation with due rigor and diligence? Petitions for nullity would now seem largely superfluous – a waste of time and money – given that *sacramental* marriage to a new partner would in many or most cases no longer be a prerequisite for receiving Communion and being socially accepted as a Catholic in good standing.

Also, once the principle is accepted that *some* people in an objectively illicit sexual relationship may receive Communion, where will we stop? For starters, why should it be only the *innocent* party from the broken but valid first marriage who can subsequently go down the new 'penitential' path to Holy Communion? For at least as many *guilty* parties will also soon have children by *their* new civil spouse; and those children will need both their parents in the home just as much as any others. Next question: Why stop at folks who are divorced and civilly

remarried? Why not also extend this new ecclesiastical 'mercy' to some couples who are just 'living together'? What about Communion for those in 'trial marriages', and for at least some homosexual couples?

Finally, the inclusion of sacramental confession in the 'penitential process' proposed by revisionists will require from priests a sacrilegious abuse of this sacrament. Confessors will be expected to absolve some Catholics who confess being in a sexual relationship with someone other than their true husband or wife, but without any purpose of amendment. I feel I should conclude this paper by going on record as affirming that I myself, with the help of God, will never profane the Sacrament of Penance and violate my own conscience by giving a sacrilegious absolution to someone in that situation, no matter what higher authority in the Church might tell me to do so. May God preserve his Church from the calamity of endorsing Cardinal Kasper's iniquitous proposal.