

# *THE CANONICAL SITUATION AND THE EXERCISE OF THE RIGHTS AND OBLIGATIONS OF THE DIVORCED\**

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INTRODUCTION\*\*

Due to ignorance of Church law, some identify divorce as a canonical offense punished with excommunication; while some divorced Catholics, particularly those who have attempted civil marriages, voluntarily distance themselves from the Church because they feel abandoned by the ecclesial community for reason of their restricted participation in the sacraments<sup>1</sup>. For such motives, the study attempts to analyze the canonical situation of the divorced members of the faithful by departing from the ecclesiology of the Second Vatican Council which describes the Church as *communio*. The study then proceeds to expose the situation of the divorced in the Church by comparing the relevant provisions of the canonical discipline prior to the 1980 Synod of Bishops to the present. After this exposition, the study proceeds to analyze the exercise of their rights and obligations in the Church according to the classical distinction of the three-fold mission of Christ.

\*\* The abbreviations used in the study are:

- AAS *Acta Apostolicae Sedis*, commentarium officiale  
 CCE *Catechismus Catholicae Ecclesiae*, Libreria Editrice Vaticana, Città del Vaticano 1997  
 CCEO *Codex Canonum Ecclesiarum Orientalium*  
 CIC'17 *Codex Iuris Canonici*, 1917  
 ChL JOHN PAUL II, *Adhortatio Apostolica «Christifideles Laici»* (30.XII.1988): ASS 81 (1989) 393-521.  
 CN CONGREGATIO PRO DOCTRINA FIDEI, *Litterae «Communio notio»* (28.V.1992): AAS 85 (1993) 838-850.  
 EdM CONGREGATIO PRO CLERICIS ET ALIAE, *Instructio «Ecclesiae de Mysterio»* (15.VIII.1997): AAS 89 (1997) 852-877.  
 EE JOHN PAUL II, *Litterae Encyclicae «Ecclesia de Eucharistia»* (17.IV.2003): AAS 95 (2003) 433-475.  
 FC *Adhortatio Apostolica «Familiaris Consortio»* (22.XI.1981): AAS 74 (1982) 81-191.  
 LG CONCILIUM OECUMENICUM VATICANUM II, *Constitutio Dogmatica de ecclesia «Lumen Gentium»* (21.XI.1964): AAS 57 (1965) 5-75.  
 SC CONCILIUM OECUMENICUM VATICANUM II, *Constitutio «Sacrosanctum Concilium»* (4.XII.1963): AAS 56 (1964) 97-138.

1. «El abuso de la palabra “excomulgado”, empleada frecuentemente, vino, sin duda, porque se prohibía la comunión eucarística a los divorciados vueltos a casar, pero no su participación en la vida cristiana»: A. LE BOURGEOIS, *Cristianos divorciados vueltos a casar*, Madrid 1991, p. 117. Cf. M. LEGRAIN, *Los cristianos ante el divorcio*, Bilbao 1995, pp. 23-29; IDEM, *Divorciados y vueltos a casar*, Santander 1990, pp. 15-26; CONFERENZA EPISCOPALE ITALIANA, *La pastorale dei divorziati risposati e di quanti vivono in situazioni matrimoniali irregolari o difficili*, n. 15, in *Enchiridion della Conferenza Episcopale Italiana*, 2 (1973-1979), Bologna 1985, pp. 1254-1255.

## I. DIVORCE AND ECCLESIAL COMMUNION

To be able to understand the canonical situation of a member of the People of God, it is important to depart from the notion of the Church as communion. It describes not only the integration of the faithful in the Church but also the ontological reality of who is a faithful<sup>2</sup>. Communion is not a vague disposition, rather, it is an organic reality requiring a juridical form and the animation of charity<sup>3</sup>. To understand the canonical situation of the divorced faithful, it is helpful to distinguish between the the mystical and juridical dimensions of communion. Such distinction, however, should not lead to a radical separation between these two aspects of one reality (cf. *CN* 4)<sup>4</sup>. Internal or mystical communion, on the one hand, is the participation of the faithful in the Mystical Body of Christ through the action of God's grace and charity. This can be destroyed partially by mortal sin, and it can be lost totally through the loss of faith. On the other hand, external or juridical communion is determined by the faithful's union with the Church through the bonds of profession of faith, the sacraments and ecclesiastical governance (cf. c. 205; *CN* 3-4). *Lumen Gentium* teaches that though a person is externally incorporated into the Church, if he does not persevere in charity, that person is not saved (cf. *LG* 14). «In addition to these (external) bonds, however, for full incorporation it is necessary to possess the Spirit of Christ, in other words to be united to God in love through sanctifying grace»<sup>5</sup>. Thus, the faithful's communion with God and with the Church could be strengthened or it can be weakened depending on how the individual responds to the demands of sanctity (cf. *EE* 36).

Divorce, when sought unjustly and without any legitimate and licit reasons, is a grave offense (cf. *CCE* 1649; 2383-2386). Those who are innocent and had been abandoned unjustly do not contravene the moral law, and therefore, do not destroy the bonds of their mystical communion in the Church (cf. *CCE* 2386). Those who are guilty of this offense destroy partially their internal communion with the Church. «Contracting a new union, even if it is recognized

2. «*Communio* supera en todas las dimensiones este modo limitado de concebir la vida social. Desde su propia etimología (*cum-munus*), habla de coparticipación, de ser parte en un cometido que a todos atañe. Más que ninguna otra noción, *communio* define la ontológica dinamicidad de la condición de miembro, del *ser* cristiano (y no sólo del *estar* en la Iglesia)»: A. MARZOA, *Comunión y derecho. Significación e implicaciones de ambos conceptos*, Pamplona 1999, p. 228.

3. Cf. CONCILIUM OECUMENICUM VATICANUM II, *Ex actis ss. Oecumenici concilii Vaticani II. Notificationes* (16.XI.1964), *Nota explicativa praevia*, n. 2, in *Decrees of the Ecumenical Councils*, II, N. TANNER (ed.), Washington 1990, p. 899.

4. Cf. R. KASLYN, «*Communion with the Church*» and the Code of Canon Law, Lewiston-Queenston-Lampeter 1994, pp. 122-123.

5. K. McNAMARA, *The People of God*, in *Vatican II: The Constitution on the Church*, K. McNAMARA (ed.), Chicago 1968, p. 146.

by civil law, adds to the gravity of the rupture: the remarried spouse is then in a situation of public and permanent adultery» (*CCE* 2384). Those who are guilty and have not repented of their sin remain to be members of the Church for they retain the indelible character produced by baptism and confirmation. This means that the external bonds of communion remain intact though the internal bonds are partially destroyed. For this reason, the Holy Father calls «upon Pastors and the whole community of the faithful to help the divorced and with solicitous care to make sure that they do not consider themselves as separated from the Church, for as baptized persons they can and indeed must share in her life» (*FC* 84). However, due to the weakened bonds of communion, they encounter certain limitations in their participation in the mission and life of the Church. This juridical effect has its origin in the objective situation created by an irregular marriage situation.

## II. CIVIL DIVORCE AND THE CANONICAL DELICT OF BIGAMY

Prior to the codification of the delict of bigamy in the universal law of the Church (cf. *CIC*'17 c. 2356), some particular legislations in the United States of America had penalized with excommunication the divorced and remarried members of the faithful. Such was the case of the Fifth Provincial Council of Baltimore (1843) which promulgated the decree of *ipso facto* excommunication of those Catholics who had undergone civil divorce and remarriage<sup>6</sup>. The penalty of excommunication was maintained in the Second Plenary Council of Baltimore (1866)<sup>7</sup>. In 1884, the Third Plenary Council of Baltimore decreed the *ipso facto* excommunication reserved to the Ordinary of those divorced Catholics who have dared to attempt second marriages<sup>8</sup>: «It is manifestly clear that they are guilty of the gravest crime, who seek for a marriage to be dissolved by a

6. Cf. CONCILIUM PROVINCIALIS BALTIMORENSE V, n. 61, cit. in CONCILIUM PLENARIUM BALTIMORENSE II, *Acta de decreta Concilii Plenarii Baltimorensis II*, n. 327, Baltimore 1875, p. 172. The penalty is reiterated in the pastoral letter issued for this provincial council. Cf. BISHOPS OF THE ECCLESIASTICAL PROVINCE OF BALTIMORE, *Pastoral Letter of the Fifth Provincial Council of Baltimore* (1843), n. 8, in *Pastoral Letters of the American Hierarchy, 1792-1970*, H. NOLAN (ed.), Huntington 1971, p. 112.

7. Cf. CONCILIUM PLENARIUM BALTIMORENSE II, *Acta et Decreta Concilii Plenarii Baltimorensis II*, n. 327, cit., p. 172; BISHOPS OF THE UNITED STATES OF AMERICA, *Pastoral Letter of the Second Plenary Council of Baltimore* (21.X.1866), n. 18, in *Pastoral Letters of the American Hierarchy, 1792-1970*, cit., p. 151.

8. Cf. G. FOGARTY, *The Historical Origin of the Excommunication of the Divorced and Remarried Catholics Imposed by the Third Plenary Council of Baltimore*, in *The Jurist* 38 (1978) 426-433; M. BRADY, *Two Penalties of the Third Plenary Council of Baltimore*, in *The Jurist* 22 (1962) 346-355.

civil magistrate, or, what is worse, after a civil divorce is obtained, try to enter into a new marriage, while the legitimate bond, which still remains before God and the Church, becomes of less account. To cure these ills, we establish the penalty of excommunication, reserved to the Ordinary, incurred *ipso facto* by those who, after they have obtained a civil divorce, dare to attempt marriage»<sup>9</sup>. On May 4, 1977 the National Conference of Catholic Bishops of the United States of America requested Pope Paul VI to repeal the penalty of excommunication imposed to the divorced and remarried. The favorable reply to this request was granted October 22, 1977<sup>10</sup>.

The 1917 Code did not consider the remarriage of the divorced under the crime of adultery or public concubinage (cf. *CIC'17* c. 2357, § 2) since there existed, in their case, the celebration of an exchange of consent which has satisfied the conditions of a common law marriage. In this manner, the 1917 Code stressed that the mere fact that civil marriage was attempted, there existed a worse delict committed: civil marriage of the baptized<sup>11</sup>. For this reason, «adulterous concubinage does not suffice for the commission of the crime (of bigamy), since the delict (of bigamy) is consummated only when the principals have exchanged their marital vows»<sup>12</sup>.

The divorced and remarried, considered as bigamists (cf. *CIC'17* c. 2356), were *ipso facto* legally infamous<sup>13</sup>. For the *ipso facto* effect of the penalty of *infamia iuris* to be incurred, two objective prerequisites are to be present: there must be an objectively valid nuptial union and, concomitantly, an attempted second marriage. This extreme punitive measure is employed by the Church as a vindicative penalty which entails the lost of certain rights<sup>14</sup>. Their situation as legally infamous includes them within the categories of those who were considered as publicly unworthy and public sinners (cf. *CIC'17* c. 855, § 1; 1240, § 1).

9. CONCILIUM PLENARIUM BALTIMORENSE III, *Acta et Decreta Concilii Plenarii Baltimorensis Tertii*, n. 124, Baltimore 1886, pp. 63-64. Cf. BISHOPS OF THE UNITED STATES OF AMERICA, *Pastoral Letter of the Third Plenary Council of Baltimore* (7.XII.1884), n. 38, in *Pastoral Letters of the American Hierarchy, 1792-1970*, cit., p. 176.

10. Cf. *Canon 2356, Excommunication for Divorced, Remarried Catholics in U.S.A. Repealed*, in *Canon Law Digest*, VIII, J. O'CONNOR (ed.), Mundelein 1978, pp. 1213-1214.

11. Cf. L. DEL AMO, *Los matrimonios civiles y el delito de bigamia*, in *Revista Española de Derecho Canónico* 10 (1955) 287-323.

12. V. TATARCZUK, *Infamy of Law: A Historical Synopsis and a Commentary*, Washington 1954, p. 51.

13. «*Infamia juris est poena ecclesiastica sive ut latae sive ut ferendae sententiae ab auctoritate ecclesiastica competenti statuta, qua quis ob delicta determinate quammaxime ignominiosa decernitur bonae existimationis apud communitatem fidelium indignus et hanc ob rationem arceatur a publicis muneribus in Ecclesia atque privatur a certis iuribus socialibus in can. 2294, § 1 enumeratis*»: G. MICHIELS, *De delictis et poenis*, III: *De poenis in specie*, Tornaci 1961, p. 395.

14. Cf. *ibid.*, pp. 400-402; T. GARCÍA-BARBERENA, *Comentarios al Código de Derecho Canónico*, IV, n. 446, Madrid 1964, pp. 430-432.

Such canonical condition of legal infamy entailed a series of penalties which could be either *prohibitive* or *inhabilitating*<sup>15</sup>.

The second part of canon 2356 contains the typification of the second degree of the delict of bigamy: «(...) those who, notwithstanding a conjugal bond, attempt to enter another marriage, even a civil one as they say, (...) and if spurning the admonition of the Ordinary, they stay in the illicit relationship, they are to be excommunicated according to the gravity of the deed or struck with personal interdict». Since the penalty is *ferendae sententiae*, there should be a certain degree of contumacy and a valid warning or admonition from the Ordinary in order for the penalty to be validly imposed<sup>16</sup>.

### III. THE SITUATION OF THE DIVORCED AND REMARRIED IN CHURCH DOCUMENTS AFTER THE PROMULGATION OF THE 1917 CODE

In different documents, the situation of the divorced, particularly those who had remarried, is often called a difficult situation, an irregular situation, an illegitimate situation, or a situation which is objectively contrary to the law of God. Such expressions were used in the document *Foedus matrimoniale* of the International Theological Commission<sup>17</sup>. The document also stressed that the divorced and remarried, though they do not participate in the plenitude of communion, are not separated from the Church<sup>18</sup>.

In the documents of the Fifth General Assembly of the Synod of Bishops in 1980 there has never been an explicit mention of the canonical sanctions which could arise from the irregular situation of the divorced and remarried<sup>19</sup>. The Post-Synodal Apostolic Exhortation *Familiaris Consortio* confirmed and differentiated the expressions *difficult situation* (cf. FC 77) and *irregular situation* (cf. FC 79). This pontifical document obviously had clarified the canonical situation of the divorced, both those who had not remarried and those who had remarried. Regarding those who had attempted second marriages, the document clearly defined their ecclesial situation: they are not separated from the Church though they are in a canonical situation which is irregular (cf. FC 84).

The absence of the delict of bigamy in the Revised Code of Canon Law presupposed a new vision of the situation of the divorced and remarried members of

15. Cf. *ibid.*, n. 466, p. 431.

16. Cf. *ibid.*, n. 538, pp. 517-518.

17. Cf. INTERNATIONAL THEOLOGICAL COMMISSION, *Propositions on the doctrine of Christian Marriage*, in *International Theological Commission: Texts and Documents, 1969-1985*, M. SHARKEY (ed.), San Francisco 1989, pp. 163-174.

18. Cf. *ibid.*, *Proposition, 5.4*, p. 174.

19. Cf. J. M. DÍAZ MORENO, *Uniones irregulares y actitud cristiana*, in *Razón y Fe* 204 (1981) 550-561.

the faithful. The Church avoided in the revision of the Code to impose a discipline based on penalties to those who sought divorce and remarriage. Instead, the principal criterion used was to approach the problem in a pastoral manner.

The Catechism of the Catholic Church refers to the situation of those who have undergone marital separation as a difficult situation (cf. *CCE* 1649). In a general way, the Catechism calls the situation of the divorced and remarried as a situation that objectively contravenes God's law (cf. *CCE* 1650; 1665) and a situation of public and permanent adultery (cf. *CCE* 2384). Reiterating the doctrine of *Familiaris Consortio*, the Catechism confirms that they are not separated from the Church (cf. *CCE* 1651; 1665).

#### IV. DIFFICULT FAMILY SITUATIONS AND IRREGULAR MARRIAGE SITUATIONS

*Familiaris Consortio* includes within the category of difficult family situations the state of separated spouses or simple divorcees (cf. *FC* 83) and of the divorced and remarried (cf. *FC* 84). The expression difficult situation is used to refer to any objective problematic situation concerning either the family or the married state. Both simple divorcees and the remarried belong to this situation since their condition contradicts the normal situation of marriage. The concept of difficult situation is greater in scope than the concept of irregular situations. While all irregular situations are difficult situations, not all difficult situations are irregular since there are difficult situations which could arise involuntarily and do not have any connotation of immorality or contradiction with the Divine or ecclesiastical laws.

The Apostolic Exhortation also contemplates a series of irregular situations from the canonical point of view and also some situations which are irregular from the perspective of civil law (cf. *FC* 79). The condition of the divorced is referred to as an irregular marriage situation. Some authors, however, do not consider the situation of separated spouses and of simple divorcees to be an irregular marriage situation<sup>20</sup>. These situations, according to these authors, are difficult situations but do enter into the category of irregular marriage situations.

It is important to understand the scope of the expression irregular marriage situation in order to be able to describe the situation of the divorced in the Church. Examining the situations given by *Familiaris Consortio*, López-Alar-

20. Cf. J. MEDINA-ESTÉVEZ, *La atención pastoral hacia personas que tienen un status familiar irregular*, in *Notitiae* 33 (1997) 50-67; H. FRANCESCHI, *Las situaciones matrimoniales irregulares*, in *Matrimonio y familia*, A. SARMIENTO, H. FRANCESCHI, Bogotá 2003, pp. 158-159; P. BIANCHI, *La nozione canonica di «situazione matrimoniale irregolare»*, in *La Giurisdizione della Chiesa sul matrimonio e sulla Famiglia*, J. CARRERAS (a cura di), Milano 1998, p. 263.

cón and Navarro-Valls believe that the situations mentioned as irregular marriage situations in *Familiaris Consortio* 80-84 are all valid, though not all of these forms of irregular situations are absolutely rejected by Canon Law since there are irregular marriage situations which receive a weaker rejection due to their capacity of producing certain legal effects. Irregular marriage situations which are not totally rejected by Canon Law can be regularized if the involved parties have the will to fix their situation. Thus there exist two classifications of irregular matrimonial situations: juridical situations which are absolutely contrary to Canon Law, and juridical situations which are relative or weak. From this classification, the civil marriage of the divorced is an irregular marriage situation absolutely rejected and contrary to Canon Law. The juridical situation of those who have received a decree of civil divorce but have not remarried is also an irregular situation but not totally rejected by Canon Law<sup>21</sup>.

J. Carreras and H. Franceschi define an irregular marriage as that situation of the marital life of a Catholic faithful, presenting elements of public or manifest stability, but has not been (or cannot be) recognized as valid by the legitimate authorities of the Church since it does not manifest the ecclesial dimension of the conjugal union of the baptized since it contradicts publicly the teachings of the Church on marriage<sup>22</sup>. An irregular marriage situation has the following characteristics: it is a situation related to the Church; it is a notion denoting formality; it is juridical by nature; those who are in irregular marriage situations are not subject to a punishment or any ecclesiastical penalty; and, it is a situation which is eminently pastoral<sup>23</sup>.

## V. THE CANONICAL SITUATION AND THE EXERCISE OF THE RIGHTS AND OBLIGATIONS OF SIMPLE DIVORCEES

Simple divorcees, after receiving the civil decree of divorce, are characterized by their negation to contract any subsequent marriage while the other spouse is alive. However, it is important to distinguish two situations from the viewpoint of Christian morality: those who are guilty of having destroyed a valid marriage and those who had been abandoned unjustly. For those who are guilty of having destroyed a valid marriage, their sin could be absolved in sacramental confession if they sincerely repent and try to repair the scandal, and they should attempt to reconcile and live common conjugal life.

21. Cf. M. LÓPEZ-ALARCÓN, R. NAVARRO-VALLS, *Curso de derecho matrimonial canónico y concordado*, Madrid 62001, p. 101-104.

22. Cf. H. FRANCESCHI, *Las situaciones matrimoniales irregulares*, cit., p. 145; J. CARRERAS, *Situaciones matrimoniales irregulares. La solución jurídica*, Pamplona 22000, pp. 37-40.

23. Cf. *ibid.*, pp. 64-68.



Following the opinion of López-Alarcón and Navarro-Valls, the situation of divorced Catholics but not remarried is also an irregular situation in the sense that it is a juridical situation contrary to the nature of marriage demanded Canon Law. This situation is not totally rejected by the Canon Law since certain juridical effects may be recognized by the Church. However, their condition is an anomalous situation since conjugal life is suspended<sup>24</sup>.

The canonical situation of the divorced but not remarried is assimilated to the situation of separated spouses (cf. *FC* 83)<sup>25</sup> since their marital rights and obligations are temporarily or perpetually suspended. Those who had received a divorce decree are considered in the eyes of God and of His Church as spouses who are separated but their bond of marriage remains to be intact.

The simple divorcee has to adhere to the obligations dictated by Church Law, such as: living a chaste life, avoiding the near occasions of falling into adultery, maintaining the conviction in the indissolubility of marriage (cf. *CCE* 1649), participating actively in the life and activities of the Church, and providing the necessary support and education of their children (cf. c. 1154). Canon Law encourages that «when the reason for separation ceases, the common conjugal life is to be restored, unless otherwise provided by ecclesiastical authority» (c. 1153, § 2). Another recommendation which the Code explicitly states is the moral duty of the innocent spouse to forgive the guilty party and resume common life when this is possible (cf. 1155). The separated and the simple divorcees are to observe the rights and obligations of the faithful according to their respective condition (cf. cc. 208-231; *CCEO* cc. 7-26). Those who have decided not to enter a new union indeed exercise their prophetic function by giving testimony to a heroic degree to the indissolubility of marriage<sup>26</sup>. Those who are guilty but had repented and had received sacramental absolution, and those who had been abandoned unjustly can participate fully in the sacramental life of the Church. Those who are guilty of having created such irregular situation have the duty to repent and ask sacramental absolution before they can be accepted to the sacraments (cf. *FC* 83). They also have the right to be attended with the adequate means of pastoral care<sup>27</sup>. Their perseverance to live a conti-

24. «(Por último,) se encuentra en situación irregular el divorciado que sigue vinculado por matrimonio canónico, ya que el divorcio es contrario a la norma canónica que sigue regulando dicha unión y, por otro lado, crea una situación jurídica anómala pues produce la pérdida de los derechos y deberes conyugales en el orden civil bajo la tutela jurisdiccional del Estado, lo que causa también la cesación real del matrimonio canónico *in facto esse*»: M. LÓPEZ-ALARCÓN, R. NAVARRO-VALLS, *Curso de derecho matrimonial...*, p. 104.

25. Cf. R. AZNAR-GIL, *Uniones matrimoniales irregulares*, Salamanca 1993, pp. 186-188.

26. Cf. M. LEGRAIN, *Divorciados y vueltos a casar*, cit., pp. 111-119.

27. Cf. G. PUTRINO, *I fedeli separati e divorziati-risposati*, in *Laós* 9 (2002) 78-88; S. NICOLL, *Famiglie in situazione difficile o «irregolare»: una pastorale de accoglienza*, in *Orientamenti Pastoral* 211 (2003) 9-16.

ment life and to remain in the Church could be assured by the establishment of support groups in the parish or in the diocese. By virtue of their right to associate they can indeed create these types of associations or associate themselves to existing groups. Where there is no inconvenience and scandal is avoided, they can also collaborate actively in liturgical functions and other ecclesial activities.

Given that their situation is also anomalous from the canonical viewpoint, they encounter certain limitations in the exercise of their rights. For example, they could not be accepted to join an institute of consecrated life<sup>28</sup>, or in the case of women, they cannot be accepted to the order of virgins<sup>29</sup>. The most obvious limitation which could be attributed to these members of the faithful is the impediment to contract another valid marriage since their previous marriage is presumed by Church law to be valid and existent (cf. cc. 1085; 1060).

## VI. THE CANONICAL SITUATION OF THE DIVORCED AND REMARRIED

The remarriage of those who had received the civil decree of divorce while the legitimate spouse lives is considered by the Church as null and invalid due to the impediment of the bond of an existing marriage (cf. cc. 1073; 1085). This contradicts the indissolubility and unity of marriage demanded by natural and Divine laws. Therefore, divorce and remarriage is a situation absolutely rejected but not penalized by Canon Law. For objective reasons, their situation does not allow them the plenitude of communion enjoyed by those members of the faithful who are in the state of grace. This objective situation of sin brings along with it a series of consequences like the limitations which they experience in the exercise of their subjective rights in the Church, particularly in the sphere of the right to receive and to be administered the sacraments. Their full participation in the threefold office of Christ is also partially impeded<sup>30</sup>.

As members of Christ's faithful, the divorced and remarried are invited to exercise their rights and obligations according to their personal condition and always in accordance with the nature of the ecclesial function by observing the relevant canonical provisions and the demands of ecclesial commu-

28. Cf. *Canon 542 (CIC'17): Married Persons: No dispensation*, in *Canon Law Digest 9*, J. O'CONNOR (ed.), Mundelein 1983, pp. 371-372.

29. Cf. C. DARCY, *Canon 604: Previously Married Person Becoming a Consecrated Virgin*, in *CLSA Advisory Opinions 1983-1993*, P. COGAN (ed.), Washington 1995, pp. 165-166.

30. «Los fieles que se encuentran en estas situaciones, por su forma de vida no adecuada eclesialmente, tienen impedidos el ejercicio de algunos derechos comunes a todo fiel. Su participación en la vida eclesial se basa en esta comunión eclesial real, aunque no plena ni perfecta, derivándose de ello una serie de normas canónicas que configuran un estatuto específico para estas situaciones»: F. AZNAR-GIL, *Uniones matrimoniales irregulares*, cit., p. 121.

nion. The exercise of their rights and obligations as members of the faithful depends on the degree of their communion with the Church which is the basis for their exercise<sup>31</sup>. Communion serves as the principal criterion in determining the limitations of the exercise of the rights of the faithful<sup>32</sup>. Full communion with the Church does not only imply visible incorporation to the ecclesial society, but it also includes the state of grace of the faithful. The faithful who is in the state of grace exercises more his rights and obligations than those who are in a state of grave sin because this partially damages ecclesial communion (cf. *LG* 14)<sup>33</sup>. The deprivation from Eucharistic communion, as in the case of the divorced and remarried, modifies their juridical status in the Church<sup>34</sup>. The competent Church authority has the obligation to regulate the exercise of these rights and obligations in the ecclesial society in order to safeguard the common good<sup>35</sup>.

Divorced and remarried Catholics participate in the life of the Church in a limited manner. There are certain ecclesial functions and activities which do not correspond to their objective irregular situation. For this reason, they are impeded by the ecclesiastical discipline from performing such functions. In most cases, these ecclesiastical prohibitions are a consequent development of what has been established previously by Divine will.

31. «Para una adecuada comprensión de la naturaleza de los derechos fundamentales del fiel, es necesario, por tanto, interrogarse acerca de la posición que el hombre bautizado corresponde en la unidad de la Iglesia. Se trata, en definitiva de comprender armónicamente la dignidad de cada fiel, personalmente configurado con Cristo, con el sentido de la unidad que reclama la “*communio cum Eo et internos*” a la que hemos sido elevados, de tal manera que “*nos omnes membra illius Corporis efficitur*”» (*LG* 7): P. LOMBARDÍA, *Los derechos fundamentales del cristiano en la Iglesia y en la sociedad*, in *Les droits fondamentaux du Chrétien dans l’Église et dans la société* (Actes du IV<sup>e</sup> Congrès International du Droit Canonique, Fribourg, 6-11.X.1980), E. CORECCO, N. HERZOG, A. SCOLA (publié par), Fribourg Suisse-Freiburg i. Br.-Milano 1981, p. 25.

32. Cf. D. CENALMOR, *Límites y regulación de los derechos de todos los fieles*, in *Fidelium Iura* 5 (1995) 146-172.

33. Cf. F. COCCOPALMEIRO, *Comunione ecclesiale, diritti fondamentali e concetto di diritto*, in *Les droits fondamentaux du chrétien dans l’Église et dans la société*, cit., pp. 107-113.

34. «Innanzitutto, la grazia santificante e il peccato grave sono rilevanti non solo per i rapporti tra una persona e Dio, ma anche per i rapporti *tra una persona e la Chiesa* intesa precisamente *come società*. E in effetti, la grazia santificante risulta necessaria per la piena incorporazione alla Chiesa società e per il diritto all’Eucarestia; il peccato grave causa la perdita della piena incorporazione e del diritto all’Eucarestia. Quest’ultimo esempio è particolarmente lampante: una realtà che causa la perdita di un diritto è certamente una realtà rilevante per i rapporti tra persona e Chiesa, per il semplice, ovvio motivo che causando la perdita di un *diritto* modifica la posizione nella *societas*»: *ibid.*, p. 108.

35. Cf. R. BOTTA, «*Bonum commune Ecclesiae*» ed esercizio dei diritti fondamentali del fedele *nul nuovo* «*Codice di diritto canonico*», in *La nouveau Code de droit canonique II* (Actes du V<sup>e</sup> Congrès International du Droit Canonique, Ottawa 19-25.VIII.1984), M. THÉRIAULT, J. THORN (publiés sous la direction de), Ottawa 1986, p. 819.

The divorced and remarried faithful have their rights and obligations to be either operative or suspended. Since they opted to live an irregular situation, their communion with the Church is debilitated. Such situation warrants the automatic suspension of some rights and obligations<sup>36</sup>. If the exercise of these rights and obligations are not suspended, it may provoke inconsistency with their nature and purpose; and may even cause scandal on the rest of the members of the faithful. Consequently, it can cause disturbance to the common good.

This legal technique is called suspension, not extinction, since rights and obligations are proper and inherent to all the faithful and they cannot be renounced. Neither could this mechanism be called suppression. Rights and obligations can never be legitimately suppressed. Suppression of such rights and obligations would mean absolute injustice since they are inherent to the dignity of a Christian<sup>37</sup>. They can only be extinguished by death. It is also important to distinguish between the *tenure of rights and obligations* from the *exercise of these rights and obligations*. One may have rights and obligations but some personal conditions or situations may necessarily limit or impede their exercise. In such cases, the rights and obligations of the faithful remain to be intact and in a potential situation, waiting for the removal of the obstacles which limit or impede their exercise.

## VII. THE DIVORCED AND REMARRIED AND THEIR PARTICIPATION IN THE THREEFOLD MISSION OF CHRIST AND THEIR COOPERATION IN THE MISSION OF THE HIERARCHY

### A. *The Exercise of the Function to Teach*

#### 1. *The Public Representation of the Church in the Office of Teaching*

The function to teach in the name of the Church calls for an authentic and total coherence of faith and action in order to act as witnesses of the Gospel (cf.

36. «(...) los derechos fundamentales no se pierden más que con la muerte, por estar siempre radicalmente presentes en la condición del bautizado. En cambio, puede suspenderse su ejercicio por distintas causas: 1ª la comisión de ciertos delitos, entre ellos el abuso de los derechos fundamentales; de especial mención son aquellos delitos que implican la ruptura de la comunión eclesial (herejía, cisma y apostasía), o reciben esa ruptura como una pena (excomunión); 2ª las situaciones de la ruptura de la comunión eclesial no delictuales (hermanos separados); 3ª aquellas situaciones excepcionales que hagan necesaria la suspensión de algunos de los derechos fundamentales»: J. HERVADA, *Elementos de Derecho Constitucional Canónico*, Pamplona 2001, p. 109.

37. Cf. IDEM, *La dignidad y la libertad de los hijos de Dios*, in *Fidelium Iura* 4 (1994) 9-31; D. TIRAPU, *Los derechos del fiel como condición de dignidad y libertad del Pueblo de Dios*, in *Fidelium Iura* 2 (1992) 31-54.

*CCE* 2472). The divorced and remarried members of the faithful could not give an authentic and integral proclamation of the Good News due to their irregular situation. They cannot be admitted to assume the function of sponsor of Baptism or Confirmation. In the 1917 Code, since they were considered as legally infamous, they were prohibited from assuming such function (cf. *CIC*'17 cc. 2356; 765, n. 2; 795, n. 2). The elaborate legislation of the 1917 Code on this matter has been reduced into a compact legislation in the Code in vigor (cf. cc. 872-874; 892; 893). Among the qualities demanded for lawfulness is that the sponsor has to live a life of faith which befits the role to be undertaken (cf. c. 874, § 1, n. 3). Such quality is demanded because the Church affirms that the role of sponsors is truly an ecclesial function (cf. *CCE* 1255). It is for this reason that the Church had always stressed on the necessary compatibility of the faithful's integrity of witnessing to the role of sponsors in Baptism and Confirmation<sup>38</sup>. The reason for this disqualification is based primarily on the lack of qualities demanded for the assumption of the office of sponsor which has for its purpose to help parents bring up their children to profess the faith and to show this by living it. In our opinion, the prohibition to admit the divorced and remarried to the role of sponsors has also its legal basis in the protection of the right of the faithful, in this case the potential member of the faithful, «to a Christian education, which genuinely teaches them to strive for the maturity of the human person and at the same time to know and live the mystery of salvation» (c. 217). Another reason for disqualifying them from this function is the role of sponsors in guiding the baptized person to the fullness of Christian initiation which reaches its summit in the reception of the most Holy Eucharist. Given that they are barred from receiving the Eucharist, how can the divorced and remarried fulfill this function? The minister of the sacrament, however, could allow the divorced and remarried to stand as *witnesses* as foreseen for non-Catholics in canon 874, § 2. The minister, however, need to emphasize the difference of this role from that of the sponsor.

In case there really exists the necessity or advantage to let lay members of the faithful to preach in a public sacred place (cf. c. 766), those who are to be admitted to cooperate in this function should possess the necessary requirements demanded by Church law and they should be able to project the unity of life demanded by the proclamation of the Gospel (cf. *ChL* 34)<sup>39</sup>. The lay person

38. Cf. W. WOESTMAN, *Canon 874: Catholic in Invalid Marriage as Godparent*, in *Roman Replies and CLSA Advisory Opinions 1998*, F. PEDONE, J. DONLON (eds.), Washington 1998, pp. 68-70.

39. «Ya se trate de una posición confiada a los sagrados Pastores con cierta estabilidad, por razones de necesidad, ya de un cargo ocasional por razones de utilidad en casos particulares, la capacidad viene medida por la idoneidad –ciencia y rectitud de vida– que debe ser comprobada por quien confiere el encargo»: E. PARADA, *La posición activa de los laicos en el ejercicio del «munus docendi»*, in «*Ius Canonicum*» 27 (1987) 113.

allowed to preach represents the Church in its institutional apostolate. It is therefore necessary that these lay men and women should be effective transmitters of the Good News (cf. c. 768) and should be totally in communion with the Church<sup>40</sup>. The divorced and remarried, due to their objective irregular situation, could never be permitted to preach in public sacred places since this function is a supplementary assistance (cf. *EdM* art. 13). Permitting those who are not qualified by law would be an arbitrary decision and may lead to scandal or to a vague transmission of the message of salvation since preaching does not only consist of mere instruction, but primordially, it has to be salvific.

The divorced and remarried cannot be permitted to impart official catechesis since they do not possess the integrity of life demanded for such function (cf. c. 228, § 2). The integrity of life required should be understood as outstanding witnessing to the faith, not just mere theoretical doctrinal knowledge since the purpose of catechesis is to incite the faith of the people to be living, manifest and active (cf. c. 773)<sup>41</sup>. It is in the interplay between faith and practice which impedes the divorced and remarried to be efficient transmitters of the Gospel message. Their acceptance to such functions may result to misinterpretation and confusion on the part of the faithful, particularly those who have not reached sufficient doctrinal knowledge of the faith.

The universal law dictates that «the local Ordinary is to be careful that those appointed as teachers of religion in schools, even non-Catholic ones are outstanding in true doctrine, in witness of their Christian life, and in their teaching ability» (c. 804, § 2). The appointment or approval of teachers of religion, in Catholic or non-Catholic institutions, belongs by right to the competent ecclesiastical authority who is to select fitting members of the faithful for such function<sup>42</sup>. It is also the duty of the ecclesiastical authority to provide further

40. Cf. C. J. ERRÁZURIZ, *Derechos y deberes del fiel en relación con la Palabra de Dios: Presupuestos fundamentales*, in *Ius Canonicum*, 40 (2000) 24-25.

41. «En efecto, al vivir la misma forma de vida que aquellos a quienes catequizan, los catequistas laicos tienen una especial sensibilidad para encarnar el Evangelio en la vida concreta de los seres humanos. Los propios catecúmenos y catequizandos pueden encontrar en ellos un modelo cristiano cercano en el que proyectar su futuro como creyentes»: CONGREGACIÓN PARA EL CLERO, *Directorio General para la Catequesis*, n. 230, Città del Vaticano 1997, p. 238.

42. «En términos generales –generales porque existe un amplio margen para que la legislación particular especifique la normativa concreta a tenor de las circunstancias eclesiales y del tipo de relación con el ordenamiento civil–, el hecho de que la «institutio et educatio» religiosa católica están sometidas a la autoridad eclesiástica lleva consigo, al menos, esta consecuencia: que los profesores de religión, los encargados de asistencia religiosa, los programas y el material didáctico para la enseñanza de la religión católica están sujetos al juicio de idoneidad de la autoridad competente, que puede negarlo legítimamente cuando resulten estar en contraste con la doctrina o la moral católica»: D. CITO, *Comentario al canon 805*, in *Comentario Exegético al Código de Derecho Canónico*, III/1, A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (coord.), Pamplona 2002, pp. 252-253.

specifications regarding the criteria used in judging the suitability of the teachers of religion. Outstanding witness of Christian life is one of the requisites explicitly demanded from those who wish to become teachers of religion. Thus, the divorced and remarried, although they possess the necessary academic degree and pedagogical skills, cannot be appointed as teachers of religion, nor can the local ordinary approve or propose such persons to the secular authority for appointment<sup>43</sup>. Another competence concerning religious education and formation vested by law specifically to local ordinaries is the right to remove or demand the removal of teachers of religion when religious and moral considerations require (cf. c. 805). This competence of the local ordinary does not only refer to the condition of teachers of religion in formally Catholic educational institutions but also to those who were approved for the post in non-Catholic schools. Teachers of religion who are in irregular marriage situations are to be removed or demanded to be removed from their post for reason of objective immorality which directly contradicts the content of the subject entrusted to them<sup>44</sup>. Falling into an irregular situation is tantamount to the loss of the necessary requisite demanded for their post: the lack of testimony by not living according to the demands of Catholic morality. This possible extinction of labor relationship between the competent authority and the teacher of religion should be made clear in the labor contract.

The Code states that «teachers in a Catholic school must be outstanding in true doctrine and uprightness of life» (c. 803, § 2). There is a difference between teachers of religion and teachers of profane subjects. This is made clear in the different expressions used in canons 803, § 2 and 804, § 2. The former uses the expression «uprightness of life» while the latter states that teachers of religion should be «outstanding witness of their Christian life». Given that a Catholic school manifests in a particular way the activity of the Church in the educational field, it is demanded that the whole school should maintain its Catholic identity. Maintaining its Catholic identity is possible even if some teachers appointed to teach profane subjects are in an irregular canonical situation. Unless the internal statutes of the school states the contrary, there is no problem in accepting the divorced and remarried as teachers of profane subjects

43. Cf. COMISIÓN DE ENSEÑANZA DE LA CONFERENCIA EPISCOPAL ESPAÑOLA, *Nota y declaración sobre la no propuesta de dos profesoras de Religión* (5.IX.2001), n. 4, in *Documentos Palabra*, documento 128 (2001) 136.

44. «La Iglesia está firmemente convencida que las personas idóneas para impartir enseñanza de Religión y Moral Católica no sólo han de ser fieles a su doctrina de un modo teórico, sino que deben manifestar una coherencia de vida que no entre en contradicción con ella, máxime en actuaciones que –en contra de lo que a veces se ha dicho– tienen una dimensión jurídica y social. La propia naturaleza de la enseñanza religiosa lleva consigo un testimonio personal del profesor acorde con lo que enseña»: *ibid.*, n. 5.

since there is no direct incompatibility between their personal situation with the content of the subject taught. Canon 803, § 2 does not speak of removal in case a teacher does not live the required uprightness of life. The literal content of the mentioned canon manifests that this quality of uprightness of life on the part of teachers is an expectation, not a demanded motive for appointment or removal. The presence of divorced and remarried teachers, may provoke a series of inconveniences but not total incompatibility to the task assigned. Those in charge of the vigilance over the school and the community of educators, however, should explain prudently that such irregular situation is not compatible to Christian life and necessary precautions are to be taken into consideration.

«In Catholic universities it is the duty of the competent statutory authority to ensure that there be appointed teachers who are not only qualified in scientific and pedagogical expertise, but are also outstanding in their integrity of doctrine and uprightness of life. If these requirements are found to be lacking, it is also the authority's duty to see to it that these teachers are removed from office, in accordance to the procedure determined in the statutes» (c. 810, § 1). Unlike canon 803, § 2, this canon specifies the requisites for appointment of professors and the necessary motives for their removal from their position. Those who do not possess the necessary uprightness of life, this includes the divorced and remarried, should not be appointed, or in case improper moral conduct occurs, they should be removed from their position and respecting what has been agreed upon in the labor contract which falls under the competence of secular law<sup>45</sup>. Logically, the same procedure stated above for the removal of teachers of religion is applicable in this case.

As for those who are to teach the sacred sciences in Catholic universities, ecclesiastical faculties or universities, and in other Catholic institutes of superior studies, the law requires that they should receive the mandate from the competent ecclesiastical authority (cf. cc. 812; 229, § 1). As for the general requisites for the concession of this mandate, the Code remits us to canon 812. The divorced and remarried, since their objective situation automatically dictates the lack of the requisite of uprightness of life, cannot be given the mandate to teach the sacred sciences in institutes of superior studies. Such situation of in-

45. «(...) los requisitos religiosos o morales constituyen una parte esencial de la relación jurídica que media entre el docente y la universidad, hasta el punto de que «en el momento del nombramiento se debe informar a todos los docentes y al personal administrativo de la identidad católica de la institución y de sus implicaciones, así como de su responsabilidad de promover, o al menos respetar, tal identidad» (*Ex Corde Ecclesiae* 4, § 2); en consecuencia, nada impide que los estatutos prevean supuestos concretos –de tipo personal, familiar o social– que impidan el nombramiento o sean causa de remoción del encargo, por su incompatibilidad con las obligaciones que lleva consigo la docencia en una universidad católica»: D. CITO, *Comentario al canon 810*, in *Comentario Exegético...*, III/1, cit., p. 278.



compatibility with Canon Law is also a cause for the revocation of the mandate according to the procedure dictated by universal law and the internal statutes of the Catholic institution.

Since missionaries are officially sent in the name of the Church, the divorced and remarried cannot be selected and sent as lay missionaries. «A common and indispensable requirement for missionaries is that they must be sent, admitted, and authorized by the Church through the bishop or the equivalent Ordinary of the territory in question»<sup>46</sup>. Among the requisites demanded is the integrity of moral conduct lived indispensably with the theological virtues<sup>47</sup>. Missionary activity requires the total coherence between what is preached and what is practiced in private life. In fact, the Code states that through their testimony to the faith and their words they have to open the way to conversion to those who have not heard of the message of salvation (cf. c. 787, § 1). The divorced and remarried, however, could be of great help to the missionary activity of the Church through their spiritual and material collaboration (cf. *CCEO* c. 585, § 4). If they volunteer for the missions for other purposes such as doctors, teachers of secular subjects and other forms of social work, their initiative should be appreciated and welcomed since it is also their duty as members of the faithful to help and provide for the needs of the Church (cf. c. 222). Their participation in these activities does not, however, convert them to be missionaries in the strict sense of the word.

Lay catechists in the missions (cf. c. 785, § 1) and missionaries, according to the Code, are not the same. Lay catechists represent in a public manner the work of evangelization of the Church (cf. *CCE* 906; c. 228). For this reason, there are requisites that they have to possess in order for them to be judged fit for the task: proper formation and outstanding living of the Christian life (cf. c. 785). The divorced and remarried members of the faithful do not meet these requisites, particularly the quality of testimony which catechists are called to project to the mission community. What characterizes the work of these catechists is their duty to prepare persons for the sacraments and their particular relation to the liturgical functions of the community. The services of these catechists may also include other deputations of ecclesial functions, such as extraordinary ministers of communion and preaching. Keeping all these possibilities in mind, there is enough reason why it is inconvenient and unlawful to appoint the divorced and remarried members of the faithful as lay catechists.

46. A. REUTER, *The Missionary Activity of the Church*, in *Studia Canonica* 23 (1989) 404.

47. Cf. SACRA CONGREGATIO PRO GENTIUM EVANGELIZATIONE SEU DE PROPAGANDA FIDEI, *Document sur le rôle missionnaire des laïcs adressé aux Ordinaires «Notre temps»* (17.V.1970), in *Bibliografia Missionaria* 34 (1970) 197-212.

## 2. *The Obligation and the Right to Educate Their Children*

The duty to educate children belongs by natural right to their parents (cf. c. 1136)<sup>48</sup>, even if their parents are living in an irregular marriage situation. Though the Revised Code distinguishes between legitimate children (cf. c. 1137) and illegitimate children (cf. c. 1139), both have the right to be educated by their parents<sup>49</sup>. The divorced and remarried parents have the obligation and the right to educate their children in accordance to the teaching of the Church and introduce them to the sacramental life of the Church (cf. *FC* 84). This moral duty of parents towards their children is also a juridical obligation imposed explicitly by Canon Law (cf. cc. 226, § 2; 793). Annexed to this natural right are other rights such as the right to select the school for their children (cf. c. 797) and the right to demand that religious and moral education is duly given in the schools (cf. c. 799). The grave obligation imposed by Church law to parents to educate their children is developed throughout the Code<sup>50</sup>. Canon 774, § 2 reminds: «Before all others, parents are bound to form their children, by word and example, in faith and in Christian living» (c. 774, § 2). The Church also reminds of the importance of family catechesis (cf. *CCE* 2226; *FC* 53). The duty to be exemplary witnesses of their Christian faith to their children is a difficult concern of divorced and remarried Christians. The Holy Father, in his solicitude for the education of the children born of irregular unions, reminds the Church that necessary pastoral attention should be given to both parents and children<sup>51</sup>.

## 3. *The Obligation to Evangelize in a Private Manner*

A duty and a right proper to all members of the faithful recognized in the Code is the vocation of every Christian to proclaim the Gospel (cf. c. 211; 225). Nothing impedes that the divorced and remarried exercise their right and obligation to the apostolate in a private manner, so long as they do not compromise the institutional mission of the Church. The divorced and remarried can exercise their prophetic function in their own way: to serve as leaven in the world

48. Cf. F. PETRONCELLI-HÜBLER, *Diritti e doveri della famiglia nell'educazione cristiana*, in *Monitor Ecclesiasticus* 112 (1987) 101-111.

49. Cf. M. S. FOSTER, *The Promotion of the Canonical Rights of Children*, in *Proceedings of the Fifty-Ninth Annual Convention of the Canon Law Society of America* (October 13-16, 1997, La Jolla, California), Washington 1997, pp. 178-180.

50. Cf. F. MORRISSEY, *The Rights of Parents in the Education of their Children*, in *Studia Canonica* 23 (1989) 429-444.

51. Cf. JOHN PAUL II, *Ad eos qui plenario coetui Pontificii Consilii pro Familia interfuerunt* (24.I.1997), n. 4, in *AAS* 89 (1997) 484-485.

by sanctifying their work and by infusing the Christian spirit to political, social, economic structures and other secular affairs (cf. cc. 225; 227)<sup>52</sup>. Indeed, their condition as children of God wounded by sin is still capable of transmitting the Gospel in certain ways. The mere fact that they persevere in the faith is already a true way of evangelizing others. This is an authentic testimony which could serve as an example for others to remain faithful to the Church despite of personal frailties. A concrete way of helping in the task of evangelization would be the divorced and remarried Catholic's humble and respectful observance of Church laws, particularly those which directly limit the exercise of their rights. Through their respect and reverence to the indications of their sacred pastors, they avoid scandal and serve as shining examples for the proper formation of the faithful. Their unceasing prayers and sacrifices offered for the task of evangelization are also fundamental means of doing apostolate in the Church (cf. *CCEO* c. 585, § 4). Indeed, through their silent and heroic perseverance in the Church and the fulfillment of their duties as Christians, they exercise actively the prophetic function of Christ (cf. *CCE* 1651).

## B. *The Exercise of the Function to Sanctify*

### 1. *The Public Representation of the Church in the Office of Sanctification*

The lay ministries of lectors and acolytes may be conferred, through the prescribed liturgical rite, only to lay men whose age and talent meet the requirements prescribed by the decree of the bishops' conference (cf. c. 230, § 1). *Ministeria Quaedam* states that lectors and acolytes must possess the suitable age and special qualities which are to be determined by the conference of Bishops<sup>53</sup>. The expression *special qualities*, has to be interpreted in accordance to the qualities required in c. 228, § 2<sup>54</sup>. For example, the Nigerian Bishops' Conference legislation on this matter is explicit when it comes to the marital status of the candidate: «He must be properly married or, if single, a fully mature adult. It would not be wise to install a man as lector or acolyte who may later put him-

52. Cf. A. DEL PORTILLO, *Faithful and Laity in the Church*, L. HICKEY (trans.), Shannon 1972, pp. 119-121.

53. Cf. PAUL VI, *Motu proprio «Ministeria Quaedam»* (15.VIII.1972), VIII, b, in AAS 64 (1972) 533.

54. Coherent lifestyle with the Gospel is a quality which has been demanded as basic by the particular provisions of different bishops' conferences. For example, cf. CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Decree Number 24: Ministries of Lector and Acolyte* (1.XII.1987), in *Studia Canonica* 22 (1988) 223; CONFÉRENCE DES ÉVÊQUES DE FRANCE, *L'application du Code de droit canonique, Canon 230*, in *La Documentation Catholique* 86 (1989) 74.

self in a condition in which he could not receive the sacraments»<sup>55</sup>. The conferences of bishops of the Pacific and of Switzerland clearly stated in their respective documents that the aspirants to the ministries of lector and acolyte should live a Christian life which honors marriage and family life<sup>56</sup>. Therefore, divorced and remarried lay men, due to their objective irregular situation are impeded to be admitted to the ministries of lectors and acolytes.

The role of extraordinary ministers of Holy Communion has always to be considered as a supplementary assistance to a function proper to sacred ministers (c. 910, § 2)<sup>57</sup>. As for the qualities demanded by universal law for such function, the following requisites are emphasized: proper formation, integrity of Christian life and good reputation among the members of the faithful. The expression *nemo seligatur cuius designatio fidelium admirationem excitare possit* in the instruction *Immensae Caritatis* stands for both *ad actum* or *ad tempus* designations<sup>58</sup>. It is clear from the letter of the law that the divorced and remarried members of the faithful do not possess the qualities demanded for the deputation of this function. The Archdiocese of Naples, for example, mentioned explicitly that the divorced members of the faithful are not to be designated as extraordinary ministers of Holy Communion<sup>59</sup>. The Instruction *Ecclesiae de Mysteriorum* explicitly mentioned that Catholics whose family situations are contradictory to the teachings of the Church are not to be designated for any functions which are considered as supplementary assistance (cf. *EdM* art. 13). Since

55. CATHOLIC BISHOPS' CONFERENCE OF NIGERIA, *General Guidelines for Both Lector and Acolyte*, A, 2, in *Code of Canon Law. Annotated* (Latin-English edition of the *Code of Canon Law* and English language translation of the 5<sup>th</sup> Spanish-language edition of the commentary prepared under the responsibility of the Instituto Martín de Azpilcueta), E. CAPARRÓS, M. THÉRIAULT, J. THORN (eds.), Montreal 1993, *Appendix III*, 7, p. 1365.

56. Cf. CONFÉRENCE ÉPISCOPALE DU PACIFIQUE, *Appendice III-7, c. 230*, in *Code de Droit Canonique: Bilingüe et annoté* (Text latin-français du Code de droit canonique et traduction en langue française de la 5<sup>e</sup> en langue espagnole du commentaire préparé sous la responsabilité de l'Institut Martín de Azpilcueta), E. CAPARRÓS, M. THÉRIAULT, J. THORN (sous la direction de), Montreal 1999, p. 1625; CONFÉRENCE DES ÉVÊQUES SUISSES, *Appendice III-9, c. 230*, in *Code de Droit Canonique...*, cit., p. 1650.

57. Cf. T. RINCÓN-PÉREZ, *Carácter supletorio de la función de ministro extraordinario de la comunión* (*Respuesta de la C. P. para la interpretación autentica del CIC, I.VI.1988*), in *Ius Canonicum* 29 (1989) 589-598.

58. «Christifidelis, minister extraordinarius s. Communionis, rite instructus, vita christiana, fide moribusque commendetur oportet. Se huic magno muneri non imparem esse contendat, pietatem colat erga Ss.mam Eucharistiam et exemplum se praebeat ceteris fidelibus devotione ac reverentia erga augustissimum altaris Sacramentum. Nemo seligatur cuius designatio fidelium admirationem excitare possit»: SACRA CONGREGATIO DE DISCIPLINA SACRAMENTORUM, *Instructio de communione sacramentali quibusdam in adiunctis faciliore reddenda «Immensae caritatis»* (29.I.1973), in *AAS* 65 (1973) 266.

59. Cf. ARCIDIOCESI DI NAPOLI, *Il ministero straordinario della comunione*, n. 1, in *Notitiae* 31 (1995) 410.

the function of extraordinary minister of holy communion is directly related to the Holy Eucharist, it would be theologically obscure to designate this task to the divorced and remarried who are prohibited by Divine and ecclesiastical laws to receive communion (cf. cc. 915; 916). Their situation is also a contradiction of the authentic and rich significance of the mystery of the Eucharist.

The same reasons mentioned above also stand for the designation of lay leaders in Sunday celebrations in the absence of a priest (cf. *EdM* art. 7)<sup>60</sup>. The directory indicates that those who are to be designated as lay leaders are to have an outstanding moral conduct and are well esteemed by the community of the faithful where the lay leader is to exercise this task<sup>61</sup>. The lack of the necessary qualities for suitability to such an important task and the prohibition to receive holy communion are primary reasons why the divorced and remarried cannot be given the mandate to be lay leaders in Sunday celebrations in the absence of a priest.

It is also possible that lay persons may be delegated as official or qualified witnesses of marriage but always in accordance to the provisions by the law (cf. cc. 1112; 1111, § 2). The restrictions specified by canon 1112, § 1 are to be strictly followed. This is clearly another supplementary function exercised by the lay faithful in the absence and scarcity of sacred ministers (cf. *EdM* art. 10). Thus, the norm given by *Ecclesiae de Mysterio* art. 13 stands. The divorced and remarried members of the faithful cannot be delegated for such an important function. Regarding the role of simple witnesses mentioned in canon 1108, there is no legal provision which impedes the divorced and remarried to assume this task. However, there exists a grave inconvenience since their situation directly contradicts the indissolubility of marriage. Therefore, they should be dissuaded from assuming this role.

The divorced and remarried can not be deputed for tasks which are supplementary assistance since the general guidelines given by universal law, particularly *Ecclesiae de Mysterio* art. 13, and by some local provisions clearly indicate that those who do not live a life congruent to the demands of Christian morality should not be appointed for such tasks.

## 2. *The Designation of Temporary Liturgical Assignments*

The Catechism of the Catholic Church affirms: «Servers, readers, commentators, and members of the choir also exercise a genuine liturgical func-

60. Cf. CONGREGATIO PRO CULTO DIVINO, *Directorium de celebrationibus dominicalibus absente presbytero*, in *Notitiae* 24 (1988) 366-378.

61. Cf. *ibid.*, n. 30, p. 373.

tion» (*CCE* 1143; cf. c. 230, § 2). The role of lector in public liturgical functions, even though it is designated for a specific time, may not be exercised by the divorced and remarried members of the faithful. The inconvenience in designating the divorced and remarried to proclaim the word of God, particularly in the celebration of the Holy Eucharist, is due to the effect which the lector projects to the congregation who knows his irregular situation. Other liturgical functions such as commentators, organists, cantors or members of the choir could be exercised by the divorced and remarried members of the faithful<sup>62</sup>. However, when they exercise these services in celebrations where their situation is known by the congregation, it is inconvenient that they present themselves as *couples* so as not to cause scandal among the faithful.

### 3. *The Non-Institutional Exercise of the Mission to Sanctify*

The Code recognizes the fact that the Church exercises in a peculiar way her mission to sanctify through the sacred liturgy (cf. c. 843, § 1). By virtue of their baptism, the divorced and remarried faithful indeed preserve this right and obligation inherent to all the faithful. This remains to be an active right and obligation since their situation is not punished by any ecclesiastical censure which prohibits their participation in liturgical celebrations. The divorced and remarried should remember that though they could not participate actively in an external manner through the exercise of some specific liturgical roles, they still form part of the Church and their presence in these celebrations is an exercise of their sanctifying function (cf. c. 835, § 4). «They should be encouraged to listen to the word of God, to attend the Sacrifice of the Mass, to persevere in prayer (...), to cultivate the spirit and practice of penance and thus implore, day by day, God's grace» (*FC* 84). In the same way, the Church also asks them to maintain their dialogue with God through humble and consistent prayers. Through the exercise of their function to sanctify outside the liturgy –through a fervent life of prayer and penance– the divorced and remarried contribute to the sanctification of the Church and to their personal itinerary to conversion<sup>63</sup>. «With firm confidence she (the Church) believes that those who have rejected the Lord's command and are still living in this state (of irregular marriage) will obtain from God the grace of conversion and salvation, provided that they have persevered in prayer, penance and charity» (*FC* 84).

62. Cf. C. M. GONZÁLEZ-SARACHO, *La admisión a la eucaristía de los fieles divorciados que se han vuelto a casar civilmente*, Romae 2000, p. 116.

63. «Debe tenerse en cuenta que, si bien los *pia exercitia* no son liturgia, sin embargo, también en ellos ejerce la Iglesia su función de santificar»: E. TEJERO, *Comentario al canon 839*, in *Comentario Exegético...*, III/1, cit., p. 414.

The divorce and remarried, as members of the faithful, are not exempted from fulfilling the precept to attend Holy Mass on Sundays and other holy days of obligation (cf. c. 1247). Though they are prohibited to receive holy communion (cf. cc. 915; 916), they are invited to participate actively in the celebration of the Holy Eucharist (cf. *FC* 84). «Participation in the communal celebration of the Sunday Eucharist is a testimony of belonging and of being faithful to Christ and His Church» (*CCE* 2182). It is the duty of pastors to help divorced and remarried Catholics «to deepen their understanding of the value of sharing in the sacrifice of Christ in the Mass, of spiritual communion, of prayer, of meditation of the Word of God, and of works of charity and justice» (*Epistula* 6). By fulfilling the dominical precept, they educate their children. Indeed, they also have the right to receive, from their pastors the necessary spiritual assistance in conformity to their status (cf. c. 213).

As parents, the divorced and remarried can also exercise their mission to sanctify through the fulfillment of their duty of educating their children in the faith (cf. c. 835, § 4; cf. *FC* 39). The Code recognizes this as a primordial right and duty of Christian parents (cf. c. 774, § 2)<sup>64</sup>. Parents, including the divorced and remarried, have the grave obligation to prepare their children to receive the sacraments of Christian initiation (cf. c. 867, § 1). Though the Code considers these children to be illegitimate<sup>65</sup> (cf. c. 1139), it is clear that children born of invalid unions are innocent and they have the right to grow in a loving and Christian atmosphere. The same right and duty obviously apply to children born of their first valid unions. It is unlawful for ministers of baptism to deny its administration to those who duly ask for it, even if the parents of the child are living in a situation contrary to the law of the Church<sup>66</sup>. The only justified motive to defer the administration of the sacrament of baptism is the true lack of hope that the child will be brought up in the Catholic religion (cf. c. 868, § 1, n. 2). The legal status and the limitations to receive the sacraments on the part of the child's parents do not automatically mean incapacity to impart the necessary education in the faith.

As members of the laity, the divorced and remarried faithful have also the mission to offer temporal things and affairs as an oblation to God (cf. c. 225, § 2)<sup>67</sup>.

64. Cf. P. BAILLARGEON, *The Rights and Duties of Parents in the Sanctification of Their Children*, in *Proceedings of the Fifty-Fourth Annual Convention of the Canon Law Society of America* (Cambridge, Massachusetts, October 12-15, 1992), Washington 1992, pp. 55-71; M. QUINLAN, *Parental Rights and Admission of Children to the Sacraments of Initiation*, in *Studia Canonica* 25 (1991) 385-401.

65. Cf. F. R. AZNAR-GIL, *Uniones Matrimoniales irregulares...*, cit., pp. 169-172.

66. Cf. F. R. AZNAR-GIL, *El bautismo de niños nacidos en una unión matrimonial irregular: Normas españolas*, in *Salmanticensis* 37 (1990) 33-63.

67. Cf. T. RINCÓN-PÉREZ, *La participación de los fieles laicos en la función santificadora de la Iglesia*, in *Relaciones de justicia y ámbitos de libertad en la Iglesia*, Pamplona 1997, pp. 320-326.

All their actions in the world, when done in the spirit of Christ become an expression of their common priesthood exercised for the sanctification of the world<sup>68</sup>. Just like the rest of the faithful, they also have to consecrate the world to God (cf. *LG* 34). Although they are not fully in communion with God, they are still capable of offering, in a humble and sincere spirit, their labors and pains by virtue of the indelible character of baptism which confers on them the dignity of the common priesthood. In order to be able to perfectly unite themselves sacramentally to the Sacrifice of Christ, they have to free themselves from any situation of grave sin and fix their irregular situation in accordance to the law of the Church. In this way, they become worshipers whose every deed is holy, consecrating the world itself to God.

### C. *The Exercise of the Kingly Function*

#### 1. *The Participation in Legislative Activities of the Church*

In diocesan synods, some lay faithful are called to participate as synodal members. These members of the laity should be elected by the pastoral council or, in case that the pastoral council is inexistent, they are to be elected on the basis determined by the diocesan bishop (c. 463, § 1, n. 5). It is impossible that persons in irregular situations to be considered suitable for such function since they do not enjoy the required condition of integrity of life (cf. c. 228, § 2). This is further clarified by the *Instruction on Diocesan Synods* which states that in the election of lay synodal members, men or women, it is necessary that the indications of canon 512, § 2 are to be observed<sup>69</sup>. Hence, those elected to this function are to be members of Christ's faithful who are outstanding in firm faith, high moral standards and prudence (cf. c. 512, § 3). The instruction is clear in indicating that only those who are in legitimate canonical situations are to form part of the assembly<sup>70</sup>. Viana opines that this has to be understood in connection to the limitations related to the situation of the divorced and remarried given in *FC* 84<sup>71</sup>. The

68. Cf. *ibid.*, pp. 347-355.

69. Cf. CONGREGATIO PRO EPISCOPIS-CONGREGATIO PRO GENTIUM EVANGELIZATIONE, *Instrucción de Synodis dioecesis agendas* (19.III.1997), in *AAS* 89 (1997) 706-721.

70. Cf. *ibid.*, II, n. 3, 1º, p. 711.

71. «(...) la Instrucción no concreta en qué consiste esta regularidad canónica. Más allá de la hipotética condición penal de estos fieles, la cuestión es relevante a propósito de su condición matrimonial. Pienso que servirían aquí como criterios de referencia las situaciones contempladas en la exh. ap. *Familiaris consortio* de Juan Pablo II (22.XI.1981), especialmente por lo que se refiere a los católicos que han celebrado matrimonio meramente civil y divorciados vueltos a casar, con las precisiones indicadas en este documento pontificio»: A. VIANA, *La Instrucción de la Curia romana sobre los sínodos diocesanos* (19.III.1997), in *Ius Canonicum* 38 (1998) 736.



Instruction states that the synodal members named freely by the bishop are to be outstanding in knowledge, competence and prestige<sup>72</sup>. Thus, the divorced and remarried cannot be convoked for such purpose. Perhaps, it would be fitting to invite them to be observers in diocesan synods (cf. c. 463, § 3). In this way, they can make their presence and problems felt even if they do not participate directly in the discussions.

If such qualities are demanded by law in the diocesan level, how much more if the assembly would be in the universal and interdiocesan levels? The qualities mentioned above make it impossible for the divorced and remarried to be selected to represent the faithful in diocesan synods or in ecumenical or particular councils.

## 2. *The Restrictions in the Assumption of Ecclesiastical Offices and Employment in Church Institutions*

The 1917 Code penalized *ipso facto* the divorced and remarried with legal infamy, explicitly prohibiting them to exercise any ecclesiastical function and office (cf. *CIC'17* c. 2294, § 1). In the Revised Code, the situation of the divorced and remarried, although no longer penalized with legal infamy, also encounter certain restrictions in the exercise of their capacity to be called to cooperate in the function of governance, particularly in the assumption of ecclesiastical offices and other forms of collaboration. This public and official representation of the Church is contradictory to the situation of the divorced and remarried since their condition may lead to a false mentality among the faithful: to think that their irregular situation is legitimately recognized by the Church. Their verifiable situation of irregularity with the Church directly contradicts the suitability for certain offices demanded by law.

The terms of employment of the Roman Curia are specified in the *Regolamento generale della Curia Romana*<sup>73</sup> and in the internal regulations of each dicastery. Among the requisites for admission is good moral character which implies a coherent lifestyle to the values of the Gospel<sup>74</sup>. Thus, those employed in the Roman Curia have to live an exemplary religious and moral conduct in conformity with the doctrine of the Church within their private and family life<sup>75</sup>. With these requisites and the nature of the work entrusted, it is not possible for the divorced and remarried to be designated for such functions. They could not

72. Cf. CONGREGATIO PRO EPISCOPIS-CONGREGATIO PRO GENTIUM EVANGELIZATIONE, *Instructio de Synodis dioecesanis agendas*, II, n. 3, 4<sup>o</sup>, cit., p. 712.

73. SECRETARIA STATUS, *Regolamento generale della Curia Romana*, in AAS 91 (1999) 629-687.

74. Cf. *ibid.*, art. 14, § 1. n. 2, pp. 636-637.

75. Cf. *ibid.*, art. 33, p. 646.

even present themselves as volunteers in the Roman Curia<sup>76</sup>. Failure to comply with the necessary requisites for suitability to their post, for example, entering into an irregular marriage situation which could produce scandal and detriment to the nature of the dicastery and to the image of the Church, may also result to the disciplinary sanctions foreseen in the *Regolamento*<sup>77</sup>.

Those selected as members of the diocesan pastoral council are to be members of Christ's faithful who are outstanding in firm faith, high moral standards and prudence (cf. c. 512, § 3). Only those who are judged to possess the qualities prescribed by canonical norms may be designated for such responsibility (cf. *EdM* art. 5, § 2). It is clear that the law formally disqualifies the divorced and remarried from membership in the pastoral council. Jiménez-Urresti asserts that the expression *full communion* stated in canon 512, § 1 has to be interpreted in the mystical sense of communion with the Church, that is, to live harmoniously with the teachings and the law of the Church<sup>78</sup>. Ratzinger states that those who are to form the council have to be fully inserted in the life of the Church, that is, they are supposed to be capable of participating actively in its sacraments and live accordingly to the principles of Christian morality<sup>79</sup>. The same reasons mentioned above are to be considered in the exclusion of divorced and remarried from participating as members of parish pastoral councils (cf. 536, § 1; *EdM* art. 5, § 2; c. 228, § 2).

Among the qualities demanded by universal law for offices related to the administration of justice in the Church, the requisite of good reputation is demanded (cf. cc. 1421, § 3; cf. c. 1428, § 2; 1435; 1483). Grochowski believes that the emphasis given by the Code to this quality indicates that those who cooperate in the administration of justice in the Church must live a life of moral integrity and they must be esteemed by the people<sup>80</sup>. De Diego-Lora also upholds the same idea and indicates that the quality of good reputation has to be verified by the bishop through the previous investigation of the personality of those designated for such offices<sup>81</sup>. Since these offices are related to the ecclesiastical tri-

76. Cf. *ibid.*, art. 22, § 2, p. 641.

77. Cf. *ibid.*, arts. 70-85, pp. 662-668.

78. «Y esa comunión plena supone no sólo no ser ateo, hereje o cismático, sino también “poseer el Espíritu de Cristo”, “perseverar en la Iglesia no sólo ‘de cuerpo’ sino también ‘de corazón’, según expone la noción del Concilio mismo» (cf. *LG* 14): T. I. JIMÉNEZ-URRESTI, *Justificación y naturaleza del consejo pastoral*, in *La Curia Episcopal. Reforma y actualización*, Salamanca 2000, p. 193.

79. «I membri di tali Consigli devono essere totalmente inseriti nella vita ecclesiale e sacramentale nonché condurre una vita, che sia in consonanza con i principi morali della Chiesa»: J. RATZINGER, *Introduzione*, in *Sulla pastorale dei divorziati risposati*, Città del Vaticano 1998, p. 16.

80. Cf. Z. GROCHOLEWSKI, *Comentario al canon 1420*, in *Comentario Exegético...*, IV/1, cit., pp. 776-777.

81. Cf. C. DE DIEGO-LORA, *Comentario al canon 1435*, in *Comentario Exegético...*, IV/1, cit., pp. 845-851.

bunals and very much linked to marriage problems, it is not prudent to appoint lay faithful in irregular marriage situations to any of these offices<sup>82</sup>. The Supreme Tribunal of the Apostolic Signatura has definitely excluded persons who are in irregular marriage situations to exercise the function of advocates in matrimonial causes<sup>83</sup>. If such office could not be exercised by these persons, other more significant offices related to the administration of justice in the Church should not also include persons in irregular marriage situations. To this effect, divorced and remarried Catholics cannot be appointed as lay judges, auditors, relators, notaries, defenders of the bond, promoters of justice and advocates since the tribunal must be seen as a forum where the truth of marriage is respected.

### 3. *The Exercise of the Right of Association in the Church*

Just like the rest of the faithful, the divorced and remarried are also invited to exercise their right to join associations. However, the exercise of this right may find some restrictions, particularly in public associations.

Gutiérrez comments that canon 316 is a reiteration of the discipline of the 1917 Code which rendered invalid the admission of public sinners to ecclesiastical associations<sup>84</sup>. This position is supported by Manzanares and Martínez-Sistach who claim that defection from ecclesiastical communion does not only mean schism but also includes the persistent situation of prohibition to receive the Eucharist<sup>85</sup>. Following the arguments of these two authors, Navarro claims that such interpretation is in perfect continuity with the Magisterium<sup>86</sup>. As a

82. «Indudablemente, aunque nada digan estos cánones al respecto, los que se hallan en situación irregular en su matrimonio, o tienen abandonados a sus hijos, caso de laicos, o han incurrido en alguna pena canónica, están en circunstancias que han de ser tenidas en cuenta para que no se hagan a su favor tales nombramientos»: *ibid.*, p. 851.

83. Cf. SUPREMUM SIGNATURAE APOSTOLICAE TRIBUNAL, *Responsum* (12.VI.1993), in *Periodica* 82 (1993) 699-700. Cf. R. BURKE, *Commentarius*, in *Periodica* 82 (1998) 701-708.

84. Cf. J. L. GUTIÉRREZ, *Commentary on canon 316*, in *Code of Canon Law. Annotated*, cit., p. 255.

85. «Se apartare de la comunión eclesial: por una conducta pública incompatible con la comunión eclesial en cuanto expresada y alimentada en la Eucaristía; es decir, afectaría a los supuestos del c. 915»: J. MANZANARES, *Las asociaciones canónicas de fieles. Su regulación jurídica*, in *Asociaciones Canónicas de Fieles* (Simposio celebrado en Salamanca, 28 al 31 de octubre 1986, organizado por la Facultad de Derecho Canónico de la Universidad Pontificia de Salamanca), Salamanca 1987, p. 141. Cf. LL. MARTÍNEZ-SISTACH, *Las asociaciones de fieles*, Barcelona 42000, p. 78.

86. «(...) es razonable que, en continuidad con el Magisterio de la Iglesia, se consideran incluidos otros hechos o comportamientos especialmente, que son incompatibles "con la comunión eclesial en cuanto expresada y alimentada en la Eucaristía". Entre éstos están: vivir en concubinato; contraer únicamente matrimonio civil (cf. FC 82); divorciarse y casarse civilmente habiendo contraído previamente matrimonio canónico y permaneciendo el vínculo matrimonial (cf. FC 84), etc.»: J. F. NAVARRO, *Comentario al canon 316*, in *Comentario Exegético...*, II/1, cit., p. 489-490.

general rule, divorced and remarried Catholics cannot be validly admitted to any public association since these associations represent the Church. In fact, the internal regulations of many public associations in the Church demand moral uprightness as a requisite for enrollment<sup>87</sup>. The non-admission of public sinners to ecclesiastical associations have to be reflected in the general regulations which are to be provided by particular law which has the function to specify under which circumstances one can or cannot be admitted<sup>88</sup>. Those who are in irregular marriage situations are to be dismissed from public associations if they persist in such situation after having been warned of its consequences. The ecclesiastical authority can by no means allow persons living in situations contrary to the law of the Church to occupy the functions of moderator or commissioner of public associations (cf. cc. 317, § 1; 318, § 1). These directive functions are authentic cooperation with the mission of the Church to govern since these associations act *in nomine Ecclesiae*<sup>89</sup>.

Regarding the admission to private associations in the Church, the Code almost remits everything to the statutes of each association (cf. c. 307, § 1). Thus, it depends upon the statutes of each association to regulate the procedure and qualities to be demanded for the valid enrollment to the association. In these associations, there is no problem in admitting the divorced and remarried, except if the statutes had stated the contrary. The purpose and the nature of the association will also dictate the requisites for membership. For example, a private association which has for its mission to spread and protect the Christian message on marriage and the family, logically cannot admit divorced and remarried persons as members for this would contradict the association's aim and mission. Though private associations can be autonomous regarding the election and designation of officers, they should see to it that offices such as president, moderator, secretary, treasurer, etc., are held by competent and exemplary persons (cf. c. 324, § 1).

87. For example, cf. J. BOGARÍN-DÍAZ, *Los católicos unidos irregularmente en la ordenación jurídica de las cofradías sevillanas de Nazarenos*, in *Revista Española de Derecho Canónico* 48 (1991) 81-127.

88. For example, cf. CONFERÊNCIA EPISCOPAL DE PORTUGAL, *Nomas gerais para regulamentação das associações de fiéis* (15.III.1988), art. 36, § 3, in J. F. NAVARRO, *Comentario al canon 316*, cit., p. 490, nt. 4.

89. «Mais tout n'est pas possible: normalement dans leur participation à la vie apostolique de l'Église, les divorcés remariés ne peuvent pas remplir des fonctions de direction ou des rôles qui leur feraient représenter officiellement l'Église. Ils doivent comprendre que leur intervention dans certaines activités, si justement motivée soit-elle, pourrait avoir un effet défavorable à la cause de l'Église. C'est pourquoi, le plus souvent, on ne leur confiera qu'une tâche de second plan»: E. GAGNON, *Pastorale des divorcés remariés*, in *Problèmes doctrinaux du mariage chrétien*, Louvain-la-Neuve 1979, p. 368.

#### 4. *The Divorced and Remarried and the Temporal Order*

The divorced and remarried can help in the establishment of the Kingdom of God in the world if they start their process of conversion. Through their conversion, they could indeed become effective witnesses of Christ's triumph over sin. Nothing impedes that the divorced and remarried should involve themselves in works of charity and piety, particularly in the secular order of things. Through their constant service to human society, they implant the Kingdom of God in this world. Thus, the duty of the laity to permeate and perfect the temporal order of things with the spirit of the Gospel expressed in canon 225, § 2 remains intact. Their skills and competence in secular affairs are operative and they continue to contribute to the extension of the Kingdom<sup>90</sup>.

Another aspect in which they can exercise their kingly function is in the sphere of the family. Through their efforts in disciplining and forming their children, the divorced and remarried parents indeed implant and extend God's reign.

### VIII. THE DIVORCED AND REMARRIED AND THEIR PARTICIPATION IN THE SACRAMENTAL LIFE OF THE CHURCH

#### A. *The Right of the Faithful to Receive the Sacraments*

Given that the exercise of the rights of the faithful is not absolute, so is also the exercise of the right to receive the sacraments. Canon 843 gives the following conditions for the lawful reception of the sacraments: the opportunity of the petition, the right disposition of the subject and the absence of any ecclesiastical legal prohibition from receiving the sacraments. These conditions have to be verified by the minister. Obviously, what could be verified are the external manifestations of such limitations. In case the proper disposition is judged lacking or insufficient, then the minister has the obligation to deny the sacrament since in such situation there does not exist properly a right to receive the sacrament<sup>91</sup>.

#### B. *The Admission to the Rites of Christian Initiation of Adults*

In the stage of the precatechumenate, the inquirer living in an irregular marriage situation should be informed, as early as possible, of the canonical

90. Cf. A. MIRALLES, *Aspectos teológicos a considerar en la pastoral de los divorciados vueltos a casar*, in *Familia et Vita* 2/2 (1997) 45-46.

91. Cf. T. RINCÓN-PÉREZ, *Disciplina del culto divino*, in *Manual de Derecho Canónico*, INSTITUTO MARTÍN DE AZPILCUETA (obra a cargo del), Pamplona 21991, pp. 470-471.

laws governing marriage<sup>92</sup>. This will serve for the non-baptized to understand the reasons why the Church demands the legitimization of irregular marriage situations prior to the reception of the sacraments. The non-Christian in an irregular situation who wish to be baptized may be accepted to the catechuminate, but if the previous marriage is not declared invalid, they are not to receive the sacraments of initiation<sup>93</sup>. The reason for is that the catechuminate is a process of formation in which the individual has to cooperate with God's grace and consequently has to grow in the life befitting a Christian<sup>94</sup>.

The case of the unbaptized person asking for the sacrament of baptism is different from that of non-Catholic Christians who ask for full incorporation to the Catholic Church<sup>95</sup>. Thus «irrespective of their marital status, baptized non-Catholics may never be “welcomed into the catechuminate” in the technical sense»<sup>96</sup> since they have already received baptism validly. Though they are not catechumens, the divorced and remarried non-Catholic has to participate in the catechetical formation imparted by the parish. In this stage, it should be made clear that their irregular marriage situation impedes them from receiving the sacraments of Confirmation, if necessary, and the Eucharist. In order for them to be received to the fullness of communion, they must seek the adequate canonical solution to their situation. If their situation is consequently regularized in the external forum, they also have to request for sacramental absolution in order for them to receive fruitfully these sacraments (cf. cc. 889, § 2; 916)<sup>97</sup>. As for those whose marital status could not be easily regularized, they could be incorporated to the Catholic Church, but it should be made clear that their situation is the same as to those Catholics in irregular situations who encounter certain limitations in the reception of the sacraments.

There are uncatechized baptized Catholics who desire to receive the fullness of Christian initiation but their irregular marital situation impedes them

92. Cf. L. GAUPIN, *RCIA: Canonical Issues, a Liturgical Response*, in *Proceedings of the Fifty-Sixth Annual Convention of the Canon Law Society of America* (Milwaukee, Wisconsin, October 8-11, 1984), Washington 1985, pp. 137-138.

93. Cf. SACRA CONGREGATIO PRO DOCTRINA FIDEI, *Private reply to the Bishop of Honolulu regarding the admission of divorced and remarried persons to the catechuminate and sacraments* (11.VII.1983), in *Canon Law Digest* 10, J. O'CONNOR (ed.), Mundelein 1986, pp. 139-140.

94. Cf. A. REHRHAUER, *Welcome In! Canonical Issues and the RCIA*, in *Proceedings of the Fifty-Second Annual Conention of the Canon Law Society of America* (Cleveland, Ohio, 15-18 October 1990), Washington 1991, pp. 161-162.

95. Cf. ORDO INITIATIONIS CHRISTIANAE ADULTORUM, *Appendix: Ordo admissionis valide iam baptizatorum in plenam communionem Ecclesiae Catholicae*, Typis Polyglottis Vaticanis 1973, pp. 183-192.

96. J. PROVOST, *Reception of Baptized Non-Catholics Who are Divorced and Remarried*, in *Code, Community, Ministry: Selected Studies for the Parish Minister Introducing the Code of Canon Law*, E. PFNAUSCH (ed.), Washington <sup>2</sup>1992, p. 117.

97. Cf. A. J. STRICKLAND, *Reception into Full Communion: Canonical Issues and Pastoral Challenges*, in *The Jurist* 61 (2001) 279.

from receiving the sacrament which complete their process of Christian initiation (cf. c. 842). The Church is solicitous in giving them the necessary pastoral attention but, at the same time, demands that the proper dispositions on their part should be achieved. The Rite of Confirmation explicitly demands that the person who is to receive the sacrament has to be in the state of grace<sup>98</sup>. Obviously, their situation also impedes them from receiving the Eucharist.

### C. *The Prohibition to Receive Holy Communion*

This is the most delicate problem which the Church faces in the pastoral attention of the divorced and remarried members of the faithful. An abundant theologico-pastoral and canonical literature had already been published on this question<sup>99</sup>. Pastors also have issued a good number of norms treating to reorient some misinterpretations in the pastoral application of some previous documents<sup>100</sup>. However, some documents, instead of orienting and clarifying the documents of the Holy See, have produced confusion and a pastoral practice which is not totally in line with the ecclesial discipline<sup>101</sup>.

The discipline prohibiting the reception of holy communion by the divorced and remarried is based on Sacred Scriptures. Their situation of adultery makes them unworthy to receive the Body and Blood of Christ (cf. *Mk* 10:11-12; *Mt* 19:9; *1Cor* 11:23; 27-29).

The discipline of the primitive Church has been maintained by the ecclesiastical discipline. The 1917 Code considered remarriage while a valid bond

98. Cf. ORDO CONFIRMATIONIS, *Praenotanda*, n. 12, Typis Polyglottis Vaticanis, p. 19.

99. For bibliographies on this subject, cf. J. PROVST, *Intolerable Marriage Situations: A Second Decade*, in *The Jurist*, 50 (1990) 597-598, nt. 74; F.R. AZNAR-GIL, J. R. FLECHA-ANDRÉS, *Divorciados y Eucaristía*, Salamanca 1996, pp. 159-167.

100. The following is a non-exhaustive listing: CONGREGAZIONE PER LA DOTTRINA DELLA FEDE, *Sulla pastorale dei divorziati risposati*, Città del Vaticano 1998; CONFERENZA EPISCOPALE ITALIANA, *La pastorale dei divorziati risposati e di quanti vivono in situazioni matrimoniali irregolari o difficili*, nn. 24-33, cit., pp. 1257-1261; BISHOPS OF THE STATE OF PENNSYLVANIA, *Internal Forum-Pastoral Care of Catholics Who Remarry* (29.VII.1994), in *Origins* 24 (1994) 205-208; BISHOP OF CORPUS CHRISTI, *Ministry to Divorced and Remarried: A Pastoral Letter from Bishop Rene H. Gracida*, in *Forum* 6/2 (1995) 23-31; CONFERENCIA EPISCOPAL ESPAÑOLA, *Directorio de la Pastoral Familiar de la Iglesia en España* (21.XI.2003), nn. 224-228, Madrid 2004, pp. 183-187.

101. A prominent example of this are the pastoral letter and the principles of pastoral care of the divorced and remarried issued by the three German bishops of the ecclesiastical province of the Upper Rhine. Cf. O. SAIER, K. LEHMANN, W. KASPER, *Grundsätze für eine seelsorgliche Begleitung von Menschen aus zerbrochenen Ehen und wiederverheirateten Geschiedenen in der Oberrheinischen Kirchenprovinz* (10.VII.1993), in *Kirchliches Amtsblatt für die Diözese Mainz* 10 (1993) 63-74.

exists as a grave sin and a delict warranting a just punishment: legal infamy, excommunication or personal interdict (cf. *CIC'17* cc. 2356; 2260; 2275, n. 2). Such condition was included within the category of the expression *publicly unworthy subjects to receive Holy Communion* (*CIC'17* cc. 855, § 1; 856).

In 1973 the Sacred Congregation for the Doctrine of the Faith issued a circular letter to the Roman Catholic episcopate warning Pastors on the proliferation of erroneous opinions regarding the indissolubility of marriage<sup>102</sup>. The letter urged local Ordinaries to observe the ecclesiastical discipline which prohibited those in irregular unions to receive the sacraments. It also reminded pastors of their duty to attend to their pastoral needs by applying the appropriate pastoral solutions provided by Canon Law and the approved praxis of the Church for the internal forum<sup>103</sup>.

The praxis of the Church not to admit the divorced and remarried to Holy Communion was insisted by an unpublished Instruction issued exclusively to bishops before the opening of the 1980 Synod of Bishops<sup>104</sup>. At the closing Mass of the 1980 Synod of Bishops, the Pope mentioned explicitly that the divorced and remarried cannot receive the Eucharist unless they fulfill the conditions demanded by Christian morality<sup>105</sup>. This pronouncement was confirmed by the Post-Synodal Apostolic Exhortation *Familiaris Consortio* (cf. *FC* 84). The same discipline was reiterated in the Post-Synodal Exhortation *Reconciliatio et Paenitentia*<sup>106</sup>.

The Revised Code of Canon Law maintains the norm which regulate the external conditions necessary to receive the Eucharist (cf. c. 912). Furthermore, canon 916 states the norm valid for the internal forum. This canon is clearly directed to those who have to abstain voluntarily from receiving Holy Communion while in the state of grave sin. Although the delict of bigamy has been omitted in the Revised Code, this does not mean that the Church had changed its discipline on this matter. The Code maintains that those «who obstinately persist in manifest grave sin are not to be admitted to Holy Communion» (c. 915)<sup>107</sup>. The inclusion of the divorced and remarried under the category of those

102. Cf. SACRA CONGREGATIO PRO DOCTRINA FIDEI, *Litterae circulares de indissolubilitate matrimonii et de admissione ad sacramenta fidelium qui in unioni irregulari vivunt*, in X. OCHOA, *Leges Ecclesiae*, V, n. 4187, cols. 6572-6573.

103. Cf. IDEM, *Responsum particulare* (21.III.1975), in X. OCHOA, *Leges Ecclesiae* VI, n. 4657, cols. 7605-7606.

104. Cf. G. CAPRILE, *Il Sinodo dei Vescovi 1980*, Roma 1982, p. 383, nt. 29.

105. Cf. JOHN PAUL II, *Homilia in Xystino sacello habita VI exeunte Synodo Episcoporum* 25.X.1980), n. 7, in AAS 72 (1980) 1082-1083.

106. Cf. IDEM, *Adhortatio Apostolica «Reconciliatio et Paenitentia»* (2.XII.1984), n. 34, in AAS 77 (1985) 271-273.

107. Cf. I. GRAMUNT, *Non-Admission to Holy Communion: The Interpretation of Canon 915 (CIC)*, in *Studia Canonica* 35 (2001) 175-190.



who persevere obstinately in manifest grave sin had been clarified prior to the promulgation of the Revised Code. During the process of the revision, the new formulation of canon 867 in the 1980 schema (the revised formulation of canon 855 of the 1917 Code) read: «*Ad sacram communionem ne admittantur qui graviter et publice delinquerunt et in contumacia manifesto perseverant*»<sup>108</sup>. The Commission affirmed that the phrase *qui graviter et publice delinquerunt et in contumacia manifesto perseverant* included the divorced and remarried: «*Certo certius textus respicit etiam divortiatos et renuptiatos*»<sup>109</sup>. The prohibition stated in canon 915 is not an ecclesiastical sanction which punishes the person concerned. This is clear when canon 915 distinguishes those who are under the penalty of imposed or declared excommunication and interdict from those who obstinately persist in a situation of manifest grave sin.

The Code of Canons of the Eastern Churches also maintains the same discipline: «Those who are publicly unworthy are forbidden from receiving the Divine Eucharist» (*CCEO* c. 712). The expression *publicly unworthy* includes the situation of the divorced and remarried.

The Catechism of the Catholic Church clearly identified remarriage after divorce as a sin of adultery which bars the faithful from receiving the Eucharist (cf. *CCE* 1650). It also reiterates that the divorced and remarried are not separated from the Church (cf. *CCE* 1665). Though the text of the Catechism is not formulated as a law, it enjoys authority in interpreting canonical legislations since it «constitutes sufficient authority as magisterial teaching, and ecclesiastical law must conform to magisterial teaching»<sup>110</sup>. Indeed, the mind of the John Paul II, the legislator who promulgated both Latin and Eastern Codes, is confirmed by the texts of the Catechism.

The letter issued by the Congregation for the Doctrine of the Faith in 1994 to the worldwide episcopacy affirmed that a new union cannot be recognized as valid if the preceding marriage was valid, thus the divorced and remarried cannot receive Holy Communion as long as this situation persists (cf. *Epistula* 4). «This norm is not at all a punishment or a discrimination against the divorced and remarried, but rather expresses an objective situation that of itself renders impossible the reception of Holy Communion» (*Epistula* 4). It also mentioned that the prohibition to receive the Eucharist without prior sacramental absolution is a disposition established by Divine law which the Church can not dis-

108. PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Canon 867*, in *Schema Codicis Iuris Canonici iuxta animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiarum necnon Superiorum Institutum vitae consecratae recognitum*, Libreria Editrice Vaticana 1980, p. 204.

109. IDEM, *Acta Commissionis: Relatio, canon 867*, in *Communicationes* 15 (1983) 194.

110. J. MYERS, *Divorce, Remarriage and Reception of the Holy Eucharist*, in *The Jurist* 57 (1997) 488.

pense (cf. *Epistula* 6). The Congregation insisted that the position adopted by some authors who favor the internal forum solution is inadmissible since marriage is a public reality (cf. *Epistula* 7-8). Thus those who are subjectively certain that their previous marriage has never existed must be able to prove also with certainty this reality in the external forum (cf. *Epistula* 9).

The Declaration of the Pontifical Council for the Interpretation of Legislative Texts dated June 24, 2000 had for its purpose to rectify the erroneous interpretation of canon 915 by some authors who sustained that this canon cannot be applied generally to the divorced and remarried<sup>111</sup>. This is confirmed, for example, by the commentary of Huels on canon 915 in the edition of the Code prepared under the supervision of the Canon Law Society of America<sup>112</sup>. According to some authors, given that the said canon explicitly speaks of grave sin, it is necessary that all the required conditions for the constitution of a mortal sin should be present, including the subjective conditions of the faithful concerned. Considering that the subjective elements for the commission of a mortal sin cannot be judged *ab externo* by the minister of Holy Communion, then communion cannot be denied to the divorced and remarried who approach the minister since it is the prerogative of one's conscience to judge the worthiness of the individual to receive the Eucharist. These authors also claim that a previous warning should be given previously before the attitude of the divorced and remarried can be judged as obstinate. They conclude that the doctrinal pronouncements which prohibit generally the divorced and remarried to receive Holy Communion cannot be applied in certain cases because this general prohibition contradicts the provisions of canon 915 of the Code of Canon Law which is a superior document. For this reason, these authors believe that there are certain circumstances that may allow the reception of the Eucharist by the divorced and remarried when canon 915 is applied restrictively according to the text of canon 17<sup>113</sup>.

111. Cf. PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, *Dichiarazione* (24.VI.2000), in *Communicationes* 32 (2000) 159-162.

112. Cf. J. HUELS, *Commentary on canons 915-916*, in *The Code of Canon Law: A Text and a Commentary*, J. CORDIEN, T. GREEN, D. HEINTSCHEL (eds.), Bangalore 1999, p. 653. The same author maintains his position in his commentary on canon 915 in the latest edition of the Code of Canon Law under the patronage of the Canon Law Society of America. Cf. IDEM, *Commentary on canon 915*, in *New Commentary to the Code of Canon Law*, J. BEAL, J. CORIDEN, T. GREEN (eds.), New York-Mahwah, pp. 1110-1111.

113. Two authors who maintain this kind of argumentation are Travers and Werckmeister. Cf. P. J. TRAVERS, *Reception of the Holy Communion by Catholics Attempting Remarriage after Divorce and the 1983 Code of Canon Law*, in *The Jurist* 55 (1995) 187-217; IDEM, *Holy Communion and Catholics Who Have Attempted Remarriage after Divorce: A Revisitation*, in *The Jurist* 57 (1997) 517-540; WERCKMEISTER, *L'access des divorcés remariés aux sacrements*, in *Revue de Droit Canonique* 48 (1998) 59-79; IDEM, *L'admission des divorcés remariés aux sacrements et l'interprétation du can. 915*, in *Revue de Droit Canonique* 51 (2001) 373-399.

The Declaration firmly refuted this position by affirming that the law contained in canon 915 «is derived from Divine law and transcends the domain of positive ecclesiastical laws: the latter cannot introduce legislative changes which would oppose the doctrine of the Church» (*Dichiarazione* 1). Citing canon 712 of the Eastern Code, the declaration points out the legal prohibition has for its motive the juridical repercussion of the state of sin in a person and to ecclesial communion (cf. *Dichiarazione* 1). The declaration calls for a reconsideration of the substantial content of canon 915 in the light of the constant Magisterium and discipline of the Church.

The Holy Father once more made an allusion to the problem concerning the reception of the Holy Eucharist by those who are publicly unworthy in his latest encyclical letter<sup>114</sup>. The document reminds that those who are incorporated to the Church through the visible bonds of communion but are not united invisibly to Her through grace could not receive the sacrament of unity worthily (cf. *EE* 36). In fact, the Roman Pontiff made this declaration: «I therefore desire to reaffirm that in the Church there remains in force, now and in the future, the rule by which the Council of Trent gave concrete expression to the Apostle Paul's stern warning when it affirmed that, in order to receive the Eucharist in a worthy manner, one must first confess one's sins, when one is aware of mortal sin» (*EE* 36). The Holy Father also explicitly referred to the case of those who obstinately persist in a manifest situation of grave sin (cf. *EE* 37). The Pontifical document clearly stresses the need to safeguard the sacrament of the Eucharist from any sacrilegious reception, and at the same time to protect ecclesial communion from any form of disturbance. Though, the divorced and remarried are not explicitly mentioned in the encyclical, it is obvious that their situation falls within the general situation of those who obstinately persist in a manifest grave sin.

#### D. *The Denial of Sacramental Absolution and of the Anointing of the Sick*

The Church has the obligation to see to it that the sacrament of Reconciliation is indeed celebrated validly and lawfully, not so much of pure legalism but above all to guarantee that the effects of the sacrament is received fruitfully by the penitent and that the sacrament is protected from any abuse. The Catechism, citing *Familiaris Consortio* 84, clearly states the conditions for granting sacramental absolution to the divorced and remarried: «Reconciliation through the sacrament of Penance can be granted only to those who have repented for

114. Cf. JOHN PAUL II, *Litterae Encyclicae «Ecclesia de Eucharistia»* (17.IV.2003), n. 36, in AAS 95 (2003) 433-475.

having violated the sign of the covenant and of fidelity to Christ, and who are committed to living in complete continence» (CCE 1650). Given that the second union cannot be regularized in the internal forum, the divorced and remarried can manifest their contrition and conversion through the resolution to separate from their partner (physical separation), or in case there exist serious motives and physical separation cannot be obliged, the duty to live a totally continent life has to be taken by the penitent (moral separation)<sup>115</sup>. The Pope reminds that such practice is based on two intertwined principles which cannot be renounced by the Church: the principle of mercy and compassion, and the principle of truth and consistency: «Basing herself on these two complementary principles, the Church can only invite her children who find themselves in these painful situations to approach the divine mercy by other ways, not however through the sacraments of penance and the Eucharist until such time as they have attained the required dispositions»<sup>116</sup> (RP 34).

Regarding the limitation on the administration of the sacrament of the Anointing of the Sick, c. 1007 of the Code states: «The anointing of the sick is not to be conferred upon those who obstinately persist in a manifestly grave sin». The Church demands that this sacrament has to be administered in the state of grace. This means that, when circumstances permit, the anointing is conferred after sacramental absolution (cf. SC 74). The state of grace is demanded as a requisite in order for the sacrament to be fruitfully received. However, when the infirm is incapable of going to confession or is in a condition which makes it impossible to make a perfect act of contrition, the anointing produces the effects of forgiveness of sins and the remission of temporal penance<sup>117</sup>. This limitation on the exercise of the right of the faithful explicitly affects the divorced and remarried who are considered to be in a situation of obstinate situation of grave sin. Obviously, except in situations of true danger of death, the divorced and remarried cannot receive this sacrament, when being in full control of their faculties, they fail to manifest their sorrow and contrition through a manifest will to rectify their objective situation of public adultery. It is in the obstinate attitude—a deliberate and conscious will—to be truly sorry for the sin of adultery which impedes the conferral of the sacrament<sup>118</sup>.

115. Cf. F. AZNAR-GIL, *Uniones matrimoniales irregulares*, cit., p. 143-146.

116. JOHN PAUL II, *Adhortatio Apostolica «Reconciliatio et Paenitentia»*, n. 34, cit., pp. 271-273.

117. «Il ne faut pas perdre de vue que l'Onction a pour effet secondaire le pardon des péchés si le malade renonce à son péché, et qu'elle peut être précédée, le cas échéant, de'une confession sacramentelle. S'il n'est plus conscient, l'esprit de la réforme suggère ici une interprétation large et interdit tout rigorisme. D'ailleurs, le Code parle au présent et, dans le cas où le malade est inconscient et proche de la mort, il semble possible d'appliquer un critère voisin de celui du canon 1184 (...): B. DUFOUR, *La pénitence et l'onction des malades*, Paris 1989, p. 173.

118. Cf. B. WENANTY ZUBERT, *Comentario al canon 1007*, in *Comentario Exegético...*, III/1, cit., pp. 893-895.

### E. *The Prohibition to Admit Divorced and Remarried Lay Men as Candidates to the Permanent Diaconate*

Recognizing that vocation is a gift from God, no one has the right to be admitted to sacred Orders without the prior canonical verification of the candidate's vocation. It is therefore the function of the Church to select the candidates, discern the authenticity of one's vocation, and to admit those who are called to sacred Orders<sup>119</sup>. «Only those are to be promoted to Orders who, in the prudent judgment of the proper Bishop or the competent major Superior, all things considered, have sound faith, are motivated by the right intention, are endowed with the requisite knowledge, enjoy a good reputation, and have moral probity, proven virtue and the other physical and psychological qualities appropriate to the Order to be received» (c. 1029). Taking into consideration the qualities demanded, it is unlawful to admit divorced and remarried lay men as aspirants to the order of deacons since their objective situation of irregularity directly contradicts the requisites of good reputation, moral probity and proven virtue stated in the mentioned canon<sup>120</sup>. It is also foreseen that those who are to be accepted as candidates to the permanent diaconate «must be active members of a Christian community and already have exercised praiseworthy commitment to the apostolate»<sup>121</sup>. This requisite is impossible for the divorced and remarried to fulfill since their canonical situation limits their participation in the mission of the Church.

The impossibility for divorced and remarried to be ordained as permanent deacons has primarily for its basis canon 1041, n. 3 of the Code which states that one who has attempted marriage, even a civil marriage, while himself prevented from entering marriage by an existing marriage bond is irregular for the reception of Orders<sup>122</sup>. The divorced and remarried who has not received the annulment of his previous marriage is irregular for the reception of Orders<sup>123</sup>. Geisinger asserts that the canonical discipline «refers to the fact of the invalid attempt at marriage, which gives rise to scandal; hence, the irregularity occurs even if the marriage is ended by death or civil divorce, as irregularities are by their nature perpetual»<sup>124</sup>. The law has for its bases «the abuse of the

119. Cf. T. RINCÓN-PÉREZ, *Justicia pastoral en el ejercicio de la función santificadora de la Iglesia*, in *Relaciones de justicia y ámbitos de libertad en la Iglesia*, cit., pp. 182-183.

120. Cf. CONGREGATIO DE INSTITUTIONE CATHOLICA, *Ratio fundamentalis institutionis diaconorum permanentium* (22.II.1998), n. 31, in AAS 90 (1998) 858-859.

121. *Ibid.*, n. 33, p. 859.

122. Cf. R. GEISINGER, *Commentary on canon 1041*, in *New Commentary on the Code...*, cit., pp. 1216-1217.

123. Cf. J. PROVOST, *Canon 1041, 2º & 3º: Dispensations from the Irregularities of Schism and Attempted Marriage*, in *CLSA Advisory Opinions 1984-1993*, cit., pp. 311-313.

124. R. GEISINGER, *Commentary on canon 1041*, cit., p. 1216.

sacrament of marriage and the incongruity that a person in this situation would be an apt candidate for Orders»<sup>125</sup>. Thus the stability of family life and a positive family experience are basic requirements in determining the acceptance of married candidates to the Order of Deacons<sup>126</sup>.

In his commentary to canon 1041, Gilbert reported a particular problem which emerged in the United States of America: «Many seminaries are beginning to receive applications of those who have been married and divorced but whose marriages were declared null by an ecclesiastical tribunal»<sup>127</sup>. The same problem had also been consulted to the Canon Law Society of America<sup>128</sup>. If the previous marriage had been declared null, the candidate does not encounter himself to be in a situation of irregularity. This does not mean, however, that other factors may need not to be taken into consideration so as to judge the suitability of the candidate to receive the sacrament of Orders: «(...) one should also note that this case raises the question of the appropriateness of a serious inquiry by seminary admissions boards before accepting candidates who have been married and divorced. Perhaps some of the reasons that may have led to the break-up of the marriage may be pertinent to a judgment regarding the candidate's suitability for admission to Orders»<sup>129</sup>. In such cases, the person who had received an annulment has to be judged according to canon 1041, n. 1 which considers irregular for the reception of orders «one who suffers from any form of insanity, or from any other psychological infirmity, because of which he is, after experts have been consulted, judged incapable of fulfilling the ministry»<sup>130</sup>. This is pointed out clearly in the *Basic Norms for the Formation of Permanent Deacons* which include psychological maturity and prudence as basic human qualities demanded from aspirants to the permanent diaconate<sup>131</sup>.

125. E. GILBERT, *Commentary on canon 1041*, in *The Code of Canon Law...*, cit., p. 730.

126. Cf. CONGREGATIO DE INSTITUTIONE CATHOLICA, *Ratio fundamentalis institutionis...*, n. 37, cit., pp. 860-861.

127. E. GILBERT, *Commentary on canon 1041*, cit., p. 730.

128. Cf. T. GREEN, *Canon 1041: Irregularity for Reception of Orders Following Attempted Marriage and Following Ecclesiastical Declaration of Nullity of Marriage*, in *CLSA Advisory Opinions 1984-1993*, cit., p. 309.

129. *Ibid.*

130. Cf. F. BAUER, *The Admission of the Previously Married and Annulled to Sacred Orders, Diaconate and Religious Life*, in *Proceedings of the Forty-Seventh Annual Convention of the Canon Law Society of America* (New Orleans, Louisiana, 15-18 October 1985), Washington 1986, pp. 126-129.

131. Cf. CONGREGATIO DE INSTITUTIONE CATHOLICA, *Ratio fundamentalis institutionis...*, n. 32, cit., p. 859.

## F. *The Celebration of Sacramentals*

### 1. *The Prohibition to Celebrate in Any Liturgical Ceremony the Remarriage of the Divorced Faithful*

The *Welcome Home Solution*, proposed by Kelleher, suggested that the Church should simply recognize and accept the second marriage of Catholic divorcees so that they may be received to the sacraments<sup>132</sup>. This proposal was accompanied by Deltombe's idea of creating a diocesan team to study the situation of divorced and remarried Catholic couples; and in the event that the previous marriage could not be reconciled, those who had remarried should fulfill a period of penance before their second marriage could be blessed by a priest<sup>133</sup>.

The so-called *pastoral practice of welcome* was developed in certain regions of France. This initiative, based on an inappropriate comprehension of the authentic sense of pastoral charity, permitted certain liturgical celebrations to accompany the celebration of civil unions among divorcees. Such pastoral praxis consisted in celebrating in a non-sacramental manner the second union of members of the faithful to manifest ecclesial benevolence, and oftentimes with the pretext for priests to «use the opportunity for further evangelization and even-prenuptial counseling»<sup>134</sup>. This kind of blessing privately second unions was applied in the French dioceses of Autun<sup>135</sup> and Strasbourg<sup>136</sup>. It also maintained its influence in other Swiss dioceses<sup>137</sup>.

132. Cf. S. KELLEHER, *The Problem of the Intolerable Marriage*, in *America* 119 (14.IX.1968) 178-182; IDEM, *Divorce and Remarriage for Catholics? A Proposal for Reform of the Church's Law on Divorce and Remarriage*, Garden City, New York 1973, p. 190; IDEM, *Looking Back, Looking Ahead*, in *America* 139 (18.XI.1978) 355-357.

133. Cf. F. DELTOMBE, *Pour une solution pastorale du problème des divorcés remariés*, in *Le Supplément* 130 (1979) 329-354.

134. J. PROVOST, *Intolerable Marriage Situations Revisited*, cit., p. 172.

135. Cf. A. LE BOURGEOIS, *Des couples mariés civilement accueillis par l'Église. L'expérience de Lugny (Saône-et-Loire) sur la pastorale du mariage* (27.IX.1974), in *Documentation Catholique* 71 (1974) 897-898; *Communiqué de Mgr. Le Bourgeois, évêque d'Autun, sur les suites de «l'expérience de Lugny»* (20.VI.1975), in *La Documentation Catholique* 72 (1975) 643-644; *Le problème des divorcés remariés. Lettre de Mgr. Le Bourgeois aux prêtres du diocèse d'Autun* (15.IX.1976), in *La Documentation Catholique* 73 (1976) 885-886; *Divorcés remariés. Quelques précisions* (3.VII.1977), in *La Documentation Catholique* 74 (1977) 645-646.

136. Cf. L. A. ELCHINGER, *Mariage de divorcés et célébration religieuse*, in *L'Église en Alsace* 6 (1975) 31-32; IDEM, in *L'Église en Alsace* 7-9 (1977) 40-41.

137. *La Documentation Catholique* reports: «Les évêques des diocèses de Lausanne-Genève-Fribourg, Sion et Bâle ont publié, le 1<sup>er</sup> février 1979, un document sur la pastorale du mariage destiné au clergé et aux personnes engagées dans cette pastorale. Voici le passage consacré aux «situations particulières», notamment le cas des divorcés et des fiancés qui ne veulent pas s'engager dans un sacrement»: *La pastorale du mariage. Situations particulières. Directives des évêques de Suisse romande*, in *La Documentation Catholique* 76 (1979) 343.

The danger and negative repercussions of this pastoral practice and the proliferation of false news which spread that the Pope had approved *ad experimentum* these religious celebrations for non-sacramental marriages prompted the publication in *L'Osservatore Romano* of a note rectifying this false news<sup>138</sup>.

The pastoral practice of celebrating in a religious manner the civil marriage of divorcees has been expressly prohibited in other dioceses of the world. Such was the case of Chile where the Permanent Council of the Bishops' Conference published a declaration which explicitly prohibited priests and deacons to participate in such ceremonies<sup>139</sup>. Either private or public celebrations done in presence of ministers of the Church would indeed give a false impression that the Church is recognizing the validity and lawfulness of such unions. It tends to project the ceremony to be a Church wedding<sup>140</sup>. Thus the International Theological Commission published this proposition: «It is therefore wrong and very dangerous to introduce within the Christian community the practice of permitting the couple to celebrate successively various wedding ceremonies on different levels, even though they be connected, or to allow a priest or deacon to assist at or read prayers on the occasion of a nonsacramental marriage that baptized persons wish to celebrate»<sup>141</sup>.

In order to rectify this well intentioned but erroneous pastoral practice, Cardinal Knox, who was then the prefect of the Sacred Congregation for the Sacraments and Divine Worship, intervened in the 1980 Synod of Bishops<sup>142</sup>. In his intervention, he appealed to stop such illicit pastoral practice. This pastoral practice has been explicitly prohibited by Pope John Paul II: «Similarly, the respect due to the sacrament of Matrimony, to the couples themselves and their families, and also to the community of the faithful, forbids any pastor, for whatever reason or pretext even of a pastoral nature, to perform ceremonies of any kind for divorced people who remarry. Such ceremonies would give the impression of the celebration of a new sacramentally valid marriage, and

138. The note stated: «Secondo una informazione apparsa recentemente su giornali e organi di stampa di molti Paesi, il Santo Padre avrebbe dato un'approvazione "ad experimentum" a celebrazioni religiose fatte in occasione di matrimoni non sacramentali. Teniamo é inesatta e priva di qualsiasi fondamento»: *Smentita*, in *L'Osservatore Romano* (2.VI.1978) 2. The same note also appears in *L'Osservatore Romano* (4.VI.1978, edición española) 5. The French translation appeared in *La Documentation Catholique* 75 (1978) 604.

139. Cf. CONSEJO PERMANENTE DE LA CONFERENCIA EPISCOPAL DE CHILE, *Las bendiciones extrasacramentales de las parejas* (IX.1977), in *Comunicando, Boletín Oficial de la Diócesis de Talca* (IX.1977). The text of the declaration also appears in French in *La Documentation Catholique* 74 (1977) 898.

140. Cf. E. GAGNON, *Problèmes pastoraux relatifs aux catholiques divorcés et civilement remariés*, in *Esprit et Vie* 88 (1978) 243.

141. INTERNATIONAL THEOLOGICAL COMMISSION, *Propositions on the Doctrine...*, n. 3.6, cit., p. 170.

142. Cf. J. R. KNOX, *Intervention*, in *Il Sinodo dei vescovi 1980*, cit., pp. 471-473.



would thus lead people into error concerning the indissolubility of a validly contracted marriage» (FC 84).

## 2. *The Celebration of Ecclesiastical Funeral*

Among those who were deprived of ecclesiastical burial in the 1917 Code were those who refused to give signs of repentance before dying and were under the penalty of declared excommunication or interdict, or were considered as public sinners (cf. c. 1240, § 1, nn. 2, 6). The divorced and remarried, considered as bigamists, were punished either with legal infamy, or, if they spurned the warning of the Ordinary, were excommunicated or struck with personal interdict (cf. *CIC'17* c. 2356). Thus if they died without giving any sign of repentance, they were deprived of ecclesiastical burial as an ecclesiastical sanction. However, prior to the Revision of the Code of Canon Law, the provision contained in canon 1240, § 1 was successively abrogated by two decrees issued by the Sacred Congregation for the Doctrine of the Faith in 1973<sup>143</sup>.

Given that divorce and remarriage is no longer punished with excommunication and the present Code does not automatically exclude all manifest sinners from ecclesiastical burial, divorced and remarried members of the faithful may be granted Christian burial, but taking always into consideration that they have manifested some signs of repentance and that their burial would not be a cause of public scandal to the faithful. The abrogation of the former discipline and the disappearance of the denegation of Church burial as an expiatory punishment in the Revised Code manifest a new attitude adopted by the Legislator: a more benign pastoral approach on the question. The fact that the denial to grant ecclesiastical burial to a deceased member of the faithful is a delicate pastoral matter, the present discipline recommends: «If any doubt occurs, the local Ordinary is to be consulted and his judgment followed» (c. 1184, § 2).

## 3. *The Celebration of Other Forms of Blessings*

Since the divorced and remarried members of the faithful are not punished with any ecclesiastical sanction, they may also receive the spiritual benefits of the celebration of certain blessings<sup>144</sup>. However, there are certain forms of bless-

143. Cf. SACRA CONGREGATIO PRO DOCTRINA FIDEI, *Decretum particulare «Complures Conferentiae»* (29.V.1973), in X. OCHOA, *Leges Ecclesiae* V, 4204, col. 6606; IDEM, *Decretum «Patres Sacrae»* (20.IX.1973), in AAS 65 (1973) 500.

144. Cf. J. BONET-ALCÓN, *Los sacramentales de la Iglesia, el matrimonio y la familia*, in *Anuario Argentino de Derecho Canónico* 5 (1998) 39-41.

ings which may not be convenient to be celebrated in favor of the divorced and remarried since such celebrations can produce scandal on the part of some members of the faithful or it may be directly contradict to the nature and purpose of the celebration of certain blessings<sup>145</sup>. It is clear that these persons cannot receive the blessings proper to spouses for in the eyes of the Church they are not married and they are not spouses<sup>146</sup>. As for motives of scandal, it is doubtful if it is convenient to bless the home of a divorced and remarried couple since this could lead to a misconception on some members of the faithful. In such circumstances, pastoral prudence is required and the diocesan bishop has to regulate this matter so as to have a more effective pastoral attention to these members of the faithful.

Other forms of blessings may be celebrated for these couples in irregular marriage situation. Of particular relevance would be the blessing of the divorced and remarried woman before and after giving birth<sup>147</sup> and the blessing of the children<sup>148</sup> born of these unions. As members of the faithful, they can also do certain forms of blessings such as the grace before meals and other acts which are proper to lay people and to their situation. Such actions when celebrated within the family are means of educating their children in the faith and an exercise of their priestly function.

## CONCLUSION

1. Divorce affects the situation of the faithful in the juridical and mystical dimensions of ecclesial communion. Obviously, those who have been abandoned unjustly and have struggled to save their marriage, or those who have sought the civil decree of divorce for the sake of ensuring certain civil rights, for the protection of their children and other just reasons, are not morally culpable.

The breach produced in the Church when members of the faithful opt to solve marital crises through civil divorce without just motives demands total reconciliation with the Church. Those who are guilty of having contravened the law of the indissolubility of marriage are earnestly invited to repent of their sins through sacramental confession.

145. The book *De Benedictionibus* explicitly gives this pastoral criteria in the celebration of blessings: «Ideo unaquaeque celebratio benedictionis pastorali iudicio semper est subicienda, praesertim si periculum admirationis apud fideles vel ceteros oriturum praevideri possit»: DE BENEDITIONIBUS, *Praenotanda generalia*, n. 13 (editio iuxta typicam), Città del Vaticano 1993 (reimpressio), p. 12.

146. Cf. *ibid.*, *Ordines benedictionis coniugum*, pp. 40-57.

147. Cf. *ibid.*, *Ordines ad benedicendam mulierem ante vel post partum*, pp. 85-99.

148. Cf. *ibid.*, *Ordines benedictionis puerorum*, pp. 57-78.

2. Given that divorce is not recognized by Canon Law, the canonical situation of the divorced but not remarried is assimilated to the situation of separated spouses. However, it should be stressed that there exists a difference between the separation of the spouses with the bond remaining from that of civil divorce which presumes the dissolution of a valid marriage bond.

As members of Christ's faithful, simple divorcees have to adhere to the obligations demanded by Church Law, such as: living a chaste life, avoiding the near occasions of falling into adultery, maintaining the conviction in the indissolubility of marriage (cf. *CCE* 1649), participating actively in the life and activities of the Church, and providing the necessary support and education of their children (cf. c. 1154). Canon Law encourages that «when the reason for separation ceases, the common conjugal life is to be restored, unless otherwise provided by ecclesiastical authority» (c. 1153, § 2). Since their situation contradicts the nature of conjugal life, their situation, from the legal viewpoint, is also considered as an anomalous situation. The matrimonial legal system of the Church partially rejects their situation. In this case, the Church also puts certain limitations in the exercise of their rights and obligations. However, if they have been reconciled to the Church through sacramental absolution, or if they are innocent, they may be accepted to the sacraments.

3. Remarriage through civil formalities after divorce produces a great harm to ecclesial communion. «Contracting a new union, even if it is recognized by civil law, adds to the gravity of the rupture: the remarried spouse is then in a situation of public and permanent adultery» (*CCE* 2384).

The 1917 Code of Canon Law considered remarriage after divorce as a crime of bigamy punished with legal infamy in its first degree. In its second degree, bigamists who persist in their illicit relationship and spurn the admonition of the Ordinary can be excommunicated or struck with personal interdict (cf. *CIC*'17 c. 2356).

Prior to the revision of the Code of Canon Law, the Apostolic Exhortation *Familiaris Consortio* had had a change of approach towards the situation of the divorced and remarried. The Pope included their situation under the category of irregular marriage situations. The document obviously has avoided the term bigamy and corrected the notion that they are excommunicated from the Church. The tone of *Familiaris Consortio* has been later confirmed by the promulgation of the 1983 Code of Canon Law where the crime of bigamy has been abolished. This obvious change is in line with the desire of pastors to treat the problem of divorce and remarriage in a pastoral manner rather than in a penal approach. This change of disciplinary approach on the problem, however, does not mean that the Church has changed her doctrine on the indissolubility of marriage. The Church in fidelity to the words of Christ constantly teaches that remarriage after divorce is a sin of adultery.

The 1983 Code does not state any explicit description of the situation of the divorced and remarried. However, certain general expressions found in the Code

apply to the situation of the divorced and remarried: *those who obstinately persist in manifest grave sin* and *other manifest sinner* (cf. cc. 915; 1007; 1184, § 1, n. 3). In the Code of Canons of the Eastern Churches, they are included within a more general expression: *those who are publicly unworthy*. The inclusion of the divorced and remarried under the category of those who persevere obstinately in manifest grave sin (cf. c. 915) has been clarified prior to the promulgation of the Revised Code. The *Pontificia Commissio Codici Iuris Canonici Recognoscendo* clearly defended the position that the divorced and remarried are also included within the general prohibition contained in canon 915.

The expressions –*those who obstinately persist in manifest grave sin, other manifest sinners, and those who are publicly unworthy*– used in the Codes of Canon Law, manifest that the situation of the divorced and remarried has obvious juridical repercussions since it is a condition derived from an objective situation which transcends the forum of personal conscience. Their manifest and persistent situation of grave sin produces a partial rupture in the juridical dimension of communion. This situation is manifested through certain limitations explicitly stated by the law on the exercise of their rights and obligations in the ecclesial community.

4. The situation of the divorced and remarried is irregular marriage situation absolutely rejected by Canon Law. The ecclesiastical norms which limit the participation of the divorced and remarried in the threefold mission of Christ and the reception of the sacraments are not punitive in nature, rather they are a direct consequence of a situation which directly contradicts the nature of such rights (cf. *Epistula 4; FC 84*). There are certain ecclesial rights and obligations which do not correspond to their objective situation of irregularity with the divine-positive law, and therefore, they are impeded by the ecclesiastical discipline from exercising such rights and duties. But previous to these ecclesiastical laws, the divine-positive law, in certain circumstances, had already set beforehand such prohibitive or restrictive measures. A good example of this is the divine law which prohibits the publicly unworthy to receive the Holy Eucharist.

Such limitations in the exercise of their rights and obligations in the Church is a result of an objective situation which contravenes the order of communion in the Church. These limitations find their origin in a legal mechanism known as suspension of rights and obligations. Suspension does not affect all rights and obligations of the faithful. Some rights can still be exercised legitimately by these members of the faithful without causing any problem. Examples of these rights and obligations which remain operative are the duty to educate their children in the faith, the right to receive the necessary pastoral attention, etc.

Certain rights and duties need to be suspended. If these rights and obligations are not suspended, their exercise may provoke inconsistency with the nature, content and purpose of such rights and obligations. These limitations also

serve as a precautionary measure to avoid scandal among the faithful and to safeguard the common good of the entire ecclesial community. The exercise of some rights and obligations is sometimes impossible because of the voluntary state or situation which directly impede their normal and licit usage. The limitations or suspension of their exercise do not have their primary origin from ecclesiastical laws. They originate from the situation of the faithful who refuses to normalize an objective irregular situation in the Church; and consequently, a manifestation of the obstinate will of the faithful who personally rejects to repair the damage produced to ecclesial communion. For this reason, it is important to distinguish between the tenure of rights and obligations from the exercise of these rights and obligations. One may have the rights and obligations but some personal conditions or situations may necessarily limit or impede the exercise of these rights and obligations. In such cases, the rights and obligations remain to be intact and are in a potential condition, waiting for the faithful to remove the obstacles which limit or impede their exercise.

5. The divorced and remarried, due to their objective situation of irregularity with the Divine-positive law, cannot fully exercise their rights and obligations as baptized Christians sharing in the threefold mission of Christ.

The exercise of their prophetic function is limited, particularly in the field of those public functions which need authentic witnessing to the Gospel. The divorced and remarried are disqualified from assuming the function of sponsors of the sacraments of baptism and of confirmation. They cannot assume the task of preaching or teaching the faith in a public and institutional manner (catechists, teachers of religion, professors of sacred sciences, lay missionaries).

In the field of the function to sanctify, the divorced and remarried cannot assume functions of supplementary assistance in liturgical activities. Neither could they be installed as acolytes or lectors. Certain temporary liturgical assignments may not be convenient to be assigned to them, particularly in places where their marital condition is known. They can perform other temporary liturgical assignments such as commentators and cantors. These functions, however, need to be performed by removing first any motive of scandal.

The situation of the divorced and remarried members of the faithful encounter certain restrictions also in the exercise of their capacity to be called to cooperate in the function of governance and in the assumption of ecclesiastical offices and other functions which are official representations of the Church.

6. The right of the faithful to receive from their pastors the spiritual riches of the Church, particularly that of the sacraments (cf. c. 213), also encounters a series of limitations on the part of the divorced and remarried members of the faithful.

The non-baptized who are in irregular marriage situations cannot be received to the sacraments of Christian initiation without fixing previously their irregular situation. If there is a difficulty to regularize their situation, they

could continue to be linked to the Church as catechumens. The baptized non-Catholics wishing to be incorporated to the plenitude of Catholic communion also has to regularize his or her marriage situation. In the event that their marital situation cannot be regularized, they may be incorporated to the Catholic Church but it should be made clear that their situation is the same as those Catholics in irregular marriage unions who are prohibited from receiving the sacraments. The uncatechized divorced and remarried Catholics who have not completed the reception of the sacraments of Christian initiation cannot receive the sacraments without legitimizing their marriage situation in the Church.

The Church maintains her discipline not to admit the divorced and remarried to Holy Communion. «They are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist. Besides this, there is another special pastoral reason: if these people were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church's teaching about the indissolubility of marriage» (*FC 84*). From the canonical viewpoint, the prohibition to admit the divorced and remarried has for its legal basis the divine-positive law expressed in canon 915 (cf. *CCEO c. 712*) which maintains the discipline of the Church to refuse the administration of Holy Communion to those who are publicly unworthy.

«Reconciliation in the sacrament of Penance which would open the way to the Eucharist, can only be granted to those who, repenting of having broken the sign of the Covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage. This means, in practice, that when, for serious reasons, such as for example the children's upbringing, a man and a woman cannot satisfy the obligation to separate, they take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples» (*FC 84*).

7. Certain forms of sacramentals cannot be celebrated in favor of the divorced and remarried. The Church has explicitly prohibited her pastors from imparting their blessings before or after the civil celebration of the divorcee's subsequent marriage. The ecclesial norm is clear: «Such ceremonies would give the impression of the celebration of a new sacramentally valid marriage, and would thus lead people into error concerning the indissolubility of a validly contracted marriage» (*FC 84*).

8. In exercising their rights and duties in the threefold mission of Christ, the divorced and remarried must observe the limitations established by the law. Any ecclesial actuation should always be done in the spirit of communion by following the indications given by the canonical discipline which has for its purpose to maintain order in the Church. Judging from the content and reasons given by the Magisterial documents cited in the study, the discipline of the

Church regarding the exercise of the rights and obligations of the divorced and remarried members of the faithful in the Church will remain unchanged since the Church has to remain faithful to the truth of marriage proclaimed and taught by Christ.

9. Majority of the ecclesial documents, both in the universal and particular levels, had followed the orientation given by *Familiaris Consortio* on how to approach the problem of the divorced members of the faithful. A paramount example of this is the Catechism of the Catholic Church which has repeated the doctrine of *Familiaris Consortio* on the question of the divorced members of the faithful. Most documents of national or regional conferences of bishops and of diocesan bishops had also faithfully followed the normative guidelines given by *Familiaris Consortio* and the relevant canons provided the Code of Canon Law. Worthy of consideration is the production of directories, both by bishops' conferences and by diocesan bishops, concerned with the pastoral attention of the family with corresponding spaces dedicated to the situation of the divorced members of the faithful. Most of these documents now limit to call the situation of the divorced and remarried as an irregular marriage situation.

10. In the pastoral attention of the divorced members of the faithful, «pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations» (FC 84). The Church does not exclude these members of the faithful from ecclesial communion. What the Church denounces is the situation of sin which needs to be rectified for the sake of the truth and sanctity of marriage. «With firm confidence, she believes that those who have rejected the Lord's command and are still living in this state will be able to obtain from God the grace of conversion and salvation, provided that they have persevered in prayer, penance and charity» (FC 84).

In order to have a more efficient pastoral attention to the divorced members of the faithful, pastors must respect the demands of divine-positive law manifested through the Magisterium of the Church and other normative guidelines issued by the Holy See. By observing a uniform praxis and respecting the demands of justice, pastors give witness to the unity of the Church and to the ever binding law of the indissolubility of marriage.

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