

# Canonical and Theological Analysis Concerning “Single-Again” Persons

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The recent synods on the family, both the extraordinary and the ordinary included significant conversation on the situation and pastoral care of divorced and remarried persons. While the bishops at the synod did not seem likely to drastically change the Catholic Church's position on the indissolubility of marriage, some in the media and at least a few bishops, most notably Cardinal Walter Kasper, called for "pastoral" changes that would, in fact, have worn down the sanctity of the marriage bond. In the end, in their attempts to make the Church more "pastoral," many have proposed solutions that, instead of calling people to the Truth, undermine the very sacrament that the couples desire and reject the clear teaching of the Gospel and unwavering teaching of the Catholic Faith. With that fact in mind, it must be maintained that solutions to the challenges facing the Church in ministry to civilly remarried divorcees that undermine the nature of marriage must be rejected in favor of solutions that both honor the dignity of the persons involved and the Truth.

In order to find a solution to this problem, it is necessary to start with a working definition of marriage, much as is done in canon law itself. Canon 1055 sets out the working definition that this discussion will use. "The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized." (c. 1055 §1) From there, Canon law identifies two essential properties of marriage, unity and indissolubility (c. 1056). From these two canons, it is possible to identify nine key characteristics of marriage from a canonical perspective. First of all, marriage is referred to as a matrimonial covenant; by invoking covenant language, canon

law implies the persistent and irrevocable nature of a covenant. Second, marriage is a partnership (*consortium*) of the whole of life; again, the implication of this characteristic defines marriage with reference to life in its entirety, both from the perspective of time and scope. Third, marriage is, by definition, the union of a man and a woman. Fourth, canon law observes that this definition and the ends of marriage are not social constructs, but they are instead ordered by the very nature of marriage. Number five through 7 is a listing of the three goods of marriage, its three ends, the good of the spouses themselves, the good of each other between them, and the good of procreation and raising of offspring. Finally, marriage has been raised by the Christ to the dignity of a sacrament. Therefore, marriage between two baptized persons is, by its very nature, sacramental and impossible to sever by any power short of death. It should be noted that a marriage that is a natural marriage, that is, one or both spouses is not baptized, or a marriage that is not consummated maintains internal dissolubility, wherein the spouses cannot, by their own will, dissolve the marriage, but such a marriage can, in some circumstances, be dissolved by the power and authority of the Church. A sacramental marriage, however, once it has been consummated, “can be dissolved by no human power and by no cause, except death.” (c. 1141)

With the nature and indissolubility of marriage firmly established in the law, it comes to the question of if a person who has divorced and remarried can be admitted to communion. Canon 915 stipulates that a person “persevering in manifest grave sin [is] not to receive communion.” (c. 915) John Huels uses the case of a person civilly remarried after divorce as his key example of implementation of this canon. Not only is the Blessed Sacrament profaned by this, but the nature and definition of marriage is, *de facto*, threatened because the faithful will see a person in public grave sin receiving the Eucharist

as though their marriage situation were normal.<sup>1</sup> Each suggestion to readmit persons in an irregular marriage of this sort seem to fall into one of three traps which are unacceptable from either a theological or a canonical perspective. That is to say, in order to readmit a civilly remarried divorcee to receive communion, one of these three premises must be asserted, either explicitly or implicitly. The first possibility is the rejection of the indissolubility of marriage. This is clearly an unacceptable answer since the indissolubility of sacramental marriage is absolute and explicit in canon 1141 and implicit in the very definition of marriage. If a first marriage cannot be said to be dissolved, the solution would then imply that polygamy and polyandry are permissible in Christian Marriage since persons with a living spouse take a second or subsequent spouse to live with that person as married. Closely related to this would be the possible interpretation that adultery is no longer a sin. This latter possibility is rejected by the sixth commandment. It does not seem possible that a sin specifically spoken of in the Decalogue and by Christ could be denied as a sin. Polygamy, on the other hand, while it has scriptural antecedent, has never been accepted in Christian marriage, and it must reject one of the key characteristics of the definition of marriage in canon law, that it involves one man and one woman. This question was addressed in the thirteenth century by Peter Lombard among others. The scholastic theologians distinguished between the separation of the spouses, which could be licit in some circumstances and still is according to the 1983 Code of Canon Law, and the right to remarry, the dissolution of the bond. While separation was possible, dissolution of the bond in such a way that the parties would be free to remarry was and is not.<sup>2</sup>

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<sup>1</sup> Huels, *The Pastoral Companion*, 95.

<sup>2</sup> Amenta et al., *Administrative procedures in canonical marriage cases*, 30–31.

If it is accepted, as it must be, that a marriage cannot be dissolved nor multiplied, then the only way to admit a civilly remarried divorcee to the Eucharistic banquet is by allowing a person in this circumstance to receive communion while persevering in a state of sin. Such a solution fails in the light of both canon 915 and Sacred Scripture itself, wherein Paul tells the Church at Corinth, “For anyone who eats and drinks without discerning the body, eats and drinks judgment on himself. That is why many among you are ill and infirm, and a considerable number are dying.” (1 Cor 11:29-30, NABRE) It is undeniable that to allow such a person to remain in such a state of sin receiving the Eucharist would, far from being pastoral, encourage that person’s spiritual death. Notably, some have proposed following the example of the Eastern Orthodox Churches in this matter. In those churches, one can seek a divorce for a limited set of reasons, and have a second marriage (though no subsequent marriages) blessed by their church so they can partake of the sacraments. Unfortunately, this cannot be taken as a solution because, for this to occur, one still must tacitly accept one of the three unacceptable solutions above.

In short, there is no way to effectively admit remarried divorcees who have not acquired a declaration of nullity from the appropriate authority to communion without destroying marriage itself. Rather, the Church must always call her people to conversion of heart. Persons who have been civilly divorced and remarried are welcome to participate in the Mass, and they are encouraged to do so. If such people can do so, the possibility of living as brother and sister could readmit them to communion since the objective sin would no longer be present as a barrier. The only true solution to this problem is to address the underlying societal breakdown that has made marriage, as an institution itself, so weak that Christian marriages fail and spouses separate no less frequently than non Christian

marriages. This can only be achieved through thorough catechesis, formation, and marriage preparation, remote, proximate, and immediate, and through the continued call from the Church and her teachers, both lay and clerical, to the true conversion of mind and soul.

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