

New Way? No Way!

The Unsoundness of the New Way Proposed in

Synod15: Relazione Finale del Sinodo dei Vescovi al Santo Padre Francesco, 84-86

The Synod's *Final Report*, 84–86, is ambiguous. While the starting point for the drafting committee's work on this section was a unanimous report of the bishops in the German-speaking small discussion group, amendments tightened up that text. Commenting on the Synod's *Final Report*, Cardinal Kasper said that “the door has been opened to the possibility of the divorced and remarried being granted Communion,” while Cardinal Pell held that the document, soundly interpreted, created no opening for civilly remarried divorcées to receive Communion.

Assuming for the sake of argument that Cardinal Kasper was right, I shall show that the new way for pastors to accompany and discern with remarried divorcées proposed in *Final Report*, 84–86, could not deliver what such penitents would be seeking without conniving with them to change their uncertain consciences into erroneous ones—and possibly into culpably erroneous ones.

The proposed new way would have several features. It would consist of a conversation between a remarried divorcée and a priest. It would begin with an examination of conscience. It would be conducted in the “internal forum”—that is, with the baring of conscience and the confidentiality of the sacrament of penance. Although *Final Report*, 84–86, does not say so, it implies that the remarried divorcées will receive absolution in the sacrament of penance for any sins they confess during the conversation and discernment.

Presumably the session would sometimes end by providing the remarried divorcée with confident assurance, not previously available, that he or she may receive Holy Communion without eating and drinking the judgment upon himself or herself of which St. Paul speaks (see 1 Cor 11:29). If the possibility of this happening were excluded from the start, few if any remarried divorcées would be willing to undergo the examination of conscience.

If, then, pastors offer such a way of accompaniment and discernment, what sort of remarried divorcées are likely to respond?

Shortly after Paul VI issued *Humanae vitae* in July 1968, many theologians, pastors, and even some conferences of bishops publicly advised Catholic spouses that they could use their own “consciences” to decide responsibly that contraception was appropriate and morally permissible to protect and foster the good of their marital relationship. In the wealthy nations, many married Catholics acted on that advice. Convinced that they were not sinning by doing so, they did not confess using contraception. Since that time, many theologians and pastors have generalized the 1968 advice to include all sexual sins, even the ongoing adultery that Jesus taught results from divorce and remarriage.

Many Catholics who accepted such advice no longer go confession. Some have quit coming to Mass, while those who come to Mass receive Communion without any sense of guilt in doing so. If divorced and remarried, these Catholics are hardly likely to respond to the offer of a new way of accompaniment and discernment.

Most remarried divorcées who respond to the offer of a new way will realize that, in the eyes of the Church, they are not married to their current partners. Unlike those who have been receiving Communion without any sense of guilt, they have either been refraining from receiving or receiving with some sense of guilt.

Unlike Catholic remarried divorcées before Vatican II, however, they will not readily agree that they are committing adultery with the risk of dying in mortal sin. Rather, feeling that their previous marriage no longer exists and that their present relationship is really a marriage, they will be hoping to have the priest confirm their view of the situation.

If the first marriage of such Catholics was in the Church, it should be regarded as valid unless and until its invalidity is established. While that presumption of validity is mentioned in Canon Law (c. 1060, c. 1085 §2), it is not peculiar to Catholic marriage cases. Whenever people undertake a socially important act—for example, making a last will—and appear to fulfill the usual conditions for performing an act of that kind, the act must be presumed to be valid. Without this presumption, the people affected would not know how to regard such acts, with the result that they would become ineffective.

According to the Church’s doctrine—which Pope Francis has asserted is not in question—a valid, consummated marriage between two baptized persons is indissoluble. This doctrine is clear from both the Council of Trent’s teaching on marriage and the teaching of the universal, ordinary magisterium of the Catholic Church since Trent.

So, in dealing with remarried divorcées whose original marriage was in the Church, was with another baptized person, was consummated, and has not yet found to have been null, any priest participating in the new way of accompaniment and discernment ought to presume that the original marriage is indissoluble and that sexual intercourse with the current partner is adulterous. How, then, can the priest deliver what such a remarried divorcée needs to be confident that he or she may blamelessly receive Communion?

The first paragraph of *Final Report*, 85, quotes part of *Familiaris consortio*, 84, and focuses on an examination of conscience about matters other than remarried divorcées' sexual intercourse with their present partners. So, it does not bear upon the desired assurance. The second paragraph of *Final Report*, 85, however, implies that the priest may help such people become convinced either that the consequences of their ongoing adultery somehow justify it, or that they are not responsible for those actions, or both.

The passage begins by quoting canon law to the effect that various factors can reduce or eliminate a person's responsibility for his or her actions, and citing the Pontifical Council for Legislative Texts' observation that behavior rightly judged to be objectively wrong should not therefore be judged to be sinful. From these sound premises, a conclusion is drawn: "Therefore, while sustaining a general norm, it is necessary to recognize that the responsibility for specific actions or decisions is not the same in all cases. While taking into account the rightly formed conscience of persons, pastoral discernment must take on these situations."

Then, without any indication of its relevance, another important statement is slipped in to complete the paragraph: "Also the consequences of actions done are not necessarily the same in all cases."

Even if a pastor does take into account both any good consequences of remarried divorcées' sexual intercourse with their current partners and all the subjective factors that could limit or nullify guilt for their past sins, none of those considerations can change the objective wrongness of their adultery. If, therefore, the practitioner of pastoral discernment is to help remarried divorcées achieve confident assurance that ongoing sexual activity with their current partners is not mortally sinful, he must do one of two things. He might help each divorcée to overcome the unsureness of conscience that moved him or her to embark on the way of accompaniment by becoming convinced that ongoing sexual activity

with his or her current partner really is marital intercourse. Or he might convince the divorcée that in having intercourse with his or her current partner he or she will never have the capacity for voluntary action necessary for a sin to be mortal. If the pastor succeeds in doing either thing, however, he will have connived with someone who came to him with a doubtful conscience to achieve a conscience that is confident but almost certainly erroneous and possibly culpably erroneous.

Furthermore, the first sentence of *Synod 15: Final Report of the Synod of Bishops*, 84–86, soundly says that baptized persons who are divorced and remarried ought to be more integrated into the Christian community, “avoiding every occasion of scandal.” But the proposed way of accompaniment and discernment cannot be implemented without scandal—i.e., leading others into sin—since deciding to divorce and remarry would still be choosing to commit adultery, as Jesus taught, but the availability of the new way would make *having been* divorced and remarried much more attractive than it has been.

Thus, divorced Catholics who have been resisting temptations to become involved in another romantic relationship because they did not want to live indefinitely in mortal sin and risk dying in it would experience a new temptation to remarry. If they gave in to it, they would accept living for a while in mortal sin with some risk of dying in it for the sake of what they imagined to be the happiness of remarried divorcées.

Married Catholics who are dissatisfied with their marriages but unwilling either to live alone or to live indefinitely in mortal sin also would experience either or both of two new temptations. One would be to engage in one or more extramarital affairs with a view to divorce and remarriage. The other would be to divorce with a view to engaging in romantic relationships and eventually remarrying. Hoping for a better life as remarried divorcées, some of them would also give in to such temptations.

The new way of accompaniment and discernment for civilly remarried divorcées has been promoted as merciful. However, it would impose a great price on the faithful spouses and innocent children of those spouses who were led into sin by its availability. Far better for those victims, as well as for remarried divorcées themselves, is the true mercy of our good Lord. Rather than connive with sinners to believe themselves justified without repentance, he enables them to repent, give up their sins, take up their cross, and follow him all the way to their Father’s house.

Proponents of the new way are likely to dismiss the preceding considerations as closed-minded and pharisaical. That will be an *ad hominem* fallacy. Moreover, regardless of my behavior, I am closed-minded and pharisaical only if my heart is corrupt. So, that charge against anyone cannot express a real judgment without being judgmental in the sense that Jesus condemns. Not intending to be judgmental, proponents of the new way probably will use *closed-minded and pharisaical* not as a serious charge but only as a fallacy—a sophistic device to distract attention from the weakness of their case.