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To your Eminence, Cardinal Müller,

We are taking the liberty to write you this very detailed letter, because we are concerned about various press reports, in which words of yours are circulated that we can hardly think possible. For instance, in **kath.net** the following words were attributed to you: “There are many media, but only one mediator, Jesus Christ and his Gospel. Therefore the word of God can never be ignored or distorted in any way. It has to be accepted in its entirety. The Church cannot change what Christ taught, neither before nor after the Synod.” With regard to marriage, the prime text was “What God has joined together, let no man put asunder” (<http://www.kath.net/news/48155>).

We take the liberty of drawing attention to something that you do not mention – as far as we can tell from the press releases – but which also belongs to the Gospels, to the Word of God, to “what Christ taught,” and therefore to what “can never be ignored or distorted in any way.”

Biblical Foundations: The Ideal and the Real

Jesus’s words about divorce are to be found in different places and in different layers of transmission in the New Testament (cf. 1 Cor 7:10-15; Mk 10: 9, 11-12; Lk 16:18; Mt 5:32 and 19:9). To be sure, the wording differs—a sign that the early Church had already made adjustments to Jesus’s teaching in response to the changing social situation.

- Probably Mk 10:9 gives us the genuine words of Jesus, as derived from the “pre-Marcian catechetical collection,” the kernel of which is also found in St. Paul: “What God has joined together, man *should* not put asunder” – not “*must*,” as is repeated in the standard translation of the sentence. Paul also writes as follows: ... the wife *should* not separate from the man” – “the man *should* not put her away” (1 Cor 7:10f.).
- Probably the oldest tradition for an explicit prohibition of divorce is found in Luke 16:18, “Whoever divorces his wife and marries another, commits adultery; and he who marries a woman who has been divorced from her husband commits adultery.” Jewish marriage law was generous in allowing divorce (see Dt 24:1). From the legal standpoint at least, a man could avail himself of various means to dissolve a marriage with his wife. Sexual intercourse with another woman did not violate his own marriage, but that of the other woman’s husband, if she was married. Hence it is clear that the wife was considered the property of the husband, and he could make use of her almost as if she were an object (cf. Gen 29:16-21; Ex. 20:17).

For this reason, Jesus formulated his teaching about divorce from a purely male perspective. It is the men he has in mind. Whoever divorces his wife forces her to look for another husband, because economically she cannot make it on her own. Jesus wants to expose the true motivation of Jewish divorce practice, and so he reminds them of the original, truly human meaning of the bond between husband and wife. Thus he sees afresh what marriage is. In contrast to the unilateral right of the husband to put away his wife, he promotes the equal dignity and equal rights of the wife. Both husband and wife are held to mutual loyalty, and are bonded to each other. Seen against the background of Jewish divorce law, Jesus’s taking the side of the woman

should be viewed as a central element of his critique. That is the real reason his teaching is provocative. Jesus wants to shake up his audience, but he does not want to establish a law. “The legalistic labeling of each and every divorce and each and every marriage of a divorced person as adultery can be a dangerous generalization, and runs the risk of disregarding real people.” (U. Luz, *Das Evangelium nach Matthäus I / 3*, 102). Jesus sees the Law of Moses “as an expression of the life-enhancing loving will of God ... For Jesus, God's law is a challenge to human freedom, a calling forth of the freedom to love.” (R. Pesch, *Freie Treue. Die Christen und die Ehescheidung*, Freiburg 1971, 15). The teaching of Jesus “is not the promulgation of a new law, but an urgent call to a freer loyalty” (Pesch, *et al.*, 16).

- In the Gospel of Mark (10:11-12) what used to be generally understood as Jesus's words prohibiting separation, is immediately followed by the ban on divorce for the man *and* for the woman: “At home, his disciples asked him again ... He answered them, Whoever divorces his wife *and marries another* commits adultery against her. A woman also commits adultery if she divorces her husband and marries another.” Here a new situation is apparent: the transition to a Hellenistic-gentile Christian environment. For among the Jews only the man could divorce his spouse, whereas among the Greeks the woman could also divorce her husband.
- The Gospel of Matthew slips into Jesus's teaching the so-called “unchastity clause” in the case of adultery: “Whoever divorces his wife, *except on the grounds of unchastity*, delivers her over to adultery” (Mt 5:32). The Matthean community, about 60 years after the death of Jesus, must have experienced the failure of marriages among Christians. The community was facing the dilemma of maintaining the challenging vision of Jesus's teaching on the one hand, and on the other, finding workable ways by which this vision of marriage could be concretely lived out in free loyalty. Unlike the provocatively strict prohibition on any and all divorce, Matthew's community, about 60 years after the death of Jesus, does consider adultery as adequate grounds for divorce. Thomas Söding, in his recent publication on this point, writes: “In the case of *porneia*, marriage is destroyed or is no longer binding; a second marriage is possible.” (Thomas Söding, “In favorem Dei,” in *Zwischen Jesu Wort und Norm*, ed. Graulich & Seidmaier, Freiburg 2014, 63) This points to realistic dealings with what is real, however painfully wounded it leaves the ideal.
- “Structurally, the unchastity clause is a reason for women to be subjected to divorce, b) for *porneia* only applies to unchaste behavior on the part of women. Whether it be a matter of ongoing infidelity, concubinage, or be described in some other way, makes very little difference, for in any case, the adulterous behavior is attributed to her.” (J. Gnilka, *Das Matthäusevangelium, Herders theologischer Kommentar zum Neuen Testament I*, 1, Freiburg 1986, 168)
- Matthew 19:9 contains yet another qualification: “Whoever divorces his wife, *except for unchastity, and marries another*, commits adultery.” Jesus's prohibition of divorce has now become a ban on remarriage. With this formulation we embarked on “a path that ushered in legal regulations and promoted legalistic thinking” (J. Gnilka, *Das Matthäusevangelium, HthKNT I*, 2, Freiburg 1988, 154). This mode of thinking has unfortunately been fixed in the Roman Catholic Church to the present day.
- The Hellenistic-gentile Christian environment is also the setting for the so-called Pauline privilege (1 Corinthians 7:10-16), which allows an exception -- despite knowledge of Jesus' words: If a married woman converts to the Christian community, but her husband does not approve of her action and wants to divorce her, Paul offers this advice on his own authority: “*He* (the non-believing partner) should divorce her. *A brother or a sister* (i.e. the Christian partner) in such cases is not slavishly bound” (1 Cor 7:15). This means that he [or she] is *free* to

remarry. Paul has not taken Jesus's teaching as a law that knows no exceptions. He understands that the Word of the Lord is not “a rule for practice applicable under all circumstances.” (H. Merkley, *Der erste Brief an die Korinther*, ÖTK 7/2, Gütersloh 2000, 116). This Pauline privilege has been extensively used by the Church in modern times – e.g. as a necessity of the church’s mission in the case of polygamy (can. 1149 CIC).

- It is a similar situation with the so-called “Pettrine privilege,” which does not go back directly to any biblical statement. “For the good of the faith” the pope, by special dispensation, can dissolve a so-called “natural marriage” (a non-sacramental marriage between two unbaptized people or a “half-Christian” marriage between a baptized and an unbaptized person) under certain conditions, regardless of whether the marriage was consummated or not. These conditions stipulate that at least one of the partners was unbaptized during the time of the first marriage; that the marriage has irretrievably failed; and that the petitioner and the future new spouse were not to blame for the failure.

The New Testament does not, therefore, lay down an eternally valid groundwork, undisputed by today’s Christians, for our current discussion. But at the same time it provides points of departure that are always valid in the search for walkable paths that “combine unconditional faithfulness to Jesus’s commandment with a sense for what is humanly possible and pastorally necessary. If we want to express for today the thrust of Jesus’s ban on divorce, we must start from the center and from the whole of the New Testament. Not to take steps to alleviate or even resolve every human difficulty, in order not to jeopardize Jesus’s basic requirement of uncompromising fidelity, is unacceptable. If that were the case Jesus would not have forgiven the woman taken in adultery but would have delivered her over to the punishment awaiting her, as a sign of the seriousness of his instruction. Making allowances for people who fail to live up to the vision of Jesus likewise presents something radical and challenging, even if it happens within the horizon of the coming reign of God.” (Th. Pfammatter, *Geschiedene und nach Scheidung wiederverheiratete Menschen in der katholischen Kirche*, Fribourg 2002, 232). Against the background of this exegetical research your dismissive comment about “controversial exegetical hypotheses” seems unjustified. It is precisely because the Gospel of Matthew and Paul cite the unambiguous words of Jesus and in the same breath speak of the above exceptions, that we find this important conclusion undeniable: Both New Testament texts see no contradiction between the words of Jesus and the exceptions given. We can assume that Matthew and Paul kept entirely to the “clear teaching of Christ.” (GL Müller, “Zeugnis für die Macht der Gnade,” in R. D. Dorado, ed., *In der Wahrheit Christi bleiben*, Würzburg 2014, 118).

The Old Church: Changes in Tolerance

- The view that a husband is obliged to dismiss his adulterous wife persisted in the early church. The “Shepherd of Hermas” (about 145) states: Indeed, the man who continues to live with the persistently adulterous wife, is a partner in her adultery and participates in her sin. But husbands and wives who have committed adultery should be taken back by their spouses if they repent (mand IV, 1,5.8, in: SC 53, 155.157). Tertullian (adv. Marc 4:34 ; CSEL 47,534) says the same thing. An illustrative example is given by Origen (d. 254) in his Commentary on Matthew: “Even some leaders of the Church, contrary to what is written, allow a woman to marry during the lifetime of her husband. They do this despite the word of Scripture” [1 Cor 7:39 and Rom 7:3 are cited], though this is not entirely unreasonable. We may thus assume that it is to avoid something worse that they have conceded this practice, which goes against what was written and established in the beginning.” (In Matt 14:23; BGL 30,64f.). In spite of its being contrary to the word of Scripture, Origen does not condemn this practice. “Because of unchastity on the woman’s part, the dissolving of a marriage [is] allowed” (in Matthew 14:24;

BGL 30, 65). It should be noted that Origen is evidently prepared to allow only the man to remarry.

This line of thought will be continued in the Eastern Church. Basil of Caesarea (d. 379) writes: “The husband must not separate from the wife nor the wife from the husband, unless one of them was caught in adultery, or is inhibited in piety.” (Regulae morales 73.1; cit. by Th. Pfammatter, *ibid.*, 274). If separation does occur, this is what counts: “If a husband is abandoned one must look for the cause of his being abandoned. If it turns out that she left him for no good reason, he deserves forgiveness, but she merits punishment. Pardon is granted to him so that he can participate in the church community” (Ep. 199, can. 35; BGL 3,127).

The many-faceted transmission of Jesus’s teaching with its various New Testament adaptations requires from us an ecumenical respect for the paths of other churches and a self-critical approach of each to its own tradition. With this background, it is difficult to understand why the 1993 *Catechism of the Catholic Church* passes over Mt 5:32 and 19:9 in silence. In contrast, R. Pesch wrote in 1971: “The Christian community must not impose Jesus's command as a statute for Christians whose marriages are broken. The community must not turn Jesus’s words into a law that puts a yoke on well-intentioned believers left to cope on their own, thereby laying on people burdens from which Jesus wished to free them. ... The Christian community must take seriously Jesus's teaching, in such a way as to help create a human environment in which the marital union God wills is realized, and in which failure can be borne in a human and Christian manner.... The Christian community must take on Jesus’s mind, his appeal to our heart, our conscience, our love; it must not force the innocent to do penance or set itself up as a the harsh judge of the guilty; on the contrary, it must contribute to the forgiveness of sin and to the beginning of a new, happier life If it does this, then it remains freely faithful to Jesus” (Pesch, a.a.O., 76).

The Testimony of the Broader Tradition

The broader ecclesiastical tradition does not arrive at a unanimous solution either, before the Council of Trent.

During the period of the early church several Church Fathers rejected remarriage even after the death of the first spouse; this regulation sounds even more rigorous than the common conviction that a marriage, with all its binding repercussions, ended with the death of a spouse. Since the church at that time made no claim to having its own marriage law, and did not think about it in legal categories, ecclesiastical regulation made almost no pronouncements about divorce – a situation that is in many ways quite comparable to our own. Marriage law was regulated by civil society, which included the possibility of divorce. It is striking that church regulation did not set itself over against this; still this did not seem to affect the ideal of only one marriage. The church was satisfied with blessing marriages.

It was the *Synod of Elvira* (Spain) that first made a clear statement in favor of the indissolubility of marriage: “A believing woman who leaves her believing adulterous husband to marry another man, should be forbidden to marry him. If she does marry him, she may not receive communion until her former husband dies, unless perhaps an emergency illness requires that it be administered.” (DH 117). The exact date of the synod is unknown (between 295 and 314). This decision speaks clearly in favor of the current strict regulation. But the validity of this Synod for the universal church is controversial. In the end just 19 Spanish bishops and 24 priests took part in it.

There were more participants at the *Council of Arles* (314). At a first glance this Council also argued for a strict rule. Taking a closer look, however, it came to a more nuanced conclusion. The council in fact concludes: “we strongly advise those who catch their wife committing adultery – this concerns those Christians who are still young and to whom remarriage would be forbidden – ...not to take another wife during the lifetime of the first, even if she was adulterous” (Concilium Arelatense, ca 11, in: CCL 148, 11). What is striking is the vacillation between “strongly advising” and “prohibiting” in the same breath. In any case the remarriage of these men is not condemned nor are sanctions imposed on them.

The *Councils of Vannes* (between 461 and 491) and *Agde* (506) confirm the practice common in the churches late into the 4th century that a man may leave his wife because of adultery and may remarry (Th. Pfammatter, *ibid.*, 254-257).

In time, the Germanic legal concept, that it is the sexual relationship between a man and a woman that establishes the marriage, gained ground. As a consequence, in this system of judicial thought, adultery, meaning a sexual relationship with another partner, was regarded as dissolving the marriage – just as in the Gospel of Matthew 5:32. Among other grounds for divorce in Germanic law, some councils recognized entrance into a monastery as dissolving a marriage.

While in the “western” (Latin) church the practice (still current today) gradually prevailed of not allowing any possibility of divorce and remarriage in a sacramentally valid and consummated marriage, the Eastern Churches allow divorce together with remarriage under certain conditions.

The Eastern Churches are oriented towards the “unchastity clause” in Matthew’s Gospel. They accept other forms of “gross misconduct,” along with adultery, as grounds for divorce. Yet they hold fast to the principle of the indissolubility of marriage, just as in the Latin church.

What has prevailed up to now in the understanding of the Eastern churches is especially the principle of “*oekonomía*,” which is not strict about standardization or regulation but always takes into account the individual case. In its handling of exceptional cases the church departs from the path of strict legality – for the welfare of souls, in imitation of the mercy and the love of God for humankind that was shown by Christ, who does not leave the lost, the fallen, and those who have failed in the lurch, but helps them out. It is noteworthy that this principle was never condemned by any council or pope. Yet, in the Eastern Church everything possible is still done to save a marriage that can be healed and to hold the spouses to lasting fidelity. Only when a marriage has totally failed – meaning that it is dead – will the repentant faithful be given the chance to remarry. There is a prerequisite: the recognition of fault, for without a reappraisal of the past, and a suitable time of waiting or grief, forgiveness and a new beginning are impossible.

The Council of Trent on Divorce and Remarriage

This council (1545-1563) discussed the question of divorce and remarriage explicitly and extensively. Its decisions have remained normative to the present day. All the more important is the fact that this council let the practice of the Eastern Church be heard as part of the strictly binding position taken: “If anyone says that the Church is in error for having taught and for teaching, in accordance with the doctrine of the gospel and the apostles, that a) the marriage bond cannot be dissolved because of adultery on the part of one of the spouses, and that b) neither of the two, not even the innocent one who has given no cause for infidelity, can contract another marriage during

the lifetime of the other spouse; and c) that the husband (or wife) who dismisses an adulterous wife (or husband) and marries another commits adultery, let him be anathema.” (DH 1807).

This formulation, which is complicated and hard to comprehend, can only be understood as an effort to allow the still widespread practice of a husband marrying again in case of his wife’s adultery. Above all they did not want to jeopardize the union of particular Roman church provinces (Venice) with the Greek ones under their control in the eastern territories. Hence they chose this wording to avoid condemning the practice of the Eastern Churches (compare to R. Weigand, “Das Scheidungsproblem in der mittelalterlichen Kanonistik,” In: *Theologische Quartalschrift* 151 [1971], 52-60).

The formula of the council states:

- The marriage bonds cannot be dissolved, even in the case of adultery.
- Neither of the spouses can remarry during the other’s lifetime.
- Whoever does so commits adultery.

How are we to understand this canon?

1. The sentence: “The marriage bond cannot be dissolved because of adultery” does not define the “absolute indissolubility” of marriage but refers to (using a technical term from later church canonical teaching) the so called “internal indissolubility” between the spouses themselves; it is not about the so called “external” one. Nobody is given the right to dissolve a marriage by free will and on his or her own authority, which would mean withdrawing the unconditional promise of fidelity to his partner.

2. The formula: “The church has not erred ...,” as the council’s debates quite clearly show, refers to the decision-making competence or legislative authority of the *western* church. The church, in making this decision, has not exceeded its competence or authority. With this canon, Trent legitimizes the practice of the Latin Church; the different practice of the Eastern Church is at least tolerated and not condemned. The formulation “the Church has not erred ...” was obviously put in for the benefit of the Orthodox Church.

From this it follows that the council did not want to define the indissolubility of marriage as a universal, unconditionally applicable, truth of revelation, and it did not do so. Concern about the differing practice of the eastern Churches, as well as condemnation of the Reformation challenge to church teaching and legislative authority, must always be kept in mind as background for understanding the content of what is proclaimed in the canon of Trent that is under consideration. With your contrary interpretation of the pertinent texts from Trent (“this is not in keeping”) you can no more hope to find a broader agreement, than you can expect to have your argument convince others. You declare: “The canonists repeatedly spoke of an improper practice” (G.L. Müller, reference as above, 120). In doing so you overlook the fact that ecclesiastical law must at all times hold fast to dogmatic principles and not the other way around.

(For more details, see: Thomas Pfammatter, *Geschiedene und nach Scheidung wiederverheiratete Menschen in der katholischen Kirche: Kriteriologische Fundamente integrierender Praxis. Reihe Praktische Theologie im Dialog*, 23, Universitätsverlag

Freiburg/CH 2002. See also H. Jorissen, “Die Entscheidung des Konzils von Trient zu Ehescheidung und Wiederheirat und ihr Hintergrund,” in Th. Schneider (Hg.), *Geschieden – Wiederverheiratet – Abgewiesen*, Freiburg 1995, 112-126.)

Consequences

The “rigorous” view of the absolute indissolubility of marriage cannot appeal to a single teaching of Jesus nor to fidelity to Jesus’s words. Such an appeal is brittle and questionable, especially if an absolutely binding law is to be derived from it.

The Council of Trent provides space to embrace both:

- Concern for the permanence of marriage, and
- Pastoral assistance in case of incurably broken marriages

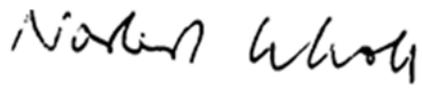
The biblical foundations, historical development, and church documents make it clear that there is definitely room for reform. In matters of divorce and remarriage, there is more room than is currently permitted in the Western Roman Church. In particular, the concept of the “absolute indissolubility” of a duly contracted and consummated marriage has to be critically examined. The survey on matters of sexual morality and acceptance of cohabitation that preceded the preparations for the Extraordinary Assembly of the Synod of Bishops in 2014 has shown how much the lived experience of Catholics departs from church teaching.

Neither scripture nor tradition can claim on their own to vouch for truth infallibly. “A doctrine is only infallible if it has been proven beyond a doubt ... For this reason the universal magisterium’s striving for truth, and how the faith can and must be passed on in accordance with the Gospel, must continue, even after a particular teaching authority has made a (definitively) binding doctrinal decision ... Given the ongoing search for the truth, the doctrinal position must be critically evaluated in light of its historical context. Hence, the historical circumstances have to be taken into account, as well as the intended message, its place in the totality of the faith, and its rank in the hierarchy of truths. This task of critical reflection falls to all members of the church, and especially to the theologians, male and female. Finally, theology has a mission to contribute to the building up of the church, so that the truth entrusted to the church can be investigated ever more deeply, presented scientifically and logically, and also proclaimed in a contemporary manner.” (S. Demel, *Einführung in das Recht der katholischen Kirche*, Darmstadt 2014, 107f.)

Given the exceptions to the rules that are already apparent in the New Testament, and, as a result, the non-uniform practice in the tradition of the church, it seems imperative that the upcoming Bishop’s Synod, with regard to the remarriage of divorcees, follow the example of the apostle Paul and the evangelist Matthew, the practice of the early Christian communities and councils, and the current handling of these issues in the churches of the East. The Synod should also look for ways and means to be of assistance to the Catholic men and women affected, in fidelity to the teaching of Jesus.

We are confident, that you and your fellow-bishops, together with Pope Francis, will find a solution in keeping with the gospel—one that is not only merciful, but also fully justified by Scripture and Tradition in the fullest sense.

Yours sincerely,



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