

FR MCGAVIN & THE COMING SYNOD

In a paper published on the chiesa website¹, Fr Paul-Anthony McGavin, an Australian theologian, has endeavoured to justify a departure from Catholic principle on the issue of marriage and divorce.

He first praises Pope Francis, finding in the Pope's *ipse dixit* essential agreement with statements of Benedict XVI indicating a shared discomfort over what he calls a "closed system" theology. Papa Ratzinger had written of his theological education in the seminary that "[t]he crystal-clear logic seemed to me too closed in on itself, too impersonal and ready-made." Fr McGavin quotes two of Ratzinger's utterances and finds in them agreement with the Pope's recent advice to seminarians that "[t]he theologian who is satisfied with his complete and conclusive thought is mediocre" and his complaint of the "cold syllogisms" of theology. Since Ratzinger is "a scholar of immense depth and breadth", McGavin seems to say, their shared sentiments must be right. He does not explore the possibility that both Popes might be wrong.

His paper contains some strange arguments. This, for instance, purporting to illustrate Ratzinger's statement "that moral argumentation turns not only [on] its syllogistic 'validity', but also on its 'soundness'"—

"Feminist arguments about the rights of women over their own bodies in respect of pregnancy termination may be challenged philosophically in terms of premises and logic, but the strongest challenge is on 'soundness'. It is a matter of verifiable truth that the foetus is not part of the body of a woman. In truth, the woman provides nutrition and a protective environment during the course of gestation between conception and birth."

Does he think that premises and logic do not rely on verifiable truth? Or that one may arrive rationally at conclusions from facts such as the physical distinction between a woman and her unborn child without reliance on premises and logic? If an argument is sound how can it be other than syllogistically valid? Ratzinger's distinction is not a real distinction but a conceptual one driven by his preoccupation with the subjective.

A similar criticism can be addressed at McGavin's endorsement of what he perceives to be the two Popes' shared objection to a "closed system" theology. This perceived objection calls to mind a proposition condemned as Modernist by Pius X in *Lamentabili Sane* (3rd July, 1907)—

59. Christ did not teach a determined body of doctrine applicable to all times and all men, but rather inaugurated a religious movement adapted, or to be adapted, to different times and places.

It is a weakness of the modern thinker (grounded as he is in the solecisms of modern

¹ <http://chiesa.espresso.repubblica.it/articolo/1350864?eng=y> For those who wish to read it here, it is reproduced in the appendix.

philosophy) that even as he ignores real distinctions he is happy to invent distinctions of his own which have no reality but mental, a debility not lessened by the fact that his error is shared by others.²

The critical paragraph of McGavin's paper is to be found at about the mid-point, under the heading 'Systematic Thought Too Closed In On Itself'. There he expresses the view that the plain words of Christ can be interpreted via a "hermeneutics of continuity" to allow exceptions. The Pope is not limited, according to this view, by "an orthodox theology merely repeating magisterial statements of doctrine and traditional formulae". Then follows this sentence—

"Sadly, we can expect arguments that focus on formulaic rehearsals to continue."

This is a strange utterance for an allegedly orthodox theologian and the concern it prompts is not allayed by what follows. He dismisses a study in support of the Church's constant teaching in the journal *Nova et Vetera* on the basis that the study "has much *vetera*, but little *nova*", a remark at once trivial and revealing. It smacks of the mockery to be found in the offerings of George Tyrell and, like Tyrell, it rejects reasons that are of long standing and in conformity with the Church's tradition in favour of what is novel and modern. McGavin invokes the false distinction mentioned above to complain that the arguments of the authors of this study are "syllogistically tight but less sure in terms of soundness", and appeals to the young Ratzinger's lament that their "crystal-clear logic seem[s]... too closed in on itself, too impersonal and ready-made."

He cites the demands of "a sense of mercy as learned from Jesus" in addressing the complaints of aggrieved spouses, and goes so far as to speculate whether those who support the Church's position have ever sat in the confessional. Apart from its defamation of his fellow priests this assertion involves a false understanding. Mercy is sorrow at another's misfortune coupled with a desire to help him.³ It is no part of mercy to encourage another to embrace error. On the contrary, it is a work of mercy to present the penitent with the truth and to encourage him to adhere to it in the face of adversity.⁴ He goes on to assert something which is both false and offensive—

"The refusal for noetic and technical reasons not to recognise the existential facts of the dissolution of the relationship of a man and woman previously joined in marriage in fact amounts to a refusal to encounter reality, tragic and painful reality. And refusal of this kind amounts to a refusal of mercy. It is a grave anomaly that mercy does not figure in the matrimonial jurisprudence of the Latin Church."

McGavin appeals to what he calls an analogy, the manner of dealing with an abused

² Forty years or so ago Avery Dulles SJ published his dissertation on 'models' of the Church. He went on to extend the idea to various other realities (revelation, history, and so on). His enthusiasm spawned a generation of theologians incapable of seeing reality other than through the lens of some 'model'. The invention was simply an instance of applied subjectivism. There was no corresponding reality; each 'model' was simply a factitious creation of the writer's imagination.

³ St Thomas Aquinas, *Summa Theologiae* II-II, q. 30, a. 1

⁴ Mistated by Papa Roncalli, John XXIII, in his *Opening Speech* to the fathers of Vatican II.

sacred host. Little effort is needed to show that there is no similarity to justify the claim.⁵ The end for the sake of which the host is consecrated is achieved through its consumption : it sanctifies in its dissolution (the recipient being rightly disposed). Matrimony, in contrast, sanctifies by its non-dissolution, its persistence. Whilever a spouse embraces its adversities, his marriage is a means of grace, sanctifying and ordered to his salvation. Moreover, just as a sacred host abused does not cease to be the body of Christ, a marriage abused does not cease to be a marriage.

Here, in the cavalier attitude he demonstrates towards the sacramental character of matrimony, is the matter of gravest concern in McGavin's paper. That matrimony validly contracted is a sacrament is *De fide*. The Council of Trent defined it so against the Protestant Reformers on November 11th, 1563—

Si quis dixerit, matrimonium non esse vere et proprie unum ex septem Legis evangelicae sacramentis, a Christo Domino institum, sed ab hominibus in Ecclesia inventum, neque gratiam conferre, anathema sit.⁶

Pius IX condemned in (nn. 65, 66 and 67 of) the Syllabus of Errors annexed to the Bull, *Quanta Cura* (8th December, 1864), various propositions concerning matrimony including this one—

67. By natural law the bond of matrimony is not indissoluble and in various cases divorce, properly so called, can be sanctioned by civil authority.

Leo XIII confirmed these matters in *Arcanum* (10th February, 1880). Pius X rejected the Modernists' denial of matrimony's Divine institution in *Lamentabili Sane* n. 51. Pius XI endorsed his predecessors' teachings in *Casti Connubii* (31st December, 1930) and his comment on the words of canon 7 of Session XXIV of the Council of Trent is to the point—

89. If... it is quite certain that the bond of marriage cannot be dissolved even on account of the sin of adultery, it is evident that all the other weaker excuses that can be, and usually are, brought forward are utterly valueless...

Fr McGavin's arguments are coloured by the defects that trouble all modern philosophy, the first of which is materialism.⁷ A perception of reality limited to the material is stultifying. Only a *metaphysical* perception enables a proper grasp of reality. The metaphysical categories *form* and *matter* have fixed meanings derived from the profound analyses of Aristotle and adopted by St Thomas. The *form* of a thing is that which determines it to be what it is ; the *matter* is that which is determined. The *form* and *matter* of the Blessed Eucharist are not "a schema [taken to] the Sacrament of Marriage". *Form* and *matter* are transcendental categories which can be applied analogically to every element of creation and every act of human will. The *form* of

⁵ An analogical term is a predicate attributable to two or more denoting in them a character somehow same, somehow unsame, & more unsame than same. He confuses infungible with fungible.

⁶ Council of Trent, Session XXIV.

⁷ The other is subjectivism, that truth is measured not by reality but by opinion.

matrimony is the mutual act of the consenting wills of the two parties ; without that *form-ality* there can be no marriage. The *matter* of matrimony is *that which is capable of* matrimony, a man and a woman rightly disposed, unfettered by what would impede their mutual act of self-donation. As to *what it is* (its essence), matrimony like the parties who embrace it, is God's creation. Just as God created man in His own image and likeness (*male and female did He create them—Genesis 1 : 27*), He created marriage as the fitting disposition of their mutual wills for the good of society.⁸ McGavin appears to understand these distinctions little better than he understands analogy.

He is not alone. The vast majority of the world's priests and bishops have been deprived of a grounding in the Church's philosophy which, *pace* its gratuitous (and false) denial by John Paul II in *Fides et Ratio*, is the philosophy of St Thomas. This deprivation occurred through the systematic disobedience to the Church's explicit directives by the bishops and seminary teachers who preceded them. The silence of popes and bishops on the question of marriage over the last fifty years—part of their refusal to confront a burgeoning atheism—has allowed the secular acceptance of marriage to dominate men's minds. This silence is behind Fr McGavin's appeal to the secular :

"In the civil order from which I write in Australia, and in most other countries, moral categories are not evoked and the conditions for civil divorce are simply "irretrievable breakdown of the marriage". In pastoral circumstances of the kind to which I have earlier alluded, the language is along the lines of : "Externally there is the 'form' of marriage... but not the 'substance' of marriage..., in truth, the marriage is dead". Those who look at the issue only in canonical terms and in terms of technical sacramental theology cannot accept the description of death."

Implicit here is the claim that the position enunciated by the Church does not face reality ; or rather, that the reality she insists upon is defective because it is not 'phenomenological'. One can feel some sympathy for him in his misguidedness for who, among the Church's leaders, in recent times has warned the forces of secularism of the perils to society of a refusal to adhere to the principles of the moral law ?

After relating what he terms "a technical statement of what the Church holds" he allows that one can understand "in a certain perspective [...] why those in a contra-position to [Cardinal] Kasper use the term 'adultery' in respect of divorce and remarriage". But it is not just the theologians who use that term ; Our Lord Jesus Christ uses it [cf. *Matthew 19 : 9*]. McGavin repeats this folly when he dismisses Cardinal Burke's words in an EWTN interview reminding us of the fact. There is a naivety at work here, something that was also characteristic of Tyrell. It hardly needs saying that none of the instances McGavin cites against principle serve to gainsay the Divine precept about marriage.⁹

⁸ Human will goes to the acceptance or rejection of marriage's terms. It is not free to dictate its essence. The lack of understanding of this truth grounds the atheistic, world-wide, folly of those who think that by passing a law they can determine what marriage is.

⁹ To address them seriatim : the better view is that solemn religious vows *cannot* be dispensed effectually ;

Accepting the adversity flowing upon rigorous commitment to his marriage vow may make a man, a woman, a saint. McGavin would rather see the 'dead' marriage interred and the suffering spouse freed of its burdens to enter another. That in doing so he is condemning husband or wife to a breach of the sixth commandment and the loss of the graces of his state seems not to trouble him.

He concludes—

"It is not my purpose here to 'find a solution' – that, among other things, is the challenge of the upcoming Synod of the Church and the Holy Father in communion with the whole Church."

He is wrong in this too. The Synod is not going to amend the Church's teaching over her refusal to admit the divorced and remarried to Communion, no matter what individual bishops, or even the Pope, may think. That teaching is immutable. The Synod may by a majority purport to change the Church's praxis but they will simply be expressing their own disfunctional view. The Church's members will not be bound by any determination that departs from the Church's teaching.

If a majority of the Church's episcopacy takes it into their heads to abandon Christ's teaching—and Pope Francis endorses that opinion—it is inevitable schism will follow. We have remarked previously on the folly of Pope Benedict XVI's abdicating the office of the papacy. Should this rupture eventuate it will only serve to confirm that view.

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After he was condemned by the King's Bench for denying the authority of King Henry VIII in usurping the headship of the Catholic Church in England, Sir Thomas More famously charged the court's members as follows—

"Howbeit, it is not for this supremacy so much that ye seek my blood, as for that I would not condescend to the marriage."

He was executed for his objection to the tyrant's abandonment of his wife in favour of another woman. Fifteen centuries earlier John the Baptist had suffered the same fate over the same issue at the hands of another king. These acts of principle by the Church's great martyrs are reduced to insignificance by Fr McGavin and his ilk.

God save us from their pernicious influence.

Michael Baker

17th September, 2014—*St Robert Bellarmine, Doctor of the Church*

if the Church allows their abandonment it is to reduce the potency for evil, to prevent impediment to the good of the individual in his weakness, and for the removal of scandal. The laicised priest does not lose the indelible character of the priesthood—he remains a priest regardless of how he may conduct himself after laicisation. Nor is marriage inconsistent with the priesthood. In the present dispensation, the Church, recognising that the priest is *alter Christus*, is rightly insistent upon celibacy.

APPENDIX

Reconciling anomalies : a hermeneutic on divorce and remarriage

by Paul-Anthony McGavin

Dictionary	
For those who have trouble following Fr McGavin's terminology we provide the following assistance.	
Deontic	pertaining to duty
Empirical	knowledge obtained through the senses
Hermeneutic	pertaining to interpretation, interpretative
Methodological	particular, or idiosyncratic, manner of proceeding
Noetic	intellectual, abstract
Ontology	the science of being as being
Phenomenological	pertaining to knowledge via the senses
Syllogistic	pertaining to formal argument involving a major premise (a principle), a minor premise (a fact) and a conclusion. For instance— <i>Man is mortal. But Paul-Anthony McGavin is a man. Therefore Paul-Anthony McGavin is</i>
Teleology	to do with the final cause, or purpose, of things ; the end for the sake of which they exist and act (be and do)

There have been moves and counter-moves for the upcoming Synod on the Family to look again at the Latin tradition on divorce and remarriage. Both directions of movement have been promoted by Pope Francis. Cardinal Müller as Prefect of the Congregation for the Doctrine of the Faith (CDF) was published in English in *L'Osservatore Romano* of 25 October 2013 refuting the ideas of those who want to permit second marriages while the first spouse is still alive. Cardinal Kasper was invited by Pope Francis to give an inaugural address to the Consistory of on the Family that was published 1 March 2014 in Italian as "Rapporto segreto al concistoro" in "Il Foglio" where he argued that it was not enough to consider the problem only from a sacramental perspective. Müller's CDF document, "Testimony to the Power of Grace", presumably invoked the permission of the Pope, and Kasper's address, published in English as "The Problem of Divorced and Remarried" on 1 March 2014 was reportedly praised by the Pope as "profound and serene" theology. These seemingly polar positions are not easily reconciled. This article draws upon the methodological approaches of Joseph Ratzinger and of Jorge Bergoglio to suggest a way toward reconciling these anomalies.

Surprising congruity between Bergoglio and Ratzinger

At first blush, it may seem strange to use a phrase "the methodological approaches" in respect of Pope Francis, when he has gained for himself a reputation for speaking loosely without a script, and for the frequency of reinterpretation of papal remarks by the Director of the Vatican Press Office, Father Federico Lombardi, SJ. As I argued in my analysis of "Evangelii gaudium" – the only sustained integrative piece of writing by Pope Francis – a sophisticated methodology may be discerned. This methodology is not consistently sustained, and lapses are most evident in matters of economy and society, yet the methodology remains present. While lacking the refinement and moderation of Joseph Ratzinger, in a central and organising sense there is a surprising congruity between the mental approaches of Ratzinger and Bergoglio. The vast differences in personality and style between the Holy Father and the Pope Emeritus need to be

refocused in order to see the congruity in the manner of reasoning.

Mentalities not of a closed-system kind

For example, the Pope's words to seminarians of the Pontifical Gregorian University: "The theologian who is satisfied with his complete and conclusive thought is mediocre" (*L'Osservatore Romano*, 18 April 2014:13), seem weak in methodology, and unhelpful for young men who are still in the process of building a coherent appreciation of Catholic doctrine. Yet the sentiments in Bergoglio's words echo Ratzinger's mature reflections of what he found stultifying in much of the seminary formation that he experienced as a young man. This is seen in Ratzinger's recollections published in English as "Milestones : Memoirs 1927-1977", where he portrays the theological education of his seminary years in the following terms : "The crystal-clear logic seemed to me to be too closed in on itself, too impersonal and ready-made" (San Francisco : Ignatius, 1998 : 44). There is an almost parallel line in "Evangelii gaudium", where Bergoglio decries "cold syllogisms" in theology (n. 142). Pope Emeritus Benedict is a scholar of immense breadth and depth in a way that Pope Francis is not. But in their different ways, each demonstrates a reaching for a manner of theological practice that presses the boundaries of thinking that operates in singular philosophical or canonical manners of reasoning. Their mentalities are not of the closed-system kind.

In respect of the Pope Emeritus, this observation is at odds with the way he has been represented, especially by those who have opposed his work across 23 years as Prefect of the Congregation for the Doctrine of the Faith. Those who promote public opinion and perceptions for the most part found Ratzinger unattractive and poorly grasped his measured manner of reasoning and speaking. The extrovert and clipped manner of address of Bergoglio has been more amenable to the populist interests of the media. But what they see as "new" in Bergoglio more reflects the fact [than] those who opposed Ratzinger and those who popularised this opposition generally failed to grasp the depth of learning, sophistication and openness that characterised his manner of thinking.

Different manner of discourse within Church and society

The media has been quick to portray Bergoglio as opening the Church to "new" questions concerning morality and modern life and to a fresh engagement with contemporary society. This portrayal reveals a lack of hearing and listening to what Ratzinger has been saying over many years. I cite two pointed examples, the first from an article titled "The Renewal of Moral Theology : Perspectives on Vatican II and 'Veritatis splendor'", the second from an essay on pluralism in the Church:

"For a new springtime of... moral theology [that we await]... [we need] to find a language... adapted to today's world along with forms of argumentation that would be effective in debate... It is important to find arguments that can be understood by the modern mind and that are capable of convincing it" (*Communio*, 2005, 357-368).

"There is a persistent suspicion today, even among wholly Church-minded theologians, that orthodox theology is hopelessly condemned merely to repeat magisterial statements of doctrine and traditional formulae" (*The Nature and Mission of Theology*, 1995, Ignatius Press, 95).

The first of these quotes urges a manner of communication attuned to contemporary discourse ; the second makes clear that ecclesial understanding is not a closed-system, and that new perspectives and new learnings may be comprehended in a thorough-going orthodoxy. Although Ratzinger was not marked for having a "common touch", he supported a search for different manners of discourse within the Church and with social and political cultures. Media perceptions and representation[s] of Ratzinger were dominated by his office as CDF Prefect and his public role in support of the main teaching positions of the Wojtyla pontificate. There was weak perception of the temperance with which Joseph Ratzinger exercised these responsibilities, and largely an ignorance of what he was saying and writing in his own name. Across the decades, Joseph Ratzinger was a man for whom "discovery" was important, as I have argued this in my appreciations of his "Caritas in veritate" (*L'Osservatore Romano*, 2009). Yet the "new" for Ratzinger was always in relation to the "old". The phrase "hermeneutics of continuity", although not frequently used by Ratzinger himself, has become a signature phrase for the theological manner of Joseph Ratzinger. This methodology has never been simply a repetition of magisterial statements or traditional formulae. The Ratzingerian method always engages both the old and the new (nova et vetera) that is characterised by integral continuity and robust and broad-based engagement with truthfulness.

Before moving on directly to clarify the links between Ratzinger and Bergoglio, a further essential characteristic of Ratzingerian methodology needs to be considered – his engagement with factuality as part of his search for truthfulness.

Tradition as living tradition

The religious mentality of Ratzinger makes use of philosophy, but at its core is not philosophical. For Ratzinger, “reality” includes the mental phenomena of ideation – what in a 1996 address on “relativism” to Latin American Bishops he calls “noetic” (in *The Essential Pope Benedict XVI*, 209), but does not focus on ideation. With Bergoglio, we see a similar focus in “*Evangelii gaudium*”: “It is dangerous to dwell in the realm of words alone... realities are greater than ideas” (n. 231). Ratzinger’s religion and theology is not noetic, but from his early years as a theologian proceeds from a core that is located in what may be described as “historic”. In his 1969 magisterial work *Introduction to Christianity*, we read: “Human reason is not autonomous in the absolute... It is always found in a historical context” (193-194). To say “historical” implies verifiable phenomena that is past, while a Ratzingerian sense is not simply past, but also present. Reading Mosaic and dominical traditions such as “male and female he created them” (*Genesis* 1:27) in this perspective leads to encounters both with something that is past in the sense of the original nature of God’s creation, but also something that is present as in the dual sexual nature of mankind as encountered now. There are contacts between this manner of perceiving and the centrality of tradition in a Ratzingerian perspective – because tradition in this perspective is a living tradition. As such, that which is received in history and in tradition has a verifiable reality that is not simply noetic.

Moral truth, and knowledge of reality

The portion of the above Bergoglio quote from “*Evangelii gaudium*” on “realities” also echoes a Ratzingerian perspective. Ratzinger is unimpressed by moral reasoning that is only syllogistic, and thus we read in a 1984 address on morality to USA bishops: “To seek a thorough knowledge of reality is a fundamental commandment of morality” (in *On Conscience*, 69). Ratzinger is neither a physical scientist nor a social scientist, but he profoundly recognises that moral argumentation turns not only [on] its syllogistic “validity”, but also on its “soundness” (to use philosophical categories that I amplify in an article “*Conversing on Ethics, Morality, and Education*” in the “*Journal of Moral Education*”, 2013). For example, feminist arguments about the rights of women over their own bodies in respect of pregnancy termination may be challenged philosophically in terms of premises and logic, but the strongest challenge is on “soundness”. It is a matter of verifiable truth that the foetus is not part of the body of a woman. In truth, the woman provides nutrition and a protective environment during the course of gestation between conception and birth. As Ratzinger says in the address just quoted: “Moral behaviour is a response to reality and therefore requires a knowledge of reality” (69).

Morality not merely phenomenological

I have said above, “not only syllogistic”, but one should also say “not only empirical”. Neither the methodology of Ratzinger nor of Bergoglio is simply phenomenological. It would be difficult to sustain the historical perspective of the Church in respect of homosexual acts simply in phenomenological terms in the face of evidence (although as I believe, not conclusive evidence) of stable homosexual relationship and the development[al] course of children raised in homosexual households. Robust argumentation draws upon philosophical concepts of ontology and teleology (the nature of “being” and the “end” or purpose of being) and upon social science evidence of human development and sociality (empirical “realities”). The robustness of moral argumentation such as in the contentious area [of] homosexuality and homosexual behaviour is not one of “proof” in the sense of unchallengeable conclusiveness. The robustness of Catholic argumentation is better appreciated in terms of “reasonableness” and “coherence”. Although not introduced in a context of moral theology, the term “conaturality” drawn from “*Evangelii gaudium*” is particularly useful (n. 119). Ratzinger captures a similar sense of the congruity of philosophy and empirics in his 2004 essays in “*Truth and Tolerance*” (206) when he argues the essential truth of the Torah by quoting the Apostle Paul:

“When the gentiles who do not have the law do by nature what the law requires, they are a law to themselves, even though they do not have the law (*Romans* 2:14-15)”.

This is essentially a restatement of natural law. Yet it is not natural law as understood in syllogistic philosophical terms, nor in terms of positive law, but natural law as understood in a congruency between premise (which may be a deontic articulation of law as in the Decalogue) and empirics that witness to the coherence and integrity of a living witness. Such an integral approach is not the “desk bound theology” that Bergoglio decries in “*Evangelii gaudium*” (n. 133). Pope Francis is not always temperate in his expressions, but viewed methodologically his approach is congruent with a Ratzingerian perspective.

Further development in canonical/moral issues cannot be excluded

It is this manner of natural law approach to moral theology that is challenged by those who are unsettled by suggestions arising under Jorge Bergoglio for reconsideration of divorce and remarriage. The more serious challenges are usually directed at Walter Kasper, rather than Pope Francis. One of the first challenges came from Cardinal Burke, Prefect of the Supreme Tribunal of the Apostolic Signatura, who in an EWTN interview of 20 March 2014 declared: “In my estimation as a canonist, I do not think it is possible... that the Church’s approach [on the matter of divorce and remarriage] can change”, and: “We’re talking about the very words of Christ himself in the Gospel in which he taught the indissolubility of marriage”. The issues raised in this brief interview excerpt of Cardinal Burke make clear that the question of divorce and remarriage also traverses canon law, dogmatic theology, sacramental theology, and biblical theology. Granted that the issues are complex and range across a wide field, this brief interview points to a certain narrowness in response. Over the years, the canon law of the Church shows some amazing responses to pastoral anomalies. Just to name a few : solemn religious vows to God can be dispensed ; those in holy orders can be “laicised” and contract valid marriages ; Catholics who contracted invalid marriages can obtain retroactive validation ; and those who contracted civil marriages with canonical irregularity can after civil divorce contract another marriage with ecclesial validity. Simply to say, “I do not think it is possible” seems unduly determinative in excluding further development across the range of considerations involved.

Deontic citation of scriptural texts does not close the issue

Even the reference to the dominical texts: “What therefore God has joined together, let not man put asunder”, and: “Whoever divorces his wife and marries another, commits adultery against her” (*Mark* 10:9, 11), are cited in a deontic manner that seems to involve no hermeneutic. These texts occur in a context where allusion by Pharisees to *Deuteronomy* 24:1-4 prompts Our Lord to describe the Mosaic text as an allowance for “hardness of heart” (*Mark* 10:5). The Deuteronomic text refers to a man’s writing a certificate of divorce “if [a wife] finds no favour in his eyes because he has found some indecency in her” (*Deuteronomy* 24:1). This is a context not unlike what is encountered in Islamic divorce practice – where a wife may be dismissed because she displeases her husband. Since the Mosaic law did not encompass divorce initiated by the woman, the dominical words : “and if [a wife] divorces her husband and marries another, she commits adultery” (*Mark* 10:12) suggest a Christian extension arising from a retrieval by the Church of the equal dignity of men and women as a response to remembering Jesus’ reading of *Genesis* 1:27 and 2:24 (*Mark* 10:6-8). The inclusion of “except on the grounds of fornication [porneias]” in the first of the Matthean text[s] on this topic (*Matthew* 5:31-32) may refer to “indecency” in *Deuteronomy* 24:1, but may also capture something of matrimonial jurisprudence in the early Church. Certainly, the Pauline treatment makes clear that matrimonial jurisprudence was not simply a settled issue in the apostolic era (*1 Corinthians* 7:10-15). My purpose in these observations is not to diminish the received dominical teaching on the nature of marriage. It is to make clear that receiving this teaching still involves interpretative acts and reasoning, requires a “hermeneutics of continuity”. While the Church’s memory of Jesus’ words remains pivotal, simple deontic citation of dominical texts does not close the issue.

Systemic thought too closed-in on itself

Nor does a noetic sacramental theology or moral theology close the issue, and Pope Francis is unlikely to be daunted by such attempts at closure or – in the expression of Joseph Ratzinger earlier cited – to accept a view of orthodox theology as “merely repeat[ing] magisterial statements of doctrine and traditional formulae”. Sadly, we can expect arguments that focus on formulaic rehearsals to continue. An impressive example of such argumentation is a lengthy article by John Corbett, O.P., and seven collaborators as published in the Summer 2014 issue of “*Nova et Vetera*”: “Recent Proposals for the Pastoral Care of the

Divorced and Remarried". (The journal title is ironic, for the article has much "vetera", but little "nova"). I find the scholarship of this article impressive in its reach and exactness. But it seems to me to typify the recall earlier cited by Ratzinger of his seminary theology: "The crystal-clear logic seemed to me to be too closed in on itself, too impersonal and ready-made." Across the areas of sacramental theology, selected Church history, and magisterial documents, the authors are impressive in mounting arguments that are syllogistically tight, but less sure in terms of soundness. A comprehensive critique cannot here be undertaken, and I draw attention only to certain aspects of deficiency.

The first is a deontic approach that in their view requires no hermeneutic. I draw on two examples to illustrate. The authors seem to think it sufficient simply to quote as accurate and determinative the texts of certain Latin Church determinations on marriage jurisprudence in the Orthodox Churches (Corbett, *Nova et Vetera*, 12 (3): 612). In like manner, dominical texts are cited as though they require no hermeneutic: "Jesus gives the definitive interpretation of this commandment, 'Everyone who divorces his wife and marries another commits adultery...'" (Corbett, 605). The pastoral dangers of a lax matrimonial jurisprudence are portrayed (Corbett, 623), but the pastoral motive for recent proposals is not really engaged. The canonical and theological formation of those who form marriage tribunals is rightly upheld (Corbett, 629), but pastoral experience does not figure. Across thirty pages of dense text, one encounters no engagement with the kinds of pastoral considerations that have led to proposals for reconsidering Latin Church practice. It is not entirely unfair to evoke the stricture of Pope Francis concerning "desk-bound theology", or his stricture voiced before the CELAM Conference during the 2013 World Youth Day visit: "[Against]... a way of 'seeing' which [is] completely 'antiseptic', detached and unengaged [and that such a perspective is] impossible... [for] there is no such thing as an 'antiseptic' hermeneutics".

Pastoral experience of marriage failure

Although it seems a harsh thing to say, it is as though Corbett and his collaborators have never sat in the confessional. I remember being shocked one time at a loyal and regular parishioner in conversation remarking to me: "It would all be over if my husband committed adultery." I immediately thought, but being shocked did not say: "Is this the one unforgiveable sin, and what of the '...for better or worse...' of the marriage vows?". But in the confessional the heartbreaking stories of marriage failure largely do not focus on "uncleanness" of one kind or another. The main issues are things like lack of communication, sustained meanness, deep unkindnesses, on-going diminishment of the person by treating as a commodity or as a supplier of goods and services, and the deathliness of cohabitation that is not a marriage. This may sound like a "social worker" confessional experience, but it is not – the confessions are about the heart-wrenching and gut-wrenching difficulties and inevitable failures in handling personal diminishments of these kinds. A confessor's understanding conveyed implicitly or conveyed in few words often leads to tearfulness by the penitents. And tears not so much tears of repentance and grief, as tears of relief that someone has listened with a sympathetic ear, and conveyed a sense of mercy as learned from Jesus. Those mounting a contra-position to Cardinal Kasper are concerned about "false mercy", and one should be concerned about mercy that is unjustly practised and falsely conceived. But mercy nevertheless must be at the heart of every action of the Church and the ministers of the Church. The small book that Cardinal Kasper published following his consistory address bears the title: "Mercy: the essence of the Gospel and the key to Christian life". I am not here going to mount a critical appreciation of that work. But the fact is that Pope Francis acclaims: "This book has done me much good".

Some analogical thinking

An analogical word is in order. Most priests at some time would discover a saliva-saturated sacred Host on a church floor, and for sanitary reasons may be reluctant to consume it. It would be an unwise and uninstructed priest who returns such a find to the tabernacle. In Australia where altar wine is fortified wine (sherry), such a sacred Host would be placed in unconsecrated wine in a chalice and with thorough saturation would soon dissolve (and would no longer have the appearance of bread), and would then be consumed, but not consumed as Blessed Sacrament.

Sustaining this analogy, there is no equivalent Latin canonical recognition when a marriage has been fundamentally violated and has "dissolved" to a degree that it is not recognisable as marriage in a like manner to where the absence of the appearance of bread does not admit recognition of Eucharistic sacramental presence. The refusal for noetic and technical reasons not to recognise the existential facts of

the dissolution of the relationship of a man and woman previously joined in marriage in fact amounts to a refusal to encounter reality, tragic and painful reality. And refusal of this kind amounts to a refusal of mercy. It is a grave anomaly that mercy does not figure in the matrimonial jurisprudence of the Latin Church. That fact alone calls for a widening of perspective and methodologies for dealing with complex issues that are pastoral before they are juridical.

We have to seek the good in the proposals put by Kasper, and to respond searchingly and wisely to discover how we may be instruments of authentic mercy. When our Lord said to the woman: “Go, and do not sin again” (John 8:11), it seems improbable that he is saying: “Go, return to some status quo ante”, since in all likelihood there was not a viable prior state to which she might return. It seems unlikely that he is saying: “Go, and walk in heavy penitence and reparation for the rest of your years”, and more likely that he is saying, “Go, and rebuild a life that is peaceful and that has integrity and is suffused with thankfulness”. My experience across the years leads me to observe that those who continue to practice the faith after civil divorce and civil remarriage are generally not the “serial monogamy” types, but are people who in phenomenological terms have experienced the death of a marriage. The marriage partner may still be alive, but the marriage not. Those who dismiss or who want to dismiss consideration of divorce and remarriage would read my last remark as indicative of a defective or deficient sacramental theology – so I now turn briefly to sacramental theology.

Sacramental theology

Sacramental theology is most often expounded with reference to the Holy Eucharist. The conditions for valid celebration are typically stated as four: (1) a sacred minister in priestly apostolic order; (2) the “matter” ordained by Our Lord in instituting the Eucharist, namely, wheaten bread and grape wine; (3) the necessary “form”, that is the recitation of Our Lord’s words in the Institution of the Eucharist in the context of a duly-approved rite of the Church; (4) the “intention” to “do as the Church does”, that is the celebrating minister should intend what the Church intends in receiving this Sacrament from the Lord and should intend to enact what the “form” expresses. With these conditions satisfied, the “matter” that is brought to the celebration at consecration becomes in sacramental form the Body and the Blood of the Lord. That is, “transubstantiation” occurs, a change from the “substance” of bread and wine to the “substance” of the Body and Blood of the Lord, while the “appearances” of bread and wine remain unchanged.

In taking this schema to the Sacrament of Marriage, the term “matter” seems un-natural, and we are disposed to speak of “form”, but I shall retain the traditional technical language under its fourfold categories: (1) the ministers of marriage are the contracting parties, a man and a woman, and for a sacramental marriage, a baptised man and a baptised woman, with the marriage witnessed and blessed by a sacred minister of the Church; (2) the ministers of the marriage are also the “matter”, so – for example – a homosexual “marriage” would be invalid because of diriment impediment of matter; (3) the necessary “form” articulates the essential characteristics of marriage – exclusiveness, permanence, love, openness to children; (4) the “intention” invokes the capacity and the purpose freely to enact a contract as professed in the marriage rite, and thus precludes incapacity and deceit. With these conditions satisfied, the “matter” of the sacrament – the groom and the bride – undergoes a change in status such that a man and a woman become husband and wife. With a sacramental marriage this status change brings about a status of grace, matrimonial grace. The matrimonial relationship is made holy – Holy Matrimony – and its sexual expression is described as “the marriage act”. Whereas coitus outside marriage is uncleanness (fornication), coitus within marriage is sanctified, is holy, and children conceived by such unions are “legitimate”. This account seems rather “clinical”, impersonal, and closed-system, but it gives a technical statement of what the Catholic Church upholds.

Quandary when technical theology does not meet phenomenological realities

One can thus in a certain perspective understand why those in a contra-position to Kasper use the term “adultery” in respect of divorce and remarriage. In the civil order from which I write in Australia, and in most other countries, moral categories are not evoked and the conditions for civil divorce are simply “irretrievable breakdown of the marriage”. In pastoral circumstances of the kind to which I have earlier alluded, the language is along the lines of: “Externally there is the ‘form’ of marriage [not referring to a form of words, as above], but not the ‘substance’ of marriage [again, not referring to language usage in the schema outlined above] ; in truth, the marriage is dead”. Those who look at the issue only in canonical

terms and in terms of technical sacramental theology cannot accept the description of death. Viewed from the contra-position, narratives such as I recount from penitents are simply phenomenological statements, and not “reality” statements. From the contra-position, the celebration of the marriage contract effects an ontological change – just as the valid celebration of baptism effects an ontological change in the baptised person, and just as the valid celebration of the sacred mysteries effects an ontological change that is explained as transubstantiation.

A received paradigm cannot be our sole paradigm in complex situations

This is a real quandary, because the Church has never dealt simply in phenomenological terms. In phenomenological terms, for example, Jesus was “son of Joseph”; and in phenomenological terms Jesus suffered a death that shattered all the hopes of those whom he chose as Apostles. The verities of Christian faith know otherwise. So, too, in phenomenological terms one may encounter enactments of a spouse or of spouses that are starkly in contradiction to what is professed of the matrimonial state. Those in the contra-position hold that the matrimonial state remains in the face of these violations and in the face of phenomenological death. The very day after writing this section of this paper, I noticed the following in the 17 August 2014 address in Korea of Pope Francis to the Bishops of Asia:

"Then too, there is a [another] temptation: that of the apparent security to be found in hiding behind easy answers, ready formulas, rules and regulations. Jesus clashed with people who would hide behind laws, regulations and easy answers... He called them hypocrites. Faith by nature is not self-absorbed; it 'goes out'. It seeks understanding; it gives rise to testimony; it generates mission. In this sense, faith enables us to be both fearless and unassuming in our witness of hope and love. Saint Peter tells us that we should be ever ready to respond to all who ask the reason for the hope within us (cf. 1 Pet 3:15). Our identity as Christians is ultimately seen in our quiet efforts to worship God alone, to love one another, to serve one another, and to show by our example not only what we believe, but also what we hope for, and the One in whom we put our trust (cf. 2 Tim 1:12)".

I quote this in full, while recognising that the quote is more general in its address than my present writing. But the fact remains that it is such closed-system perspectives that were challenged in a spearhead way when early in his consistory address Cardinal Kasper said:

"It is not enough to consider the problem only from the point of view and from the perspective of the Church as a sacramental institution. We need a paradigm change and we must... consider the situation also from the perspective of those who are suffering and asking for help".

In effect, Kasper is saying that a received paradigm of sacramental theology cannot be our sole paradigm for addressing complex situations that cannot be dealt with from this perspective. And in his interview published 7 May 2014 in "Commonweal" he said: “We have our own resources for finding a solution”.

Let’s start by avoiding derogation of other long-standing traditions

It is not my purpose here to “find a solution” – that, among other things, is the challenge of the upcoming Synods of the Church and the Holy Father in communion with the whole Church. But I will say that it is arrogant and specious to speak dismissively of the Orthodox practice of *oikonomia*, “economy”, that may allow for a second non-sacramental marriage, after the manner of Cardinal Müller: “This practice [of *oikonomia*] cannot be reconciled with God’s will” (Testimony to the Power of Grace, 3); nor after the manner of Corbett and his collaborators (611-614). The Latin Church does not derogate the Eucharistic observances of those churches that in communion with the See of Constantinople because they do not include Eucharistic Adoration and Benediction of the Blessed Sacrament outside the Eucharist, nor because they do not conduct Eucharistic Processions. Eucharistic practice in the Latin Church has developed differently. We would do well similarly to be restrained in what we say about the juridical treatment of marriage in the Orthodox Churches, and not to derogate it because it operates in a framework that is different from the Latin Church. There is a useful 2014 article by a bishop and a priest of Eastern Catholic rites in "Studia canonica" that shows the quite different mentalities of the practice of in marriage jurisprudence in Orthodoxy. The following quotes suggests a different perspectual approach in considering this issue:

"This differentiation in terminology [in matrimonial jurisprudence] is the result of historical development.

It would not be reasonable to expect the early Christian writers or the canonical sources to use this terminology logically or correctly" (Vasil and Gallaro: 123).

"An objective difficulty in analysing the pastoral practice of the Orthodox Church in matrimonial cases consists in the difficulty of communication, the different terminology and different sensitivity in the theological field. Moreover, there are also differences in the perception of tradition, the unity of discipline, and that of pastoral prudence" (Vasil and Gallaro: 132-133).

I would also add that it is wrong for the contra-position to imply any correspondence between Anglican practice and Orthodox practice (Corbett, 614-615). The collapse of Anglican marriage discipline is contemporary and has occurred within my ministerial lifetime. Orthodox matrimonial jurisprudence is long-standing and, although the world area of Orthodoxy is far smaller than that of Latin Catholicism, one does not need to engage in sophisticated demographic studies to observe that matrimony in Orthodoxy has displayed and continues to display a general stability that is being lost in Latin Catholicism. I am not proposing Orthodox practices as a panacea, but it seems to me evident that engaged conversation between Orthodox and Latin perspectives would be very helpful in the present conflictual circumstances.

A listening and engaged conversation toward a more encompassing methodology

It is engaged conversation that is needed. What Cardinal Kasper has said is not "the last word". Our present Holy Father often speaks "ad libitum", and his words are only "last words" under restrictive circumstances. But such as Cardinal Burke and Father Corbett and his associates have endeavoured to give finality to words that are argumentative rather than conversing. I began this paper in terms of the congruency between the methodologies of Ratzinger and Bergoglio. The paradigms of Joseph Ratzinger show vast scholarship and methodological versatility and marked temperance and moderation. Jorge Bergoglio has a different personality and a different manner of address. But as I outlined in my earlier appreciation of his "Evangelii gaudium", Pope Francis nevertheless has a sophisticated and comprehensive methodology (although I suppose he would not use that word), and I quote from him and from my "www.chiesa" article to illustrate this, and to make the plea that we take a lead from the Holy Father in approaching the complex theological, canonical, and pastoral issues surrounding divorce and remarriage. The following quote from "Evangelii gaudium" is an example of the manner of thinking of Pope Francis that is holistic, concrete, and pastoral:

"There... exists a constant tension between ideas and realities. Realities simply 'are', whereas ideas are 'worked out'. There has to be a continuous dialogue between the two, lest ideas become detached from realities. It is dangerous to dwell in the realm of words alone... So [another] principle comes into play: realities are greater than ideas. This calls for rejecting the various means of masking reality: angelic forms of purity, dictatorships of relativism, empty rhetoric, objectives more ideal than real, brands of ahistorical fundamentalism, ethical systems bereft of wisdom" (n. 231).

And now quoting from my earlier "www.chiesa" piece:

"The irony... is that his method is at once simple and complex. It is simple because it is straightforward. It is simple because there is constant reference to concrete situations, rather than to abstractions that cover all or various situations. It is complex because it is situated in a cluster of understandings. The Pope's oft-quoted single-line remarks in fact situate in a mind that sees a cluster of understandings, and not just single-line perspectives that call upon the mentality that we find in syllogistic logic. Pope Francis is a system thinker".

Two further quotes from "Evangelii gaudium" illustrate the instinct of Pope Francis toward pastoral theology:

"Pastoral ministry in a missionary style is not obsessed with the disjointed transmission of a multitude of doctrines to be insistently imposed" (n. 35). "It needs first to be said that in preaching the Gospel a fitting sense of proportion has to be maintained" (n. 38).

And again quoting from my earlier "www.chiesa" appreciation of the mind of Jorge Bergoglio:

"In these small quotes we see an implicit holistic grasp of the Gospel; again we see that the significances of aspects of the proclamation or of corollaries of the proclamation are situated in a whole that gives them proportion. What the Pope presents derives from systemic understanding. This is not intellectualist

systematizing, but systemic understanding that is grounded in pastoral experience.

"The Pope will be misunderstood if his various utterances (particularly those that grab the media as "sound bites") are taken as one-line dictums, for the Pope's mind is not a fragmented one. In Pope Francis we encounter a mind that is grounded in a pastoral empiricism, but an empiricism that is in whole-system dialogue with the foundations of Catholic faith that integrates concrete circumstances within a structured and fundamental understanding of the Gospel".

Whether "Pauline" or "Franciscan", the Gospel is a Gospel of Peace

Jorge Bergoglio has taken the style of Francis of Assisi's "evangelium" for his pontificate. In my life and ministry, I find a constant return to the Apostle Paul as a paradigm for ministry under Jesus Christ. For some people, the angularities of his nature and his intellectuality make him distant, yet he remains a man of great passion for the truth of Jesus Christ, and a man with a true pastor's heart. The little end-line in First Corinthians 7:15 for me "says it all":

"...": for God has called us to peace.

Let us then engage the conversations that will lead us to truthfulness and to peace. In religious terms, entering that conversation involves the grace of the Holy Spirit. In human terms, the difficulties in conversation are often psychological, with positions and contra-positions proceeding from different psychologies. A pithy word from one of the founders of social cognitive psychology is relevant to finding a new manner of thinking that may lead to an authentic hermeneutic of continuity:

"The solution is derived from the configurations of knowledge, rather than from any single proposition" (A. Bandura, *Social Foundations of Cognitive Thought and Action*, 455).
