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Historical Theology and the Problem of Divorce and Remarriage Today

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"So speak and so act as those who are to be judged under the law of liberty. For judgment is without mercy to one who has shown no mercy; yet mercy triumphs over judgment" – James 2:12–13.

WHAT GUIDANCE CAN THE DISCIPLINE of Historical Theology—and, more precisely, Patristic Theology—offer to Moral Theology today, as it explores the vexed question of divorce and remarriage in the Catholic Church?[1] While I make no claim to expertise as a moral theologian, I have spent several decades studying the history and development of marriage in early Christianity.[2] Over time it has become clear to me that early Christian tradition was much more diverse on the question of divorce and remarriage than is sometimes acknowledged. Neither the biblical texts nor the patristic interpretations of these texts provide a single or simple account of early Christian theory or practice. As a result, the task of weighing the tradition and evaluating its relevance to contemporary Catholic moral practice remains a complex matter that requires careful discernment. I offer the following reflections in the hope of assisting this process of discernment.

I proceed in three steps. First, I review briefly the New Testament texts on divorce and remarriage. My aim is to provide not a thorough historical-critical reading but rather to highlight the differences among the various witnesses and to underscore the developments that took place within the biblical tradition. Then, I examine some of the diverse views on divorce and remarriage that are found in early Christian writers, including Augustine. I focus on the Western tradition because it is

[1] I am grateful to Professors David Cloutier and Robert Koerpel for inviting me to contribute to this issue of the *Journal of Moral Theology*. Any errors or limitations are strictly my own.

[2] My studies on this topic include the following: David G. Hunter, ed., *Marriage and Sexuality in Early Christianity* (Minneapolis: Fortress Press, 2018). For specific studies on divorce and remarriage, see "Augustine's Doubts on Divorce: Reconsiderations on Remarriage," *Augustinian Studies* 48 (2017): 161–182; and "Did the Early Church Absolutely Forbid Remarriage after Divorce?" *Vergentis: Revista de Investigación de la Cátedra Internacional conjunta Inocentio III* 6 (2018): 45–64 [vergentis.ucam.edu/index.php/vergentis/article/view/65].

the foundation of current Roman Catholic practice and because Eastern Christian writers followed a different path on the question.[3] The different views that are present in the Western writers derive largely from the diversity of the biblical texts and show that there was not one patristic tradition on the matter. In the final part of this essay, I address the following question: Given the diversity and development in the biblical and patristic traditions, are there historical resources that might assist moral theologians to address the question of legitimate development? While historical precedents can never provide a detailed blueprint or infallible directive for present practice, I suggest that early Christian tradition offers valuable guidance for Catholic moral theologians today.

DIVERSITY AND DEVELOPMENT IN NEW TESTAMENT TRADITIONS

It is a truism that the theology of the early church fathers was largely a commentary on the texts of scripture. While true, this observation is complicated by the fact that the New Testament scriptures do not speak with a single voice on the question of divorce and remarriage. On the one hand, all of the significant discussions of the issue in the New Testament are based on sayings attributed to Jesus, and there is general agreement among scholars that these sayings have a very strong claim to historical reliability. As biblical scholar Raymond F. Collins has observed: "No other saying of Jesus appears as many times in the New Testament as does the logion on divorce (Mk 10:11–12; Mt 5:32; Mt 19:9; Lk 16:18; 1 Cor 7:10–11); no other saying has as much claim to historicity as does this one."[4] On the other hand, while the various biblical accounts are based on what is most likely a genuine teaching of the historical Jesus, these accounts do not always agree with one another, and these differences sometimes show important developments in the application of Jesus's teaching.

For example, the earliest reference to a teaching of Jesus on divorce is found in Paul's famous discussion of marriage in the seventh chapter of 1 Corinthians. There Paul wrote: "To the married I give charge, not I but the Lord, that the wife should not separate from her husband (but if she does, let her remain single or else be reconciled to her husband)—and that the husband should not divorce his wife" (1 Corinthians 7:10–11).[5] Although Paul's letter was written before any of the

[3] For the Eastern tradition of "accommodation" (oikonomia), see Kevin Schembri, *Oikonomia: Divorce and Remarriage in the Eastern Orthodox Tradition* (Kanonika 23; Rome: Edizioni Orientalia Christiana, 2017; Rome: Valore Italiano, 2017).

[4] See, e.g., Raymond F. Collins, "Marriage and Divorce in the New Testament," in *Marriage—Divorce—Remarriage: Challenges and Perspectives for Christians*, ed. R. Burggraeve, K. Demasure, M. Foket, and P. Weber (Leuven: Peeters, 2007), 71–85, quotation at 76.

[5] Unless otherwise noted, I am citing biblical texts from the Revised Standard Version (RSV).

extant gospels, his version of Jesus's saying already shows some adjustment to the Hellenistic context in which he was preaching. Jewish tradition generally did not allow women to initiate divorce, whereas it was possible under Roman law. Both here and in 1 Corinthians 7:13 ("If any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him"), Paul assumes that women have the legal right to initiate divorce, a possibility not envisioned in the Jewish law contained in Deuteronomy 24:1–4. In this case, Paul seems to have modified the tradition of Jesus's teaching that he had received in order to make that tradition relevant to the cultural situation of his Corinthian community. As we will see below, a similar modification also was made in Mark 10:12.

Another critical development evident in Paul's use of the earlier tradition is his explicit granting of permission for divorce (and, most likely, remarriage as well) in cases where a Christian was divorced by a non-Christian spouse (the so-called "Pauline privilege"). Paul discussed this situation in 1 Corinthians 7:12–16, and it is an issue that would not have arisen in the context of the historical ministry of Jesus. After first discouraging Christian husbands and wives from divorcing their non-Christian partners, as long as the non-Christian was willing to remain married, Paul addressed the case where the non-Christian no longer wished to remain married to the Christian: "But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace" (1 Cor 7:15). In this instance, Paul has explicitly justified divorce and probably remarriage as well.[6] In contrast to his invocation of the authority of Jesus in 1 Corinthians 7:10 ("not I, but the Lord"), Paul has explicitly noted that he has made the exception on his own authority, "I, not the Lord." His comment suggests that he is aware that his policy goes beyond the strict prohibition contained in the teaching of Jesus.

Perhaps the most consequential modification of the tradition of Jesus's teaching is found in the famous "Matthean exception" in Matthew 5:31–32 and Matthew 19:8–9. While the gospels of Mark and Luke present versions of Jesus's teaching on divorce and remarriage stated in absolute terms with no exceptions specified, Matthew twice introduces an exception. Mark 10:11–12, for example, reads: "And he said to them, 'Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery.'" Similarly, Luke 16:18 states: "Every one who divorces his wife and marries another commits adultery, and

[6] Paul did not explicitly address the question of the remarriage of the Christian divorced by a non-Christian. For the likelihood that remarriage of the Christian was permitted, see the arguments of Raymond F. Collins, *Divorce in the New Testament* (Collegeville, MN: Liturgical Press, 1992), 63–64.

he who marries a woman divorced from her husband commits adultery." Critical scholarship on these passages suggests that the Lukan version best represents the most primitive form of the divorce logion from Q, and that the version in Mark has been modified to include the possibility of women divorcing their husbands.[7]

In contrast to the versions of these sayings in Mark and Luke, the Gospel of Matthew twice presents the teaching with an exception in the case of *porneia*. As Matthew 5:31–32 presents the text in a series of antitheses in the Sermon on the Mount: "It was also said, 'Whoever divorces his wife, let him give her a certificate of divorce.' But I say to you that every one who divorces his wife, except on the ground of *porneia*, makes her an adulteress; and whoever marries a divorced woman commits adultery." Later in Matthew 19:8–9 we find: "He said to them, 'For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so. And I say to you: whoever divorces his wife, except for porneia, and marries another, commits adultery'."

There are numerous problems presented by the addition of the exceptive phrase in Matthew's Gospel. First, there is the question (still debated by modern scholars) as to what constituted *porneia*. Literally, the word meant "uncleanness," and there is general agreement that Matthew is reflecting the legislation of Deuteronomy 24:1–4, which allowed a man to divorce his wife if he found some "indecency" in her. The word could refer to a wide variety of sexual offenses, including extra-marital intercourse, polygamy, and sex with prostitutes. It could also refer to marriage within the degrees of kinship forbidden in Leviticus, as it probably did in the Jewish laws imposed on Gentile converts in Acts 15:20 and 29. For my purposes here, the original meaning of the phrase in Matthew's Gospel is of less significance than the fact that it was added to the tradition of Jesus's teaching that had been received from Mark's Gospel. There is widespread agreement among biblical scholars that the Gospel of Matthew was written for a community with a sizable Jewish-Christian membership that still observed Mosaic law. It seems likely that the purpose of the Matthean exception would have been to make it possible for Gentile Christians to enter the community and conform to marital requirements appropriate to a stricter Jewish-Christian ethic by allowing them to depart from

[7] See, e.g., Joseph A. Fitzmyer, "The Matthean Divorce Texts and Some New Palestinian Evidence," *Theological Studies* 37 (1976): 200–202; and Collins, *Divorce in the New Testament*, 175–183. If Luke's version represents the earliest form of the Jesus logion, then Mark's modification suggests that wrote for a Gentile Christian audience, addressing the possibility of a woman divorcing her husband, much as Paul had done.

illicit marriages.[8]

But the exceptive clause in Matthew's Gospel raises an even more fundamental question, again one about which scholars today still disagree: did the presence of *porneia* (whatever it meant) mean only that divorce was justified in that case, or did it also mean that remarriage was permitted to the man who divorced his wife on account of her *porneia*?[9] As we will see in the next section of this article, both the question of remarriage after *porneia* and the gender differences in the texts will become major points of contention among the authors in the Western tradition. Here it is enough to note that these modification in the tradition of Jesus's saying on divorce may have theological implications. As Joseph Fitzmyer once observed:

> Now these exceptions and modifications, being found in such an inspired record of early Christianity's reaction to Jesus, raise the crucial question: If Matthew under inspiration could have been moved to add an exceptive phrase to the saying of Jesus about divorce that he found in an absolute form in either his Marcan source or in "Q," or if Paul likewise under inspiration could introduce into his writing an exception on his own authority, then why cannot the Spirit-guided institutional Church of a later generation make a similar exception in view of problems confronting Christian married life of its day or so-called broken marriage (not really envisaged in the NT)—as it has done in some situations. The question here is whether one looks solely at the absolute prohibition, traceable to Jesus, or at "the process of understanding and adaptation" which is in the NT itself and "with which the modern Church can identify only by entering into the process and furthering it."[10]

I will return in the final portion of this essay to the question raised by Fitzmyer. Here I simply want to stress the differences that exist in the biblical texts and note the willingness of the New Testament authors to modify the received tradition of Jesus on divorce in order to adapt that tradition to the needs of their own communities.

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[8] It has also been suggested that the exception was added to conform Christian practice more closely to the legislation of Emperor Augustus (*Lex Iulia de adulteriis coercendis*), who required that a man divorce his wife, if she was guilty of adultery, or risk prosecution for pandering (*lenocinium*). For this suggestion, see Collins, *Divorce in the New Testamen*t, 196–197.

[9] Collins, *Divorce in the New Testament*, 199–205, has presented twelve different modern readings of the Matthean exception.

[10] Fitzmyer, "The Matthean Divorce Texts," 224–225. The portions that Fitzmyer has quoted are taken from George W. MacRae, SJ, "New Testament Perspectives on Marriage and Divorce," in *Divorce and Remarriage in the Catholic Church*, ed. L.G. Wren (New York: Newman, 1973), 1–15, esp. 3.

DIVERSE PATRISTIC INTERPRETATIONS OF THE NEW TESTAMENT

Given the diverse presentations of the traditions regarding divorce and remarriage in the New Testament, it is not surprising that they should give rise to different patristic interpretations. Unlike historical-critical scholars, however, who search for the earliest form of a text and trace its subsequent redactional history, most patristic commentators started from the premise that scripture had but one ultimate divine Author, despite its numerous human authors; therefore, they believed that it was appropriate to attempt to harmonize divergent passages. But this did not mean that they all harmonized the texts in the same way. As a result, the diversity of the biblical witnesses sometimes led the ancient commentators to different conclusions regarding the meaning of the texts for Christian moral practice.[11]

It is well known that Augustine read the Matthean exception as allowing divorce, but not remarriage, in the case of extra-marital relations committed by either the husband or the wife.[12] But, as I argue here, his position was not the only viewpoint circulating in the early church, nor was it the dominant one. I begin with the writings of a lesser known, but significant fourth-century biblical commentator, whom modern scholars have dubbed the "Ambrosiaster." Ambrosiaster argued that a man who found his wife guilty of adultery could divorce her and remarry. While some scholars have tried to argue that this position was an anomaly in the early church,[13] Ambrosiaster's view may have been the more prominent approach to the question prior to the appearance of Augustine's.

There are three parts to my argument. First, I examine Ambrosiaster's discussion of divorce and remarriage, both his reading of the biblical texts and its context within Roman legal practice. Second, I discuss Augustine's approach to the issue. I show that Augustine himself had persistent doubts about whether the biblical texts actually supported his account of the indissolubility of marriage. Both the ambiguity of the biblical texts and the prior witness of Ambrosiaster seem

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[11] In this section I have reproduced arguments previously published in the article in *Vergentis* cited above in note 2.

[12] The Old Latin (Vetus Latina) translation of the New Testament that Augustine and his contemporaries used had translated the Greek *porneia* as *fornicatio*.

[13] See, e.g., Henri Crouzel, *L'église primitive face au divorce: Du premier au cinquième* (Paris: Beauchesne, 1970), 274: "L'Ambrosiaster est donc le seul écrivain ecclésiastique des cinq premier siècles à permettre clairement le remariage: à l'homme seul, après une separation pour inconduite; à l'homme et à la femme, abandonees par leur conjoint incroyant….Il est en outré assez paradoxal de constater, puisque l'Orient et l'Occident vont prendre dans la suite des disciplines inverses à propos du remariage, que le seul auteur qui le permette dans les cinq premier siècles est un Latin." In the summer of 2014, prior to the two synods on the family, the journal *Communio* translated into English and published an article by Crouzel which had originally appeared in 1976 and which had repeatedly characterized Ambrosiaster as a marginal figure in the western tradition.

to have influenced Augustine's hesitation on the issue. Third, I present a sample of evidence from both before and after the time of Ambrosiaster and Augustine. This evidence will show that there was considerable diversity of opinion and policy on divorce and remarriage and that Ambrosiaster's view may have been part of a wider and more long-lasting tradition.

The evidence of Ambrosiaster

The name "Ambrosiaster" was coined in the sixteenth century for the author of the earliest complete Latin commentary on the Pauline epistles to have survived from antiquity. The author seems to have wished to remain anonymous, but he says that he is writing in Rome when Damasus was bishop (366–384). He is usually thought to have been a presbyter in the church at Rome, perhaps presiding over one of the cemetery churches outside of the city walls.[14] His writings generally present a moderate, clerical view of ecclesiastical life, and they were known to several of his contemporaries, including Jerome, Augustine, and Pelagius, although these authors also seem to have been unaware of his true identity. The writings of Ambrosiaster gained even greater prominence in the Middle Ages when the Pauline commentary was attributed to Ambrose of Milan, and another work of his, the *Questions on the Old and New Testaments*, was ascribed to Augustine in the manuscript tradition.[15]

Ambrosiaster's discussion of divorce and remarriage is found in his commentary on 1 Corinthians 7:10–11, where Paul had presented the issue and cited the Jesus saying ("To the married I give the charge, not I but the Lord, that the wife should not separate from her husband (but if she does, let her remain single or else be reconciled to her husband)—and that the husband should not divorce his wife)." Ambrosiaster paid close attention to the gender distinctions in the Pauline text and sharply distinguished Paul's precept to the woman from his precept to the man:

> This is the apostle's advice: that if the wife leaves her husband because of his bad behavior, she should remain unmarried. Or be reconciled to her husband. But if she cannot exercise self-control, he says, since she does not desire to struggle against the flesh, she should be reconciled to her husband. For it is not permitted for a woman to remarry, if she divorces her own husband on account of fornication or apostasy or if he seeks to use her under the compulsion of his lewd desires, since the woman, as the inferior party, does not enjoy the same

[14] For this suggestion see Sophie Lunn-Rockliffe, *Ambrosiaster's Political Theology* (Oxford: Oxford University Press, 2007), 80–86.

[15] For an overview and introduction to Ambrosiaster, see Lunn-Rockliffe, Ambrosiaster's Political Theology, and David G. Hunter, "The Significance of Ambrosiaster," *Journal of Early Christian Studies* 17 (2009): 1–26.

> rights as the man, who is the superior. But if her husband commits apostasy or desires to enjoy his wife in a perverted manner, the woman can neither marry another man nor return to her husband.[16]

Ambrosiaster argues here that women are allowed to divorce their husbands in cases where the husbands are guilty of sexual impropriety or apostasy; he seems to have in mind the exception clause from Matthew's gospel, which allowed divorce in the case of *porneia*, which was rendered as *fornicatio* in Ambrosiaster's Latin Bible.[17] But Ambrosiaster insisted that women are not allowed to marry again, despite the allowance of divorce.

The situation is quite different, however, in the case of the man who divorces his wife because of her extramarital activity. Turning to the second half of 1 Corinthians 7:11, Ambrosiaster argued explicitly that men have a right not given to women, namely the right to remarry after divorcing their wives "on account of fornication":

> And a husband should not divorce his wife. He says that a husband should not divorce his wife. But the following words are to be understood: Except on account of fornication. He did not add the words that he wrote concerning the woman: But if she separates, she should remain as she is, because it is lawful for a man to marry another woman, if he divorces a wife who sins, since a man is not bound by the law in the same way that a woman is, for the man is the head of the woman.[18]

There are several features of Ambrosiaster's position that deserve comment. First, he has taken quite literally the distinction in the biblical text between Paul's directive to women, where there is an explicit

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[16] Ambrosiaster, *In ep. ad Cor. primam* 7:11 (CSEL 81/2: 74–75; trans. is my own): "Hoc apostoli consilium est, ut si discesserit propter malam conuersationem uiri, iam innupta maneat. Aut uiro reconciliari. Quodsi continere se, inquit, non potest, quia pugnare non uult contra carnem, uiro reconcilietur. Non enim permittitur mulieri, ut nubat, si uirum suum causa fornicationis dimiserit aut apostasiae aut si [inlicite] impellente lasciuia usum quaerat uxoris, quia inferior non omnino hac lege utitur qua potior. Si tamen apostatet uir aut usum quaerat uxoris inuertere, nec alii potest nubere mulier nec reuerti ad illum." The word *inlicite* in brackets is found only in the *recensio prior* (alpha) of Ambrosiaster's commentary, i.e., the earlier version.

[17] If Ambrosiaster does have the Matthean exception in mind, it would appear that he believed *fornicatio* could be understood metaphorically as apostasy. Augustine maintained the same position.

[18] Ambrosiaster, *In ep. ad Cor. primam* 7:10–11 (CSEL 81/2: 74; trans. is my own): "Et uir ne uxorem dimittat, uirum uxorem non dimittere. Subauditur autem: excepta causa fornicationis. Et ideo non subiecit sicut de muliere dicens: quodsi discesserit, manere sic, quia uiro licet ducere uxorem, si dimiserit [uxorem] peccantem, quia non ita lege constringitur uir sicut mulier; caput enim mulieris uir est." The word uxorem in brackets was added in the *recensio posterior* (gamma) of Ambrosiaster's commentary. The CSEL edition has presented the words *uirum uxorem non dimittere* as part of the biblical lemma, but these words are Ambrosiaster's paraphrase of the biblical text just cited: *Et uir ne uxorem dimittat*.

command to "remain single or else be reconciled to her husband" and the directive given to men, where there is no explicit prohibition of remarriage. It is possible, of course, that Paul might have intended his prohibition of remarriage also to apply to the man who divorced his wife. Augustine, among others, argues against the double standard by noting that elsewhere Paul insists on sexual equality (for example, in 1 Corinthians 7:4, where he says that the man does not have control over his own body, but the wife does, and vice versa). But Ambrosiaster is correct that, strictly speaking, Paul did not give the same prohibition to the man that he gave to the woman.

There are several reasons why Ambrosiaster might have been drawn to this interpretation of Paul that enshrined a double-standard for men and women in the matter of remarriage. First, he had a well-developed theology of creation that relegated women to second-class status, both in society and in the Church. Indeed, following the lead of Paul's comment in 1 Corinthians 11:7 ("For a man ought not to cover his head since he is the image and glory of God; but woman is the glory of man"), Ambrosiaster even denied that women were created in the image of God.[19] But Ambrosiaster was also strongly influenced by Roman legal culture, and his emphasis on the subordinate place of women reflects the social standing of women in the later Roman Empire. For example, when discussing the image of God in one of his *Quaestiones*, Ambrosiaster could refer to the exclusion of women from certain legal roles as evidence of their inferior status in relation to men and, therefore, the absence of God's image:

> For how can it be said that woman is the image of God, when it is clear that she is subject to the dominion of the male and does not possess authority (*auctoritatem*)? For she is not able to teach, nor to be a witness (*testis*), nor to take an oath (*fidem dicere*), nor to serve as a judge (*iudicare*): how much less is she able to give commands (*imperare*)![20]

For Ambrosiaster, the image of God essentially meant dominion, and only a male could exercise dominion, either in a secular or in a religious context.

I stress the influence of Roman law on Ambrosiaster's thought because his emphasis on the double standard on remarriage probably resulted as much from the unequal status of women in Roman law and

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[19] I have discussed Ambrosiaster's unusual reading and its context in "The Paradise of Patriarchy: Ambrosiaster on Woman as (Not) God's Image," *Journal of Theological Studies* 43 (1992): 447–469.

[20] *Quaestiones veteris et novi testamenti* 45.3, *De imagine* (CSEL 50:83): "Quo modo enim potest de muliere dici, quia imago dei est, quam constat dominio uiri subiectam et nullam auctoritatem habere? Nec docere enim potest nec testis esse neque fidem dicere nec iudicare: quanto magis imperare!"

society as from his peculiar theology of the divine image. This is especially the case with adultery. In Roman law, *adulterium* involved sexual relations by a married woman with a man who was not her husband; it was essentially a crime against a husband, i.e., a violation of his right to the exclusive use of his wife's body. Extra-marital sexual activity by a man might be considered *stuprum*, if it involved an unmarried woman or widow of respectable status, but it was not regarded as "adultery." Extra-marital sexual activity by a married man with a slave, prostitute, or other low-status woman had no legal bearing at all.

This is relevant to my present argument because Ambrosiaster's position on the acceptability of remarriage for a man who divorced his wife because of her adultery was not at all an anomoly from the viewpoint of Roman law. Ever since the appearance of the Emperor Augustus's marriage laws, adultery had been punished as a public crime. Husbands had been required to bring charges against their adulterous wives, or else risk being prosecuted for *lenocinium* or pimping.[21] Moreover, as legal scholar Judith Evans Grubbs has argued, Constantine's marriage legislation was even harsher on wives who wished to divorce than on their husbands.[22] According to *Codex Theodosianus* 3.16.1, issued by Constantine in 331, a wife could not send a notice of divorce to her husband simply on the grounds that he was a drunkard or gambler or womanizer. She had to prove that he was a murderer, a poisoner, or disturber of tombs. The husband, however, could divorce his wife for adultery or any other serious crime.[23] I am not suggesting that Ambrosiaster's teaching matched Roman legal practice in all of its particulars; rather, my claim is that Ambrosiaster's position fit well into a culture in which a married woman's sexual transgressions were taken more seriously than a man's and had a definitive impact on the marital relationship.

One further observation about the views of Ambrosiaster should cause us to be cautious about dismissing his teaching as eccentric or

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[21] See the material cited in Judith Evans Grubbs, *Women and the Law in the Roman Empire: A Sourcebook on Marriage, Divorce and Widowhood* (London: Routledge, 2002), 84.

[22] Evans Grubbs, *Women and the Law*, 202–203.

[23] CTh. 3.16.1, cited in Evans Grubbs, *Women and the Law*, 203: "It is pleasing that a woman not be permitted to send a notice of divorce to her husband because of her own depraved desires, for some carefully contrived cause, such as his being a drunkard, or gambler or womanizer. However, neither should husbands be permitted to divorce their own wives for just any reason whatsoever. But in the sending of a notice of divorce by a woman these crimes only are to be looked into: if she has proven that her husband is a murderer or a preparer of poisons or a disturber of tombs, so that only then, after being praised, she shall receive back her entire dowry…. Also in the case of men, if they send a notice of divorce, it is fitting that these three crimes be inquired into: if they wanted to repudiate an adulteress or a preparer of poisons or a go-between."

anomalous. Ambrosiaster was a careful, even conservative, thinker and well informed about contemporary church practices. For example, he provides important evidence about Christian marriage customs at Rome, including some of the earliest testimony to the bestowal of nuptial blessings;[24] he had reflected a great deal on the nature of the offices of bishop and presbyter;[25] he even gives some of the earliest evidence of the discipline of permanent sexual continence imposed on the higher ranks of the clergy, evidence that is contemporary with the canonical decrees of Popes Damasus and Siricius.[26] No one doubts that Ambrosiaster reflects contemporary church practice in these matters; there is no reason that we should not extend the same consideration to his account of divorce and remarriage practice at Rome in the fourth century.

Augustine's Doubts on Divorce and Remarriage

This brings me to the second step in my argument: the place of Augustine in the development of the Western tradition on divorce and remarriage. Augustine is well known as the primary architect of the Western theology of marriage and, in particular, the notion of the indissolubility of marriage.[27] But, as several scholars have noted, Augustine persistently expressed doubts about the validity of his own teaching. In a very thorough study of the evolution of Augustine's thought on divorce, Marie-François Berrouard has demonstrated that Augustine was always reticent to state a definitive view on the very issue posed by Ambrosiaster, namely whether a man who divorced his wife because of her adultery might be free to marry again.[28] Other scholars have noted Augustine's hesitations on the matter. In a study of Augustine's *Retractationes*, Goulven Madec has observed that Augustine acknowledged his dissatisfaction with his own solution to the problems posed by the biblical texts on divorce and remarriage.[29] The

[24] *Quaestiones veteris et novi testamenti* 127.3 (CSEL 50: 400): "cuius rei traditio et in sinagoga mansit et nunc in ecclesia celebratur, ut dei creatura sub dei benedictione iungatur, non utique per praesumptionem, quia ab ipso auctore sic data est forma."
[25] See Maurice Bévenot, "Ambrosiaster's Thoughts on Christian Priesthood," *Heythrop Journal* 18 (1977): 152–164.
[26] *Quaestiones veteris et novi testamenti* 127.35–36 (CSEL 50: 414–416); *Commentarius in epistulam Pauli ad Timotheum* 3:12–13 (CSEL 81/3: 268–270).
[27] Augustine's notion of indissolubility was based on reading the divorce prohibitions of Jesus and his citations of Genesis in the light of the *sacramentum magnum* of Ephesians 5:32. For a fuller account see Philip L. Reynolds, *How Marriage Became One of the Sacraments: The Sacramental Theology of Marriage from Its Medieval Origins to the Council of Trent* (Cambridge: Cambridge University Press, 2016), 101–153.
[28] Marie-François Berrouard, "Saint Augustin et l'indissolubilité du mariage. Évolution de sa pensée," *Recherches Augustiniennes* 5 (1968): 139–155.
[29] Goulven Madec, *Introduction aux "Révisions" et à la lecture des oeuvres de saint Augustin*. Collection des Études Augustiniennes. Série Antiquité, 150 (Paris: Institut d'Études Augustiniennes, 1996), 72: "Il faut noter aussi qu'Augustin ne se flatte pas

Orthodox bishop Peter L'Huillier has also noted Augustine's doubts about his own teaching.[30] In an essay that appeared recently in *Augustinian Studies*, I have documented these doubts in great detail.[31] We see them expressed explicitly in the text of *De adulterinis coniugiis*, Augustine's latest and most complete discussion of divorce and remarriage, as well as in various passages of the *Retractationes*, the book in which Augustine reviewed his own writings.

It will be useful to present some of the evidence of these doubts, although a fuller account can be found in the articles mentioned above. I begin with Augustine's famous review of his own writings, the *Retractationes*, composed in 426 or 427. In his note on *De adulterinis coniugiis* Augustine offered the following observation:

> I wrote two books on adulterous marriages, following the scriptures as closely as possible, with the intention of solving a very difficult problem (*difficillimam quaestionem*). I do not know whether I was able to do this in a very clear way. Quite the contrary, I do not think that I concluded the matter, although I shed light on many of its obscurities. An intelligent reader will be able to judge it.[32]

Augustine here frankly acknowledged that his discussion in *De adulterinis coniugiis* had not adequately resolved all of the questions posed by the biblical texts on the issue of divorce and remarriage.

In the text of *De adulterinis coniugiis* itself, written six or seven years earlier (ca. 421), Augustine had acknowledged a similar deficiency in his work. This two-book treatise was a response to the inquiries of an otherwise unknown correspondent named Pollentius, possibly a bishop or presbyter, who had criticized Augustine's earlier two books *On the Lord's Sermon on the Mount* for the strict position taken there on the indissolubility of marriage.[33] Near the conclusion of the first book of the treatise, Augustine frankly confessed to Pollentius the doubts that he had about his own work:

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d'avoir résolu à perfection ces problèmes très difficiles." See also the studies of Nautin and Reynolds cited below in notes 36 and 37.

[30] Peter L'Huillier, "The Indissolubility of Marriage in Orthodox Law and Practice," *St. Vladimir's Theological Quarterly* 3 (1988): 207.

[31] "Augustine's Doubts on Divorce: Reconsiderations on Remarriage," *Augustinian Studies* 48 (2017): 161–182.

[32] *Retr*. 2.57 (CCSL 57: 136), trans. Boniface Ramsey, WSA, *Revisions*, I/2, 161: "Scripsi duos libros de coniugiis adulterinis quantum potui secundum scripturas, cupiens soluere difficillimam quaestionem. Quod utrum enodatissime fecerim nescio; immo uero non me peruenisse ad huius rei perfectionem sentio, quamuis multos sinus eius aperuerim, quod iudicare poteri quisquis intellegenter legit." I have modified Ramsey's "Indeed" to "Quite the contrary" to capture the adversative sense of the words *immo uero*.

[33] On the identity of Pollentius as a cleric, see Henri Crouzel*, L'église primitive*, 337, n. 52, who summarizes the scholarly discussion.

> After dealing with these points and discussing them in this way to the best of my ability, I am not unaware that the whole question of marriage is still very unclear and most complex (*quaestionem… obscurissimam et inplicatissimam*). I would not be so bold as to claim that I have yet unraveled it fully, either in this work or any other, or even that I could do so now if pressed.[34]

Here again, six or seven years before composing his *Retractationes*, Augustine clearly expressed doubts about the adequacy of his treatment of the issue.

It is clear that the central issue that caused Augustine to have doubts about his own reading of the biblical texts derived from the two passages in Matthew's Gospel that recorded Jesus's prohibition of divorce and remarriage "except on account of *porneia*," that is, the Matthean exception.[35] The primary question Augustine had to face was how to interpret the exception and its bearing on the remarriage of the man who divorced his wife for her adultery. We have already seen from Ambrosiaster's discussion that Paul's words in 1 Corinthians 7:11 did not explicitly address the remarriage of the husband. The same can be said of the passage from Matthew 5:32. Matthew 19:9 did explicitly reject the husband's remarriage but added the phrase "except for porneia." Did this mean that in cases of divorce on account of adultery husbands were free to remarry? This is precisely how Pollentius and Ambrosiaster had interpreted the exceptive clause in Matthew's Gospel, although Pollentius thought that the Matthean exception also allowed remarriage by the innocent wife.

Augustine, however, was not willing to accept the double standard in Ambrosiaster's position. In *De adulterinis coniugiis* he tried to argue that the sayings of Jesus and the teachings of Paul had to be understood to apply to men and women equally. He appealed, for example, to the earlier passage in 1 Corinthians 7:4, where Paul had said that neither the husband nor the wife had authority over their own bodies; from this Augustine concluded that the apostle had articulated a principle of equality that should also obtain in the matter of divorce and remarriage. But Augustine knew that this was a surmise on his part and that he was filling in the blanks, so to speak, where scripture

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[34] *Adult. coniug*. 1.25.32 (CSEL 41: 379, trans. Ray Kearney, WSA, *Marriage and Virginity*, I/9, 163): "His ita pro meo modulo pertractatis atque discussis quaestionem tamen de coniugiis obscurissimam et inplicatissimam esse non nescio. Nec audio profiteri omnes sinus eius uel in hoc opere uel in alio me adhuc explicasse uel iam posse, si urguear, explicare." I have added the word "most" to Kearney's "complex" to express the superlative in the word *inplicatissimam*.

[35] Like Ambrosiaster, Augustine used an Old Latin version of scripture that translated *porneia* as *fornicatio*.

had not been explicit, and this was the ultimate source of Augustine's doubts about his own views.

Before turning to the third and final set of evidence, I would like to note that Augustine's doubts on this issue stand in marked contrast to Ambrosiaster's apparent certainty about the normativity of his own views. Augustine's seems to have been almost painfully aware of the ambiguity of the scriptural texts and the tenuousness of his own interpretations, whereas Ambrosiaster gave no hint that he was conscious of advocating an unusual position. As Philip Reynolds has observed, "Ambrosiaster gives no indication that he was conscious of advocating an unusual position. Rather, he aims merely to explain why the position is what he assumes it to be. In this as in some other matters, he probably reflects conservative Roman opinion."[36] This contrast between Augustine's doubts and Ambrosiaster's apparent certainty suggests—though it does not prove—that Ambrosiaster was simply explaining the practice on divorce and remarriage that he knew in the church of Rome in the late fourth century. Augustine, by contrast, may have been aware that he was innovating or, at least, that the traditions and interpretations of his church in North Africa differed from that of Christians elsewhere.

Christian Practice Before and After Augustine

This brings me to the third and final step in my argument, which I pose initially as a question: Are there additional reasons to suppose that Ambrosiaster's view was not an anomaly in the Western church and that Augustine's position was actually the innovation? As I have argued thus far, scripture could be plausibly cited on behalf of different positions, and both Ambrosiaster's confident assertion of his view and Augustine's doubts about his own views might suggest that the weight of tradition rested with Ambrosiaster. Can we find additional evidence to support the claim that Ambrosiaster, and not Augustine, more closely represented at least one strand of earlier Christian tradition?

As noted above, the characterization of Ambrosiaster's position as an anomaly in the Western tradition can be traced back at least as far as the standard study on divorce and remarriage by Henri Couzel, *L'église primitive face au divorce*.[37] But there exist several important studies that have raised questions about Crouzel's book and that have offered a more nuanced account of early Christian tradition on divorce and remarriage. I have already mentioned the article by Berrouard on the evolution of Augustine's thinking. But the most important work

[36] Philip Lyndon Reynolds, *Marriage in the Western Church: The Christianiztion of Marriage During the Patristic and Early Medieval Periods* (Leiden: Brill, 1994), 183.
[37] See Henri Crouzel, *L'église primitive face au divorce: Du premier au cinquième* (Paris: Beauchesne, 1970). Cited in n. 13 above.

on the present question was a lengthy article by Pierre Nautin, published in 1974, which was largely a response to Crouzel.[38] Nautin presented extensive textual evidence suggesting that the view of Ambrosiaster was both the dominant tradition in the first three centuries and that it remained so even into the Carolinian period. Subsequent scholars, such as Philip Lyndon Reynolds[39] and Riccardo Bof and Conrad Leyser,[40] have confirmed Nautin's argument and raised serious questions about the prevalence of the Augustinian position prior to the early Middle Ages.

This is not the place to survey all of the available evidence, but a selection of significant texts will serve to establish the point that Ambrosiaster's position was by no means an anomaly in the Western Christian tradition. With the exception of a passage from *The Shepherd* of Hermas, composed at Rome early in the second century, there is no text from the first four centuries that clearly and unequivocally prohibited a man from remarrying after divorcing his first wife for adultery.[41] Even Tertullian, who was a staunch opponent of remarriage in any form, even after the death of a spouse, seems to have regarded the remarriage of a woman after divorce as equivalent to the remarriage of a widow, at least in his earliest writings. For example, in his letter *Ad uxorem* he tried to discourage remarriage altogether, but allowed that a woman might marry another Christian after the death or divorce of her first husband:

> Now, recognizing the fact of human frailty, let us turn our attention to an alternative course of action [i.e., remarriage to Christians]. We are led to do this because of the conduct of certain women who, when given an opportunity of practicing continence by reason of *a divorce or the death of a husband* [my emphasis], not only rejected the opportunity of living so good a life, but, in contracting a second marriage, were not even mindful of the prescription that they should "above all

[38] Pierre Nautin, "Divorce et remariage dans la tradition de l'Église latine," *Recherches de science religieuse* 62 (1974): 7–54 ; see also Charles Munier, "L'échec du mariage dans l'église ancienne," *Revue de droit canonique* 38 (1988): 26–40.

[39] Reynolds, *How Marriage Became One of the Sacraments*, 148–150.

[40] Riccardo Bof and Conrad Leyser, "Divorce and Remarriage between Late Antiquity and the Early Middle Ages: Canon Law and Conflict Resolution," in *Making Early Medieval Societies: Conflict and Belonging in the Latin West*, 300–1200, eds., Kate Cooper and Conrad Leyser (Cambridge: Cambridge University Press, 2016), 155–180. Bof and Leyser demonstrated that early Western canon law collections, such as that of Dionysius Exiguus, distorted the earlier tradition, e.g., by recasting the decrees of the Council of Carthage in 407 in the direction of Augustine's teaching.

[41] *The Shepherd*, Mandates 4.29. Hermas insisted that a man should remain unmarried after divorcing his adulterous wife, so that he would be able to take her back, if she repented. But this was to happen only once, Hermas insisted. He did not indicate whether or not the man could remarry, if the wife repeated her sin. The primary concern of Hermas was to establish the possibility of post-baptismal repentance.

> marry in the Lord."[42]

Only in his later works, written when he was fully under the influence of the "New Prophecy," did Tertullian take a firm stance against all second marriages.[43]

Another Latin writer, Lactantius, also appears to have sanctioned the remarriage of a man who divorced his first wife for adultery, though less explicitly than Ambrosiaster. Both in his **Institutiones Diuinae** and in his *Epitome* of the *Institutiones*, Lactantius cited the Matthean exception as if it allowed a man to remarry after divorcing his wife for infidelity:

> Whoever marries a woman who has been divorced by her husband is an adulterer, as is the man who divorces his wife in order to marry another woman, except if she is guilty of adultery. For God does not want the body to be separated and torn apart.[44]

The most obvious reading of Lactantius's text is that a man was allowed to remarry, if he divorced his first wife because of her adultery. Likewise in his *Epitome* of the *Divinae Institutiones*, Lactantius stated, "God has commanded that a wife should not be divorced, unless she has been convicted of adultery, so that the bond of the conjugal pact may never be dissolved, unless infidelity has broken it."[45] As Pierre Nautin has observed, Lactantius seems to have regarded marriage in Roman legal terms as a "pact" (*foedus*), which was effectively dissolved by the "crime of adultery" (*crimen adulterii*).[46]

Perhaps the most telling sign of Western practice in regard to divorce and remarriage can be found in the canons of several synods, issued both before and after the time of Augustine, which appear to

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[42] *Ux*. 2.1.1 (CCSL 1: 383, trans. William P. Le Saint, ACW 13, 23): "Nunc ad secunda consilia conuertamur, respectu humanae infirmitatis, quarumdam exemplis admonentibus, quae diuortio uel mariti excessu, oblata continentiae occasione, non modo abiecerunt opportunitatem tanti boni, sed ne in nubendo quidem rursum disciplinae meminisse uoluerunt, ut *in Domino potissimum nuberent."*

[43] For a full discussion of the texts of Tertullian, see Paul Mattei, "Le divorce chez Tertullien: Examen de la question à la lumière des développements que le De Monogamia consacre à ce sujet," *Revue des Sciences Religieuses* 60 (1986): 207–234.

[44] *Inst*. 6.23 (CSEL 19: 569–570, translation is my own): "Haec sunt quae ad continentiam praecipiuntur a deo. Sed tamen, ne quis diuina praecepta circumscribere se putet posse, adduntur illa, ut omnis calumnia et occasio fraudis remoueatur, adulterum esse qui a marito dimissam duxerit et eum qui praeter creimen adulterii uxorem dimiserit, ut alteram ducat: dissociari enim corpus et distrahi deus noluit."

[45] *Epit*. 61 (66) (CSEL 19: 748, translation is my own): "Ideo praecipit non dimitti uxorem nisi crimine adulterii reuictam, ut numquam coniugalis foederis uinculum nisi quod perfidia ruperit resoluatur."

[46] Nautin, "Divorce et remariage dans la tradition de l'Église latine," 17; cf. Reynolds, *Marriage in the Western Church*, 182–183, who doubts that Lactantius would have extended the same privilege to the woman who divorced her husband for adultery.

have allowed the remarriage of a man who has divorced his first wife because of her adultery. In 314, the Council of Arles issued a decree that discussed the status of men who divorced their wives for adultery. Canon 11 gives evidence of both a general custom that prohibited remarriage of men who divorced their wives and the possibility of exceptions:

> Concerning those men who find that their wives are committing adultery—these being young Christian men who are forbidden to marry—it is decreed that as far as possible (*quantum possit*) they should be counseled not to marry again as long as their wives are alive, even though the latter are adulteresses.[47]

This canon makes it clear that the bishops assembled at Arles wished to discourage the remarriage of men who divorced their wives for adultery. Nevertheless, this was put on the level of a "counsel" (consilium), not a prohibition.[48] In the case of young men, it seems that a pastoral exception was being made: they were urged not to remarry *quantum possit*. It is also significant that this canon was addressed only to men. Nothing was said about a similar policy for women; it may have been assumed that women would not have been allowed to remarry.

Another significant case is the set of canons attributed to the early fourth-century council of Elvira. These canons must be used with extreme caution because numerous scholars have raised serious questions about the unity and authenticity of this collection.[49] However, even if these canons do not derive from a single early fourth-century council, they are still relevant to the present discussion, since they would illustrate later western practice. Canons 8 and 9 of this collection deal only with the remarriage of women who have divorced their husbands. Canon 8 states that if they have remarried after divorcing their husbands for no reason, they should be excluded from communion for life. Canon 9 states that if they have remarried after divorcing their husbands because of adultery, they should abstain from communion until the first husband has died, although communion may be given in case of illness.[50] It is noteworthy that there are no equivalent canons

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[47] Concilium Arelatense, c. 11 (10) (CCSL 148: 11, trans. Reynolds, *Marriage in the Western Church*, 181): "De his qui coniuges suas in adulterio depraehendunt, et idem sunt adultescentes fideles et prohibentur nubere, placuit ut, quantum possit, consilium eis detur ne alias uxores, uiuentibus etiam uxoribus suis licet adulteris, accipiant."

[48] Nautin, "Divorce et remariage dans la tradition de l'Église latine," 21.

[49] See the discussion of Josep Vilella, "The Pseudo-Iliberritan Canon Texts," *Zeitschrift für Antikes Christentum* 18 (2014): 210–259, who argues, convincingly to my mind, that the canons attributed to the "council of Elvira" actually derive from a variety of different times and places.

[50] Can. 8: "Item feminae quae nulla praecedente causa reliquerint viros suos et alteris se copulaverint, nec in finem accipiant communionem"; can. 9: "Item femina fidelis

in the collection regarding the remarriage of men who have divorced their wives for adultery. This absence may suggest that the restrictions placed on women who remarried did not exist in the same form for men, a fact that would support Ambrosiaster's position.

Finally, there is evidence from a number of councils held in the fifth and sixth centuries that further attests that the position outlined by Ambrosiaster persisted, despite the emergence of Augustine's theology of indissolubility.[51] I cite two examples. The Council of Veneticum (or Vannes) in Brittany, held sometime between 461 and 491, issued the following decree that, in the words of Philip Lyndon Reynolds, "simply translates [the exception clause of] Matthew 19:9 into ecclesiastical law":[52]

> We have decreed that those men who after leaving their wives, as is said in the gospel, "except on account of fornication," have married other women without having given proof of the adultery, should likewise be cut off from communion, lest through our indulgence their sins are overlooked and provide an invitation to others to the license of error.[53]

This canon indicates that it was normal procedure in the Gallic church of the fifth century for a man to be allowed to remarry, if he divorced his first wife for adultery. The provision added at the Council of Vannes was that this second marriage was permissible only if the adultery of the wife was formally proven. The bishops at Vannes clearly wished to avoid the abuse of false accusations of adultery against wives, but they do not appear to have fundamentally challenged the right of men to remarry, if such an accusation was sustained.

In a similar vein, the Council of Agde, which took place in 506 under Caesarius of Arles, specified that men who wished to divorce and remarry had to prove the charges against their wives in an episcopal court. Men who divorced their wives and contracted other marriages were to be excluded from communion but only in cases where they have not previously indicated the reasons for the breakup of the

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quae adulterum maritum reliquerit fidelem et alterum ducit, prohibeatur ne ducat; si duxerit, non prius accipiat communionem nisi quem reliquit, de saeculo exierit; nisi forte necessitas infirmitatis dare compulerit." Text in F. Gori, ed*., I canoni dei concili della chiesa antica. II. I concili Latini. 3. I concili spagnoli* (Rome: Augustinianum, 2013), 44.

[51] Discussed in Nautin, "Divorce et remariage dans la tradition de l'Église latine," 47–54; Reynolds, *Marriage in the Western Church*, 183–187.

[52] Reynolds, *Marriage in the Western Church*, 184.

[53] Concilium Veneticum, c. 2 (CCSL 148: 152, trans. is my own): "Eos quoque, qui relictis uxoribus suis, sicut in euangelio dicitur excepta causa fornicationis, sine adulterii probatione alias duxerint, statuimus a communione similiter arcendos, ne per indulgentiam nostram praetermissa peccata alios ad licentiam erroris inuitent."

marriage and secured a judgment against the guilty wife *apud episcopos comprouinciales*.[54] It is evident from these canonical texts that in some parts of the Western church the position represented by Ambrosiaster persisted long after Augustine had articulated his stricter view on the matter. It would appear that a woman's adultery constituted the dissolution of the marriage and justified the remarriage of her husband, as long as the offense was properly proven before church authorities.

While it is virtually certain that the historical Jesus opposed divorce and remarriage, the tradition of his teaching underwent some development in the texts of the New Testament. In more Hellenized contexts, it was applied by Paul and Mark to the possibility of women divorcing their husbands, a possibility that did not exist in the Palestinian context of Jesus's day. Of even greater consequence was the appearance of the exception in the case of *porneia* that was added in the Gospel of Matthew and Paul's granting of permission to divorce (and remarry) in the case of marriage to a non-Christian. Both of these cases indicate that the earliest Christians were willing to modify the absolute prohibition of divorce and remarriage that Jesus seems to have advocated. My examination of the Western patristic witnesses has also shown that there was some diversity in the West, at least when it came to the question of a man divorcing his wife for her adultery. Augustine's absolute position, about which he himself had expressed some doubt, appears not to have been widely recognized prior to his day and seems not to have become dominant until the Carolingian period.

Given this (limited) diversity and development in the early Christian tradition, the question I wish to pose now is this: Does the example of the early church provide any guidance to the contemporary church on how decisions to modify or develop earlier traditions might be made in practice? If my presentation of the New Testament and early Christian evidence is sound, it is clear that such decisions cannot be ruled out in principle. The question becomes under what conditions and for what reasons could a departure from previous tradition be justified. In the final portion of this essay, I present a test case from the North African church of the third century, a period during which there was heated controversy over the question of the possibility of ecclesiastical penance for the serious sin of apostasy. Under the guidance of

[54] Concilium Agathense, c. 25 (CCSL 148: 204): "Hi vero saeculares, qui coniugale consortium culpa graviore dimittunt vel etiam dimiserunt et nullas causas discidii probabiliter proponentes, propterea sua matrimonia dimittunt, ut aut illicita aut aliena praesumant, si antequam apud episcopos comprovinciales discidii causas dixerint et prius uxores quam iudicio damnentur abiecerint, a communione ecclesiae et sancto populi coetu, pro eo quod fidem et coniugia maculant, excludantur."

Bishop Cyprian of Carthage, the church in North Africa (in coordination with the church in Rome) saw fit to depart from earlier tradition and establish reconciliation for a sin that was previously considered unforgiveable.

APOSTASY AND RECONCILIATION IN THIRD-CENTURY NORTH AFRICA[55]

Cyprian of Carthage, the third-century North African bishop and martyr, was a privileged witness to one of the most dramatic changes in the history of Christianity: the emergence of a penitential system for the forgiveness of previously "unforgiveable" sins. In response to the widespread failure of Christians to remain faithful during the persecution of the Emperor Decius, Cyprian and his fellow North African bishops gradually came to acknowledge that reconciliation might be granted even to those who committed the ultimate sin of apostasy. In this section, I examine Cyprian's evolution on the question of penance for lapsed Christians. The reasons he offered for allowing changes in penitential practice may provide resources for the contemporary church, especially in its struggle to find adequate pastoral responses to the problem of divorce and remarriage.[56]

Background and context

Cyprian entered the office of bishop as a relatively recent convert, barely two years after his baptism.[57] Within a year he had to confront a crisis that was to define his entire episcopate. Late in 249 or early 250, the Roman Emperor Decius issued an edict requiring that sacrifice to the traditional gods be offered throughout the empire.[58] Motivated by a desire to guarantee the continued divine protection of the empire, Decius included the novel requirement that all who sacrificed should get a certificate (*libellus*) signed by local authorities who had witnessed the sacrificial ritual. Penalties for failure to comply varied according to rank and social status: *honestiores* were subject to exile and confiscation of property; *humiliore*s were liable to imprisonment

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[55] A more detailed presentation of the argument of this section is forthcoming: "From Rigor to Reconciliation: Cyprian of Carthage on Changing Penitential Practice," in *Changing the Church: Essays in Honour of Gerard Mannion*, eds. Mark Chapman and Vladimir Latinovic (London: Palgrave MacMillan, forthcoming). I have incorporated this material here with minor changes to fit the present context.

[56] For an excellent overview and analysis of Cyprian's controversies, see J. Patout Burns, *Cyprian the Bishop* (London and New York: Routledge, 2002).

[57] The date is unknown, but Cyprian was bishop by Easter of 249. See G.W. Clarke, *The Letters of St. Cyprian of Carthage*, vol. 1 (ACW 43; New York: Newman Press, 1984), 16. Cyprian's elevation provoked opposition from some of the more established presbyters, who continued to question his authority and to resist his policies on the lapsed Christians.

[58] According to Clarke, *Letters*, 1: 27–28, the edict applied not only to citizens but to entire households, including freedmen and slaves.

and torture. Unlike previous emperors, Decius seemed more concerned to create apostates (and thereby to stimulate traditional worship) than to execute dissidents; as a result, there were few judicial executions, but significant numbers of Christians who suffered penalties of different kinds. The faithful who suffered but survived became known as "confessors"; those who perished were "martyrs." Much larger numbers, however, lapsed in some way, either by actually sacrificing or by obtaining fraudulent certificates.

The persecution of Decius did not last long; by June of 251, the emperor had been killed in battle against the Goths. However, an unprecedented crisis remained for church leaders: how to handle the large numbers of Christians—in some places the majority—who had failed to stand firm. In North Africa, the situation was complicated by several factors. Unlike Fabian, the bishop of Rome who suffered immediate martyrdom, Bishop Cyprian believed that he was called to flee and continue to administer the church of Carthage in exile; this decision led some to question Cyprian's own authority. A more pressing problem was that some presbyters in Carthage had begun to admit lapsed Christians to eucharistic communion on the strength of letters of recommendation (*libelli pacis*) from the confessors. Earlier Christian tradition had tended to treat apostasy as an "unforgiveable" sin, for which ecclesiastical penance was not available. The new, post-Decian situation, therefore, had raised a two-fold question: could a baptized Christian be reconciled after denying the faith, and who had the authority to administer that reconciliation?

Cyprian's evolving position on the reconciliation of the lapsed

There is good reason to think that Cyprian may initially have held the rigorist view that denied the possibility of penance for apostasy. One of his earliest works, the three-book collection of biblical excerpts known as the *Testimonia ad Quirinum*, contained the following topic: "It is not possible for the person who has sinned against God to be forgiven in the church."[59] The topic was accompanied by the following biblical quotations, all of which suggested that there were certain sins (or a certain sin) that could not be forgiven: Matthew 12:32 ("And whoever says a word against the Son of man will be forgiven; but whoever speaks against the Holy Spirit will not be forgiven, either in this age or in the age to come"), Mark 3:28–29 ("Truly, I say to you, all sins will be forgiven the sons of men, and whatever blasphemies they utter; but whoever blasphemes against the Holy Spirit never has forgiveness, but is guilty of an eternal sin"), and 1 Samuel 2:25 ("If a man sins against a man, God will mediate for him; but if a man sins against the Lord, who can intercede for him?").

[59] *Test*. 3.28 (CSEL 3.1, 142): "Non posse in ecclesia remitti ei qui in deum delinquerit."

The *Testimonia* were composed early in Cyprian's episcopate, prior to the persecution of Decius. By the year 250, much had changed, and large numbers of lapsed Christians, encouraged by dissident presbyters, were demanding readmittance to full communion on the basis of the *libelli pacis* issued by the confessors. In a trio of letters from May of 250, Cyprian argued that there should be no reconciliation given to apostates until peace had come to the Church as a whole. At that time, he planned to return to the city and hold a council of bishops to deliberate on the proper course of action in regard to the lapsed. While Cyprian acknowledged that confessors and martyrs had a role in reviewing cases of the lapsed, he insisted that their recommendations must be conveyed to the bishop and would be considered only after the persecution had ceased.[60] While Cyprian had especially harsh words for those presbyters who presumed to grant reconciliation prematurely, at this point he indicated that some form of penance and reconciliation might be possible, when properly administered by the bishops.[61]

Within a few months, another evolution is evident in Cyprian's attitude toward the lapsed. Perhaps under the influence of a policy set by presbyters in the church at Rome, Cyprian acknowledged that immediate reconciliation might be granted to a lapsed Christian in the case of illness or nearness of death. Writing to the Roman clergy in summer of 250, Cyprian signaled the influence of a previous letter from Rome:

> You counselled that comfort should be given to those who fell ill after their lapse and, being penitent, were anxious to be admitted to communion. I have, therefore, decided that I too should take my stand alongside your opinion, thereby avoiding that our actions, which ought to be united and in harmony on every issue, might differ in any respect.[62]

Again, however, Cyprian emphasized the importance of refraining from any general judgement on the lapsed until peace had been restored and church leaders had been able to consult on the appropriate policies.[63]

In the following year, the long-awaited council took place. Cyprian returned to Carthage in the spring of that year and sometime after

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[60] *Ep*. 15.2.2 (addressed to the confessors); *ep*. 17.1.2 (addressed to the laity).
[61] *Ep*. 16 was addressed to the wayward clergy and cited some of the same biblical passages that appeared in Test. 3.28. In *ep*. 16.4.2 Cyprian threatened to suspend the liturgical privileges of presbyters who continued to administer penance.
[62] *Ep.* 20.3.2 (CSEL 3/2: 528–529); trans. Clarke, *Letters*, 1: 102–103.
[63] *Ep*. 20.3.3.

Easter of 251 called a council to consider the situation of the lapsed.[64] In Letter 55, written to Bishop Antonianus, who was being influenced by the Roman rigorist Novatian, Cyprian outlined and defended the decisions of the council.[65] The basic provisions were fairly straightforward. First, if someone who had sacrificed and received death-bed reconciliation should recover, that person was considered a Christian in good standing. Second, a sharp distinction was made between those who had actually sacrificed and those who had obtained a fraudulent certificate without sacrificing; the latter were restored immediately, upon examination.[66] Third, those who sacrificed were to be examined individually to determine the degree of their guilt; those who agreed to undergo penance were to be reconciled only on their deathbed, while those who refused to undergo penance were to be denied reconciliation even on their deathbed.

While the provisions of the council of 251 might not sound revolutionary, Cyprian's letter 55 provided a different perspective. In his argument to Antonianus, Cyprian showed clear awareness that his position and that of the majority of the Roman and North African bishops was a development over prior practice.[67] Cyprian insisted that he had reached his conclusions "not without careful deliberation and lengthy consideration."[68] Likewise, the council's decision had been reached only after carefully examining the scriptural arguments on both sides.[69] Contrary to his previous resistance to granting reconciliation to those who had sacrificed, Cyprian observed that at the council he had "yielded to the urgent needs of the time" (*necessitate temporum*) and considered "provisions that would bring salvation to the many."[70] Especially noteworthy is Cyprian's concern to differentiate among the lapsed. He recognized that those who had sacrificed were not all equally guilty and insisted that each of the lapsed must be examined individually.[71]

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[64] Even prior to the death of Decius in June of 251, the persecution had started to abate. Cyprian delivered his famous treatise, *De lapsis*, upon returning to the city, but before the council of 251 took place.

[65] In this brief essay, I am not able to do justice to all of the complexities of the controversy. Suffice it to say that Cyprian faced criticism both from those who opposed any reconciliation for the lapsed ("rigorists," such as Novatian) and those who favored immediate reconciliation for all ("laxists," such as the rival Carthaginian presbyters).

[66] The distinction was an innovation for Cyprian. As recently as *De lapsis* 27, he had argued that simply obtaining a certificate was an act of apostasy.

[67] In *ep*. 55.6.2 Cyprian noted that Bishop Cornelius in Rome had also called a council of bishops that reached the same conclusions as the council in Carthage.

[68] *Ep*. 55.3.2 (CSEL 3.2, 625): "… non sine librata diu et ponderata ratione a me"; trans. Clarke, *Letters*, 3: 34, slightly altered.

[69] *Ep*. 55.6.1.

[70] *Ep*. 55.7.2 (CSEL 3.2, 628); trans. Clarke, *Letters*, 3: 36.

[71] See *ep*. 55.13.2 and 55.17.3. In *ep*. 55.16.1, Cyprian even accused the rigorists of holding a Stoic view of the parity of sins: "We ought, therefore, to shun any notions

Most significant of all, Cyprian insisted on the priority of mercy in dealing with the lapsed. He argued that bishops "have no right to be over-rigid or harsh or callous in caring for our brothers. Rather we ought to mourn with those who mourn and weep with those who weep."[72] Like the good Samaritan, bishops should "imitate Christ's teaching and example, snatch our wounded brother from the jaws of our foe, tend him, and keep him safe for God's judgment."[73] Against the rigorists who might argue that extending reconciliation to apostates would create a "slippery slope" and lead to a decline in martyrdom, Cyprian rejected such an equation. Citing another innovation—the granting of penance to adulterers—he argued that this practice had not led to any decline in Christian enthusiasm for virginity, chastity, or continence: "The power of purity," he insisted, "is not crushed because penitence and pardon are conceded to the adulterer."[74] In short, Cyprian argued, the church's bishops "have no right to deny the fruits of repentance to those who grieve."[75]

There is one more innovation to which Cyprian and the North African episcopacy give witness. Two years after the council of 251, the bishops met again. This time, anticipating (mistakenly) the outbreak of a new persecution, the bishops decided that all of those who had sacrificed during the time of Decius and who had steadfastly engaged in penance, should be immediately restored to full communion. The rationale for this dramatic change in policy, as presented by Cyprian in a letter to Cornelius in Rome, was that the anticipated crisis required that penitents be adequately fortified for the impending combat by the grace of the Eucharist:

> But under the present circumstances reconciliation becomes a necessity not for the sick but for the strong, communion we must grant not to the dying but to the living. Those whom we stir and rouse to battle we must not leave all naked and unarmed; we must fortify and protect them with the body and blood of Christ. Since the Eucharist has been appointed for this purpose, to be a safeguard to those who receive it, those whom we would have against the Enemy we must now arm with the protection of the Lord's banquet.[76]

While Cyprian acknowledged that not all of those who would be reconciled were fully worthy, he argued that the bishops owed to the faithful all the potential benefits of the sacrament. And if any bishop

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which do not issue from the clemency of God but which are rather begotten of the arrogance and rigidity of philosophy"; trans. Clarke, *Letters*, 3: 42.

[72] *Ep*. 55.19.1; trans. Clarke, *Letters*, 3: 44, slightly altered.

[73] *Ep*. 55.19.2; trans. Clarke, *Letters*, 3: 45.

[74] *Ep*. 55.20.2; trans. Clarke, *Letters*, 3: 45

[75] *Ep*. 55.29.1; trans. Clarke, *Letters*, 3: 52.

[76] *Ep*. 57.2.2; trans. Clarke, *Letters*, 3: 56.

saw fit not to grant reconciliation to the penitent lapsed, Cyprian warned, "he will have to render on the day of judgment an account to the Lord for his unseasonable severity and his inhuman harshness. But so far as we are concerned, we have acted as faith and charity and brotherly love demanded."[77]

CONCLUSION

Numerous lessons can be drawn from the evolution of Cyprian's position on the reconciliation of lapsed Christians. Perhaps the most fundamental was his willingness to embrace change, especially in the light of changed circumstances. As the heir of a rigorist North African tradition on the sin of apostasy (Tertullian, the most prominent North African Christian of the previous generation had argued vigorously against penance for adulterers and apostates), Cyprian and the North African episcopacy as a whole gradually came to embrace the possibility of ecclesiastical forgiveness for what was previously considered an "unforgiveable" sin. He recognized that to deny the possibility of penance, even for the most serious sins, was effectively to drive believers out of the Church, back into pagan practice, or into the arms of heretics, and schismatics.[78] Rejecting the arguments of those who preferred an elitist conception of a "pure" Church, unsullied by contact with sinners, Cyprian emphasized the Church as a community whose sacraments provided healing and sustenance for those who had failed to live up to the ideals of the Gospel.

While there are significant differences between the crises of the third century and those of the present day, it is worth considering what these examples of past change in Church practice might teach us. There appear to be obvious parallels with current debates within the Roman Catholic Church over the status of divorced and remarried Catholics. The evolution of Cyprian and the North African bishops on the question of penance indicates an openness to consider the possibility of change, even in a long-standing practice such as the denial of penance to apostates. Similarly, the Catholic Church today faces the question of whether or not to relax or modify traditional strictures on remarriage after divorce. As Cardinal Walter Kasper noted in the lecture he delivered to the consistory of cardinals prior to the 2014 Synod on the Family, the early church offered "a praxis of pastoral tolerance, clemency, and forbearance after a period of penance" that might be applied to the divorced and remarried today.[79] As the example of Cyprian and the North African bishops suggests, such a model would acknowledge the priority of mercy over severity; it would recognize

[77] *Ep*. 57.5.2; trans. Clarke, *Letters*, 3: 59.
[78] Cyprian developed this argument explicitly in *ep*. 55.6.1.
[79] Kasper, *The Gospel of the Family*, trans. William Madges (Mahwah, NJ: Paulist Press, 2014), 31.

the diversity of persons and the complexity of human motivations and relationships; and it would offer communion in the Eucharist as the source of strength and healing rather than division and exclusion.

If, as I have argued here, the New Testament writers themselves were willing to modify the absolute prohibition of divorce that characterized Jesus' teaching, and if the Augustinian prohibition of divorce and remarriage was not the dominant tradition in either the East or West in the early church, then the possibility of further modifications might cohere with both scripture and tradition. Given that the bishops of Rome and Carthage were willing to consider fundamental changes in Christian penitential practice in order to meet the demands of a new situation, it is not inconceivable that the Church today might adopt similar accommodations. As Cyprian argued, the principle of mercy and inclusion should be the overriding consideration, not severity and exclusion.

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