

**SOME PASTORAL IMPLICATIONS
ARISING FROM CHAPTER VIII
OF THE APOSTOLIC EXHORTATION
*AMORIS LAETITIA***

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INTRODUCTION

I am delighted to be here with you today. I hope that the material we will cover together will be helpful to you and, at the same time, interesting.

Because I was directly involved in the preparation of the *Motu proprio Mitis iudex*, and because *Amoris laetitia* builds on this initial document, I believe it would be worthwhile taking time to study the pastoral implications of this significant Apostolic Exhortation [=AL] and that perhaps I can shed some light on the issues relating to the implementation of *Amoris laetitia* as we continue to deal pastorally with those parishioners who are facing difficult, if not impossible, marriage situations.

As you can imagine, quite a number of people were waiting for the publication of the Exhortation. Some feared it would go too far in one direction, other that it would go too far in the opposite way.

A careful reading of the text shows that it has tried to hold a steady middle course.

The major difference with the document is that instead of starting with principles, and working its way down to practical situations, it begins with situations to see how best they can be addressed in the light of certain principles. As the Pope says in par. 300 of AL,

It is understandable that neither the Synod nor this Exhortation could be expected to provide a new set of general rules, canonical in nature and applicable to all cases. What is possible is simply a renewed encouragement to undertake a responsible **personal** and **pastoral** discernment of particular cases... (Emphasis added)

For Pope Francis, it is obvious that “persons” and the context of their lives come before “laws”.

To set the context, we can refer to his words during his press conference of April 16, 2016, on his return from the Isle of Lesbos:

Francis Rocca of The Wall Street Journal mentioned the recent Post-Synodal Apostolic Exhortation and asked whether or not there has been any change in the discipline concerning reception of the sacraments by the divorced and remarried.

I could say “yes” and leave it at that. But that would be too brief a response. I recommend that all of you read the presentation made by Cardinal Schönborn, a great theologian. He is a member of the Congregation for the Doctrine of the Faith and he knows the Church’s teaching very well. Your question will find its answer in that presentation. Thank you.

Jean-Marie Guénois, of the French daily ‘Le Figaro’, continued on the same subject, noting that it was addressed only in one footnote, n. 351, of ‘*Amoris Laetitia*’.

Look, one of the recent Popes, speaking about the Council, said that there were two Councils: Vatican II, which took place in Saint Peter’s Basilica, and another Council which took place in the media. When I called the first Synod, the most of the media were concerned with one question: will the divorced and remarried be able to receive communion? Since I am not a saint, this was somewhat annoying to me, and even made me a bit sad. Because I think: those media that say all these things, don’t they realize that that is not the important issue? Don’t they realize that the family, all over the world, is in crisis? And the family is the basis of society! Don’t they realize that young people don’t want to get married? Don’t they realize that the declining birth rate in Europe is enough to make us weep? Don’t they realize that the shortage of jobs and employment opportunities is forcing fathers and mothers to take two jobs and children to grow up by themselves and not learn how to talk with their mothers and fathers? These are the big issues! I do not remember that footnote, but surely if something of that sort is in a footnote it is because it was said in *Evangelii Gaudium*. I don’t recall the number, but surely that is the case.

Notwithstanding this precision of Pope Francis, I have nevertheless, for this presentation, selected Chapter VIII of the document because it addresses the particular issue of reception of Communion by the divorced and remarried. One of my obvious reasons for doing so is that this chapter contains the material that drew the most media attention during its preparatory phase and which seems to interest the faithful most. I recognize though that there is also much of significance to be found in the preceding and following chapters.

Unfortunately, a number of persons, including four Cardinals recently, have questioned the doctrinal content of the Exhortation. In a letter to Pope Francis, September 19, 2016, they asked five questions:

1. It is asked whether, following the affirmations of *Amoris Laetitia* (300-305), it has now become possible to grant absolution in the sacrament of penance and thus to admit to holy Communion a person who, while bound by a valid marital bond, lives together with a different person *more uxorio* without fulfilling the conditions provided for by *Familiaris Consortio*, 84, and subsequently reaffirmed by *Reconciliatio et Paenitentia*, 34, and *Sacramentum Caritatis*, 29. Can the expression “in certain cases” found in Note 351 (305) of the exhortation *Amoris Laetitia* be applied to divorced persons who are in a new union and who continue to live *more uxorio*?
2. After the publication of the post-synodal exhortation *Amoris Laetitia* (304), does one still need to regard as valid the teaching of St. John Paul II’s encyclical *Veritatis Splendor*, 79, based on sacred Scripture and on the Tradition of the Church, on the existence of absolute moral norms that prohibit intrinsically evil acts and that are binding without exceptions?
3. After *Amoris Laetitia* (301) is it still possible to affirm that a person who habitually lives in contradiction to a commandment of God’s law, as for instance the one that prohibits adultery (Matthew 19:3-9), finds him or herself in an objective situation of grave habitual sin (Pontifical Council for Legislative Texts, “Declaration,” June 24, 2000)?
4. After the affirmations of *Amoris Laetitia* (302) on “circumstances which mitigate moral responsibility,” does one still need to regard as valid the teaching of St. John Paul II’s encyclical *Veritatis Splendor*, 81, based on sacred Scripture and on the Tradition of the Church, according to which “circumstances or intentions can never transform an act intrinsically evil by virtue of its object into an act ‘subjectively’ good or defensible as a choice”?
5. After *Amoris Laetitia* (303) does one still need to regard as valid the teaching of St. John Paul II’s encyclical *Veritatis Splendor*, 56, based on sacred Scripture and on the Tradition of the Church, that excludes a creative interpretation of the role of conscience and that emphasizes that conscience can never be authorized to legitimate exceptions to absolute moral norms that prohibit intrinsically evil acts by virtue of their object?

It is impossible to answer these questions by a “Yes” or a “No”... they remind me of the questions that the Pharisees asked of Jesus in the Gospels.

In spite of this uncertainty, we can first look at the nature of the document, then at some of its major contents. From there, we can try to see how pastoral practice can evolve in the light of AL.

I. WHAT IS AN “APOSTOLIC EXHORTATION”?

An “Apostolic Exhortation” is a form of document used by the Popes to express their thoughts on contemporary issues.

The document does not, as such, have a doctrinal and binding character, in the sense that it is not an “Apostolic Constitution” or a “*Motu proprio*”.

Rather, it could be compared to an extended sermon, exhorting the faithful to consider the particular points that are raised in it.

Obviously, it is not an improvised text, and calls for much prior thought and prayer in response to its call. As the Pope notes (par. 7): “I do not recommend a rushed reading of the text.”

The contents of an Apostolic Exhortation are part of what we call the “ordinary magisterium” of the Church, and, as such, call for our assent.

We can note, though, that in the present document, the Pope often states that he agrees with a majority of the bishops who were present in the Synod (see, for instance, par. 297). He also recognizes that some persons will be more comfortable with the “old” approach (see footnote 364). He does not make one approach or the other binding.

So, any study of an Apostolic Exhortation should be marked by an open mind, willing to see what the Pope is telling us, and then leaving us free to make our own decision.

II. THE GENESIS AND ORGANIZATION OF *AMORIS LAETITIA*

The present document has been nearly four years in preparation. In one sense, it began when Pope Francis, in 2013, called for two synods, one to be held in 2014, the other in 2015.

Both synods were somewhat different. The first, an extraordinary one, grouped the Presidents of all the Conferences of Bishops around the world, as well as representatives of the Roman Curia and other designated persons. The second one

gathered delegates from the various Conferences (a number of whom were at the first Synod) and had far more participants.

Each Synod issued a paper summarizing its results – known as a *relatio finalis* – or “final document”. The Pope makes abundant use of both documents in presenting the material. In other words, he begins with what the bishops said, based on their pastoral experience, rather than with what he thought personally. This is a fine example of the exercise of episcopal collegiality. (Pope Francis has the advantage of having been the President of the Argentine bishops, and so he was quite aware of the dynamics at play in such meetings).

A. THE BACKGROUND

During the course of the XXth century (and even before), the Popes have issued a number of teachings on the significance of Christian marriage in the life of the Church.

Beginning with Pope Leo XII, in his encyclical letter, *Arcanum* (February 10, 1880), in which he addressed the scourge of **divorce**, the 1917 *Code of Canon Law* then focussed on the **procreative** dimension of marriage. As we saw in the opening presentation of this workshop, Pius XI, in *Casti connubii* (December 32, 1930) introduced a **personalist** dimension to marriage. However, in 1944, under Pius XII, the then Holy Office insisted once again on the procreative dimension.

During Vatican II, a new vision of marriage was presented in *Gaudium et spes* (Nos. 48-50), presenting marriage as the union of **two persons**, rather than simply being the union of two bodies.

On July 25, 1968, Paul VI issued the encyclical letter, *Humanae vitae*, which, unfortunately, came to be identified with the banning of the use of the pill for Catholics, and its fine theology of **conjugal love** was overlooked.

After the 1980 Synod on the family, St. John Paul II issued the Apostolic Exhortation, *Familiaris consortio* (November 22, 1981) in which he addressed the issue of the admission of the divorced and remarried to the Eucharist. For all practical purposes, at that time, he closed a number of doors which seemed to have remained somewhat open in previous documents.

As divorce became more and more available throughout the secular world, it brought with it many issues relating to the faithful, and, more particularly, to our understanding of the “family” as a fundamental unit both of society and of the Church itself. The breakdown of family life has had significant effects, not only on the spouses themselves, but also, and even more particularly, on their offspring.

For this reason, Pope Francis saw that it was necessary to address the situation, and from a renewed perspective. It was for this reason that he convoked two Synods, which, in one way, can be considered to be the same one, but in two parts.

As noted above, the Apostolic Exhortation can be considered to mark the conclusion of this synodal process. But, by no means can it be considered to be the conclusion of the pastoral process, nor of the development of theological insights into its numerous underlying issues.

B. THE REACTION

In addition to the questions raised by four Cardinals mentioned earlier, the reaction to the document was swift, and not always positive.

For instance, Clifford Longley, in *The Tablet* (April 18, 2016), writes:

His thesis on the synod of the family is perfect in every way - except for the vital topic of communion for divorced and remarried.

Amoris Laetitia: Pope Francis has created confusion where we needed clarity.

Still they argue, argue, argue. Yes he did; no he didn't. He can; he can't. What exactly did Pope Francis intend to convey by chapter eight of his apostolic exhortation *Amoris Laetitia*? Conservatives say Pope Francis cannot have meant that "divorced and remarried Catholics could be admitted to Holy Communion in certain circumstances", as many have interpreted the document, because that would be plain contrary to long-standing Catholic practice sanctioned by the magisterium. (See also *The Tablet*, April 23, 2016, p. 25).

Commonweal, for its part (April 19, 2016), wrote:

The pope's conservative critics must know that even the church's strictest teachings often have exceptions. What are the Pauline and Petrine privileges, after all, if not exceptions to the church's general rule about the indissolubility of valid marriages? These "privileges" allow a pope to dissolve a marriage between a baptized person and his or her unbaptized spouse "in favor of the faith". Despite such impeccably traditional departures from Christ's commandment against divorce, there is a tendency among some conservatives to confuse fidelity with a one-size-fits-all legalism. And if there is one thing you can confidently say

about Pope Francis, it's that he isn't a legalist. Near the beginning of *Amoris laetitia*, he rebukes those who would reduce the Gospel message to a set of rigid disciplines — “stones to be hurled at others.” The pope wants to remind us that what Christ said of the Sabbath is also true of the sacraments and the rules surrounding them: they were made for us, not we for them. The rules exist not to protect the sacraments from being soiled by contact with sinners, but to protect us, the children of God, for whom the sacraments were instituted in the first place. The Eucharist, for example, is to be understood primarily as a gift that brings healing and nourishment, not as a remote display of supernatural power to be approached only with trepidation.

In the case of the divorced and remarried, the pope is calling for justice and moral realism. He draws attention to the obvious moral difference between the situation of someone who has abandoned his or her spouse and that of someone who has been abandoned. To treat these two situations the same way is neither just nor merciful. Francis argues that, since the degree of responsibility varies, “the consequences or effects of a rule need not necessarily always be the same.” This would seem to leave open the possibility that a divorced and remarried Catholic could, in good conscience and with the approval of his or her pastor, receive Communion. It would all depend on the particular circumstances — which is to say, it would depend on prudence. At the very beginning of *Amoris laetitia*, the pope reminds us that pastoral problems can't always be solved in advance by Rome.

C. AN OVERVIEW OF THE DOCUMENT

James Martin, in *America* (April 8, 2016), mentions what he considers to be the ten top takeaways from AL:

Pope Francis's groundbreaking new document “*Amoris Laetitia*” (“The Joy of Love”) asks the church to meet people where they are, to consider the complexities of people's lives and to respect people's consciences when it comes to moral decisions. The apostolic exhortation is mainly a document that reflects on family life and encourages families. But it is also the pope's reminder that the church should avoid simply judging people and imposing rules on them without considering their struggles.

Using insights from the Synod of Bishops on the Family and from bishops' conferences from around the world, Pope Francis affirms church teaching on family life and marriage, but strongly emphasizes the role of personal conscience and pastoral discernment. He urges the church to appreciate

the context of people's lives when helping them make good decisions. The goal is to help families—in fact, everyone—experience God's love and know that they are welcome members of the church. All this may require what the pope calls “new pastoral methods” (199).

Here are ten things to know about the pope's groundbreaking new document.

1. The church needs to understand families and individuals in all their complexity. The church needs to meet people where they are. So pastors are to “avoid judgements which do not take into account the complexity of various situations” (296). People should not be “pigeonholed or fit into overly rigid classifications leaving no room for personal and pastoral discernment” (298). In other words, one size does not fit all. People are encouraged to live by the Gospel, but should also be welcomed into a church that appreciates their particular struggles and treats them with mercy. “Thinking that everything is black and white” is to be avoided (305). And the church cannot apply moral laws as if they were “stones to throw at people's lives” (305). Overall, he calls for an approach of understanding, compassion and accompaniment.

2. The role of conscience is paramount in moral decision making. “Individual conscience needs to be better incorporated into the church's practice in certain situations which do not objectively embody our understanding of marriage” (303). That is, the traditional belief that individual conscience is the final arbiter of the moral life has been forgotten here. The church has been “called to form consciences, not to replace them” (37). Yes, it is true, the Pope says, that a conscience needs to be formed by church teaching. But conscience does more than to judge what does or does not agree with church teaching. Conscience can also recognize with “a certain moral security” what God is asking (303). Pastors, therefore, need to help people not simply follow rules, but to practice “discernment,” a word that implies prayerful decision making (304).

3. Divorced and remarried Catholics need to be more fully integrated into the church. How? By looking at the specifics of their situation, by remembering “mitigating factors,” by counseling them in the “internal forum,” (that is, in private conversations between the priest and person or couple), and by respecting that the final decision about the degree of participation in the church is left to a person's conscience (305, 300). (The reception of Communion is not spelled out here, but that is a traditional aspect of “participation” in church life.) Divorced and remarried couples should be made to feel part of the church. “They are not

excommunicated and should not be treated as such, since they remain part” of the church (243).

4. All members of the family need to be encouraged to live good Christian lives. Much of “*Amoris Laetitia*” consists of reflections on the Gospels and church teaching on love, the family and children. But it also includes a great deal of practical advice from the pope, sometimes gleaned from exhortations and homilies regarding the family. Pope Francis reminds married couples that a good marriage is a “dynamic process” and that each side has to put up with imperfections. “Love does not have to be perfect for us to value it” (122, 113). The pope, speaking as a pastor, encourages not only married couples, but also engaged couples, expectant mothers, adoptive parents, widows, as well as aunts, uncles and grandparents. He is especially attentive that no one feels unimportant or excluded from God’s love.

5. We should no longer talk about people “living in sin.” In a sentence that reflects a new approach, the pope says clearly, “It can no longer simply be said that all those living in any ‘irregular situation’ are living in a state of mortal sin” (301). Other people in “irregular situations,” or non-traditional families, like single mothers, need to be offered “understanding, comfort and acceptance” (49). When it comes to these people, indeed everyone, the church need to stop applying moral laws, as if they were, in the pope’s vivid phrase, “stones to throw at a person’s life” (305).

6. What might work in one place may not work in another. The pope is not only speaking in terms of individuals, but geographically as well. “Each country or region...can seek solutions better suited to its culture and sensitive to its traditions and local needs” (3). What makes sense pastorally in one country may even seem out of place in another. For this reason and others, as the pope says at the beginning of the document that for this reason, not every question can be settled by the magisterium, that is, the church’s teaching office (3).

7. Traditional teachings on marriage are affirmed, but the church should not burden people with unrealistic expectations. Marriage is between one man and one woman and is indissoluble; and same-sex marriage is not considered marriage. The church continues to hold out an invitation to healthy marriages. At the same time, the church has often foisted upon people an “artificial theological ideal of marriage” removed from people’s everyday lives (36). At times these ideals have been a “tremendous burden” (122). To that end, seminarians and priests need to be better trained to understand the complexities of people’s

married lives. “Ordained ministers often lack the training needed to deal with the complex problems currently facing families” (202).

8. Children must be educated in sex and sexuality. In a culture that often commodifies and cheapens sexual expression, children need to understand sex within the “broader framework of an education for love and mutual self-giving” (280). Sadly, the body is often seen as simply “an object to be used” (153). Sex always has to be understood as being open to the gift of new life.

9. Gay men and women should be respected. While same-sex marriage is not permitted, the pope says that he wants to reaffirm “before all else” that the homosexual person needs to be “respected in his or her dignity and treated with consideration, and ‘every sign of unjust discrimination’ is to be carefully avoided, particularly any form of aggression or violence.” Families with LGBT members need “respectful pastoral guidance” from the church and its pastors so that gays and lesbians can fully carry out God’s will in their lives (250).

10. All are welcome. The church must help families of every sort, and people in every state of life, know that, even in their imperfections, they are loved by God and can help others experience that love. Likewise, pastors must work to make people feel welcome in the church. “*Amoris Laetitia*” offers the vision of a pastoral and merciful church that encourages people to experience the “joy of love.” The family is an absolutely essential part of the church, because after all, the church is a “family of families” (80).

This lengthy passage, and similar statements can help us understand the scope of the document, and the fine line that it traces.

A similar reaction is found in the same periodical, a couple of weeks later

It has opened doors to something more far-reaching in the Catholic Church and its approach to marriage and the family. It recognizes there can be “various ways of interpreting some aspects of [the church’s] teaching or drawing certain consequences from it” and says “each country or region can seek solutions better suited to its culture and sensitive to its traditions and local needs.” Francis had already decentralized decisions regarding marriage annulments to the local church and now goes further. (G. O’CONNELL, “A Milestone on the Road”, in *America*, May 2, 2016, p. 20).

III. **THE PASTORAL SITUATIONS ENVISAGED IN CHAPTER VIII**

A. **THREE PASTORAL ATTITUDES**

The title of Chapter VIII provides three attitudes to be developed: (1) accompanying, (2) discerning and (3) integrating weakness. These will provide the background for this part of our presentation.

1. **ACCOMPANYING PERSONS**

One of the themes developed in the first part of Chapter VIII is that of “gradualness in pastoral care”. As par. 293 states,

The fathers also considered the specific situation of a merely civil marriage or, with due distinction, even simple cohabitation, noting that “when such unions [1] attain a particular stability, [2] legally recognized, are characterized by [3] deep affection and [4] responsibility for their offspring, and demonstrate an [5] ability to overcome trials, they can provide occasions for pastoral care with a view to the eventual celebration of the sacrament of marriage.”

On the other hand, it is a source of concern that many young people today distrust marriage and live together, putting off indefinitely the commitment of marriage, while yet others break a commitment already made and immediately assume a new one. As members of the church, they too need pastoral care that is merciful and helpful.

It seems obvious that the various situations mentioned – civil marriage, cohabitation. no commitment to marriage – are distinct in their nature, and the same pastoral approach would not be appropriate for each of these situations:

Entering into pastoral dialogue with these persons is needed to distinguish elements in their lives that can lead to a greater openness to the Gospel of marriage in its fullness. In this pastoral discernment, there is a need to identify elements that can foster evangelization and human and spiritual growth.

In some countries, for instance, people avoid entering into what they call “the white man’s marriage” because of the expense involved. As the Pope says, “these couples need to be welcomed and guided patiently and discreetly” (par. 294).

The “gradualness” mentioned here “is not a ‘gradualness of law’ but rather a gradualness in the prudential exercise of free acts on the part of subjects who are not in a position to understand, appreciate or fully carry out the objective demands of the law” (par. 295).

For the law is itself a gift of God that points out the way, a gift for everyone without exception; it can be followed with the help of grace, even though each human being advances gradually with the progressive integration of the gifts of God and the demands of God's definitive and absolute love in his or her entire personal and social life (par. 295).

In other words, “one size does not fit all”, and to treat all situations as the same is to overlook their particular characteristics, with the risk of ending up with an erroneous pastoral approach.

2. **DISCERNING SITUATIONS**

The key to understanding this section can be found in its opening paragraph:

The synod addressed various situations of weakness or imperfection. Here I would like to reiterate something I sought to make clear to the whole church, lest we take the wrong path: There are two ways of thinking that recur throughout the church's history: [1] casting off and [2] reinstating. The church's way, from the time of the Council of Jerusalem, has always been the way of Jesus, the way of mercy and reinstatement. ... The way of the church is not to condemn anyone forever; it is to pour out the balm of God's mercy on all those who ask for it with a sincere heart. ... For true charity is always unmerited, unconditional and gratuitous.

Consequently, there is a need to avoid judgments that do not take into account the complexity of various situations and to be attentive, by necessity, to how people experience distress because of their condition (par. 296).

There are numerous situations calling for different answers. For instance, six in particular call for attention because those divorced persons who have entered a new union, for example, can find themselves in a variety of situations that should not be pigeonholed or fit into overly rigid classifications leaving no room for a suitable personal and pastoral discernment (see par. 298).

[1] One thing is a **second union consolidated over time**, with new children, proven fidelity, generous self-giving, Christian commitment, a consciousness of its irregularity and of the great difficulty of going back without feeling in conscience that one would fall into new sins. The church acknowledges situations "where, for serious reasons, such as the children's upbringing, a man and woman cannot satisfy the obligation to separate."

[2] There are also the cases of those who made every effort to save their first marriage and **were unjustly abandoned**, or [3] of "those who have entered into a second union **for the sake of the children's upbringing** and are [4] sometimes subjectively certain in conscience that their previous and irreparably broken **marriage had never been valid**."

[5] Another thing is a new union arising from a **recent divorce**, with all the suffering and confusion that this entails for children and entire families, or [6] the case of someone who has **consistently failed** in his obligations to the family.

It must remain clear that this is not the ideal that the Gospel proposes for marriage and the family. The synod fathers stated that the discernment of pastors must always take place by adequately distinguishing with an approach that carefully discerns situations. We know that no easy recipes exist.

In view of this, we can repeat what we noted at the beginning of this presentation:

If we consider the immense variety of concrete situations such as those I have mentioned, it is understandable that neither the synod nor this exhortation could be expected to provide a new set of general rules, canonical in nature and applicable to all cases. What is possible is simply a renewed encouragement to undertake a responsible personal and pastoral discernment of particular cases, one that would recognize that since the degree of responsibility is not equal in all cases, the consequences or effects of a rule need not necessarily always be the same (par. 300).

One most important consequence of this discernment is mentioned in footnote 336: "This is also the case with regard to sacramental discipline, since discernment can recognize that in a particular situation no grave fault exists." This provision will be MOST significant when it comes to applying canon 915 on admission to Communion, as we shall see later. What he says is so important that the Pope repeats it in par. 301:

Hence it is can no longer simply be said that all those in any "irregular" situation are living in a state of mortal sin and are deprived of sanctifying grace. More is involved here than mere ignorance of the rule. A subject may know full well the rule, yet have great difficulty in understanding its inherent values, or be in a concrete situation that does not allow him or her to act differently and decide otherwise without further sin. As the synod fathers put it, "Factors may exist that limit the ability to make a decision."

A little later on, Pope Francis mentions some of these "factors":

Imputability and responsibility for an action can be diminished or even nullified by [1] ignorance, [2] inadvertence, [3] duress, [4] fear, [5] habit, [6] inordinate attachments, and other [7] psychological or [8] social factors. In another paragraph, the catechism refers once again to circumstances that mitigate moral responsibility and mentions at length "[9] affective immaturity, [10] force of acquired habit, [11] conditions of anxiety or other psychological or social factors **that lessen or even extenuate moral culpability.**"

For this reason, a negative judgment about an objective situation does not imply a judgment about the imputability or culpability of the person involved. On the basis of these convictions, I consider very fitting what many synod fathers wanted to affirm:

"Under certain circumstances people find it very difficult to act differently. Therefore, while upholding a general rule, it is necessary to recognize that responsibility with respect to certain actions or decisions is not the same in all cases. Pastoral discernment, while taking into account a person's properly formed conscience, must take responsibility for these situations. Even the consequences of actions taken are not necessarily the same in all cases" (par. 302).

Among the questions to be asked in the discernment process, we could note the following:

- [1] How did they act toward their children when the conjugal union entered into crisis;
- [2] whether or not they made attempts at reconciliation;
- [3] what has become of the abandoned party;

[4] what consequences the new relationship has on the rest of the family and the community of the faithful; and

[5] what example is being set for young people who are preparing for marriage.

A sincere reflection can strengthen trust in the mercy of God, which is not denied anyone (see par. 300).

3. **INTEGRATING WEAKNESS**

As for the third pastoral attitude – integrating weakness – a special pastoral rule is presented in paragraphs 304 and 305:

It is true that general rules set forth a good that can never be disregarded or neglected, but in their formulation they cannot provide absolutely for all particular situations. At the same time, it must be said that precisely for that reason, what is part of a practical discernment in particular circumstances cannot be elevated to the level of a rule. That would not only lead to an intolerable casuistry but would endanger the very values that must be preserved with special care.

For this reason, a pastor cannot feel that it is enough simply to apply moral laws to those living in "irregular" situations, as if they were stones to throw at people's lives. This would bespeak the closed heart of one used to hiding behind the church's teachings, "sitting on the chair of Moses and judging at times with superiority and superficiality difficult cases and wounded families" (par. 304-305).

B. **VARIOUS PASTORAL SITUATIONS**

1. **HEARING CONFESSIONS**

As was mentioned in par. 305, "discernment must help to find possible ways of responding to God and growing in the midst of limits. By thinking that everything is black and white, we sometimes close off the way of grace and of growth, and discourage paths of sanctification that give glory to God. Let us remember that 'a small step, in the midst of great human limitations, can be more pleasing to God than a life that appears outwardly in order but moves through the day without confronting great difficulties.' The

practical pastoral care of ministers and of communities must not fail to embrace this reality.”

This has very practical consequences for priests who are hearing confessions. As Pope Francis notes (footnote 351),

In certain cases this can include the help of the sacraments. Hence, "I want to remind priests that the confessional must not be a torture chamber but rather an encounter with the Lord's mercy" (*Evangelii Gaudium*, 44).

I would also point out that the Eucharist "is not a prize for the perfect but a powerful medicine and nourishment for the weak" (*ibid.*, 47).

This footnote is essential for a sound understanding of the intentions of AL. The note speaks of the “sacraments”, in the plural. These would obviously include reconciliation and the Eucharist, since the Pope mentions both of these sacraments in particular.

2. THE LOGIC OF PASTORAL MERCY

Although Pope Francis speaks consistently of mercy in its various forms, he also notes that mercy is based on truth. Again, he starts with the person: “Today, more important than the pastoral care of failures is the pastoral effort to strengthen marriages and thus to prevent their breakdown” (par. 307).

Here is one of the most poignant passages of the Exhortation, and possibly one of the most difficult for certain priests:

At the same time, from our awareness of the weight of mitigating circumstances - psychological, historical and even biological - it follows that without detracting from the evangelical ideal there is a need to accompany with mercy and patience the eventual stages of personal growth as these progressively appear, making room for the Lord's mercy, which spurs us on to do our best.

I understand those who prefer a more rigorous pastoral care that leaves no room for confusion. But I sincerely believe that Jesus wants a church attentive to the goodness that the Holy Spirit sows in the midst of human weakness, a mother who, while clearly expressing her objective teaching, always does what good she can, even if in the process her shoes get soiled by the mud of the street. The church's pastors, in proposing to the faithful the full ideal of the Gospel and the church's teaching, must also

help them to treat the weak with compassion, avoiding aggravation or unduly harsh or hasty judgments.

The Gospel itself tells us not to judge or condemn (cf. Mt 7:1; Lk 6:37). Jesus expects us to stop looking for those personal or communal niches that shelter us from the maelstrom of human misfortune and instead to enter into the reality of other people's lives and to know the power of tenderness. Whenever we do so, our lives become wonderfully complicated (par. 308).

Pope Francis demonstrates clearly that there is no place here for scrupulosity:

Perhaps out of a certain scrupulosity, concealed beneath a zeal for fidelity to the truth, some priests demand of penitents a purpose of amendment so lacking in nuance that it causes mercy to be obscured by the pursuit of a supposedly pure justice. For this reason, it is helpful to recall the teaching of St. John Paul II, who stated that the possibility of a new fall "should not prejudice the authenticity of the resolution" (footnote 364).

To help priests who are involved in discerning delicate situations, he offers the following considerations:

At times we find it hard to make room for God's unconditional love in our pastoral activity. We put so many conditions on mercy that we empty it of its concrete meaning and real significance. That is the worst way of watering down the Gospel.

It is true, for example, that mercy does not exclude justice and truth, but first and foremost we have to say that mercy is the fullness of justice and the most radiant manifestation of God's truth. For this reason, we should always consider inadequate any theological conception that in the end puts in doubt the omnipotence of God and, especially, his mercy (par. 311).

This last statement is a strong reminder to those who would put their own thoughts before those of God.

3. **THE DISCERNMENT OF "IRREGULAR" SITUATIONS**

Earlier in this presentation, I referred to Pope Francis' comments regarding the thinking of Cardinal C. Schönborn. In reply, the Cardinal noted the following:

Cardinal Schönborn subsequently told the Austrian Catholic Press Agency Kathpress that he was grateful and “not a little proud” that the Church had now “fully adopted” the pastoral practice regarding remarried divorcees that has been in use for over 15 years in his Vienna archdiocese. The archdiocesan programme, entitled “How to offer spiritual, Christian and human support to Divorced and Remarried Couples”, directs pastors to discuss the following questions with divorced and remarried couples:

- How did the couple treat their children during the marriage crisis?
- Were there attempts at reconciliation?
- What is the situation of the abandoned partner?
- What consequences has the new partnership had as far as the extended family and the community of the faithful are concerned?
- What example does it give for those younger members of the community considering marriage?

[These questions are most similar to those mentioned above and listed in par. 300 of the Exhortation].

Questioning usage of the term “irregular relationship”, Cardinal Shönborn said: “Whether someone is in a ‘regular’ or ‘irregular’ relationship is only a first external view of the situation.”

It is this discernment that leads to what has traditionally been called the “Internal Forum Solution”, to which Pope Francis alludes in par. 300 of the Exhortation:

What we are speaking of is a process of accompaniment and discernment that guides the faithful to an awareness of their situation before God. Conversation with the priest, **in the internal forum**, contributes to the formation of a correct judgment on what hinders the possibility of a fuller participation in the life of the church and on what steps can foster it and make it grow. Given that gradualness is not in the law itself (cf. *Familiaris Consortio*, 34), this discernment can never prescind from the Gospel demands of truth and charity as proposed by the church.

For this discernment to happen, the following conditions must necessarily be present: [1] humility, [2] discretion and [3] love for the church and [4] her teaching, in a [5] sincere search for God's will and [6] a desire to make a more perfect response to it.

These attitudes are essential for avoiding the grave danger of misunderstandings, such as the notion that any priest can quickly grant “exceptions” or that some people can obtain sacramental privileges in exchange for favors. When a responsible and tactful person who does

not presume to put his or her own desires ahead of the common good of the church meets with a pastor capable of acknowledging the seriousness of the matter before him, there can be no risk that a specific discernment may lead people to think that the church maintains a double standard.

As the Pope mentions elsewhere in the Exhortation (par. 37): “We have been called to form consciences, not to replace them.” So, how could this work in practice?

V. **THE “INTERNAL FORUM” SITUATION**

1. **WHAT IS THE “INTERNAL FORUM”**

The Church operates on two different planes, which we usually call “forums”. There is the external forum, which deals with matters that are visible, can be proven, measured and determined – as, for instance, recognizing that two persons are first cousins.

Then there is also the internal forum, which is of the realm of conscience and spiritual direction. The most obvious example of this is the sacrament of reconciliation. What occurs there remains entirely “internal”.

There are times when matters cannot be determined in the external forum. For instance, in a trial for murder, it might be obvious to everyone that the accused really did it, but if this cannot be proved in the external forum, then this person cannot be condemned.

A similar situation can arise with marriage nullity cases. A person may be convinced that the other party had no intention to be faithful, or to be open to children, or to intend a permanent union. Nevertheless, it could happen that the other party refuses to testify before the court, and there are no other direct witnesses. This does not mean that he or she did not intend to be faithful, etc., but just that it cannot be proven externally.

The fundamental question is: which prevails – the internal realm of conscience, or the external legal forum? Standard Catholic theology is that an informed conscience prevails. The question that follows is: what happens when a person is really convinced in conscience that the first marriage was indeed null (but the nullity cannot be proven), is now in a second union, and wishes to receive Communion?

This is where the “internal forum solution” could enter into play.

2. **WHEN MIGHT AN “INTERNAL FORUM SOLUTION” BE USED?**

For centuries, when addressing the issue of the admission of the divorced and remarried to the Eucharist, the Church has recognized the possibility of using an approach based on the internal forum. A standard approach in some places has been based on what was known as the “brother-sister” solution. The couple would live together without having sexual relations, and so could go to Communion.

On April 11, 1973, the Congregation for the Doctrine of the Faith sent a circular letter to all bishops on the issue. At that time they wrote:

In regard to admission to the Sacraments, the Ordinaries are asked on the one hand to stress observance of current discipline and, on the other hand, to take care that the pastors of souls exercise special care to seek out those who are living in an irregular union by applying to the **solution** of such cases, in addition to other right means, **the Church’s approved practice in the internal forum**. (Emphasis added) (Prot. Nos. 1284/55, 139/69).

This signified that there was a “solution” to these issues, and also that there was an “approved” internal forum practice. However, the letter did not state in what this practice consisted. Consequently, the USA Bishops wrote to the Congregation asking for an “official” interpretation of the term “the Church’s approved practice”. A reply, dated March 21, 1975, noted:

I would like to state now that this phrase must be understood in the context of traditional moral theology. These couples may be allowed to receive the sacraments on two conditions, that they try to live according to the demands of Christian moral principles and that they receive the sacraments in churches in which they are not known so that they will not create scandal. (Congregation for the Doctrine of the Faith to Archbishop Joseph Bernardin, Prot. No. 1284/66, March 21, 1975).

Cardinal J. Ratzinger, at the time Archbishop of Munich, in his Advent 1980 pastoral letter, noted the following:

The Synod established a special category for those who have reached the conviction in conscience that their first marriage was null, even when the juridical proof is not available: in such instances, in conformity with a judgment based on conscience, and provided that scandal be avoided, **admission to the Eucharist may be authorized**. But where, because of the **clear validity** of the first marriage, there can be no question of admission to Communion, the pastor and the persons concerned are not faced with a pastoral void. The Synod exhorts the pastor to see to it that

by his care and his love, these persons feel that they are not excluded from the Church, but share in its life in many ways. (Cardinal J. RATZINGER, Pastoral Letter, Advent, 1980, in *La Documentation catholique*, 78(1981), p. 389 – my translation).

Nevertheless, shortly afterwards, in *Familiaris consortio*, Art. 84, Pope John Paul II, for all practical purposes, reversed the decisions of the Congregation for the Doctrine of the Faith, and the orientations of the Synod, and tolerated the possibility of applying the “solution” only in the case where the couple agreed to refrain from sexual relations.

However, the Church reaffirms her practice, which is based upon Sacred Scripture, of not admitting to Eucharistic Communion divorced persons who have remarried. They are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and the Church which is signified and effected by the Eucharist.

The Pontifical Council for Legislative Texts, in a decision dated June 24, 2000, brought the entire matter to the exclusive level of the external forum, this making it almost impossible for divorced and remarried Catholics to receive the Eucharist if their situation had not been resolved in the external forum.

However, following upon the two Synods, Pope Francis has now reviewed this policy, and has opened the door once again to some of the possibilities that were previously allowed.

It would be important to understand clearly how such a “solution” could be applied, but, before doing so, it might be appropriate to look at the text of canon 915 in the light of what the Pope is now teaching.

3. **CANONICAL LEGISLATION – CANON 915**

Canon 915: Those upon whom the penalty of excommunication or interdict has been imposed or declared, and others who obstinately persist in manifest grave sin, are not to be admitted to holy communion.

It has been repeated time and again that the divorced and remarried are not excommunicated or subject to canonical penalties. Thus the first part of the canon is not applicable in the present case.

As for the second part, we must keep in mind the provisions of canon 18 of the *Code of Canon Law*:

Canon 18: Laws which prescribe a penalty, or restrict the free exercise of rights, or contain an exception to the law, are to be interpreted strictly.

A “strict” interpretation means that all the conditions spelled out in the law must be met; if one or more is missing, the restriction does not apply.

Canon 912: Any baptized person who is not forbidden by law may and must be admitted to holy communion.

Canon 912 spells out the fundamental right of the faithful. It is now essential to determine whether or not the law forbids the exercise of the right in the case of the divorced and remarried.

We note that canon 915 has four conditions: “[1] obstinately [2] persists in [3] manifest [4] grave sin.

- Obstinacy requires at least one previous warning.
- To persist means to continue doing something in spite of the warning.
- The situation must be manifest. However, the Exhortation tells us clearly that this situation is no longer manifest (par. 302).
- Grave sin: the same paragraph tells us that certain circumstances can diminish or even remove all culpability (see footnote 336 in the Exhortation).

Therefore, if this is the case, then the prohibition spelled out in canon 915 would no longer apply in all instances where a divorced person has entered into marriage without first obtaining a dissolution or declaration of nullity regarding the previous union.

4. **APPLYING THE PRINCIPLES: POSSIBLE ADMISSION TO THE SACRAMENTS OF PENANCE AND EUCHARIST**

On October 17, 1978, Bishop Bernard Ganter, at the time Bishop of Beaumont, TX, issued a pastoral letter on the eventual use of the internal forum solution by his priests. This was before *Familiaris consortio*, but many of the principles he laid out are equally relevant today. I intend to make abundant use here of what is contained in this pastoral letter.

a. **What an internal forum solution IS NOT**

Bishop Ganter begins by stating what an internal forum solution IS NOT:

1. It is not a **validation** of a second marriage while the spouse of the first marriage is still alive.
2. It is not **permission** for a previously married person, whose spouse is still living, to remarry in the Catholic Church.
3. It is not permission for a priest to perform any kind of public or private **ceremony** which has the appearance of a marriage ceremony, validation, or blessing.
4. It is not a judicial procedure, but simply a **pastoral decision**, made in accordance with recognized moral-canonical principles that a divorced person who has attempted remarriage (and/or his or her second spouse) may use the sacraments of Reconciliation and Eucharist, if feasible without scandal.
5. It is not a **substitute** for, or bypass of, external forum solutions of the Tribunal.

b. **What an internal forum solution is**

1. It is a pastoral **judgment** made by the parties, with the assistance of the proper ecclesiastical minister, in the internal forum, that they, even though the previous spouse is still alive, by reason of a properly formed conscience, have the **right** to receive the sacraments, with no canonical decision being rendered by the Tribunal as to the validity or invalidity of the previous marriage or marriages.
2. For the sake of thoroughness, it should not be done during the few minutes available in the Sacrament of Reconciliation. At least several sessions of in-depth counseling and investigation should be involved. It is never to be rushed, nor is it to be readily assumed that the parties understand the full **implications** of a good conscience solution.
3. As for the “properly formed conscience”, it is the task of the priest to assure that the party seeking the good conscience solution understands the difference between a declaration of nullity (church law) and a divorce (civil law).

c. **An internal forum solution could be available for the following persons**

1. A Catholic who has remarried, who has practiced the Faith insofar as possible, and who has demonstrated the stability of the present marriage over a sufficient period of time.

2. A non-Catholic who has remarried a Catholic, who wishes to resume a sacramental life and who has practiced the Faith insofar as possible, and who has demonstrated the stability of the present marriage over a sufficient period of time.

d. **Conditions for the application of the solution**

1. There would be no recourse to the internal forum solution until all external forum possibilities have been **exhausted**.

It should be noted that with the new norms promulgated by Pope Francis on September 8, 2015, the proofs required for obtaining a declaration of nullity have been greatly simplified – thus opening the door for many cases which previously would have been rejected for lack of proof:

Can. 1678 § 1*. In cases of the nullity of marriage, a judicial confession and the declarations of the parties, possibly supported by witnesses to the credibility of the parties, can have **the force of full proof**, to be evaluated by the judge after he has considered all the indications and supporting factors, unless other elements are present which weaken them.

§ 2*. In the same cases, the testimony of one witness can produce **full proof** if it concerns a qualified witness making a deposition concerning matters done *ex officio*, or unless the circumstances of things and persons suggest it. (Emphasis added)

In other words, it is not always necessary to have five or six witnesses. The judge is free to evaluate the weight to be assigned to specific testimony.

A point to keep in mind in understanding this new provision: since, in most countries, civil divorce is now available, persons who simply wish to remarry can avail themselves of the civil possibilities. Those who come to the Church for a declaration of conscience, can be presumed to be doing so (at least in most cases) for peace of conscience. They know that if they lie to the court, they won't have the peace of conscience they desire, even though they might get the "piece of paper". Therefore, the court can presume more easily that they are telling the truth – at least as they see it.

2. The remarried party and the priest are personally convinced of the **invalidity** of the previous marriage(s) though unable to offer proof in the external forum because of a lack of witnesses to substantiate the alleged ground; because knowledgeable witnesses will not cooperate; the first spouse's testimony is needed for proof, but not available; medical records and other necessary documents are not obtainable.

3. The remarried party (and the present spouse, if Catholic) can receive the sacraments without causing **scandal** or adverse criticism in the Faith-community.
4. The remarried party promises to have the present marriage **validated** in the event of the death of the former spouse.
5. The remarried party and the present spouse are fulfilling the **responsibilities** of Christian marriage in the present union, especially fidelity, parenthood, and a genuine sharing of conjugal life and love.
6. The Catholic party or couple in the present marriage must have **practiced** the Catholic Faith insofar as possible since entering the present union, and must be raising any children born of this union in the Catholic Faith.
7. The Catholic party or couple in the present marriage must agree to receive the sacraments in churches where their irregular union is not known IF this is the only way **scandal** can be avoided.
8. Lastly, and importantly, the couple in the present marriage must understand that an internal forum solution, based on good conscience, implies **no change** in Catholic teaching on the Sacrament of Matrimony; that is provides no public approval of their union by the Church; that no entry of their present marriage can be made in the matrimonial register of the parish, and no certificate of marriage can be issued for their present union.

They must be willing to live with this lack of external approval which does not, of course, imply disapproval of their return to sacramental life based on a good conscience solution.

Of course, this last point can be delicate. If a new priest comes to the parish, will he see things the same way? Therefore, pastorally speaking, it would be important for the couple to make their decision once and for all, and not keep bringing it up to priests in confession or in conversation. Since the matter is dealt with in the internal forum, there can be no certificate or document stating that the couple has been authorized to receive the sacraments. Some of the faithful are uneasy about this lack of “proof”, but this is part of the “internal” dimension of the solution.

4. **A CALL TO ALL PASTORAL WORKERS**

All of us know that many good people have left the Church entirely, many stay affiliated to the Church as nominal Catholics, and still many others struggle to do the best they

can as partners in a second marriage when it has not been possible to secure a decree of nullity for an apparently invalid prior marriage.

Those of us who, in any way, are involved in pastoral ministry, should seek out these suffering members of the Church, see how these new possibilities could be applied to them, and, by doing so, make available to loving mercy of the Lord through the Sacrament of Reconciliation and the spiritual nourishment and strength of the Eucharist. (Note: much of the above is taken, at times literally, from the pastoral letter of Bishop Bernard Ganter, October 17, 1978, private publication).

CONCLUSION

It is obvious that Pope Francis has opened new doors for the faithful who have gone through the pain of divorce, and who have subsequently remarried.

We certainly have not heard the last word on this topic. There are many who, in conscience, are opposed to any change in pastoral practice. There might be some for whom canonical regulations are of little if any significance, and who would go to the other extreme. As is often the case, "*In medio stat virtus*" – virtue is found in the middle course, not in the extremes.

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