

**ASIAN  
HORIZONS**

Vol. 10, No. 4, December 2016

Pages: 693-706

## **AMORIS LAETITIA AND CONSCIENCE**

**Charles E. Curran<sup>♦</sup>**

*Southern Methodist University, USA*

### **Abstract**

This article discusses *Amoris laetitia* and conscience in light of chapter 8 of the pastoral exhortation dealing with integrating divorced and remarried Catholics more fully into the Catholic Church. The primary focus of the article is on the possibility of communion for some divorced and remarried Catholics. The essay develops in three parts —the remote context beginning 50 years ago involving the pertinent literature on participation of some divorced and remarried Catholics in the Eucharistic banquet based on the decision of conscience in the internal forum; the present context referring to earlier statements by Pope Francis and the two Synods of 2014 and 2015; and finally *Amoris laetitia* itself. *Amoris laetitia* insists on the central role of conscience in decisions made by individuals who because of psychological or sociological circumstances cannot now fulfil the objective demands of the norm or law. Pope Francis in *Amoris laetitia*, however, does not explicitly accept or even mention the specific issue of communion for some divorced and remarried; however, there are indications that Pope Francis himself favours the possibility of Communion for some divorced and remarried. Meanwhile, he is obviously content to live with the doubts, differences, and even confusion about this issue in the life of the Church.

---

<sup>♦</sup>**Charles E. Curran** is the Elizabeth Scurlock University Professor of Human Values at Southern Methodist University. He has authored and edited more than 50 books in the area of moral theology. Curran has served as president of three national professional societies — the American Theological Society, the Catholic Theological Society of American, and the Society of Christian Ethics. He was the first recipient of the John Courtney Murray Award for distinguished achievement in theology given by the Catholic Theological Society of America. The College Theology Society gave him its Presidential Award for a lifetime of scholarly achievements in moral theology. Recently, the Society of Christian Ethics gave him its Lifetime Achievement Award. He is a member of the American Academy of Arts and Sciences. Email: ccurran@mail.smu.edu

**Keywords:** *Amoris laetitia*, Conscience, Divorced and Remarried, Gradualism Internal Forum, Pope Francis

Conscience came to the fore in Pope Francis' apostolic exhortation *Amoris laetitia* in its discussion on the specific issue of the pastoral care of divorced and remarried Catholics. Could such Catholics fully participate in the Eucharistic life of the Church? This paper will discuss the role of conscience for the divorced and remarried wanting to receive communion in light of the broader historical development of this issue which has been discussed within the Church for the last 50 years. In light of this historical reality, this paper will develop in three stages — the remote context, the proximate context, and the specific teaching of *Amoris laetitia*.

### 1. Remote Context

Catholic teaching and canon law maintain that “a marriage that is *ratum* and *consummatum* can be dissolved by no human power and by no cause, except death.” A *ratum* marriage is one between two baptized persons. A marriage is consummated by an act of sexual intercourse. In light of this teaching on the indissolubility of marriage, the Catholic Church does not recognize the possibility of divorce and remarriage.<sup>1</sup> However, Church law does recognize the possibility of annulments which declare that there never was a true and valid marriage. Valid means legally recognized by the Church. Canon lawyers and marriage tribunals in dioceses in the United States were in the forefront of efforts to make the annulment process more available. Based on contemporary psychological findings, a good number of annulments were granted through the Church tribunals because of the lack of psychic maturity on the part of the couple so that they were not able to give the necessary consent for marriage as a permanent commitment or were unable at the time of the marriage to fulfil the essential obligations of marriage.<sup>2</sup> Pope Francis in September 2015 announced new regulations to make it easier and quicker for Catholics to obtain marriage annulments.<sup>3</sup>

Marriage tribunals function in the legal order often called the external forum. In the last 50 years, however, the question has arisen

---

<sup>1</sup>Canon 1141, in *New Commentary on the Code of Canon Law*, ed. John P. Beal, James A. Coriden, and Thomas J. Green, New York: Paulist, 2000, 1362-63.

<sup>2</sup>Lawrence Wrenn, *The Invalid Marriage*, Washington, DC: Canon Law Society of America, 1998.

<sup>3</sup>Jim Yardley and Elizabetta Povoledo, “Pope Francis Announces Change for Easier Marriage Annulments,” *New York Times*, September 8, 2015.

especially in the case of divorced and remarried Catholics participating in the Eucharist about the use of the internal forum with its recognition of the central role of conscience. If the legal or external forum cannot be used, is it possible to arrive at an acceptable solution in the internal forum?<sup>4</sup>

In 1966 *The Homiletic and Pastoral Review* published the first article in the United States dealing with the possibility that divorced and remarried Catholics could receive communion. The three authors concluded that the reasons proposed for excluding such couples from the Eucharist are not always present.<sup>5</sup> *The Homiletic and Pastoral Review* later notified its readers that the Congregation for the Doctrine of the Faith issued a formal *monitum* condemning the article. However, the condemnation did not seem to have much effect.<sup>6</sup>

In 1970 the *Jurist*, the publication from the School of Canon Law of the Catholic University of America published a report of the committee appointed by the Canon Law Society of America to study this issue and four articles commissioned by the committee.<sup>7</sup> These articles made clear there are two different categories of divorced and remarried Catholics. The earlier *Homiletic and Pastoral Review* article did not make this distinction. The first category involves a couple who are morally convinced in their own conscience that there was no true marriage to begin with, but for various reasons cannot prove this in the external forum of Church law. This category has been called the "conflict situation." All recognize that at times there are discrepancies between the moral order and the legal order or what in

---

<sup>4</sup>For my earlier discussion of this issue, see Charles E. Curran, "Divorce: Doctrine et pratique catholique aux États Unis," *Recherche de Science Religieuse* 61 (1973) 575-624; for a slightly revised English version of the article, see Charles E. Curran, *New Perspectives in Moral Theology*, Notre Dame, IN: Fides, 1974, 212-76. For a very complete treatment of the historical development of the issue until 1995, see Kenneth R. Himes and James A. Coriden, "Pastoral Care of the Divorced and Remarried," *Theological Studies* 51 (1996) 97-123; also James Provost, "Intolerable Marriage Situations Revisited," *Jurist* 40 (1980) 141-96 and James Provost, "Intolerable Marriages: A Second Decade," *Jurist* 50 (1990) 573-612.

<sup>5</sup>B. Peters, T. Beemer, and C. van der Poel, "Co-Habitation in 'Marital State of Mind,'" *The Homiletic and Pastoral Review* 66 (1965-66) 566-577.

<sup>6</sup>*The Homiletic and Pastoral Review* 68 (1966-67) 390. For a fascinating article detailing the reaction of Archbishop John F. Dearden, the then president of the National Conference of Catholic Bishops, to the *monitum* condemning the article, see Samuel J. Thomas, "Dissent and Due Process after Vatican II: An Early Case Study in American Catholic Leadership," *U.S. Catholic Historian* 17, n. 4 (1999) 1-22.

<sup>7</sup>*Jurist* 30 (1970) 1-74. The article by Ladislav Örsy is the committee report of the Canon Law Society of America. The other articles are by Anthony Kosnik, Bernard Häring, Peter Huizing, and Leo C. Farley and Warren T. Reich.

the Church has been termed the external forum and the internal forum. Something can be morally true that cannot be proved to be legally acknowledged. We all recognize there are times when innocent persons have been proven guilty in the legal order or guilty people have been allowed to go free. In this situation, since the moral order is the most important reality, such a couple could be advised or themselves conclude that they are able to receive communion and fully participate in the life of the Church.

The second category of divorced and remarried Catholics involves those whose first marriage was true and valid but it has now irremediably broken down. One of the parties to that first marriage has remarried and desires to return to sacramental ecclesial communion without abandoning the second union. This category has sometimes been called the "hardship situation." This second category cannot be solved as quickly or as easily as the conflict situation involving discrepancy between the external forum and the internal forum. However, some theologians and canonists in the *Jurist* articles propose reasons that could justify the reception of communion: the primary reality is the forgiveness of God, the couple is not necessarily in a state of mortal sin or excommunicated, they have new obligations coming from the present relationship, they are sorry for their failures in the past and are conscious of their responsibilities to the spouse in the first marriage and any children from that marriage, they have new obligations resulting from the second marriage and should not break up the second marriage.

The Committee of the Canon Law Society of America concluded concerning the first category that on a sacramental level, the priest should advise the parties to follow their well-formed consciences and participate in the sacraments. With regard to the second category of those who recognized they had a true first marriage, the Committee concluded the matter was not mature for any legal conclusion, but they agreed on one recommendation: if a priest by way of counsel in the forum of conscience permits a person living in such a union to have access to the Eucharist, no legal action should be taken against such a priest.<sup>8</sup>

In June 1971, the Catholic Theological Society of America appointed a committee to study the question of the pastoral ministry to the divorced and remarried. Their report in 1972 first considered

---

<sup>8</sup>Ladislav Örsy, "Intolerable Marriage Situations: Conflict between External and Internal Forum," *Jurist* 30 (1970) 10.

the case of previously married Catholics now wanting to get married and fully participate in the life of the Church. If a couple judges in their conscience on the basis of objective criteria that the previous marriage was not a true marriage, the community should respect the conscience of those who have entered such a new marriage. However, the community will not officially celebrate this marriage. On the question of those already involved in a second marriage, the committee report called for reconsideration of the pastoral practice in the Church by stating that respect for a couple's conscience should permit reception of the Eucharist by those who present themselves after appropriate consultation, reflection, and prayer.<sup>9</sup>

In the early 1970s, theologians and canonists frequently wrote on this issue.<sup>10</sup> In pastoral practice the use of internal forum solutions in both cases grew. In August 1972, Cardinal John Krol, the president of the National Conference of Catholic Bishops (NCCB) issued a statement that the matter of pastoral care for divorced and remarried persons was under study by the Vatican and by a committee of the U.S. bishops.<sup>11</sup> In April 1973, the Congregation for the Doctrine of the Faith sent a letter to all bishops that pastors should seek out those living in irregular unions applying the Church's approved practice in the internal forum. The U.S. bishops sought a clarification to see if the approved practice, in addition to the brother and sister arrangement, also included the newer internal forum solutions, but they never received a direct answer.<sup>12</sup> The U.S. bishops' committee never did issue any guidelines on the issue.<sup>13</sup>

After the international Synod on the Family held in September-October 1980, Pope John Paul II issued his apostolic exhortation *Familiaris consortio*. With regard to divorced and remarried persons, pastors should help them to make sure they are not separated from the Church, but the Church reaffirms her practice

---

<sup>9</sup>"The Problem of Second Marriage: An Interim Pastoral Statement by the Study Committee Commissioned by the Board of Directors of the Catholic Theological Society of America," *Proceedings of the Catholic Theological Society of America* 27 (1972) 233-40.

<sup>10</sup>In *Theological Studies* Richard A. McCormick analyzed and criticized much of the literature on this subject. His writings on the subject are readily available in Richard A. McCormick, *Notes on Moral Theology 1965-1980*, Washington, DC: University Press of America, 1981, 332-47, 372-81, 544-61, 826-41.

<sup>11</sup>John Krol, "Good Conscience Procedures," *Origins* 2 (1972) 176-77.

<sup>12</sup>Himes and Coriden, 100-01.

<sup>13</sup>Provost, "Intolerable Marriage Situations Revisited," 176-77.

of not admitting to Eucharistic communion divorced persons who have remarried.<sup>14</sup>

Kenneth Himes and James Coriden in their article in *Theological Studies* report that after the 1980 synod the then archbishop of Munich-Freising, Cardinal Joseph Ratzinger, sent a letter to his priests that those in conflict situations, who were convinced the previous marriage was not a true marriage, could receive the Eucharist. He also called for further study of the hardship cases (when the previous marriage was recognized by the parties as a true marriage). There is no footnote reference for this.<sup>15</sup> Ratzinger had written a 1972 article in which he maintained that the Church cannot stop preaching the faith of the new covenant, but it must often enough begin its concrete life a bit below the threshold of the scriptural word. (Note here the similarity to the approach later taken by Pope Francis.) In emergency situations, the Church can allow limited exceptions in order to avoid worse things. He then proposes a case in which in the light of all the circumstances involved a divorced and remarried person could receive communion.<sup>16</sup> Ratzinger in 1991 in a letter to the *London Tablet* distanced himself from his earlier article in the light of Pope John Paul II's *Familiaris consortio*.<sup>17</sup>

In 1994 the three bishops of the ecclesiastical province of the Upper Rhine, Karl Lehmann, then president of the German bishops' conference, Oscar Saier, the vice-president of the conference, and Walter Kasper, issued a pastoral letter dealing with the divorced and remarried. The general principles of Church law are by definition general and cannot address all the complex individual cases. However, one must avoid both exaggerated strictness and weak flexibility. With regard to communion for the divorced and remarried, the letter maintains that a pastoral dialogue with a priest

---

<sup>14</sup>Pope John Paul II, *The Role of the Christian Family in the Modern World: Familiaris Consortio*, Boston, MA: St Paul Editions, 1981, n. 84, p. 126.

<sup>15</sup>Himes and Coriden, 102.

<sup>16</sup>Josef Ratzinger, "Zur Frage nach der Unauflöslichkeit der Ehe: Bemerkungen zum dogmengeschichtlichen Befund und zu seiner gegenwärtigen Bedeutung," in *Ehe und Ehescheidung: Diskussion unter Christen*, München: Kösel-Verlag, 1972, 35-56. An English translation by Joseph Bolin is available at <http://www.pathsoflove.com/texts/Ratzinger-indissolubility-marriage/>, p. 9.

<sup>17</sup>*Tablet*, October 26, 1991, 1310-1311. For a fuller discussion of Ratzinger-Pope Benedict XVI on this issue, see Sean Wales, "Communion for the Divorced and Remarried?" *Asian Horizons* 7, n. 1 (March 2013) 196-201. This text is available at [files.www.catholicethics.com/resources/publications/07.01.2013.12\\_Sean\\_Wales.pdf](http://files.www.catholicethics.com/resources/publications/07.01.2013.12_Sean_Wales.pdf)

can help those involved reach a personal and responsible decision of conscience that must be respected by the Church.<sup>18</sup>

A year later, the Congregation for the Doctrine of the Faith under Cardinal Ratzinger responded by reaffirming the teaching of *Familiaris consortio* that those who have left valid marriages and have remarried may not receive communion, because their state of life objectively contradicts the union of Christ with the Church which is signified and expressed in the Eucharist.<sup>19</sup> On the same day the Congregation for the Doctrine of the Faith published its response, the three German bishops responded to the Congregation. It was not their intention to introduce doctrinal innovations or new canon law. They accept the teaching of the Church on the indissolubility of marriage. They addressed the pastorally difficult work of the application of the Church's teaching in delicate and highly complex human situations. There exists room beneath the threshold of the binding teaching for pastoral flexibility in complex individual cases that is to be used responsibly.<sup>20</sup>

This description of the remote context of *Amoris laetitia's* treatment of conscience in the case of pastoral care for the divorced and remarried has made no effort to be complete. The purpose has been to show that some canon lawyers, theologians, and bishops in the Church in the past 50 years have recognized the role of conscience in making the decision about whether some divorced and remarried Catholics can fully participate in the Eucharistic life of the Church. Pope John Paul II and the Congregation for the Doctrine of the Faith firmly opposed such a practice.

## 2. Proximate Context

The proximate context for the discussion of *Amoris laetitia* and conscience in relation to the issue of communion for some divorced and remarried involves Pope Francis' statements before *Amoris laetitia* and the 2014 and 2015 Synods on the Family.

With regard to Pope Francis, the first long interview he gave was with the editor of the Jesuit journal *Civiltà Cattolica* which was published in Jesuit journals throughout the world with the English

---

<sup>18</sup>Oskar Saier, Karl Lehmann, and Walter Kasper, "Pastoral Ministry: The Divorced and Remarried," *Origins* 23 (1994) 670-73.

<sup>19</sup>Congregation for the Doctrine of the Faith, "Concerning the Reception of Holy Communion by Divorced-and-Remarried Members of the Faithful," *Origins* 24 (1994) 337-41.

<sup>20</sup>Oskar Saier, Karl Lehmann, and Walter Kasper, "Response to the Vatican Letter," *Origins* 24 (1994) 341-44. For a discussion of the different reactions to these two documents, see Himes and Coriden, 97-123.

book titled *My Door is Always Open: A Conversation on Faith, Hope, and Church in a Time of Change*. In this interview the pope speaks of his vision and dream of a Church that is truly mother and shepherdess. The Church's minister must mercifully accompany people like the good Samaritan who comforts, cleanses, and raises up the neighbour in need. The Church is a field hospital after battle. The first task is to heal the wounds of those who are suffering. It is useless to ask a seriously injured person if she has high blood pressure or high cholesterol. You have to start healing from their particular situation.<sup>21</sup>

Pope Francis' first major official document was the apostolic exhortation *Evangelii gaudium* published in November 2013. The task of evangelization exists within the limits of languages and circumstances. With mercy and patience, a pastor must accompany people through the stages of personal growth as they occur. A small step in the midst of great human limitations can be more pleasing to God than a life that outwardly appears to be orderly.<sup>22</sup>

Pope Francis here alludes to what has been called gradualism or the law of gradualness. Pre-Vatican II Catholic moral theology did not refer to such a reality, but in 1970 Bernard Häring, the foremost Catholic moral theologian in the world at that time, developed the concept in light of the distinction between the role of moral teaching and the role of pastoral counselling. On the level of moral teaching, one is dealing with the objective moral reality itself. The level of pastoral counselling deals with the person in the existential situation in which the person finds oneself. The concern of pastoral counselling must always be the conscience of the person and not just abstract rules. In some situations because of psychological or sociological circumstances, the person is incapable of doing what is objectively morally true. One cannot demand of the person that he or she has to do what is morally impossible to do in these circumstances. Häring recognizes that the law of growth, on the one hand, will logically call people to strive for holiness and living out the fullness of the Christian life, but, on the other hand, the principle of growth can and should be applied to those who are unable to realize concretely the objective moral good in a particular situation.<sup>23</sup>

---

<sup>21</sup>Pope Francis with Antonio Spadaro, *My Door is Always Open: A Conversation on Faith, Hope, and the Church in a Time of Change*, London: Bloomsbury, 2014, 54-57.

<sup>22</sup>Pope Francis, Apostolic Exhortation: *Evangelii Gaudium*, at <http://w2.vatican.va>, nn. 44-45.

<sup>23</sup>Bernard Häring, "A Theological Evaluation," in *The Morality of Abortion: Ethical and Historical Perspectives*, ed. John T. Noonan, Jr., Cambridge, MA: Harvard University Press, 1970, 139-42.



On the basis of comments made by Pope Francis, some members of the Synod on the Family used the law of growth to justify the participation of some divorced and remarried Catholics in the Eucharistic banquet.<sup>24</sup> This approach by Francis and others is strikingly different from that taken by Pope John Paul II in his apostolic exhortation *Familiaris consortio* after the 1980 synod on marriage. He insisted that what is known as the “law of gradualness” or step-by-step advance cannot be identified with the “gradualness of law” as if there were different degrees or forms of precepts in God’s law for different individuals and situations. One cannot look on the law as merely an ideal to be achieved in the future but must consider it as a command of Christ the Lord to overcome difficulties with constancy.<sup>25</sup>

Pope Francis called for two Synods of Bishops in 2014 and 2015 to discuss the family. Before the synods, at his very first Sunday *Angelus* audience, he mentioned that he had just read Cardinal Walter Kasper’s book on mercy and commented that the book “did me such good, so much good.”<sup>26</sup> Recall that Kasper was one of the three German bishops who issued the pastoral letter favouring the possibility of communion for some divorced and remarried Catholics. Pope Francis then asked Kasper to deliver the opening address at a special consistory of cardinals discussing the family in February 2014. In his address Kasper once again proposed the pastoral practice of allowing some divorced and remarried Catholics to receive communion. Kasper’s address, however, occasioned a strong negative response from others. Five cardinals — Raymond Burke, Walter Brandmüller, Carlo Caffara, Ludwig Müller, and Velasio de Paolis — released a book, *Remaining in the Truth of Christ*, reaffirming the traditional Catholic practice that the divorced and remarried cannot receive communion. In the foreword to another book, Cardinal George Pell, an Australian tasked by the pope to head the Vatican secretariat for the economy, insisted that doctrine and pastoral practice cannot be separated. Thus it was evident even before the synods began that cardinals and bishops were seriously divided on this issue of communion for some divorced and remarried

---

<sup>24</sup>John L. Allen, “The Synod’s Key Twist: Sudden Return of Gradualism,” *Crux*, October 8, 2014, at [www.cruxnow.com](http://www.cruxnow.com).

<sup>25</sup>John Paul II, *Familiaris consortio*, n. 54, p. 56.

<sup>26</sup>“Pope Francis’ First *Angelus* Address,” *Catholic World Report*, March 17, 2013 at [http://www.catholicworldreport.com/Blog/2091/full\\_text\\_pope\\_francis\\_first\\_angelus\\_address.aspx](http://www.catholicworldreport.com/Blog/2091/full_text_pope_francis_first_angelus_address.aspx).

Catholics even though the pope's actions appeared to indicate his support for such a position.<sup>27</sup>

Pope Francis himself called for open, free, honest discussions at the 2014 and 2015 synods. Such an approach was much different from the earlier synods that had been totally controlled by the Vatican. There had been no real disagreement expressed. Thus for the first time since Vatican II Catholics heard bishops and cardinals disagreeing with one another about Church policies and practices. By promoting such open and frank discussion, Francis showed that he was very willing to live with the reality of free discussion and disagreement within the Church.<sup>28</sup>

The 2015 synod's final document proposed recommendations for the pope. It was obvious from the final document that the supporters of communion for some divorced and remarried did not have the majority of the votes. There were two specific paragraphs that passed in the synod dealing with the need to better integrate divorced and remarried into the Church's life, paragraphs 84-85.<sup>29</sup> Paragraph 84, which was adopted by a vote of 187-72, called for the baptized who are divorced and civilly remarried to be more integrated into the Christian communities in the diverse ways possible. It is necessary to discern which of the different forms of exclusion actually practiced in the liturgical, pastoral, educational and institutional arenas can be overcome.

Paragraph 85 went somewhat further. Those in second marriages find themselves in very diverse situations, including some who were even unjustly abandoned. Moreover, in some situations, subjective guilt can be diminished or not existing. Pastoral discernment taking account of the correctly formed conscience of the person must deal with these different circumstances and cases. The vote on this paragraph was 178-80. The synod rules required a two-thirds vote in order for a recommendation to be sent to the pope. In this case, it barely received the necessary two-thirds votes.

---

<sup>27</sup>Thomas D. Williams, "Five Catholic Cardinals Launch Book Opposing Marriage Reform," *Breitbart*, September 18, 2014, at <http://www.breitbart.com/national-security/2014/09/18/Five-Catholic-Cardinals-Launch-Book-Opposing-Marriage-Reform/>.

<sup>28</sup>Thomas Reese, "How the Synod Process is Different under Pope Francis," *National Catholic Reporter*, October 17, 2014, at <http://ncronline.org>.

<sup>29</sup>Crux staff, "Excerpts from the Synod's Final Report," *Crux*, October 24, 2015, at <https://cruxnow.com/church/2015/10/24/excerpts-from-the-synods-final-report/>.

It is obvious that the final recommendations represented a compromise. The supporters of communion for some divorced and remarried recognized they did not have enough votes to make a recommendation along this line. However, those opposed to such a position could still agree with a recommendation that calls for greater integration of the divorced and remarried into the life of the Church but does not explicitly recognize communion for the divorced and remarried as one way of this integration. After the synod, there was great expectation and discussion about what position the pope would take in his final document on the subject of marriage and the family.

### 3. *Amoris Laetitia*

Pope Francis released his apostolic exhortation *Amoris laetitia* dealing with the questions of marriage and family in light of the previous synods on March 19, 2016. There are nine chapters involving 212 pages in the English translation that deal with the entire issue of marriage and family, including love, children, spirituality, preparation for marriage. Chapter 8 “Accompanying, Discerning, and Integrating Weakness,” deals with the specific issue of integrating the divorced and remarried into the life of the Church.<sup>30</sup>

In my judgment in chapter 8 Pope Francis logically develops his position in four steps. First, he insists on gradualness in pastoral care. He agrees with the synod fathers that any breach of the marriage vow is against the will of God, but the Church must always be conscious of the frailty of many of her children. Although the Church constantly holds up the call to perfection and asks for fuller response to God, the Church must accompany with attention and care the weakest of her children who show signs of a wounded and troubled love. In this section, he refers to Saint John Paul II’s so-called “law of gradualness” which is not a “gradualism of the law.” In this case, there is no 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 (nn. 291-95, pp. 185-88). Notice how he agrees with the words but not the teaching of John Paul II. Pope Francis explicitly recognizes there are those who prefer a more rigorous pastoral care which leaves no room for confusion. “But I sincerely believe that Jesus wants a Church attentive to the goodness which the Holy Spirit sows in the midst of human weakness, a Mother who,

---

<sup>30</sup>Pope Francis, *Apostolic Exhortation: Amoris Laetitia: On Love and the Family*, Huntington, IN: Our Sunday Visitor Publishing, 2016.

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'" (n. 308, p. 199).

Second, the pope insists that rules are not enough. Here the apostolic exhortation takes two different approaches. The Church has traditionally proposed a body of reflection concerning mitigating factors and situations with regard to the culpability of the person involved. One can no longer simply say that all those in any irregular situation are living in a state of mortal sin and are deprived of sanctifying grace. Persons knowing fully well the rule may find themselves in a concrete situation which does not allow them to act differently without further sin on their part. A person living in an objective situation of sin might not be subjectively culpable and can be living in God's grace, can love and also grow in the life of grace and charity while receiving the Church's help to this end. Discernment must help to find possible ways of responding to God and growing in the midst of limits (nn. 301-06, pp. 193-98).

Pope Francis also develops a second understanding of the limitation of rules. One cannot simply consider whether one's actions respond to a general law or rule, because that is not enough to discern and ensure full fidelity to God in the concrete life of a human being. In this context he quotes Thomas Aquinas maintaining that although there is necessity in the general principles the more we descend to matters of detail, the more frequently we encounter defects. General rules set forth a good which can never be disregarded or neglected, but in their formulation they cannot provide absolutely for all particular situations. Here the pope is accepting the position of Aquinas that in the midst of specificity and complexity, the general rule might not be binding. Logically in this case it is not a question of the difference between the objective truth and subjective culpability but in this case the general objective law itself does not oblige (n. 304, p. 196). Here Francis is proposing an understanding of general laws that could have very significant and widespread consequences in Catholic self-understanding.

Third, *Amoris laetitia* recognizes the very many different pastoral situations that arise in the cases of those who are divorced and remarried. In light of the immense variety of concrete situations, "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..." (n. 300, p. 192).

Fourth, in light of all that was said previously, in these situations there is a very important role for the individual conscience. The pope maintains that

individual conscience needs to be better incorporated into the Church's praxis in certain situations which do not objectively embody our understanding of marriage... Yet conscience can do more than recognize that a given situation does not correspond objectively to the overall demands of the Gospel. It can also recognize with sincerity and honesty what for now is the most generous response which can be given to God, and come to see with a certain moral security that it is what God himself is asking amid the concrete complexity of one's limits, while yet not fully the objective ideal (n. 303, p. 195).

Pope Francis proposes an examination of conscience for divorced and remarried who should ask themselves:

how did they act toward their children when the conjugal union entered into crisis; whether or not they made attempts at reconciliation; what has become of the abandoned party; what consequences the new relationship has on the rest of the family and the community of the faithful; and what example is being set for young people who are preparing for marriage (n. 300, p. 192).

#### **4. Concluding Remarks**

In this document, the pope never mentions the issue of communion for the divorced and remarried. He neither explicitly accepts nor denies the possibility of such action. There is no doubt that the discussion about the issue of communion in such circumstances will continue in the Church and there will be different approaches taken. Pope Francis is clearly willing to live with this doubt, ambiguity, and even confusion.

As mentioned above, it seems that the pope himself, without explicitly saying so, favours the possibility of communion for some divorced and remarried Catholics. A clue to Pope Francis' own position recently came in his reaction to the proposed guidelines from the bishops of the Buenos Aires region to help local priests put into practice *Amoris laetitia*. The guidelines maintain that *Amoris laetitia* opens up the possibility of access to the sacraments of reconciliation and the Eucharist for some divorced and remarried. However they warn, that it is necessary to avoid understanding this possibility as an unrestricted access to the sacraments or as though any situation might justify it. These guidelines dated September 5, 2016, reached

Francis who answered on the same day that the document is very good “and completely explains the meaning of chapter 8 of *Amoris laetitia*... and I am certain it will do much good.”<sup>31</sup>

Many who have opposed communion for some divorced and remarried have claimed that this pastoral approach amounts to a change in the Church’s teaching on the indissolubility of marriage. Proponents of the pastoral change, however, strongly defend the existing teaching on indissolubility and insist they are only changing pastoral practice. There is no doubt one can theoretically distinguish between the teaching and pastoral practice. But past history indicates that a change in pastoral practice often leads to a change in teaching. The best example of this is the issue of religious freedom. In the late nineteenth century the distinction was made between thesis and hypothesis. The thesis refers to the ideal order whereas the hypothesis refers to the real order in which religious pluralism exists. Where there exists such religious pluralism (many indicated it exists in almost all parts of the world), one could accept religious freedom. Vatican II finally changed the teaching itself.

I personally maintain that the Church should change its teaching on indissolubility and hope that the pastoral practice does move toward a change in the teaching on indissolubility. Indissolubility is an ideal and must constantly be insisted upon, but in our circumstances today couples cannot always live out that ideal. Interestingly enough, *Amoris laetitia* gives some support to this position. Four times while discussing the logic of pastoral mercy, Pope Francis refers to the teaching on indissolubility as an ideal (nn. 307-08, pp. 198-99). However, at the present time the teaching of the Church that indissolubility is an absolute norm that does not allow exceptions. Further discussion of this issue, however, lies beyond the parameters of this present article.

With regard to *Amoris laetitia*, Pope Francis is willing to live with the doubts and differences over the issue of communion for the divorced and remarried. The document itself calls for the central role of discernment and conscience. In this case, it is important to recognize the dilemma of conscience. I must follow my conscience, but my conscience might be wrong. That is why the Catholic tradition has always insisted on a well-formed conscience.

---

<sup>31</sup>Inés San Martín, “Pope Okays Argentine Doc on Communion for Divorced and Remarried,” *Crux*, September 12, 2016, at <https://cruxnow.com/global-church/2016/09/12/pope-okays-argentine-doc-communion-divorced-remarried/>.