

ASIAN
HORIZONS
Vol. 12, No. 2, June 2018
Pages: 296-314

AMORIS LAETITIA: A NEW APPROACH TO SEX AND GENDER ETHICS

Lisa Sowle Cahill♦
Boston College, USA

Abstract¹

In 2016, Pope Francis issued *Amoris Laetitia*, following two Synods on the Family in 2014 and 2015. These synods involved an unprecedented amount of consultation and publicity, and revealed rifts in the global Roman Catholic Church over communion for the divorced and remarried, as well as over greater openness toward LGBTQ persons. Attitudes toward these problems among Catholics globally are complex, but they are moving toward more acceptance in most countries. Discrimination against LGBTQ people is a reality in most cultures, even when attitudes in general are becoming more accepting. The U.S. and the Philippines here serve as examples. Though it changed no teachings, *Amoris Laetitia* referred the problem of communion back to “discernment” at the level of the local church. It also adopted a stance of understanding and encouragement toward Catholics who do not conform to Catholic sexual norms. Both through this document and through his personal example of listening, encouragement, discernment regarding LGBTQ persons, Pope Francis is modelling a new approach to Catholic sex and gender ethics. As he has said

♦**Lisa Sowle Cahill** is the J. Donald Monan, SJ, Professor of Theology at Boston College, a Jesuit university in Massachusetts USA. She received her PhD from the University of Chicago Divinity School. Her main areas of research are Catholic social ethics, bioethics, feminist theology and ethics, ethics of war and peace, and bible and ethics. She is the author of eleven books and over 200 articles. Her most recent book is *Global Justice, Christology and Christian Ethics* (Cambridge University Press, 2013). She is a past president of the Society of Christian Ethics (USA), and the Catholic Theological Society of America. She and her husband Larry are the parents of five adult children. Email: cahill@bc.edu

¹This paper is based on a lecture I gave at De La Salle University, Manila, July 3, 2017, at the invitation of Agnes Brazal. My thanks go to Dr Brazal, and her colleagues and students, who offered many insights and questions to further my thinking on these issues.

regarding transgender persons, “Welcome, accompany, study, discern, and integrate. This is what Jesus would do today.”

Keywords: *Amoris Laetitia*, Catholic Divorce, Catholics and LGBTQ, Catholic Sexual Ethics, Catholics and Transgender, Communion for the Divorced

Since his election in 2013, Pope Francis has brought a new style to the papacy, combining prophetic leadership with a warm and welcoming stance toward the many conscientious Catholics who stand in some way outside the Church’s established norms regarding sex, marriage and family. In the same year he was elected, Francis released an encyclical called *Evangelii Gaudium* or *Joy of the Gospel*.² In this, his first major statement, he called for the Church to end its “obsession” with rules and regulations, and with outmoded teachings and ideas. Most importantly he shifted the attention from “culture war” issues like birth control and abortion to “gospel” priorities like concern for the poor, the oppressed and all those who suffer.³

Unfortunately, many people suffer personal turmoil, rejection and even violence because of their gender identity or sexual orientation. Many have a sense of exclusion from the Catholic Church because they are divorced and remarried, single parents, or cohabiting without marriage. But as Pope Francis said in *Joy of the Gospel*, the purpose of the Church is not to create “harsh judges,” but “to offer everyone the life of Jesus Christ.”⁴ In a frequently quoted statement, he added, “I prefer a Church which is bruised, hurting and dirty because it has been out on the streets, rather than a Church which is unhealthy from being confined and from clinging to its own security.”⁵

During his first news conference in July 2013, Pope Francis famously asked the rhetorical question, “If someone is gay and he searches for the Lord and has good will, who am I to judge?”⁶ In this same spirit, he declared 2016 the “year of mercy.” Announcing the

²Pope Francis, *Joy of the Gospel*, 2013, https://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html.

³See Antonio Spadaro, S.J., “A Big Heart Open to God: An Interview with Pope Francis,” *America*, September 30, 2013, <https://www.americamagazine.org/faith/2013/09/30/big-heart-open-god-interview-pope-francis>.

⁴*Joy of the Gospel*, no. 49.

⁵*Joy of the Gospel*, no. 49.

⁶John L. Allen and Hadia Messia, “Pope Francis on Gays: ‘Who Am I to Judge?’” CNN Belief Blog, <http://religion.blogs.cnn.com/2013/07/29/pope-francis-on-gays-who-am-i-to-judge/>.

Jubilee in *Misericordiae Vultus*,⁷ he called mercy “a wellspring of joy, serenity, and peace,”⁸ called mercy a divine and Christ-like quality, identified mercy as “the very foundation of the Church’s life,” and summoned the whole Church “to bear the weaknesses and struggles of our brothers and sisters” in mercy. Mercy is “the force that reawakens us to new life and instils in us the courage to look to the future with hope.”⁹ For Francis, mercy means generosity, hospitality, understanding, and being a sign of peace and hope.

These themes will be developed in relation to another document, *Amoris Laetitia* (*The Joy of Love*),¹⁰ which Pope Francis published during the year of mercy. This document focuses on marriage and family, and specifically on whether divorced and remarried couples can receive the Eucharist, from which they have been banned by Church discipline. Echoing *Misericordiae Vultus*, *Amoris Laetitia* portrays mercy, not law enforcement, as “the fullness of justice and the most radiant manifestation of God’s truth.” If the Church is genuinely and truthfully to mediate “God’s unconditional love,” he says, then both its theology and its practice must embody mercy as genuine *imitatio Christi*, as compassion and support for the vulnerable and excluded.¹¹

The application of mercy to the situations of married couples and families could be interpreted in a variety of ways. For example, mercy could mean forgiveness toward repentant sinners, or pastoral acceptance that people can only gradually achieve the ideals promoted by the Church. However, I will argue that the role of mercy in *Amoris Laetitia* signifies a much more fundamental change in the way the Catholic Church approaches moral theology as a whole. This new approach or model applies beyond divorce and speaks to the situations of gay and lesbian Catholics, and to those who are transgender. The Church under Francis has not “officially” changed its teachings or regulations on divorce, homosexuality, or related topics. Nevertheless, the pope’s new attitude of joy, mercy, and listening, along with his emphasis on discernment, communicates that the teaching Church may learn (and perhaps eventually adapt its

⁷ Pope Francis, *Misericordiae vultus*, 2015, https://w2.vatican.va/content/francesco/en/apost_letters/documents/papa-francesco_bolla_20150411_misericordiae-vultus.html.

⁸Pope Francis, *Misericordiae vultus*, no. 2.

⁹Pope Francis, *Misericordiae vultus*, no. 10.

¹⁰ Pope Francis, *Amoris Laetitia*, 2016, https://w2.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf.

¹¹Pope Francis, *Amoris Laetitia*, no. 311.

teaching) on the basis of insights gained from accompanying those who struggle.

The possibility of such a development finds support in *Gaudete et exsultate* (2018),¹² on the humility and compassion that accompany true holiness. In effect, the pope says, doctrine, or at least our understanding and expression of it,

is not a closed system, devoid of the dynamic capacity to pose questions, doubts, inquiries... The questions of our people, their suffering, their struggles, their dreams, their trials and their worries, all possess an interpretational value that we cannot ignore if we want to take the principle of the incarnation seriously. Their wondering helps us to wonder, their questions question us.¹³

In other words, truthful interpretation of the human reality, moral responsibility, and faithful Christian living, may grow as a result of the difficulties and questions of life, even when (or perhaps because) they remain enmeshed in doubt and difficulty.

Although theologians and pastors are familiar with basic Church teachings on divorce, homosexuality, and transgender, the same is not true of all Catholics. Therefore it is important not only to clarify these teachings at the pastoral level, but also to ensure that the significance of Pope Francis's approach is understood in relation to them. What follows will be a summary; more detailed and precise formulations may be found in the *Catechism of the Catholic Church*.¹⁴ Everyone knows the Catholic Church is against divorce, homosexuality, and transgender identities. But why? What is the specific reasoning?

A first issue is divorce, which seems to have been a key impetus behind the two Synods on the Family, held in Rome in 2014 and 2015; and behind *Amoris Laetitia*, which was the follow-up to those synods. The Catholic Church teaches that marriage has several essential characteristics: it can only be between one man and one woman, whose sex and gender are said to be "complementary" to each other, and essential to true marital love; it must be agreed to by the full and free consent of both parties; it must include heterosexual intercourse; and it must be open to the possibility of procreation, not just over

¹² Pope Francis, *Gaudete et exsultate*, 2018, http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20180319_gaudete-et-exsultate.html

¹³Pope Francis, *Gaudete et exsultate*, no. 44, citing a 2015 speech in Argentina.

¹⁴*The Catechism of the Catholic Church*, Part III, Section II, Chapter II, Article 6, "The Sixth Commandment," http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a6.htm.

time or as a whole, but in each and every sexual act. Finally, any marriage between two Christians is considered to be a sacrament, and thus to be permanent and indissoluble. Sex in any other context than marriage is sinful. Married people are free to separate and even to obtain a civil divorce if there is no other way to resolve difficulties. However, the Church still regards them as permanently married, even if one spouse has been abandoned by the other. If they remarry (in a civil ceremony), they are “excommunicated,” that is, barred from receiving communion. The only way around this is to obtain an annulment (a declaration that a true marriage never existed), which few Catholics do; or to live together without sex, which to most people would not fulfil the meaning of marriage.

Regarding homosexuality, Catholic Church teaching on same-sex relations and unions will be clear from what has already been said. Sex always belongs in marriage, as a union of male and female; and it must be procreative and permanent. Since homosexual relations do not observe the rule of male-female complementarity, and are not procreative, even long-term or permanent unions or unions in which the partners adopt children, are not acceptable, according to the Church. In 1975, the Vatican issued a document, *Persona Humana*, saying that it is not a sin simply to have a same-sex orientation.¹⁵ The individual may have no choice in the matter. Nevertheless, such an orientation is “intrinsically disordered.”¹⁶ Thus he or she is instructed to give up any sexual relationships, and to find companionship and meaning in family, friends, and community. In 1986, when Pope Benedict XVI, then still Cardinal Joseph Ratzinger, was head of the Vatican’s Congregation for the Doctrine of the Faith, that body issued “Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons.”¹⁷ It reiterated that “although the particular inclination of the homosexual person is not a sin, it is a more or less strong tendency ordered toward an intrinsic moral evil; and thus the inclination itself must be seen as an objective disorder.”¹⁸ Seventeen years later, as social acceptance of gay men and lesbians in many

¹⁵ Congregation for the Doctrine of the Faith, *Persona Humana*, 1975, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html.

¹⁶*Persona Humana*, no. 8.

¹⁷Congregation for the Doctrine of the Faith, “Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons,” 1986, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html.

¹⁸“Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons,” no. 3.

parts of the world was growing, the CDF asserted that legal recognition of same-sex unions amounts to the “approval of deviant behavior.”¹⁹

A related issue to consider is that of transgender, which challenges the idea that there are only two binary and complementary sexes. The Catholic Church does not have an official teaching statement on transgender,²⁰ yet the rejection of ambiguous gender identity or a transition in gender identity is essential to maintain the view of sex and marriage as based on male-female complementarity. The Church regards each person as born with a biological sex, male or female, and a derivative gender identity, masculine or feminine. Biological sex and social gender must always correspond; in fact social gender identity is determined by biological sex. This premise is behind certain statements of Pope Francis specifically on this topic, which will be examined in more detail below.

In contrast to the apparent certitude of these teachings, popular views of divorce, homosexuality and transgender are changing. This point will be illustrated primarily with regard to the United States, and to the only predominantly Christian country in Asia, the Philippines. Unlike other Asian countries, but like the United States, the majority of Filipinos are Christian, and the Catholic Church has a significant public influence.

On divorce: In the U.S., the divorce rate is about 40-50%, though it has decreased slightly in the past three decades. Divorce is less frequent among the more financially well-off and well-educated. It is lower among Catholics than other religious groups, but still stands at about 34% for Catholics (44% have lived or are living with a partner without being married). Most divorced Catholics do not seek annulments, because this is a long and expensive process.²¹ However many of them remarry and simply attend a welcoming parish as a married couple.

¹⁹Congregation for the Doctrine of the Faith, *Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons*, 2003, no. 11, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html.

²⁰See John Norton, “Vatican says ‘sex-change’ operation does not change person’s gender, Catholic News Agency, September 19, 2011, <https://www.ncronline.org/news/vatican-says-sex-change-operation-does-not-change-persons-gender>.

²¹Pew Research Center, “U.S. Catholics Open to Nontraditional Families,” September 2, 2015, <http://www.pewforum.org/2015/09/02/chapter-3-family-matters/>

In the Philippines divorce is illegal, but there is growing momentum for change. A 2015 poll by a Filipino research organization showed that 60% of Filipinos support the legalization of divorce, including 58% of married people. In metro Manila, 67% are in support.²² However, options for divorce are limited.

Couples wanting out of a marriage can choose between a church annulment or a civil annulment; most opt for the latter. Either way, they must establish that there was some fatal impediment to the marriage from Day One: that one or each was too young to get married, was coerced into the marriage, or – most common – was psychologically ‘incapacitated’ at the time of the marriage.²³

Now homosexuality, turning first again to the US. Acceptance of homosexuality is rising among American Christians in general, including members of churches that strongly oppose homosexual relationships as sinful. 61% of the American public support same-sex marriage, and the Catholic support is even stronger (66% among white Catholics, 65% among those of Latin American descent). In 2015, the US Supreme Court ruled that same-sex marriage is a constitutional right, although some people continue to resist this on religious grounds, arguing for example that they shouldn’t have to serve gay couples in their businesses or services. For example, they might refuse to provide a wedding cake decorated with the figures of two grooms, instead of a bride and groom. However, most Americans (60%) and most Christians and Catholics (60% of white Catholics, 59% of those of Latin American descent) oppose such refusals of service.²⁴

In the U.S., transgendered individuals are only .6% of the population but that still amounts to 1.4 million adults.²⁵ And,

²²Angela Casauay, “‘Clear Majority’ of Filipinos Favor Legalizing Divorce,” <https://www.rappler.com/nation/87736-more-filipinos-favor-legalizing-divorce-sws>. The research organization is Social Weather Stations.

²³Tom Hundley and Ana P. Santos, “World’s Last Legal Ban on Divorce Doesn’t Keep Philippines Couples Together,” *Washington Post*, October 10, 2014, https://www.washingtonpost.com/world/worlds-last-legal-ban-on-divorce-doesnt-keep-philippines-couples-together/2014/10/09/d391c54c-4418-11e4-b437-1a7368204804_story.html?noredirect=on&utm_term=.7a2907a96694.

²⁴Public Religion Research Institute, *Emerging Consensus on LGBT Issues*, 2018, <https://www.prii.org/research/emerging-consensus-on-lgbt-issues-findings-from-the-2017-american-values-atlas/>

²⁵Andrew R. Flores, Jody L. Herman, Gary J. Gates, and Taylor N.T. Brown, *How Many Adults Identify As Transgender in the United States?*, Williams Institute, University of California at Los Angeles, 2016, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

according to a survey done of 81,000 teenagers in the state of Minnesota, which identified 3% as transgender, the number that explicitly see themselves as transgender may be rising as understanding and acceptance grow.²⁶ This issue has received a huge amount of public attention in the past few years, as it has also in the Philippines. The United States is experiencing very divisive “culture wars” over how to approach transgendered children and young people, or those who are experiencing what is called “gender dysphoria,” the experience of having an innate gender that differs from one’s biological sex, or from the sex assigned at birth. While sex is a biological category (male, female, or intersex), gender refers both to a sense of personal identity as male, female or other; as well as to the outward expression of that identity. Behavioural expression of gender ordinarily is shaped by cultural expectations of appropriate behaviour for one’s apparent biological sex; or by the cultural expectations for individuals who share one’s gender identity, even if that does not correspond to one’s biological sex. For example, a child who at birth was perceived to be and has been raised as a boy, and taught to emulate culturally “masculine” behaviour, may come to realize that her personal gender identity is female, and want to express that identity through attire and behaviour that are culturally typical of girls.²⁷

Hence, in the United States there are ongoing policy and legal battles over same-sex bathrooms, especially in schools. Some states have mandated that in public schools, children and teenagers are required by law to use bathrooms that match the sex that was applied to them when they were born. However, from the perspective of the child, she or he is being stigmatized and denied access to appropriate gender expression and association. Americans are about evenly split on this issue.²⁸ Whereas President Barack Obama extended federal non-discrimination protection to transgender students in 2016, President Donald Trump withdrew it two years later. Around the

²⁶Lindsey Tanner, “More U.S. Teens Identify as Transgender, Survey Finds,” *USA Today*, February 5, 2018, <https://www.usatoday.com/story/news/nation/2018/02/05/more-u-s-teens-identify-transgender-survey-finds/306357002/>.

²⁷For further clarification of these terms, see Lisa Fullam, “Gender Theory, Nuclear War and the Nazis,” *Commonweal*, February 23, 2015, <https://www.commonwealmagazine.org/gender-theory-nuclear-war-and-nazis-0>.

²⁸Pew Forum, “Where the Public Stands on Religious Liberty vs. Nondiscrimination,” September 28, 2016, http://www.pewforum.org/2016/09/28/where-the-public-stands-on-religious-liberty-vs-nondiscrimination/?utm_source=adaptivemailer&utm_medium=email&utm_campaign=16-09-28%20religious%20liberty%20immediate%20release&org=982&lvl=100&ite=351&lea=51098&ctr=0&par=1&trk=

world, a majority of respondents (from 15 countries) agreed that transgender people should be allowed to use the restroom associated with their gender identity. Respondents from Spain (76.7 %), Argentina (72.4 %), and India (71.6 %) were most supportive.²⁹

What does homosexuality look like in the Philippines? According to a report from USAID,

Cultural and social attitudes towards LGBT people are complex, with signs of acceptance, particularly among the young, but questions of whether that acceptance is based on LGBT Filipinos conforming to stereotypes and occupational niches. At the same time, LGBT Filipinos are still being murdered with 28 LGBT-related killings in the first half of 2011.

The report refers to

the early existence of transvestism and crossing gender in the 16th and 17th centuries with the *babaylan*, their disappearance under Spanish colonialism, and the emergence of different gender identities and sexual orientations in the 1960s. From then, a gay culture rapidly evolved, although with stratification of identity and communities, with the adoption of a Western notion of 'gay' by some, mostly wealthier gay men, and the adoption of an indigenous identity.³⁰

In 2013, a global study of attitudes to homosexuality found that 73% of Filipinos accept homosexuality, more than in the U.S, and much more than in neighbouring Malaysia (9%) and Indonesia (3%).³¹ A different study reports that only 3% of people in India think homosexuality is acceptable.³² Concerning countries' average level of support for transgender rights, Spain, Sweden, and Argentina top this list while Poland, South Korea, and Russia are at the bottom. The United States is ranked ninth of the 23 countries studied.³³

²⁹Public Opinion on Transgender Rights: A Twenty-Three Country Survey, January 10, 2017, The Williams Institute, UCLA Law School, <https://williamsinstitute.law.ucla.edu/research/public-support-for-transgender-rights-a-twenty-three-country-survey/>

³⁰Being LGBT in Asia: The Philippines Country Report, 2014; <https://www.usaid.gov/sites/default/files/documents/1861/2014%20UNDP-USAID%20Philippines%20LGBT%20Country%20Report%20-%20FINAL.pdf>

³¹Pew Research Center, *The Global Divide on Homosexuality*, June 4, 2013, <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/>.

³²Roger Finke and Amy Adamczyk, "Cross-National Moral Beliefs: The Influence of National Religious Context," *Sociology Quarterly* 49, 4 (2008) 617-52 (unpaginated online), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4119762/>

³³Andrew R. Flores, Taylor N.T. Brown, and Andrew S. Park, *Public Opinion on Transgender Rights: A Twenty-Three Country Survey*, January 10, 2017, The Williams Institute UCLA School of Law, <https://williamsinstitute.law.ucla.edu/research/public-support-for-transgender-rights-a-twenty-three-country-survey/>

For transgendered Filipinos, the picture is more mixed, although acceptance is growing.³⁴ On the surface, the Philippines may appear to be one of the more “liberal” Asian countries when it comes to the LGBT community. However, “the Philippines has one of worst records of violence against the trans community. The murders of 29 transgender people have been documented in the Philippines” between 2008 and 2015. “This is the highest number in the Southeast Asian region, and the second highest in Asia – though activists say that many murders of trans people go unreported in the country, so the number is likely much higher.” In the Philippines, there are no laws specifically protecting gay and transgender people. However President, Rodrigo Duterte supports gay rights, and in 2018 there were two bills before Congress to give legal recognition to the unions of same-sex partners, and to protect the rights of transgender individuals.³⁵

Turning to India, where Catholics and all Christians are a small minority, we find that legal approval and cultural acceptance of homosexual and transgender persons face similar challenges. In 2018, the Supreme Court of India is considering whether to legalize sexual activity between persons of the same sex, and whether to approve a Uniform Civil Code that would legalize same-sex marriage. Yet cultural acceptance has not kept pace with changing laws. “Today, homosexuality and queer identities may be acceptable to more Indian youths than ever before, but within the boundaries of family, home and school, acceptance of their sexuality and freedom to openly express their gender choices still remain a constant struggle for LGBT (lesbian, gay, bisexual, transgender) people.”³⁶ Because many families regard a homosexual family member as shameful there are reports of honour killings, torture, and rape as a “cure” for lesbianism.

Transgender people face a similarly ambivalent situation. In South Asia, persons known as *hijras* have been known since antiquity, and have what could be included in the category “transgender” identity, since they do not fit clearly into binary

³⁴ See Dominique Mosbergen, “The Dangers of Being LGBT in ‘Tolerant’ Philippines,” *Huffington Post*, October 12, 2015, http://www.huffingtonpost.com/entry/lgbt-philippines_us_5614f92fe4b021e856d2d870.

³⁵ Aurora Almendral, “Using an Unlikely Acceptance as a Platform in the Philippines,” *New York Times*, April 30, 2018, A8.

³⁶ Rashmi Patel, “Being LGBT in India: Some Home Truths,” *Mint on Sunday*, August 27, 2016, <https://www.livemint.com/Sundayapp/sAYrieZdZKEybKzhP8FDbP/Being-LGBT-in-India-Some-home-truths.html>.

definitions of male or female.³⁷ Most of these individuals were assigned a male gender at birth, but as adults adopt culturally feminine behaviours, including women's dress and having sex with men. Despite their long historical pedigree, and the fact that since 2014, individuals in India have been allowed to register legally as a "third gender," *hijras* generally occupy a low or marginal social status, and often sustain themselves by sex work, begging, or performing at ceremonies. They are frequently subject to violence, and suffer discrimination in access to housing, health care, education, and employment.

Taking a more global perspective on how Catholics view divorce, the LGBTQ community and other controverted family issues, a 2014 survey of Catholics in twelve countries (Brazil, Mexico, Philippines, USA, Italy, Colombia, France, Poland, Spain, Democratic Republic of Congo, Argentina, and Uganda) suggested that "an extraordinary disconnect" exists in many cultures between ordinary Catholics and the Church on issues of sex, marriage and family.³⁸ The vast majority (78%) support the use of contraception, wherever they live. In only the African countries did majorities of Catholics oppose admitting the divorced and remarried to the Eucharist. On the other side, majorities in all but Spain and the U.S. were against same-sex marriage, though with some division in Argentina and Brazil.³⁹ So we can see that globally, Catholic opinion is quite complex.

It was in the midst of this complexity, and in the hope of providing pastoral guidance in ministry to struggling Catholics, that Pope Francis convened the 2014 and 2015 synods on the family, and authored *Amoris Laetitia*. As already mentioned, this document followed a two-year process of consultation among bishops worldwide, and it began with a questionnaire that all bishops were instructed to send out to the parishes in their dioceses. Not all bishops actually complied, and few results were made public. Nevertheless, the questionnaire represents an attempt on the part of Pope Francis to gain better perspective on family issues by engaging the laity. In fact, Pope Francis himself has a divorced sister, Maria Elena Bergoglio. He thus has a personal investment in the possibility

³⁷See Anuja Agraawal, "Gendered Bodies: The Case of the 'Third Gender' in India," *Contributions to Indian Sociology* 31, 2 (1997) 273-297, <http://journals.sagepub.com/doi/abs/10.1177/006996697031002005>.

³⁸Julie Clague, "Catholics, Families and the Synod of Bishops: Views from the Pews," *Heythrop Journal* 55 (2014) 993.

³⁹Clague, "Catholics, Families and the Synod of Bishops: Views from the Pews," 991-995.

of changing Church policy to allow divorced and remarried couples to receive the Eucharist. At the end of the day, as I will further explain, neither the final document of the Synods, nor *Amoris Laetitia* did this explicitly. Yet the door has been opened, and the decision has been referred back to the local churches.

In comments to reporters during a visit to the Philippines in 2014, before the first Synod, Pope Francis called the Church's teaching against artificial birth control prophetic, but added, "The question is not that of changing doctrine, but to go into the depths, and ensuring that pastoral [efforts] take into account people's situations, and that, which it is possible for people to do."⁴⁰ Birth control was not a main topic at the Synods, but his comments on it illustrate his approach to other issues. Francis seems to appreciate that in terms of ecclesial culture, politics, and moral-cultural outlooks, we are still feeling our way forward, and that longstanding norms have to meet the test of real life, where mercy may demand innovative solutions to difficult situations.

Divorce, same-sex unions, and transgendered identities are expanding as cultural realities. What is the loving, merciful, and just response? Should they be endorsed as acceptable and normative? If not, is there still some way in which they could be supported? Are they legitimate exceptions to moral rules, at least in some cases? Or are they better seen as occasions to put mercy toward the sinner before blame and accusation? Premature settlement of these questions may risk the sorts of divisions spawned by *Humanae vitae*, potentially in a situation in which the "dissenters" from the magisterium are the churches of the global South. Francis is pope of a big church, one in which the *sensus fidelium* may be quite hard to read or even internally pluralistic. Francis realizes that his leadership must be attuned to a worldwide Church, not just Europe or the Americas. The church's pastoral and theological response must be creative, charismatic, and inspirational. It must also allow differences and flexibility at the level of local bishops.

That being said, the exchanges at the Synods were not always smooth. The preparatory document for the first Synod in 2014 expressed an openness to gay people that made many bishops, especially from Africa, uncomfortable, and caused strong disagreement.

⁴⁰ Madeleine Teahan, "There's No Need to Change Church Teaching on Contraception, says Pope Francis in New Interview," *Catholic Herald*, March 5, 2014, <http://www.catholicherald.co.uk/news/2014/03/05/theres-no-need-to-change-church-teaching-on-contraception-says-pope-francis/>; accessed 3/3/2015.

Homosexuals have gifts and qualities to offer to the Christian community: are we capable of welcoming these people, guaranteeing to them a fraternal space in our communities? ...Without denying the moral problems connected to homosexual unions, it has to be noted that there are cases in which mutual aid to the point of sacrifice constitutes a precious support in the life of the partners.⁴¹

This remarkable statement was removed from the final document and did not reappear in *Amoris Laetitia*.

Similar differences of viewpoint occurred in relation to the pope's signature topic, communion for the divorced and remarried. Attendees at the Synods largely fell into two categories.⁴² One could be called the "beleaguered group." It believed that any change in the way the church approaches gay or divorced people (or others who live outside church teachings) risks diluting the church's authority. This group was dominated by eastern Europeans, Africans, some Americans, and its most vocal proponent was the Australian Cardinal George Pell (subsequently under investigation for sex abuse). The other group, led primarily by German bishops, hoped Pope Francis would move toward a more inclusive church, and one that is more in tune with modern day challenges to church orthodoxy.

Cardinal Walter Kasper, one of Francis's trusted advisors, set aside undue strictness or leniency in favour of "a realistic application of doctrine to the current situation of the great majority of people." He said in an interview on Vatican radio that "I maintain the full teaching of the church, but the teaching has to be applied to concrete situations."⁴³ Kasper gave the specific example of admission of divorced and remarried Catholics to the sacraments, even though they continue in "irregular" marriages.

While the document to which the bishops finally agreed suggests no changes to practice – and did not adopt Kasper's call for communion to Catholics who divorce and remarry outside the

⁴¹Synod on the Family 2014, Interim Report, nos. 50-52. For an overview of this report, see Andrea Gagliarducci, "Synod Interim Report: The Church must Renew Commitment to Family," October 13, 2014, *Catholic News Agency*, <https://www.catholicnewsagency.com/news/synod-interim-report-the-church-can-renew-commitment-to-family-88148>.

⁴²Austin Ivereigh, "Pope Francis Fails to Persuade Majority of Bishops on Remarried Catholics," *The Guardian*, October 23, 2015, <https://www.theguardian.com/world/2015/oct/23/pope-francis-fails-to-persuade-majority-of-bishops-remarried-catholics-synod-family>.

⁴³"Cardinal Walter Kasper's 'Gospel of the Family,'" Vatican Radio, March 10, 2014, <http://www.news.va/en/news/cardinal-walter-kaspers-gospel-of-the-family>.

church – it gave new priority to open dialogue, the possibility of more local control, and mercy, three of Kasper’s hallmarks. Even on the topic of the remarried, many saw an open door in the proposal’s unspecific wording. The second 2015 synod was ultimately able to reach two-thirds agreement on a path to communion for the divorced and remarried, to be decided on a case-by-case process of discernment in local parishes.⁴⁴

Amoris Laetitia reinforces this approach. Relevant to communion, Pope Francis notes that, in

dealing with different ‘irregular’ situations, the Synod Fathers reached a remarkable consensus: ‘In considering a pastoral approach towards people who have contracted a civil marriage, who are divorced and remarried, or simply living together, the Church has the responsibility of helping them understand the divine pedagogy of grace in their lives...’⁴⁵

In other words, God’s grace is present *even in* these so-called “irregular” relationships.

Divorced Catholics in second marriages “should not be pigeonholed or fit into overly rigid classifications leaving no room for a suitable personal and pastoral discernment.” In some cases, a recent divorce has caused confusion and pain for children and other family members; in others one spouse has never fulfilled his or her familial responsibilities. Yet in other cases, divorced and remarried Catholics can be in a lasting union characterized by “new children, proven fidelity, generous self giving, Christian commitment,” and a conviction that to break up their new relationship or family would bring further hurt and injustice.⁴⁶ In some cases, such people were “unjustly abandoned” by a first spouse, or are convinced that their “irreparably broken marriage had never been valid.” Pope Francis thus follows the final Synod *Relatio* in saying that “the discernment of pastors must always take place ‘by adequately distinguishing’ with an approach which ‘carefully discerns situations.’ We know that no ‘easy recipes’ exist.”⁴⁷

As if to bring home the point that this kind of case by case discernment extends to communion for the divorced and remarried, the Pope adds in a footnote, “This is also the case with sacramental

⁴⁴See Michelle Boorstein and Anthony Faiola, “Pope Francis Offers Hope to Divorced Catholics, Says No to Gay Marriage,” *Washington Post*, April 8, 2016, <https://www.pressherald.com/2016/04/08/pope-insists-conscience-not-rules-must-guide-faithful/>.

⁴⁵*Amoris Laetitia*, no. 299.

⁴⁶*Amoris Laetitia*, no. 298.

⁴⁷*Amoris Laetitia*, no. 298.

disciplines.”⁴⁸ Francis explains that, due to “the immense variety of concrete situations,” it is impossible “to provide a new set of general rules, canonical in nature and applicable to all cases,” making discernment unnecessary. Rather, a process of “responsible personal and pastoral discernment” by the couple and a priest-counselor should take into account the particularities of their situation, since even in light of a general rule, responsibility with respect to certain actions or decisions is not the same in all cases”⁴⁹ Ultimately the conscience must recognize that even if “a given situation does not correspond objectively to the overall demands of the gospel,” it may be “what God himself is asking amid the concrete complexity of one’s limits...”⁵⁰

How this sort of discernment could apply to “irregular” situations beyond divorce becomes clear when Francis makes this more general statement: “it can no longer simply be said that all those in any ‘irregular’ situation are living in a state of mortal sin.”⁵¹ Sometimes, Francis seems to suggest, the *objective* nature of the moral situation might differ because of particular circumstances that prevent the individual from practicing the ideal or norm. He says that, even in sexual unions that do not conform to the church’s ideal of marriage, respect should be given to “signs of love which in some way reflect God’s own love.”⁵² As Pope Francis cautions, “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.”⁵³ Cardinal Blaise Cupich of Chicago, Illinois, USA, takes these papal indications to their logical conclusion: the teaching Church must “incorporate the insights of the faithful not just generally, but specifically into teachings about marriage and family... there can be no better teacher for the church than the faithful who actively walk this path of personal development.”⁵⁴

Beyond *Amoris Laetitia*, the pope has given some less formal and more personal indications of his attitudes toward gay, lesbian, or

⁴⁸*Amoris Laetitia*, Note 336.

⁴⁹*Amoris Laetitia*, no. 302.

⁵⁰*Amoris Laetitia*, no. 303.

⁵¹*Amoris Laetitia*, 304.

⁵²*Amoris Laetitia*, no. 294.

⁵³*Amoris Laetitia*, no. 304.

⁵⁴Cardinal Blaise Cupich, “Pope Francis’ Revolution of Mercy: *Amoris Laetitia* as a New Paradigm of Catholicity,” February 9, 2018, Von Hügel Institute, St Edmund College, Cambridge, England, <http://www.lastampa.it/2018/02/09/vaticaninsider/pope-francis-revolution-of-mercy-amoris-laetitia-as-a-new-paradigm-of-catholicity-skMox0lKtoX5szfKH6QgrL/pagina.html>.

transgendered persons. Could it be that, although according to Church teaching their sexual relationships or civil marriages are “irregular,” they are nonetheless reflecting “God’s own love”? Could it be that “what God himself is asking” in their concrete circumstances goes beyond the direct application of “a more general rule”? Although he has not changed any formal teaching, Pope Francis is leading the way to a more welcoming stance, which over the long term may affect the way that Catholics worldwide, including bishops and theologians, view the ecclesial and moral status of gay, lesbian and transgender people.

On his trip to the United States in 2015, Pope Francis met with one of his former students, Yayo Grassi, a gay man in Washington, D.C., who brought his partner of nineteen years and four friends to the Vatican’s embassy in Washington for a reunion. The pope taught Grassi as a high school student in Argentina. Grassi resumed contact with the future pope when he was the archbishop of Buenos Aires. He contacted the pope’s office to ask for a meeting in Washington, then later realized the pope’s schedule might be too full. But Grassi said the pope returned his call personally and “told me that he would love to give me a hug in Washington.”⁵⁵

On another occasion, Pope Francis invited a Spanish transgender man to meet him at his residence in Rome. The man, Diego Neria Lejarraga, was born a woman. But at the age of 40, after years of living in “a body that felt like a prison that absolutely didn’t correspond with what my soul felt,” he decided to begin the transition and undergo a sex change. However, although he was a devout Catholic, he suffered rejection in his hometown and in his parish, even being called “the daughter of the devil.” After he wrote to the pope, Francis called him personally. Later Mr Neria said, “The meeting was a wonderful, intimate, unique experience that changed my life,” Mr Lejarraga said: “Now I am in finally in peace.”⁵⁶

These pastoral approaches are of course still in tension with official Catholic teaching on LGBTQ. For example, on transgender, Pope Francis has himself said that everyone needs to value his or her body in its innate “masculinity or femininity,” and attributes any

⁵⁵Jim Yardley and Laurie Goodstein, “Before Pope Francis Met with Kim Davis, He Met with Gay Ex-Student,” *New York Times*, October 2, 2015, <https://www.nytimes.com/2015/10/03/world/europe/pope-francis-kim-davis-meeting.html?mcubz=0&r=0>

⁵⁶Andrea Vogt, “Transgender Man ‘Invited to Private Meeting by Pope Francis,’” *The Telegraph*, January 27, 2015, <http://www.telegraph.co.uk/news/worldnews/the-pope/11371770/Transgender-man-invited-to-private-meeting-by-Pope-Francis.html>.

questioning of male-female complementarity to a “gender ideology” that comes from “overseas,” and is a form of “theological colonization” that is “out to destroy the family.”⁵⁷ *Amoris Laetitia* similarly states, “Beyond the understandable difficulties which individuals may experience, the young need to be helped to accept their own body as it was created...” We need an “appreciation of our body as male or female...”⁵⁸ He rejects the idea both that gender is a mere social construct, or that it can be chosen at will, as he believes to be maintained by “gender theory” or “gender ideology.”⁵⁹ In 2017, Pope Francis reiterated his view that the sexual differentiation of men and women is inherent in human nature, cannot be cancelled or replaced, and is essential to the development of persons and societies.⁶⁰ Humans cannot change gender, assume nonbinary male-female gender, nor belong to a third gender.

There is an enormous amount to appreciate and commend in Pope Francis’s approach to sex, marriage, and families, as well as to Christian morality in general. Yet his assessment of gender is factually erroneous, and a poor foundation for mercy toward transgender people, given that mercy is “the force that reawakens us to new life and instills in us the courage to look to the future with hope.”⁶¹ The experience of transgender persons, as well as available scientific

⁵⁷These phrases are from *Amoris Laetitia*; a June 9, 2015 address to the Bishops of Puerto Rico; A General Audience on Man and Women on April 15, 2015; and an Address in Naples on March 23, 2015. They may be found together on the website of the USCCB, in “‘Gender theory’/‘Gender Ideology’ – Select Teaching Resources,” updated 2017; <http://www.usccb.org/issues-and-action/marriage-and-family/marriage/promotion-and-defense-of-marriage/upload/Gender-Ideology-Select-Teaching-Resources.pdf>. The pope’s reservations about so-called “gender ideology” come at least partly from a valid political agenda to resist educational aid programs in Francis’s native Argentina, that come with “strings attached” to North Atlantic cultural norms. “If almost nothing the Global North has forced on the Global South has benefitted it,” one commentator says, “why should he trust the Global North on gender?” (Cristina Traina, “Pope Francis, ‘gender ideology,’ and our colonialist blinders,” August 11, 2016, *National Catholic Reporter*, www.ncronline.org/blogs/distinctly-catholic/can-we-avoid-bathroom-wars; accessed September 19, 2016. Traina references papal remarks in Krakow, July 27, 2016, <http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2016/08/02/0568/01265.html#en>).

⁵⁸*Amoris Laetitia*, no. 285.

⁵⁹See Carol Glatz, “Pope Francis: Gender Theory is the Problem, Not the Solution,” *National Catholic Reporter*, April 15, 2015, which references a Wednesday audience talk of the same date, <https://www.ncronline.org/blogs/francis-chronicles/pope-francis-gender-theory-problem-not-solution>

⁶⁰Inés San Martín, “Pope Defends Male/Female Differences, as well as Women’s Equality,” *Crux*, October 5, 2017, <https://cruxnow.com/vatican/2017/10/05/pope-defends-malefemale-differences-well-womens-equality/>

⁶¹*Misericordiae vultus*, no. 10.

information about bodily reality, sex, and gender, dispute the premise that everyone's body is innately either masculine or feminine.

Take the example of intersex conditions and persons. Intersex covers multiple situations, but a common feature among the embodied persons to which the term refers is that they are *born with bodily characteristics that are neither decisively male nor decisively female and are in fact both male and female*. As they mature or even as small children they may identify quite strongly and innately with the sex that seems less compatible with their bodily appearance. Sometimes there *is no* straight line between a "natural" bodily sex and a clear gender identity. In fact "bodily sex" can be ambiguous. Gender identity is determined by several factors, and scientific literature does not agree completely on which is or are dominant: chromosomes, prenatal hormones acting on the developing brain, external genitalia, internal sex organs, family nurture or cultural expectations.⁶²

One thing that the experience of trans people clearly reveals is that many suffer great anguish, often starting in early childhood, as they struggle to express, live, and find acceptance as a deeply felt and personally constitutive gender that in the eyes of others does not "match" their physical body. Therefore, it is encouraging that Pope Francis has said of transgender, on a gospel note, "Life is life, things have to be accepted as they come... Not to say that it's all the same, but in each case. Welcome, accompany, study, discern and integrate. This is what Jesus would do today."⁶³ "Accompany, study, discern" – this follows the model of the Family Synods and *Amoris Laetitia*: through welcoming and listening to others, our judgments may change, as we attain greater understanding of the human situation.

In Conclusion

Amoris Laetitia has far-reaching consequences for moral theology in general, and these consequences apply to the ethics of sex and gender. Moral theology must look beyond traditional teachings, and beyond the traditional moral categories and principles of moral theology, such as intrinsic evil, absolute norms, double effect, objectively right/subjectively not culpable, and so on. Sexuality cannot be considered only in terms such as "the natural ends of the sexual organs," and "the

⁶²See Laci Jones, "Gender Identity Development of Intersex Persons," *Graduate Journal of Counseling Psychology* 1/2 (2009) 1-9, <https://epublications.marquette.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1019&context=gjcp>. For a helpful discussion of the complex relation between bodies and gender, in relation to Catholic teaching, see Lisa Fullam, "Gender Theory."

⁶³Airplane interview with reporters, return from Georgia, October 1, 2016, cited by Inés San Martín, "Pope Says Walk with Trans Persons, but Fight Gender Theory," *Crux*

procreative structure of the sexual act.” Pope Francis does not use any of these terms in *Amoris Laetitia*. What Pope Francis recognizes is that sex and gender are above all relational categories that refer to human persons. It is relationships that are the ultimate criterion of sex and gender morality. Neither sexuality nor gender can be adequately understood as characteristics or capacities of individuals considered in isolation. They take their meaning and their moral quality from whether they are just and loving in personal and social relationships. Whether they reflect the gospel criterion of respectful and compassionate love of other persons is the ultimate question.

In order to discern whether this criterion has been met requires consulting new sources, especially the experience of those who are trying to live in accord with the gospel but whose identities and relationships bring new realities to our attention. In the area of sex and gender, this includes people who do not fall under the norm of heterosexual, procreative, permanent, sacramental marriage. Pope Francis goes further than saying that pastoral understanding must be offered to such people, or that their sins must be forgiven. No: he goes so far as to suggest that their experiences and realities, if they meet the test of the gospel, may be teaching something new to the church, something that we are still in the process of discerning. Pope Francis does not give up on traditional norms such as indissolubility, which he still sees as intrinsically valuable and important. But I think his actions, words, and *Amoris Laetitia* suggest that relationships that do *not* fully represent these norms *can be objectively good and prudent* in given concrete circumstances, which must be discerned in context. For example, like a second marriage of divorced Catholics, a faithful, loving, and socially responsible same-sex union can manifest human dignity and the gospel values of care and fidelity.

It is appropriate to conclude by repeating Pope Francis’s spontaneous reaction to the situation of transgender people. He seems to recognize that the Church may have further to go down the path of discernment, and that the most important moral guide is the love and compassion that are key to the gospel. This is why he says: “Life is life, things have to be accepted as they come... Not to say that it’s all the same, but in each case. Welcome, accompany, study, discern and integrate. This is what Jesus would do today.”⁶⁴

⁶⁴Airplane interview with reporters, return from Georgia, October 1, 2016, cited by Inés San Martín, “Pope Says Walk with Trans Persons, but Fight Gender Theory,” *Crux*.