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THE SACRAMENT OF MARRIAGE: A DOGMATIC THEOLOGIAN READS *AMORIS LAETITIA*

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Abstract

The reaction of some cardinals and bishops to Pope Francis' *Amoris laetitia* has been contentious. In the essay we try to reveal the dogmatic structure of the document. In the Introduction (AL, 1-7) Pope Francis defines the ecclesial process that generated AL as strictly synodal and incontestable procedure of bishops and Pope and the extremes excluded by synodal consensus. Chapter one resumes the testimony of Scripture, Chapter two refers to the general social and pastoral situation of marriage and family. Chapter three summarises the testimony of Scripture and Tradition of Church doctrine to give an adequate characterisation of the Sacrament of Marriage and family. The following chapters (4-7) consider the constitutive elements of the Sacrament, and Chapter eight treats the way to help Christian couples with pastoral care according to Church order, Chapter nine gives finally an outline of the spirituality of matrimony and family. The concluding reflection points out dogmatic and moral theological differences between *Amoris laetitia* and *Casti connubii*.

Keywords: *Amoris Laetitia*, *Casti Connubii*, Doctrine of Scripture and Tradition, Family, Mercy, Pastoral Care, Sacrament of Marriage

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1. Introduction

Seldom has a papal and synodal teaching document been so strongly criticized by cardinals, bishops, theologians, and philosophers, as well as in the public discussion in the media, as the Post-Synodal Apostolic Exhortation *Amoris Laetitia* of Pope Francis.¹

This text is accused of “unclarity,” a “lack of seriousness,” and a kind of “Jesuitical dialectic” that sows “confusion” among the faithful. It is also accused of deviation from the Church’s teaching, that is to say, of heresy.

In response to these charges, I shall discuss the treatment of the sacrament of matrimony in AL. The relevant chapters, 3 and 8, will be interpreted in relation to the preceding and following chapters. This will at the same time allow us to grasp the line of argument and the precise conceptual work of Pope Francis.

2. The Dogmatic Characterization of the Post-Synodal Exhortation in the Introduction (AL, 1-7)

In his introduction (AL, 1-7), the Pope has presented a theologically exact and conceptually precise characterization of this document.

AL, 1 explains the initial words that function as its title. Despite the many signs of a crisis of marriage, the Christian proclamation about the family is truly *good news* – Gospel.

AL, 2 defines the ecclesial process that generated AL: “The *Synod process* allowed for an examination of the situation of families in today’s world, and thus for a broader vision and a renewed awareness of the importance of marriage and the family. The complexity of the issues that arose revealed the need for continued open discussion of a number of *doctrinal, moral, spiritual, and pastoral questions*.” The Pope emphasizes the ecclesial process, the synodal path that led to this document, and he himself adheres strictly to this process. The *Relatio synodalis* of 2014 and the *Relatio finalis* of 2015, the approved summaries of the discussions by the bishops, are quoted continuously. The first point he mentions is the consensus of the Synod fathers that not only spiritual and pastoral questions needed to be studied in greater depth, but “doctrinal and moral” questions too. The latter term refers to dogmatic and moral-theological changes that concern the problems involved and the solutions and answers that have been given up to now. The reason for this deeper study is the complexity of the problems, which emerged in the answers of the

¹Quotations from the official English translation; abbreviation: AL.

People of God and in the words of the bishops who took part in the Synod. Trusting in the assistance of the Holy Spirit, the Pope says: “The thinking of pastors and theologians, if faithful to the Church, honest, realistic, and creative, will help us to achieve greater clarity.”

He then describes the spectrum of the debate by the bishops and holders of responsibility in the Church, as well as the debate in the public sphere. The positions “range from an immoderate desire for total change without sufficient reflection or grounding, to an attitude that would solve everything by applying general rules or deriving exaggerated conclusions from particular theological considerations.” This excludes two extremes. On the one hand, the wish to change everything without sufficient reflection or grounding – that is to say, without looking more deeply at what precisely must be changed in the teaching and praxis that have prevailed up to now. This would lead to a total relativism that surrendered the faith to temporary circumstances.

On the other hand, we have the opposite extreme, which has also been upheld by bishops and theologians, namely to resolve the complexity of the problems concerning marriage and the family “by applying general rules.” The Pope adds: “or deriving exaggerated conclusions from particular theological considerations.” Obviously, the reason why the conclusions are exaggerated is that they are extended beyond the appropriate area of their validity. It became clear during the Synod that these two positions, which are characterized as extremes, were unacceptable. The consensus of the Church and of the pastors is located between these two boundaries.

AL, 3 explains this. In the history of the transmission of the faith, there can be differing positions with differing accentuations. The plurality of cultures leads to differentiating features in the tradition of the faith. This kind of plurality belongs to the unity of teaching and praxis of the Church.

AL itself is characterized as an element and an outcome of this synodal path: it is meant to bring together the contributions made by the two last Synods on the family. At the same time, the Pope wishes to add “other considerations as an aid to reflection, dialogue and pastoral practice, and as a help and encouragement to families in their daily commitments and challenges.”

Accordingly, he does not describe this synodal process as an intervention by the magisterium (AL, 3). This term denotes the resolution of a doctrinal, moral, or pastorally contentious question by

a declaration of the magisterium; and these declarations can have varying degrees of authority. In view of the complexity and the *de facto* difficulties of the given situation, it is clear that the “synodal path” is intended to confirm the general unity of the faith that finds expression both in the faith of the people and in the ordinary magisterium of the bishops (and hence in that of the Pope too).²

In AL, 4, Pope Francis employs the image of the “multifaceted gem” to illustrate the view of marriage and the family that is shared by believers.³

Here our model is not the sphere, which is no greater than its parts, where every point is equidistant from the center, and there are no differences between them. Instead, it is the polyhedron, which reflects the convergence of all its parts, each of which preserves its distinctiveness. Pastoral and political activity alike seek to gather in this polyhedron the best of each. There is a place for the poor and their culture, their aspirations and their potential. Even people who can be considered dubious on account of their errors have something to offer which must not be overlooked. It is the convergence of peoples who, within the universal order, maintain their own individuality; it is the sum total of persons within a society, which pursues the common good, which truly has a place for everyone (EG, 236).

To Christians, this principle also evokes the totality or integrity of the Gospel which the Church passes down to us and sends us forth to proclaim. [...] The good news is the joy of the Father who desires that none of his little ones be lost. [...] The Gospel is the leaven which causes the dough to rise and the city on the hill whose light illumines all peoples. The Gospel has an intrinsic principle of totality (EG, 237).

In AL, 5, the Pope makes a link between this document and the Jubilee Year of the Mercy of God. He describes the structure of the text in AL, 6.⁴ In AL, 7, he speaks about how various groups of readers will tackle the various chapters, and refers at the end to ch. 8.

²See Pope Francis’ discourse on October 17, 2015 marking the fiftieth anniversary of the establishing of the Synod of Bishops: http://papa-francesco_20151017_50.anniversario-sinodo.html.

³See Pope Francis, Apostolic Exhortation *Evangelii gaudium* (November 24, 2013: EG), 236-237. The Pope employs this image in EG in relation to the common good and to social peace in the world. He also applies it in EG to the evangelizing Church and to the Gospel itself.

⁴In AL, the Pope speaks basically as a pastor, not as a professor of dogmatics. He addresses first and foremost the People of God and the pastors. This is why his exposition of the contents of AL emphasizes chs. 4-7, which contain the *explicatio mysterii*. For a reading from the perspective of dogmatics, however, it is chs. 3 and 8 that occupy the foreground.

He hopes that all readers will feel most strongly addressed by this chapter, because its theme is the ecclesial ordering of marriage and family, which is renewed by being taken to a deeper level.

Let us summarize what the introduction tells us. *Amoris laetitia* is a synodal document; but this means that Pope Francis has given the Extraordinary Synod of 2014 and the Ordinary Synod of 2015⁵ a different function than that intended by Paul VI. Pope Francis did not want merely a body that would give him advice. The bishops were challenged, both in the Extraordinary and in the Ordinary Synod of Bishops, to present their testimony to the faith and their understanding of the faith as pastors commissioned by the Lord, after the testimony to the faith of the People of God with regard to faith and family had been gathered in. Accordingly, the Pope quotes many, many pages of the summaries that were voted upon in the two Synods, as autonomous sources of the testimony to the faith given by the pastors of the Church. He does not go beyond the boundaries that were posited in these summaries, for example by making a statement about homosexual partnerships. Where he adds something, his additions are precisely marked, and he justifies them.

In view of the crisis of marriage and the family,⁶ the one faith of the Church with regard to marriage and the family was to be the theme, as this is attested in the faith of the People of God and in the teaching of the pastors. This faith is inherently many-layered and plural, but it is one. With regard to the authoritative bearers of testimony that *Amoris laetitia* goes on to quote – scripture, tradition, and recent declarations by the magisterium – it must be noted that the process of tradition operated in the synod in such a way that it itself excluded the two extreme positions that are characterized in AL, 2.

This “synodal process” is the formalized process of bearing testimony to the faith and the teaching of the ordinary magisterium,

⁵On the difference in canon law between an Extraordinary and an Ordinary Synod of Bishops, see Jan Loffeld, “Prozessverläufe und divergente theologische Erkenntnisorte – die außerordentliche und ordentliche Bischofssynode 2014/15,” in: Julia Knop and Jan Loffeld, ed., *Ganz familiär, die Bischofssynode 2014/2015 in der Debatte*, Regensburg 2016, 43-62.

⁶See already the Preparatory Document: *III Extraordinary General Assembly. Pastoral Challenges to the Family in the Context of Evangelization*, Vatican City, 2013, 2: “Concerns which were unheard of until a few years ago have arisen today as a result of different situations, from the widespread practice of cohabitation, which does not lead to marriage, and sometimes even excludes the idea of it, to same-sex unions between persons [...]. Within the Church, faith in the sacramentality of marriage and the healing power of the Sacrament of Penance show signs of weakness or total abandonment” [official Vatican translation].

in order to arrive – in view of the crisis – at a deepening of the common testimony to the faith and of the praxis of the Church.⁷

3. The Results of the Synodal Process from a Dogmatic Perspective: Chapters 3 and 8

These results, carefully gathered together and justified, are to be found in ch. 3: “Looking to Jesus – The Vocation of the Family” and in ch. 8: “Accompanying, Discerning and Integrating Weakness.”

3.1. The Dogmatic Significance of ch. 3: “Looking to Jesus – The Vocation of the Family”

The dogmatic significance of ch. 3 can be seen both from the summary of the contents with which it begins and from the position of this chapter in the sequence of the argumentation. Let us begin by locating this chapter in its context.

Ch. 1, “In the light of the Word” (AL, 8-30), presents all the many-layered reality of the relationship between husband and wife, marriage and family, including earning one’s living, daily work, and the whole sphere of the erotic, as this is depicted in the Bible and in the New Testament. It is a “path of love and joy,” but also “a path of suffering and blood.”

The second chapter, “The experiences and challenges of families” (AL, 31-57), confronts the reader with the situation of marriage and the family today and sketches particularly urgent problems and challenges. These two chapters thus show us a picture of marriage and family both in the testimony of scripture and in the contemporary situation.

A decisive further step is taken in the introduction to the third chapter, “Looking to Jesus: The Vocation of the Family” (AL, 58-70). What we see here is the Gospel, “the heart of Christ’s message”⁸ about marriage and the family. This is the “mystery” of marriage and

⁷On this, see Pope Francis’ discourse at the opening of the Synod on October 5, 2015: http://w2vatican.va/content/francesco/it/speeches/2015/october/documents/papa-francesco_20151005-padri-sinodali.htm, as well as his discourse at the close of the Synod on October 24, 2015.

⁸This expression is taken from EG, 34. With regard to the theological explanation, the Pope adds in EG, 36: “All revealed truths derive from the same divine source and are to be believed with the same faith, yet some of them are more important for giving direct expression to the heart of the Gospel. In this basic core, what shines forth is *the beauty of the saving love of God made manifest in Jesus Christ who died and rose from the dead*. In this sense, the Second Vatican Council explained, ‘in Catholic doctrine there exists an order or a “hierarchy” of truths, since they vary in their relation to the foundation of the Christian faith.’”

the family in the mystery of Christ and the Church (AL, 59). In formal terms, according to AL, 60, this brief chapter contains a summary of the Church's teaching about marriage and the family.

This teaching is not presented in the manner of a theoretical statement from the perspective of uninvolved third parties, so to speak. Rather, it is presented from "the gaze of Jesus," who "looked upon the women and men whom he met with love and tenderness, [...] as he proclaimed the demands of the Kingdom of God." The text speaks here of the specific perspective of seeing and speaking that John XXIII called "pastoral teaching" at the solemn opening of the Second Vatican Council in October 1962.⁹

After this introduction, the Church's teaching is set out in six sections; the passage about the sacrament of matrimony occupies the central place here (AL, 71-75). Pope Francis did not himself formulate the summary of the central statements of faith that scripture and tradition attest with regard to marriage and the family. He adopts them almost in their entirety from the *Relatio synodi* of 2014 and the *Relatio finalis* of 2015.

The first section (AL, 61-66) discusses the *testimony of scripture*, and summarizes it from various perspectives:

- statements about marriage as a good gift of creation and of grace (1 Tim 4:4; 1 Cor 7:7; Heb 13:4; 1 Cor 7:5);
- about its indissolubility as "a concession by God," who heals hardened hearts via the path of the cross (Mt 19:8.6.3);
- about Jesus, who leads marriage and the family back to their original form and to perfection (Mk 10:1-12; Eph 5:21-32; Gen 1:26f.; Rev 19:9);
- and who bears witness to this in his public ministry (Jn 2:1-11; Lk 10:38; Mt 8:14; Mk 5:41; Lk 7:14f.; Jn 4:1-30; Jn 8:1-11);
- finally, the incarnation of the Word and Jesus' growing up in a human family are mentioned (Prologue to John and the infancy narratives of the synoptics).

These statements are summarized in AL, 66 in words of Paul VI:

The covenant of love and fidelity lived by the Holy Family of Nazareth illuminates the principle which gives shape to every family, and enables it

⁹See Peter Hünemann, Bernd-Jochen Hilberath, *Herders Theologischer Kommentar zum II. Vatikanischen Konzil*, Vol. 5, 482-490, esp. 486-88. For a more precise conceptual explanation, see Peter Hünemann, *Sprache des Glaubens – Sprache des Lehramts – Sprache der Theologie*, QD 274, Freiburg, Basleand Vienna, 2016.

better to face the vicissitudes of life and history. On this basis, every family, despite its weaknesses, can become a light in the darkness of the world...

In the second section (AL, 67-70), Pope Francis summarizes the statements about *marriage and the family in the documents of the Church*.

He begins with the Second Vatican Council and the relevant post-conciliar texts. He quotes Paul VI's *Humanae vitae* and John Paul II's *Gratissimam sane* and *Familiaris consortio*, as well as Benedict XVI's encyclicals *Deus caritas est* and *Caritas in veritate*. The core affirmations that he cites are devoted to the mystery of marriage and the family in the mystery of Christ.¹⁰

These statements from the documents of the magisterium are collected and quoted in the *Relatio synodi* of 2014 and the *Relatio finalis* of 2015. This entire section consists of a sequence of sections from these two synodal documents. It is obvious that what we read here is the shared view of faith held by the representatives of the worldwide college of bishops and by the Pope with regard to the mystery, namely, to the gospel of marriage and the family in scripture and in tradition.

Under the heading, "The Sacrament of Matrimony" (AL, 71-75), these constitutive elements of the doctrine of the faith are employed to set out the meaning and importance of the sacrament of marriage. By way of introduction, AL, 71 – with another quotation from the *Relatio finalis* of 2015 – shows that, and how, marriage belongs to the mystery of the Holy Trinity, the mystery of the Father, of Jesus Christ, and of the Church, and at the same reveals this mystery. AL, 72 then provides an exact outline of the sacrament of marriage:

The sacrament of marriage is not a social convention, an empty ritual or merely the outward sign of a commitment. The sacrament is a gift given

¹⁰With regard to *Humanae vitae*, he underlines that Paul VI emphasizes the inherent bond between marital love and life: "Married love requires of husband and wife the full awareness of their obligations in the matter of responsible parenthood [...]. The exercise of responsible parenthood requires that husband and wife, keeping a right order of priorities, recognize their own duties towards God, themselves, their families and human society." Pope Francis writes that the Apostolic Exhortation *Familiaris consortio*, the Letter to Families *Gratissimam sane*, and the catecheses of John Paul II "defined the family as 'the way of the Church.'" He also offered a general vision of the vocation of men and women to love." Pope Francis writes that the encyclical *Deus caritas est* of Benedict XVI "returned to the topic of the truth of the love of man and woman, which is fully illuminated only in the love of the crucified Christ"; and in the encyclical *Deus caritas est*, "he highlighted the importance of love as a principle of life in society, a place where we learn the experience of the common good."

for the sanctification and salvation of the spouses, since ‘their mutual belonging is a real representation, through the sacramental sign, of the same relationship between Christ and the Church. The married couple are therefore a permanent reminder for the Church of what took place on the cross; they are for one another and for their children witnesses of the salvation in which they share through the sacrament.’ Marriage is a vocation, inasmuch as it is a response to a specific call to live conjugal love as an imperfect sign of the love between Christ and the Church. Consequently, the decision to marry and to have a family ought to be the fruit of a process of vocational discernment.

Let us take these points one by one. The sacrament is not simply a traditional social custom, an empty rite born of the religious piety of earlier times. This cites the first extreme position, which is employed as a negative foil to the following remarks. The second extreme position is also mentioned: marriage is not the mere external sign of an obligation. Marriage is not an external contract that concerns the *jus in corpus* on the part of the husband and on the part of the wife. I refer here to the characterization of marriage according to *Casti connubii* (1930), which I shall discuss in a later section of this paper. But what then is the sacrament of marriage? “Marriage is a *vocation*, inasmuch as it is a response to a specific call to live conjugal love as an imperfect sign of the love between Christ and the Church.”

Every sacrament has an earthly reality as a sign. This earthly reality is the conjugal love that finds expression in the covenant of love between two persons. This, however, is “an imperfect sign of the love between Christ and the Church.” To live marriage as a sign of the covenant between Christ and the Church is called a “vocation.” As a technical term, “vocation” in the New Testament means that a human being is addressed by the word of God himself,¹¹ by his good news of the kingdom of God that Jesus Christ proclaims. “Vocation” therefore includes the “covenant of every human being with Christ in the Church” – the universal vocation, but also the individual vocation of each one to follow Jesus Christ and to collaborate in a special way in the mission of Jesus Christ. In the sacrament of baptism, the universal element of vocation receives its expression; in the sacrament of marriage, the special element of vocation receives its expression. The notion of the sacrament of marriage as a “thing” or a “power” is rejected. The central point is that the love of the marriage partners not only points to the love of Christ for the Church; rather, this love is present and efficacious in the love of the marriage partners (AL, 73).

¹¹See K.L. Schmidt, *καλέω* etc., in: Kittel, ThWNT III, 488-538, esp. 489-495.

This is the operative presence of the crucified and risen Lord, which is present in the living out of marital love. At the same time, the partners “are called to respond to God’s gift with commitment, creativity, perseverance and daily effort. They can always invoke the assistance of the Holy Spirit who consecrated their union, so that his grace may be felt in every new situation that they encounter” (AL, 74). This means that there is a very strong resemblance between Christian marriage and the eucharist.

This understanding of Christian marriage as a sacrament – and indeed, as a vocation – means, first of all, that the sacrament of matrimony has its roots in baptism. This is why it is the partners themselves who administer the sacrament to each other. And this is why a non-Christian married couple who come to faith do not need to get married again after baptism, “since by the reception of baptism their union automatically becomes sacramental.”¹² In the next three sections, always with extensive quotations from the texts of the *Relationes* of the Extraordinary and the Ordinary Synods, the Pope sketches three consequences of this.

1. “Imperfect situations” exist (AL, 76-79). The keyword of the *semina verbi* allows these to be called “pre-Christian situations.” These exist in various cultures and religious traditions, as well as in the forms of exclusively civil marriages. Since the order of redemption illuminates and fulfills the order of creation, the Church’s task is to see this as an opportunity “to accompany the persons concerned to the sacrament of matrimony, where this is possible” (AL, 77). The entire text of this section is a compact tissue of quotations from the *Relatio synodi* of 2014, the *Relatio finalis* of 2015, and the Apostolic Exhortation *Familiaris consortio* of John Paul II.

2. Pope Francis thematizes the second consequence under the heading: “The transmission of life and the rearing of children.” The dispute from the beginning of the twentieth century about the definition of the goal of marriage is taken up in a new manner here. The Pope refers to the *Catechism of the Catholic Church* (nr. 2366) and to *Gaudium et spes* nr. 48, and writes: “The child who is born ‘does not come from outside as something added on to the mutual love of the spouses, but springs from the very heart of that mutual giving, as its fruit and fulfilment.’” With a reference to *Humanae vitae*, he states: “From the outset, love refuses every impulse to close in on itself; it is open to a fruitfulness that draws it beyond itself. Hence no genital act

¹²AL. 75. The Spanish text reads: “automaticamente sacramental.”

of husband and wife can refuse this meaning, even when for various reasons it may not always in fact beget a new life.” He also quotes *Donum vitae*: “A child deserves to be born of that love, and not by any other means, for ‘he or she is not something owed to one, but is a gift’ (CCC, 2378), which is ‘the fruit of the specific act of the conjugal love of the parents’ (*Donum vitae* II, 8).” Finally, n. 83 rejects the attempt to justify abortion on the basis of the woman’s rights over her own body; and n. 84 defends the education and formation of children as a primary right and as a duty of the parents. Finally, in the last section, entitled: “The family and the Church,” the family is thematized as a “domestic church.” The core affirmation runs as follows: “The Church is a family of families, constantly enriched by the lives of all those domestic churches.” This too is a quotation from the *Relatio finalis* of 2015.

Let us sum up:

On the basis of the testimony of scripture (section 1) and tradition (section 2), the sacrament of marriage is characterized as a mystery in the mystery of Christ and of the Church (section 3). In the next three sections (4 to 6), the historicity of this mystery, and its unfolding into fruitfulness and the family, and ultimately into the ecclesial dimension, are affirmed.

3.2. The Dogmatic Significance of ch. 8: “Weakness to be Accompanied, Discerned and Integrated”

3.2.1. Preliminary consideration

Ch. 8 is about *church order* (*Kirchenordnung*).¹³ Ch. 3 summarized the testimony of faith to the sacrament of marriage and the unfolding of this sacrament in the mystery of Christ and of the Church; the topic of ch. 8 is the guiding principles of the comprehensive church order, as the title of this chapter shows. The church order is characterized by pragmatic maxims. One must accompany the fragility (of marriage and the family). One must discern the numerous and individually

¹³“Church order” is understood here in the sense of the English-language expression “Faith and Order.” In other words, it embraces more than canon law alone. The “order” of the Church is not only legal in the sense of canon law, but essentially includes also moral-ethical and creedal-spiritual elements. “Church order” thus means more than simply a *lex fundamentalis*. It includes not only canon law, but also customs and modes of conduct, the ethos of the People of God and of Church governance. This is the complex that is referred to in the traditional formula of *fides et mores*; Neo-Scholasticism narrowed it down to faith and morals in moral theology. Originally, the Latin noun *mores* designates the intentional modes of conduct that have become a rule, in the sense of the English noun: “mores,” includes conduct, and lifestyle.

distinct situations of the married couples and their relatives, their success and their failure, their difficulties, and so on. Ultimately, the entire pragmatism aims at an “integration” of the married couple and of their family, with all its weaknesses, its success and its failure, into the mystery of Christ and of the Church.

It is not only the title of ch. 8 that shows that it is about Church order. We see this also from the subheadings in the chapter.

Finally, the meaning and significance of ch. 8 emerge from its position in the sequence of the preceding chapters. Building on ch. 3, as I have described it above, the fourth chapter begins with an explanation of the constitutive elements of this sacrament. The third chapter culminates in the remarks about the *sacramentum*, the mystery of marriage and the family in the mystery of Jesus Christ and the Church, or of the Holy Trinity. The fourth chapter starts to explain in more detail the constitutive elements of this sacrament. The description of the mystery follows the *explicatio mysterii*, taking the individual elements one by one.

When the eighth chapter thematizes Church order, it refers to the preceding explanations and sums up the corresponding mode of behaviour in the Church, so that the entire presentation can be concluded with the ninth chapter, on the spirituality of marriage and the family.

3.2.2. *The Guidelines of Church Order*

After the introduction (AL, 291-295), which displays the entire spectrum of the existing forms of successful sacramental marriages and families, but also the distortions or contradictory forms, the first section thematizes the basis of modes of conduct in the Church, under the heading: “Gradualness in Pastoral Care” (AL, 293-295). AL, 293 takes up the special contemporary situation, which had already been presented in ch. 2, and draws the consequence that: “As members of the Church, they too need pastoral care that is merciful and helpful.” This means “accompanying weakness,” as the title of ch. 8 puts it. This care urgently requires a discerning pastoral dialogue, in order “to distinguish elements in their lives that can lead to a greater openness to the Gospel of marriage in its fullness.”

The goal of this discernment is “to transform” these situations “into opportunities that can lead to the full reality of marriage and family in conformity with the Gospel” (AL, 294). When he speaks of this process and of the guidelines for the Church’s action, the Pope has recourse to the term “law of gradualness,” which John Paul II

employs in *Familiaris consortio* “in the knowledge that the human being ‘knows, loves and accomplishes moral good by different stages of growth.’” Cardinal Schönborn had introduced this term into the synodal discussion, appealing thereby to Thomas Aquinas, *Summa Theologiae* II/II, q. 24, a. 9; q. 183, a. 4. Thomas speaks in both these passages of *incipientes, proficientes et perfecti*.¹⁴

The next section, “The discernment of ‘irregular’ situations” (AL, 296-300), takes up a group of problems that concern today’s Church order. Canon law understands “irregularity” to mean a permanent hindrance to the reception of ordination as bishop, priest, or deacon.¹⁵ When Pope Francis puts this adjective in inverted commas, it is clear that he is using the canon law term in a broader sense, with regard to marriages of Christians that do not correspond to the sacramental character of matrimony.

In order that an appropriate judgment may be made in this entire sphere, the Pope at once recalls the fundamentally pragmatic orientation of the Church’s action from New Testament times onwards. Exclusion and renewed integration have occurred throughout Church history. One is inevitably reminded of 1 Cor 5:1-5: the licentious man who cohabits with his father’s wife is excluded from the community, so that his flesh may be destroyed, *in order that* his spirit may be saved on the day of the Lord. Equally important in this context is the development of the sacrament of penance through the debate between Novatian and Cornelius about the exclusion and possible reintegration of the *lapsi*.¹⁶ This concerned members of the Church who had denied the faith under persecution, and the

¹⁴It is regrettable that no mention was made of the New Testament affirmations about this growth in faith, nor of the great theological tradition, the “stepped path” whereby the attempt was made in the patristic period, the Middle Ages, and in the Modern Period to grasp this conceptually. Both Karl Rahner and Hans Urs von Balthasar had taken up this topic already before 1939. See Karl Rahner, “Über das Problem des Stufenweges zur christlichen Vollendung,” in *Schriften zur Theologie*, Vol. 3, Einsiedeln, Zurich and Cologne, 1956, 11-34.

¹⁵When the Code of Canon Law lists the reasons for an irregularity of this kind, after mentioning mental or physical illness, apostasy or schism, it mentions in the third place “a person who has attempted marriage, even only civilly, while either impeded personally from entering marriage by a matrimonial bond, sacred order, or a public perpetual vow of chastity, or with a woman bound by a valid marriage or restricted by the same type of vow” (can. 1040, 1983). On the model of these canons and of their subsequent elaboration, there are various regulations that specify that divorced and remarried persons must not hold any catechesis or preaching, that they are not to undertake any ecclesial offices, etc.

¹⁶See James S. Alexander, “Novatian/Novatianer,” in TRE - Theologische Realenzyklopädie, Berlin, New York, 2000, 24, 678-682.

possibility of their reconciliation. In AL, 297, drawing on the words of the synodal fathers in the *Relationes*, and with an explicit reference to *Familiaris consortio*, the Pope confirms the correctness of the “exclusion” because of irregularity, for example “if someone flaunts an objective sin as if it were part of the Christian ideal, [...] he or she can in no way presume to teach or preach to others.” At the same time, he emphasizes the “*general consensus*” of the Synod fathers on the following point:

‘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 and offering them assistance so they can reach the fullness of God’s plan for them,’ something which is always possible by the power of the Holy Spirit.

Examples in AL, 298 illustrate this. With regard to integration, “a new set of general rules, canonical in nature,” is not possible. All that is possible is an accompaniment “which guides the faithful to an awareness of their situation before God,” and “discernment can recognize that in a particular situation no grave fault exists” (AL, 300 and footnote 336). The Pope refers to the *Catechism of the Catholic Church*, nr. 1735: “imputability and responsibility for an action can be diminished or even nullified by ignorance, inadvertence, duress, fear, habit, inordinate attachments, and other psychological or social factors.”

This means that at the end of this section, in AL, 300, the Pope has taken a very decisive step to exclude what he had already rejected in the introduction to AL as the second extreme. To what does this exclusion refer? In the Church’s tradition, from the *Nicomachean Ethics* of Aristotle and its reception in the Middle Ages onwards, philosophers and theologians had maintained that “adultery” counted as an “intrinsically evil act,” which is always *per se* evil, independently of all the specific circumstances. This position overlooked the fact that although Aristotle and the medieval theologians who received him did indeed reject taking external circumstances into account – with whom, where, and for how long the adultery had been committed – they were nevertheless aware of numerous internal or subjective elements that reduced the guilt, for example, if the act took place in the heat of passion, out of fear or ignorance, and so on.¹⁷

¹⁷On these problems, see Stephan Herzberg, “Das Lehrstück von den In-sich-schlechten Handlungen bei Aristoteles,” in *Theologie und Philosophie* 91 (2016) 196-214, and the literature cited there.

In the dispute about ethical or moral-theological theories that appear to derive – or do in fact derive – evil exclusively from the consequences of an action, John Paul II adopts this position in *Familiaris consortio* (1981) and subsequently in *Veritatis splendor*. This led to strongly polarized discussions.¹⁸

The result of the intensive theological discussions can be summarized as follows: There are intrinsically evil actions that are not conditioned by external circumstances, but that are indeed conditioned by internal, subjective elements.

In the next section, “Mitigating Factors in Pastoral Discernment” (AL, 301-303), the Pope and the synodal fathers in the two *Relationes* once again confirm the result of the theological discussion. The Pope refers here to Thomas Aquinas and the *Summa Theologiae* I/II, q. 65, a. 3 ad 2 and 3; *De malo* q. 2, a. 2; and to texts from the pontificate of John Paul II in the 1980s, as well as to a text issued by the Pontifical Council for the Interpretation of Legislative Texts in 2000.

In the following section, “Rules and Discernment” (AL, 304-306), the Pope takes up the relationship between the general ethical principles and rules, on the one hand, and the personal responsible decision of conscience, on the other hand. The two authorities belong together in their differences and in their indissoluble bond. By way of explanation, the Pope quotes the observation by the International Theological Commission that: “natural law could not be presented as an already established set of rules that impose themselves *a priori* on the moral subject; rather, it is a source of inspiration for the deeply personal process of making decisions.”

The conclusion of ch. 8 – “The Logic of Pastoral Mercy” (AL, 307-312) – is a passionate appeal by the Pope to put the preceding reflections into pastoral practice, with all the love of the Good Shepherd.

On the dogmatic basis of the Church’s teaching about marriage and the family, as this is presented in chs. 3 and 8, *Amoris Laetitia* sets out in the ninth chapter the outlines of a spirituality of marriage and of the family that correspond to the deeper understanding of these realities. In a strictly articulated “vertical plan,” the Pope sketches a spiritual path that replaces the *itinerarium mentis in Deum* – a form with Neo-Platonic roots, profoundly shaped in the Church’s tradition

¹⁸See *Herder Korrespondenz* 36 (1985) with all five statements, and a further statement in *Herder Korrespondenz* 37 (1986). Carlotti, “*Veritatis splendor*,” *aspetti della ricezione teologica*, Biblioteca di scienze religiose 167, Rome, 2001.

by Pseudo-Dionysius – by an *itinerarium in Deum* through a deepened *caritas*.

After this examination of *Amoris Laetitia*, read with the eyes of a dogmatic theologian, we shall attempt in the final section of this paper to identify the dogmatic consolidations, clarifications, and innovations that AL has brought with regard to the sacrament of marriage and to the family.

4. The Doctrinal Consolidations, Clarifications, and Innovations of *Amoris Laetitia*

4.1. Preliminary Methodological Remark

Our starting point is the core affirmations in the third chapter, in AL, 72:

The sacrament is a gift given for the sanctification and salvation of the spouses, since ‘their mutual belonging is a real representation, through the sacramental sign, of the same relationship between Christ and the Church.’ [...] Marriage is a vocation, inasmuch as it is a response to a specific call to experience conjugal love as an imperfect sign of the love between Christ and the Church. Consequently, the decision to marry and to have a family ought to be the fruit of a process of vocational discernment.

We contrast this with the basic definition of the sacrament of marriage in *Casti connubii*, because we find there a summary of the previous basic elements of the doctrine of marriage in the Latin Church.¹⁹ Nr. 10 states:

From God comes the very institution of marriage, the ends for which it was instituted, the laws that govern it, the blessings that flow from it; while man, through generous surrender of his own person made to another for the whole span of life, becomes, with the help and cooperation of God, the author of each particular marriage, with the duties and blessings annexed thereto from divine institution.

Casti connubii and *Amoris Laetitia* share the following theological foundations. (a) The origin of the human being and of his marriage lies in God, as does the restoration of the creation and of marriage through Jesus Christ. (b) Both documents speak of the gift of one’s

¹⁹Quotations here follow DH 3700-3724, and the edition with commentary by Fr. Franziskus Hürt, SJ, the author of the encyclical: *Litterae encyclicae Nr. I, Leo XIII. et Pius XI. De matrimonio christiano, “Arcanum divinae sapientiae” 10. Febr. 1880, “Casti connubii” 31. Dec. 1930*, edidit Franziskus Hürt SJ, Rome, Gregorian University, 1945. English translation from the Vatican website (which, however, has a divergent numbering of the paragraphs).

own person to one's marriage partner as a decisive element. There are, however, striking differences in the way in which the two papal documents link these two constitutive realities. We read in *Casti connubii*:

Matrimony was not instituted or restored by man but by God; not by man were the laws made to strengthen and confirm and elevate it but by God, the Author of nature, and by Christ Our Lord by Whom nature was redeemed, and hence these laws cannot be subject to any human decrees or to any contrary pact even of the spouses themselves.²⁰

The text then states explicitly that the freedom of the partners "regards only the question whether the contracting parties really wish to enter upon matrimony or to marry this particular person; but the nature of matrimony is entirely independent of the free will of man, so that if one has once contracted matrimony he is thereby subject to its divinely made laws and its essential properties."²¹ This is the Augustinian view of marriage – namely, that this *contract* is to be made for the sake of the three goods of *proles*, *fides*, and *sacramentum*. The mutual fidelity is permeated here by a notion of "ownership," when *fides* primarily concerns the prohibition against more than one partner sharing the *jus in corpus*.²²

The third *bonum*, the *sacramentum*, designates "the indissolubility of the bond and the raising and hallowing of the contract by Christ Himself, whereby He made it an efficacious sign of grace."²³ It is explicitly affirmed that stability and indissolubility belong in varying degrees to individual marriages, but apply in a special degree to Christian marriages.

The abstract juridical affirmations of *Casti connubii* are toned down when the encyclical states that "love in the home" means that the couple must help each other to grow in love,

on which indeed dependeth the whole Law and the Prophets [...]. This determined effort to perfect each other, can in a very real sense, as the Roman Catechism teaches, be said to be the chief reason and purpose of matrimony, provided matrimony be looked at not in the restricted sense

²⁰*Casti connubii*, 5.

²¹*Casti connubii*, 6.

²²See *Casti connubii*, 19: "conjugal honor [...] consists in the mutual fidelity of the spouses in fulfilling the marriage contract, so that what belongs to one of the parties by reason of this contract sanctioned by divine law, may not be denied to him or permitted to any third person; nor may there be conceded to one of the parties anything which, being contrary to the rights and laws of God and entirely opposed to matrimonial faith, can never be conceded."

²³*Casti connubii*, 31.

as instituted for the proper conception and education of the child, but more widely as the blending of life as a whole and the mutual interchange and sharing thereof.²⁴

The “restricted sense” left its mark on the public image of marriage, which dominated in preaching, pastoral care, canon law, and theology. Such a marriage does not exist for modern human beings, when they look at the cultural history of humankind. Marriage as an unchangeable divine law that is present in the human being himself – so that one would have to have recourse to the construction of a divine dispensation from the divine law, if one wished to make sense of the polygamy of a figure like Abraham – is unthinkable for the modern human being, who finds the whole idea crazy.

4.2. The Theological Innovations with Regard to the Sacrament of Marriage

The *first* innovation lies in the starting point in the view of marriage that *Casti connubii* itself calls the *verissima ratio*, the *primaria matrimonii causa et ratio*, namely, the *totius vitae communio*. *Amoris Laetitia* calls this the “mutual belonging” of the marriage partners. This designates the comprehensive, bodily, total relation of love that binds together husband and wife in marriage. This reality, the *covenant of life*, this marital love itself, is the expression of the relationship of love between Christ and the Church, fulfilled and perfected in the event of the Passion and the mysteries of Easter. The “imperfect signs of conjugal love” belong to this mystery. This shift had already been made by *Gaudium et spes*, 48f. and *Lumen gentium*, 11. *Amoris Laetitia* spells out the individual facets of this relationship, especially in chs. 4-7.

Secondly, the sacrament of marriage is a *covenant of life*, not simply a contract. It involves a consent that “is not only a requirement of the law, but something that also entails an ethical obligation.”²⁵ A covenant (*fœdus* in the Roman legal terminology) is an obligation that is entered into in good faith, and that obligates both in moral-ethical terms and in legal terms. This bids farewell to the juridical construction of the divinely preordained contract. When a marriage is evaluated, more must be involved than the question whether the wedding was legally valid.

²⁴*Casti connubii*, 23f.

²⁵See Ilona Riedel-Spangenberg, “Ehebund,” in Axel Freiherr von Campenhausen, Ilona Riedel-Spangenberg, and Fr. Reinhold Sebott, SJ, ed., *Lexikon für Kirchen- und Staatskirchenrecht*, Paderborn et al., 2001, Vol. 1, 5001f. CIC 1983 ,can. 1055 §1, 1058§2, 1063§4, explicitly adopts this concept.

Thirdly, marriage, as a covenant of life, is exposed to many risks, which are directly connected to the finitude and temporality of the covenant. The sacrament of marriage is threatened by moral and legal failure in every situation, down to the most everyday situations. The accumulation of offenses against good faith can pile up to such an extent that the mutual belonging is no longer merely at risk, but in fact no longer exists. The bishops who gathered for the Synod and the Pope himself have uncovered, with a remarkable perspicacity, this risk in the modern historical and societal situation. The sacrament is seen as a reality that exists in history.

Fourthly, the imperfection and the risk show us the reason for the gradualness, since the living of the sacrament in people's life histories involves a realization of the covenant of life that must be deepened and renewed in the various phases and situations in life. At the beginning, there is the loving testing of the divine vocation to the covenant of life with this particular partner. At the end, there is the completion in the hour of death, as an entering, full of hope, into communion with the Father, the Son, and the Holy Spirit. And in all the various phases, there are various forms of possible failure.

Fifthly, the imperfection and fragility of the covenant of life open our eyes to at least the partial and analogous realization of marriage in other forms of union.

Sixthly, the sacrament of marriage is not seen as a "thing," as a "power," that exists *in* the Church. This sacrament belongs to the Church; it is the Church *qua* domestic church. According to *Lumen gentium* 1, the Church is in Christ "as it were the sacrament, or sign and instrument, of the most intimate union with God and of the unity of the entire human race." This leads here to a new view of the sacraments: the individual sacraments are forms of realization of the Church in faith, mysteries in the mystery of Christ and the Church.

The orientation of the sacrament of marriage to the fruitfulness that transcends conjugal love in the divine gift of children, and the development into a family, transmits a holistic theological image of marriage and the family that is new.

When we look back over these innovations, we see that very many individual elements of this understanding in faith of marriage and the family as a sacrament had already appeared and were accepted in the period between *Casti connubii* and *Amoris Laetitia*. But the true innovation of AL consists in the fact that it succeeds in integrating these very different elements into one new holistic image. This is

what must be said about the believing understanding of the sacrament of marriage in ch. 3.

A number of innovations, corrections, and clarifications are found in the eighth chapter, and these are very important for the Church's praxis with regard to the sacrament of marriage and the family – since it is in praxis that the new understanding must be articulated.

First, Casti connubii is essentially concerned about the official act of witnessing a wedding and the determination of the validity of a wedding on the occasion of a remarriage, which is sanctioned with the exclusion from reception of the sacraments. But the guidelines for the praxis in *Amoris Laetitia* embrace all the phases, from encouraging a person to get married, down to death, and each phase is accompanied personally. The requirement that we accompany the fragility of marriage demands a fundamental transformation of pastoral activity.

Secondly, AL explains two ethical or moral presuppositions that were implied in the previous pastoral activity of the Church.

a) “Intrinsically evil actions” do not exclude internal subjective circumstances that reduce or remove guilt.

b) Although the human being is obliged in conscience to observe general ethical principles and commandments, and to behave accordingly, knowledge of this fact can never replace the decision of his conscience, which he must take personally – because the universality of moral principles and commandments can never reach fully into the individuality or particularity of the individual situations and actions. Both authorities remain. They are at one and the same time distinct *and* inseparable.

Thirdly, these two clarifications explain why *Amoris Laetitia* does not quote certain passages from *Familiaris consortio*, *Veritatis splendor*, and the *Catechism of the Catholic Church*: it is because these contain an erroneous interpretation of intrinsically evil actions. Statements from *Humanae vitae* are not quoted, because they contain an extension of the common natural ethical law into the particularity of individual actions.