

ASIAN
HORIZONS
Vol. 11, No. 1, March 2017
Pages: 42-61

CANONICAL IMPLICATIONS OF *AMORIS LAETITIA*

James Mathew Pampara, CMI[♦]
DVK, Bangalore

Abstract

The Post-Synodal Apostolic Exhortation *Amoris Laetitia* has created a lot of interest among both canonists and theologians, especially because of its footnote 351. The author, while not entering into the polemics around it, tries to understand this document using the principles of interpretation of Canon Law. Looking into the document as a post-synodal apostolic exhortation, the author explains that it is to be understood in the light of 'text in the context and by looking into the mind of the author.' This document can be understood correctly only as the continuation of the consistent teaching of the Magisterium in this regard. The author argues that it contains no doctrinal errors. However, it seems that through footnote 351, Pope Francis has opened a small window of pastoral discernment to at least some of those divorced and remarried in the context of their reception of the sacrament of penance and Eucharist, which were hitherto considered absolutely closed unless they had already fulfilled the conditions stipulated in *Familiaris Consortio*, 84.

Keywords: *Amoris Laetitia*, Pope Francis, *Familiaris Consortio*, Divorced and Remarried, *Catechism of the Catholic Church*, *Veritatis Splendor*, Congregation for the Doctrine of the Faith, Pontifical Council for Legislative Texts

[♦]**Dr James Mathew Pampara, CMI** is Associate Professor of Canon Law and Latin in the Institute of Oriental Canon Law, DVK, Bengaluru. He completed his Licentiate (1997) and Doctorate (2007) in Oriental Canon Law from the Pontifical Oriental Institute in Rome with specialization in Penal Law and Penal Procedure. He has also specialized in Medieval Latin (Oxford University, UK) and Jurisprudence (Rota Romana, Vatican). He was the Postulator General of the CMI Congregation (2004-2007), the Director of the Institute of Oriental Canon Law (2009-2012) in DVK, and the Vice President of the Oriental Canon Law Society of India (2010-2013) and continues to be a member of OCLSI executive committee (2013-). He teaches Canon Law (both Eastern and Latin) in various seminaries in India and is a member of various canon law societies in India and abroad. Email: james.pampara@gmail.com

Introduction

The Post-Synodal Apostolic Exhortation *Amoris Laetitia* of Pope Francis of 19 March 2016¹ marks the sequel and culmination of the extra-ordinary Synod of Bishops on Family held in Vatican in October 2014 and the Synod of Bishops held there again in October 2015. This papal document is to be studied together with the Apostolic Exhortation *Familiaris Consortio* of Saint John Paul II.² *Amoris Laetitia* (hereafter AL) was received by many with much enthusiasm, though there were certain misunderstandings and confusion in the minds of some regarding how to understand and interpret it.³ Though the emphasis of it is pastoral in nature, it has created a lot of interest in many canonists too, all the more because of certain unfortunate controversies that arose from some wordings, for example, footnote 351 of AL. There are people who tried to see a paradigm shift in the vision and doctrine of the Catholic Church regarding the divorced and remarried in it,⁴ while others saw mere continuity with the idea that not only the further development of doctrine in any form as a metaphysical impossibility on this topic, but even the pastoral attitude and praxis in this regard as something

¹Francis, *Amoris Laetitia*, Post-Synodal Apostolic Exhortation on Love in the Family (19 March 2016), Vatican City: Libreria Editrice Vaticana, 2016. http://w2.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia.html (accessed on 8/2/2017).

²John Paul II, Apostolic Exhortation *Familiaris Consortio* on Role of the Christian Family in the Modern World (2 November 1981), in Pontifical Council for the Laity, ed. *Enchiridion on the Family: Compendium of Church Teaching on Family and Life Issues from Vatican II to the Present*, Boston: Pauline Books and Media, 2004, 111-213. Though the title of this document does not indicate that it is a post-synodal apostolic exhortation, it states it clearly in the text (FC 2) that this exhortation is the fruit of the Synod of Bishops on Family held from September 26 to October 25, 1980.

³In fact, *National Catholic Register* reported on 14 November 2016, that four Cardinals, namely, Walter Brandmüller, Raymond L. Burke, Carlo Caffarra and Joachim Meisner wrote to Pope Francis asking further clarifications in this regard. For the full text of the letter, see: <http://www.ncregister.com/blog/edward-pentin/full-text-and-explanatory-notes-of-cardinals-questions-on-amoris-laetitia> (accessed on 30 March 2017). Likewise, 45 academics wrote a theological critique on *Amoris Laetitia* on 29 June 2016 addressing Cardinal Angelo Sodano, the dean of the College of Cardinals, highlighting the possible doctrinal errors in AL: <https://nebula.wsimg.com/8ce34a148027aaaa2bd54570b202f33c?AccessKeyId=EEC4442C9A64986D8B58&disposition=0&alloworigin=1> (accessed 30 March 2017).

⁴cf. James F. Keenan, "Redeeming Conscience," *Theological Studies* 76 (2015) 129-147; Gerard O' Collins, "The Joy of Love (*Amoris Laetitia*): The Papal Exhortation in its Context," *Theological Studies* 77 (2016) 905-921; Conor M. Kelly, "The Role of Moral Theologian in the Church: A Proposal in the Light of *Amoris Laetitia*," *Theological Studies* 77 (2016) 922-948.

perennial in nature.⁵ Hence this study attempts to highlight the real value and merit of AL and way in which it has to be studied and understood and put into pastoral practice based on sound canonical principles.

1. The Nature and Binding Force of Apostolic Exhortations

Catholic Magisterium⁶ consists of various types of documents, which include both conciliar and papal. As Popes and Ecumenical Councils represent the Supreme authority of the Catholic Church, the documents from them have a higher degree of binding force. However, not all documents of an ecumenical council demand the same response from the believers. For example, of the sixteen documents of the Second Vatican Council, four come under the category of constitutions and nine are decrees and three come under the category of declarations. Among the constitutions, two, namely, *Lumen Gentium* and *Dei Verbum* are dogmatic constitutions and as such they have got a higher level of binding force among these conciliar documents. However, even in them, everything does not come under the category of infallible teaching.⁷ In short, in understanding and interpreting the documents of the magisterium, whether they are of any ecumenical council or of pope, there are many hermeneutical principles that come into play.

There are principally four categories or grades of authentic magisterium. They are (1) infallible and definitive teachings of an ecumenical council or of a pope; (2) non-infallible and definitive teaching; (3) non-infallible non-definitive teaching of popes and (4) teaching of one's own bishop. The response of the faithful due to an infallible definitive teaching of an ecumenical council or of a pope is that the believer "must believe it with divine and Catholic Faith" (*fide divina et Catholica credenda*).⁸ The Christian faithful is not obliged to believe with the same faith a non-infallible definitive teaching.

⁵Inés San Martín of *Crux* reported on 1 February 2017 that Cardinal Gerhard Müller, the Prefect of the Congregation for the Doctrine of Faith stated that the teaching on divorced and remarried presented in *Familiaris Consortio* still remains valid. Cf: <https://cruxnow.com/global-church/2017/02/01/germans-still-jousting-proper-reading-amoris-laetitia/> (accessed on 30 March 2017).

⁶For a detailed discussion on weighing and interpreting documents of the magisterium, see: Francis A. Sullivan, *Creative Fidelity: Weighing and Interpreting Documents of the Magisterium*, Dublin: Gill & Macmillan, 1996.

⁷CCEO c. 597, §3: "No doctrine is understood to be infallibly defined unless it is clearly established as such." Cf.: CIC c. 749, Second Vatican Council, Dogmatic Constitution *Lumen Gentium*, 25; First Vatican Council, *Pastor Aeternus*, chapter IV.

⁸CCEO c. 598, §1, CIC c. 750; *Lumen gentium*, 25.

However, s/he has to hold such a definitive teaching.⁹ The third category, namely, a non-definitive non-infallible teaching of a pope demands only an *obsequium* of intellect and will from the believer whereas an authentic magisterium of one's own bishop demands from the believer an *obsequium religiosum animae*, meaning even a lesser level of religious *obsequium* than that is demanded of ordinary authentic papal magisterium.¹⁰

Papal magisterium finds expression mainly through two types of documents such as encyclicals and apostolic exhortations.¹¹ Popes usually promulgate major legal documents through Apostolic Constitutions. For example, the *Code of Canon Law* of 1983 was promulgated with the Apostolic Constitution *Sacrae disciplinae leges* while the *Code of Canons of the Eastern Churches* was promulgated with the Apostolic Constitution *Sacri Canones*. Less important legislations are done through Apostolic Letters given *motu proprio* and they are simply called *motu proprios*. They are legally binding on the Christian faithful. They need not be directly intended for teaching purpose, though the canons of the Codes are in fact real sources from which one can understand the authentic teachings of the Catholic Church on various aspects of her faith. When a pope wants to teach a subject or an aspect of faith in detail, he uses the instrument called "encyclical" and encyclicals constitute without doubt ordinary authentic magisterium of the pope on the given topic. Apostolic Exhortations can also be considered as constituting the ordinary magisterium of popes. Renowned canonist Francis G. Morrissey writes thus in his article on AL:

⁹CCEO c. 598, §2, cf. John Paul II, Apostolic Letter *Motu Proprio Ad tuendam fidem*, 18 May 1998, AAS 90 (1998) 457-461; For English Translation, see: *Canon Law Digest* 14 (2012) 643-648.

¹⁰George Nedungatt, ed., *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, Kanonika 10, Rome: Pontificio Istituto Orientale, 2002, 441-457.

¹¹Whether Apostolic Exhortations can be considered as documents of Magisterium is in fact disputed. For example, the *Enchiridion on Family* (see foot note no. 2) published by the Pontifical Council for the Laity, while including *Humanae Vitae*, the encyclical of Pope Paul VI, among the section on "Documents of the Magisterium," places *Familiaris Consortio* in the section "Documents of Pope John Paul II and the Holy See," thus indicating that apostolic exhortations are not part of the Magisterium of the Church. However, *Amoris Laetitia* published by the official publication of Vatican, namely, *Libreria Editrice Vaticana*, clearly indicates that it is part of the Magisterium of Pope Francis. On page 300, under the title "the Magisterium of Francis," four documents are mentioned, namely, *Lumen Fidei*, *Evangelii Gaudium*, *Laudato Si* and *Amoris Laetitia*, of which two are encyclicals and two are apostolic exhortations.

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

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

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

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

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

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

So, any study of an Apostolic Exhortation should be marked by an open mind, willing to see what the Pope is telling us, and then leaving us free to make our own decision.¹²

2. Hermeneutical Principles of Canon Law and the Interpretation of *Amoris Laetitia*

Both *CIC* and *CCEO* contain certain hermeneutical principles to interpret the canons of the Codes. Though they are intended primarily as a means to interpret the laws of the Church, in fact, these principles help us to understand any document of the Church including *AL*. The hermeneutical principles relevant in our context are found mainly in *CCEO* cc. 1499-1503 and *CIC* cc. 17-21. *CCEO* c. 1499 (*CIC* c. 17) stipulates:

Laws are to be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse is to be taken to parallel passages, if such exist, to the purpose and the circumstances of the law, and to the mind of the legislator.

Accordingly, the first and foremost hermeneutical principle in understanding a canon or a document of the Church is to consider the proper meaning of the words. Then it states that the text is to be understood not in isolation, but in the context. Other parameters

¹²Francis G. Morrissey, “Some Pastoral Implications Arising from Chapter VIII of the Apostolic Exhortation *Amoris Laetitia*,” *CLSGBI Newsletter* 186 (June 2016) 53-80, here at 55. See also, Francis G. Morrissey, “Outline for a Spirituality of the Family in the Light of the Apostolic Exhortation *Amoris Laetitia*,” *CLSGBI Newsletter* 188 (December 2016) 31-45.

given in this canon look into the purpose and circumstances of the law and the mind of the legislator.

AL is a post-synodal apostolic exhortation and hence to understand the meaning of the text, one should look into the synodal document itself and see the context, purpose and circumstance of the exhortation and the mind of the legislator. In fact, Pope Francis himself clearly articulates his mind or intention in giving this exhortation in nos. 3 and 4. In AL, 3, we read thus:

Since “time is greater than space”, I would make it clear that not all discussions of doctrinal, moral or pastoral issues need to be settled by interventions of the magisterium. Unity of teaching and practice is certainly necessary in the Church, but this does not preclude various ways of interpreting some aspects of that teaching or drawing certain consequences from it. This will always be the case as the Spirit guides us towards the entire truth (cf. Jn 16:13), until he leads us fully into the mystery of Christ and enables us to see all things as he does. Each country or region, moreover, can seek solutions better suited to its culture and sensitive to its traditions and local needs. For “cultures are in fact quite diverse and every general principle ... needs to be inculturated, if it is to be respected and applied.”

From the above text, a few things need to be highlighted. From the words of Pope Francis, it is evident that he does not intend to insist on finding universally applicable uniform solutions to different kinds of problems related to family and marriage. He highlights the need to look into various cultures while implementing the perennial values and doctrines of the Catholic Church regarding marriage and family in the actual context. In this context, it is not his aim to settle every doctrinal issue to the satisfaction of all, but to focus on the pastoral context where the Church will come to help those who need her help. In a way, in this paragraph one can see that the Pope is giving more emphasis on the action of the Holy Spirit and the *sensus fidei* of the believers (LG, 12 and 35), rather than proclaiming universally valid uniform solutions to all types of problems. His emphasis on the need of inculturation in the pastoral theology of marriage and family is something that needs to be noted by all pastors. Moreover, the above passage reminds the reader that in understanding the text of AL, one should have a pastoral mind and not a dogmatic one. In fact, the very instrument “Apostolic Exhortation” implies that the intention of the document in question is not to teach something totally new, but to exhort the people to understand and appreciate the already existing perennial teachings on the matter and to propose ways and means in

which the already existing magisterium can be understood, discerned and received in the changed times and pastoral situations.¹³

To understand the exact context and purpose of AL, one has to read its fourth paragraph too. It states thus:

I must also say that the Synod process proved both impressive and illuminating. I am grateful for the many contributions that helped me to appreciate more fully the problems faced by families throughout the world. The various interventions of the Synod Fathers, to which I paid close heed, made up, as it were, a multifaceted gem reflecting many legitimate concerns and honest questions. For this reason, I thought it appropriate to prepare a post-synodal Apostolic Exhortation to gather the contributions of the two recent Synods on the family, while adding 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.

From the above text, it is evident that AL takes its inspiration from the *Relatio finalis* of the Synod of Bishops of October 2015¹⁴ as well as *Relatio Synodi* of the III Extraordinary General Assembly of the Synod of Bishops of October 2014.¹⁵ However, Pope Francis makes it clear that AL contains much more than what is in the two synodal documents, because he added “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” (AL, 4). In this context, it is to be observed that, canonically, the Synod of Bishops, instituted by Pope Paul VI after the Second Vatican Council as an expression of the collegiality of the bishops, does not have deliberative power, and as such remains only as a consultative organ to help the successor of Peter to govern the Church.¹⁶

According to CCEO c. 1503 (and CIC c. 21), “in case of doubt, the revocation of a pre-existing law is not presumed, but later laws must be related to the earlier ones and, insofar as possible, must be harmonized with them.” In interpreting the teachings of AL too, this

¹³Regarding the reception of documents of the Church, cf.: Gilles Routhier, *La réception d'un concile*, Paris: Les Éditions du Cerf, 1993; Giuseppe Alberigo and J.-P. Jossua, ed. *La réception de Vatican II*, Paris: Les Éditions du Cerf, 1985. Regarding the reception of *Amoris Laetitia*, see: James F. Keenan, “Receiving *Amoris Laetitia*,” *Theological Studies* 78, 1 (2017) 193-212.

¹⁴cf.: Michael G. Campbell, trans., “Final *Relatio* of the Synod of Bishops,” *CLSGBI Newsletter* 184 (December 2015) 107-168. See also, General Secretariat of the Synod of Bishops, “The Vocation and Mission of the Family in the Church and Contemporary World: *Lineamenta*,” *CLSGBI Newsletter* 181 (March 2015) 6-37.

¹⁵“*Relatio Synodi* of the III Extraordinary General Assembly of the Synod of Bishops,” *CLSGBI Newsletter* 180 (December 2014) 5-26.

¹⁶Robert Ombres, “The Synod of Bishops: Canon Law and Ecclesial Dynamics,” *CLSGBI Newsletter* 184 (December 2015) 169-181.

hermeneutical principle is relevant. Since AL is a Post-Synodal Apostolic Exhortation on Family, *Familiaris Consortio*, the previous Apostolic Exhortation on the family by John Paul II is also to be taken into consideration while interpreting difficult passages of AL. In this context, it is to be observed that the authentic magisterium of the Church shows always a continuity with the earlier magisterium and the latter documents are to be understood in the light of earlier teachings on the same matter. However, this principle does not deny the possibility of doctrinal progress or development of dogmas as eminently expounded by Cardinal John Henry Newman in his famous work *An Essay on the Development of Christian Doctrine* of 1845 (and later revised in 1878). However, such changes in the understanding and articulation of dogmas are usually done not through apostolic exhortations, but by papal encyclicals.

3. The Full Title of *Amoris Laetitia* and Its Canonical Implications

Whereas the Post-Synodal Apostolic Exhortation *Familiaris Consortio* of 22 November 1981 contained the detailed title “Role of the Christian Family in the Modern World,” AL has the detailed title “Post-Synodal Apostolic Exhortation on Love in the Family.” Another notable aspect of this apostolic exhortation is seen in the title page which presents this document as “Post-Synodal Apostolic Exhortation *Amoris Laetitia* of the Holy Father Francis to Bishops, Priests and Deacons, Consecrated Persons, Christian Married Couples and all the Lay Faithful on Love in the Family.” Thus this apostolic exhortation has explicitly included “consecrated persons” separately as its passive subjects. Though this may appear not of much relevance, it needs a more considered study. In fact, Pope Francis, himself a consecrated person and who declared and celebrated a year dedicated to the consecrated persons, seems to have included the consecrated persons in the full title intentionally.

From the canonical perspective this has greater significance because while the *Code of Canon Law* follows a bipartite division of the people of God by dividing them only as clergy and laity by stating that religious are called from both these groups, the *Code of Canons of the Eastern Churches* follows a tripartite division of the people of God by dividing them as clergy, laity and religious, and thus assigning separate status to persons belonging to each group.¹⁷ In fact, the

¹⁷For a detailed study on this topic, see: James Mathew Pampara, “Place and Role of Consecrated Persons in the Church According to *Lumen Gentium* and the Codes of Canon Law,” in Saju Chackalackal, ed., *Consecrated Life for a Transformed World*,

tripartite system of presenting the consecrated persons as having a separate state of life is based on *Lumen gentium*, 31 which defined lay persons as “all the faithful except those in holy orders and those who belong to a religious state approved by the Church.” Pope Francis, by separately addressing the consecrated persons in this apostolic letter, seems to endorse this tripartite system followed by CCEO in its canons 323, 399 and 410. However, it is to be noted that by the word ‘consecrated’, canon law understands both religious and members of secular institutes whereas in fact the members of the secular institutes are part of the laity if they are not constituted in the sacred orders.

4. Reception of Eucharist in the Church by Divorced and Remarried Persons

Both codes prohibit the reception of Eucharist to certain Catholics. CCEO c. 712 stipulates: “Those who are publicly unworthy are forbidden to receive the Divine Eucharist.” Its parallel canon, CIC c. 915 enjoins: “Those upon whom the penalty of excommunication or interdict has been imposed, or declared, and others who obstinately persist in manifest grave sin, are not to be admitted to holy communion.” Commenting on CCEO c. 712, Lorenzo Lorusso writes: “It is opportune to remember also that the divorced and remarried cannot receive the Eucharist.”¹⁸ In fact, this position has been repeatedly found in many of the papal and curial documents. For example, the International Theological Commission, in its report of 1977 entitled, *Propositions on the Doctrine of Christian Marriage*, says that the reason why it is impossible for the divorced and remarried to receive communion is the incompatibility of their state of life “with the precept and the mystery of the Paschal love of the Lord.”¹⁹ This

Bangalore: Dharmaram Publications, 2016, 117-134; Ivan Žužek, “Bipartizione o tripartizione dei *Christifideles* nel CIC e nel CCEO,” in Ivan Žužek, *Understanding the Eastern Code*, Kanonika 8, Rome: Pontifical Oriental Institute, 1997, 328-353.

¹⁸Lorenzo Lorusso, *Il culto divino nel Codex Canonum Ecclesiarum Orientalium: Commento ai singoli canoni*, Analecta Nicolaiana 5, Bari: Ecumenica Editrice, 2008, 106. For various opinions regarding whether divorced and remarried persons could be permitted to receive Eucharistic communion, cf.: Kenneth R. Himes and James A. Coriden, “Pastoral Care of Divorced and Remarried,” *Theological Studies* 51 (1996) 97-123; James Provost, “Intolerable Marriage Revisited,” *Jurist* 40 (1980) 141-196; James Provost, “Intolerable Marriages: A Second Decade,” *Jurist* 50 (1990) 573-612; Charles E. Curran, “*Amoris Laetitia* and Conscience,” *Asian Horizons* 10 (December 2016) 693-706.

¹⁹International Theological Commission, *Propositions on the Doctrine of Christian Marriage*, Rome: 1977, 5.3., cited in Winfried Aymans, ed., *Eleven Cardinals Speak on Marriage and the Family: Essays from a Pastoral View Point*, trans. Michael J. Miller et al., San Francisco: Ignatius Press, 2015, 49.

prohibition is reiterated by John Paul II in the Post-Synodal Apostolic Exhortation *Reconciliatio et Poenitentia*, 34 of 2 December 1984.²⁰

4.1. *Familiaris Consortio*

Familiaris Consortio, 84 deals with the question of the reception of Eucharist by divorced and remarried in detail. It states:

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

Reconciliation in the sacrament of penance, which would open the way to the Eucharist, can only be granted to those who, repenting of having broken the sign of the covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage.

This means, in practice, that when, for serious reasons such as, for example, the children's upbringing, a man and a woman cannot satisfy the obligation to separate, they "take on themselves the duty to live in complete continence, that is by abstinence from the acts proper to married couples."

From the above text, it is evident that the Post-Synodal Apostolic Letter of John Paul II *Familiaris Consortio*, in unambiguous terms prohibited the reception of Eucharist by the divorced and remarried persons. If they separate themselves from that unlawful second marriage, then they can receive the Eucharist. As long as they decide to continue in this second unlawful marriage, to receive the Eucharist, they have to live in perfect continence. Even to receive the Sacrament of Penance validly, there should be the firm resolve from the part of the penitent to separate from the unlawful marriage or to live in perfect continence. The reason for this norm is that the prerequisite for a valid confession includes contrition and contrition means a firm resolve to desist the sin. For Catholic theology, a person who does "acts proper to married couples" outside a valid marriage is in a state of sin and to get absolution from that sin, s/he needs to have contrition.

²⁰ "...The other principle is that of truth and consistency, whereby the church does not agree to call good evil and evil good. Basing herself on these two complementary principles, the church can only invite her children who find themselves in these painful situations to approach the divine mercy by other ways, not however through the sacraments of penance and the Eucharist until such time as they have attained the required dispositions..."

In this context, it is to be observed that the prohibition of reception of Eucharist to the divorced and remarried, found in *Familiaris Consortio*, should not be confused with the previous legislation of excommunication. According to CIC 1917 c. 2356, such persons needed to be excommunicated:

Bigamists, that is, those who notwithstanding a conjugal bond, attempt to enter another marriage, even a civil one as they say, are by that very fact infamous; and if, spurning the admonition of the Ordinary, they stay in the illicit relationship, they are to be excommunicated according to the gravity of the deed or struck with personal interdict.²¹

From this legislation it is evident that *Familiaris Consortio*, 84 shows a real leap from the earlier discipline in the Church regarding the divorced and remarried. St John Paul II exhorts:

Together with the synod, I earnestly call upon pastors and the whole community of faithful to help the divorced, and with solicitous care to make sure that they do not consider themselves as separated from the Church, for as baptized persons they can, and indeed must, share in her life. They should be encouraged to listen to the Word of God, to attend the sacrifice of the Mass, to persevere in prayer, to contribute to works of charity and to community efforts in favour of justice, to bring up their children in the Christian faith, to cultivate the spirit and practice of penance and thus implore, day by day, God's grace.

4.2. *The Catechism of the Catholic Church*

The *Catechism of the Catholic Church*, no. 1650 too reiterates the position of *Familiaris Consortio*. In CCC, 1650, we read thus:

Today there are numerous Catholics in many countries who have recourse to civil *divorce* and contract new civil unions. In fidelity to the words of Jesus Christ – “Whoever divorces his wife and marries another, commits adultery against her; and if she divorces her husband and marries another, she commits adultery” – the Church maintains that a new union cannot be recognized as valid, if the first marriage was. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God's law. Consequently, they cannot receive Eucharistic communion as long as this situation persists. For the same reason, they cannot exercise certain ecclesiastical responsibilities. Reconciliation through the sacrament of penance can be granted only to those who have repented for having violated the sign of the covenant and of fidelity to Christ, and who are committed to living in complete continence.

This text elaborates clearly why this prohibition to receive the Eucharist to those who marry again while their first marriage was

²¹Edward N. Peters, *The 1917 Pio-Benedictine Code of Canon Law*. In English Translation with Extensive Scholarly Apparatus, San Francisco: Ignatius Press, 2001, p. 748.

valid before the Church. Here it is evident that the right way to go for the second marriage is approaching the ecclesiastical tribunal to get the first marriage declared null, if the parties or one of them believes it to be so. Since all marriages solemnized in the Church are presumed to be valid till the opposite is proven, a mere civil divorce and a second marriage, again before the civil authorities, is considered as 'objectively contravening God's law' by the *Catechism of the Catholic Church*.

4.3. The Letter of the Congregation for the Doctrine of Faith to the Bishops

The Congregation for the Doctrine of Faith, in its *Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful*, dated 14 September 1994,²² reiterated the instruction found in *Familiaris Consortio*, 84 and CCC 1650. In this letter we read thus:

In this context the difficulties and sufferings of those faithful in irregular marriage situations merit special attention...

Aware, however, that authentic understanding and genuine mercy are never separated from the truth, pastors have the duty to remind these faithful of the Church's doctrine concerning the celebration of the sacraments, in particular, the reception of Holy Communion...

After having mentioned various pastoral approaches that justified giving communion to divorced and remarried, CDF continues:

With respect to the aforementioned new pastoral proposals, this Congregation deems itself obliged, therefore, to recall the doctrine and discipline of the Church in this matter. In fidelity to the words of Jesus Christ, the Church affirms that a new union cannot be recognized as valid if the preceding marriage was valid. If the divorced are remarried civilly, they find themselves in a situation that objectively contravenes God's law. Consequently, they cannot receive Holy Communion as long as this situation persists.

This norm is not at all a punishment or a discrimination against the divorced and remarried, but rather it expresses an objective situation that of itself renders impossible the reception of Holy Communion...

The faithful who persist in such a situation may receive Holy Communion only after obtaining sacramental absolution, which may be given only "to those who, repenting of having broken the sign of the Covenant and of fidelity to Christ, are sincerely ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage..."²³

²²CDF, "Letter to the Bishops Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful" (14 September 1994), *AAS* 86 (1994) 974-979; English Translation, *Canon Law Digest* 13 (2009) 521-526.

²³*Canon Law Digest*, 13 (2009) 522-523.

From the is letter of CDF itself it is clear that there were divergent practices at least in some corners regarding the reception of the Eucharist by those who have entered into a new unlawful civil union. This letter expressly repudiates all such practices in clear terms and reiterates that the only way to receive Eucharist by the divorced and remarried is the way to separate from the unlawful marriage and repent or to resolve to lead a life of perfect continence in case they cannot separate for the sake of their children. Commenting on this letter, Cardinal Joseph Ratzinger, the then Prefect of the Congregation and later Pope Benedict XVI, stated clearly that regarding this matter *epikeia* and *aequitas canonica* are not possible to be applied as they “exist in the sphere of human and purely ecclesiastical norms of great significance, but cannot be applied to those norms over which the Church has no discretionary authority.”²⁴

4.4. Declaration of the Pontifical Council for Legislative Texts

Pontifical Council for Legislative Texts, the dicastery of Vatican that authentically interprets the laws of the Church in the name of the supreme legislator, issued a declaration regarding the admission to Holy Communion of Faithful who are divorced and remarried on 24 June 2000. It reads thus:

The Code of Canon Law establishes that “Those upon which the penalty of excommunication or interdict has been imposed or declared, and others who obstinately persist in manifest grave sin, are not to be admitted to holy communion” (can. 915). In recent years some authors have sustained, using a variety of arguments, that this canon would not be applicable to faithful who are divorced and remarried. It is acknowledged that paragraph 84 of the Apostolic Exhortation *Familiaris Consortio*, issued in 1981, had reiterated that prohibition in unequivocal terms and that it has been expressly reaffirmed many times, especially in paragraph 1650 of the *Catechism of the Catholic Church*, published in 1992, and in the Letter written in 1994 by the Congregation for the Doctrine of the Faith, *Annus internationalis Familiae*. That notwithstanding, the aforementioned authors offer various interpretations of the above-cited canon that exclude from its

²⁴Joseph Ratzinger, “Concerning Some Objections to the Church’s Teaching on the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful,”: http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19980101_ratzinger-comm-divorced_en.html (Accessed 30 March 2017). On this matter see also: Gerhard Ludwig Müller, “Testimony to the Power of Grace: On the Dissolubility of Marriage and the Debate Concerning the Civilly Remarried and the Sacraments,” *L’Osservatore Romano*, ed. quotidiana, Anno CLIII, no. 243, 23 October 2013, in http://www.vatican.va/roman_curia/congregations/cfaith/muller/rc_con_cfaith_20131023_divorziati-risposati-sacramenti_en.html (Accessed on 30 March 2017).

application the situation of those who are divorced and remarried. For example, since the text speaks of “grave sin,” it would be necessary to establish the presence of all the conditions required for the existence of mortal sin, including those which are subjective, necessitating a judgement of a type that the minister of Communion could not make *ab externo*; moreover, given that the text speaks of those who “obstinately” persist in that sin, it would be necessary to verify an attitude of defiance on the part of an individual who had received a legitimate warning from the Pastor. Given this alleged contrast between the discipline of the 1983 Code and the constant teachings of the Church in this area, this Pontifical Council, in agreement with the Congregation for the Doctrine of the Faith and with the Congregation for Divine Worship and the Discipline of the Sacraments declare the following:

1. The prohibition found in the cited canon, by its very nature, is derived from divine law and transcends the domain of positive ecclesiastical laws: the latter cannot introduce legislative changes which would oppose the doctrine of the Church... But the unworthiness that comes from being in a state of sin also poses a serious juridical problem in the Church: indeed the canon of the *Code of Canons of the Eastern Churches* that is parallel to can. 915 CIC of the Latin Church makes reference to the term “unworthy”: “Those who are publically unworthy are forbidden from receiving the Divine Eucharist” (can. 712). In effect, the reception of the Body of Christ when one is publicly unworthy constitutes an objective harm to the ecclesial communion: it is a behaviour that affects the rights of the Church and of all the faithful to live in accord with the exigencies of that communion...

2. Any interpretation of can. 915 that would set itself against the canon’s substantial content, as declared uninterruptedly by the Magisterium and by the discipline of the Church through the centuries, is clearly misleading. One cannot confuse respect for the wording of the law (cfr. can. 17) with the improper use of the very same wording as an instrument for relativizing the precepts or emptying them of their substance.²⁵

This declaration points to the fact that there were attempts of misleading and erroneous interpretation of CIC c. 915 to the extent of understanding this canon as not prohibiting Eucharist to divorced and remarried people and then the dicastery in categorical terms rejects such interpretations.²⁶ Though it is the practice of the Church to accept the conscientious self-appraisal of each person when it

²⁵*Canon Law Digest*, 14 (2012) 852-855; *Communicationes* 32 (2002) 159-162; *L’Osservatore Romano*, English Edition, 33 (July 12, 2000) 3-4; *CLSGBI Newsletter* 122 (September 2000) 21-24.

²⁶For a detailed discussion on such attempts, see: John J. Coughlin, *Canon Law: A Comparative Study with Anglo-American Legal Theory*, New York: Oxford University Press, 2011, 169-171.

comes to the reception of Eucharist,²⁷ John Paul II warns in the Apostolic Letter *Ecclesia de Eucharistia*, n. 37 that it cannot be always the only parameter in every situation:

The judgement of one's state of grace obviously belongs only to the person involved, since it is a question of examining one's conscience. However, in cases of outward conduct which is seriously, clearly and steadfastly contrary to the moral norm, the Church, in her pastoral concern for the good order of the community and out of respect for the sacrament, cannot fail to feel directly involved. The *Code of Canon Law* refers to this situation of a manifest lack of proper moral disposition when it states that those who "obstinately persist in manifest grave sin" are not to be admitted to Eucharistic communion."²⁸

4.5. Understanding and Interpreting Footnote 351 of *Amoris Laetitia*

Footnote 351 of AL created a lot of interest and misunderstanding and controversies among many. The footnote reads thus: "In certain cases, this can include the help of the sacraments... I would also point out that the Eucharist 'is not a prize for the perfect, but a powerful medicine and nourishment for the weak' (*Evangelii Gaudium*, 47)."

This footnote is given to AL 305, which, while speaking about divorced and remarried persons, deals with the mitigating factors in their culpability and there Pope Francis brings in the possibility for some to have no subjective culpability in an objective situation of sin. The pertinent text runs as follows:

Because of forms of conditioning and mitigating factors, it is possible that an objective situation of sin – which may not be subjectively culpable, or fully such – a person can be living in God's grace, can love and can also grow in the life of grace and charity, while receiving the Church's help to this end.

From this text, it is clear that footnote 351 opens the possibility of the reception of the Eucharist by some who are objectively in sin, namely, those who are divorced and remarried.

From the above analysis, it seems that there is some newness in AL regarding the pastoral care of divorced and remarried Catholics. However, one cannot draw too much from just a footnote because it cannot be logically concluded that Pope Francis wanted to introduce

²⁷William J. Levada, "Reflections on Catholics in Political Life and the Reception of the Holy Communion," *Origins* 104 (1 July 2004) 34, cited in John J. Coughlin, *Canon Law*, 21. Cf. B. Peters, T. Beemer, and C. van der Poel, "Co-Habitation in 'Marital State of Mind,'" *The Homiletic and Pastoral Review* 66 (1965-66) 566-577.

²⁸John Paul II, Apostolic Letter *Ecclesiae de Eucharistia* (17 April 2003), AAS 95 (2003) 433-475.

some radical changes in the discipline of the Church regarding this matter through a footnote. Then what could be a situation where a divorced and remarried person can receive help from the Church that may include sacramental help? It seems that this sacramental help includes both the sacrament of penance and the reception of the Eucharist.

The reception of the sacrament of penance can also be envisaged in the following manner: A divorced and remarried person, who does not want to separate from the second irregular union and wants to live the second marriage, even if s/he is culpable for the breaking of the first marriage, may repent of his/her some sins and confess them and get absolution for them.²⁹ Since it is not a full reconciliation with God and the Church and since that person still lives in sin, such a person, even after that reception of the sacrament of penance s/he cannot receive the Eucharist.

The second scenario includes the reception of the Eucharist too. Since the footnote 351 refers to the Eucharist as “the medicine for the weak,” it should be considered as a possibility at least in some limited situations. In this context, one has to remember the lecture given by Cardinal Walter Kasper under the title “The Gospel of the Family” in the extraordinary Consistory of Cardinals from 20-21 February 2014 in Rome.³⁰ In this talk, he argued that mercy is to be considered as a hermeneutical principle in interpreting difficult pastoral situations of divorced and remarried persons³¹ and the juridical path need not be the only path to be followed in all such cases of divorced and remarried.³² He invoked the principle of *oikonomia* practiced by the Orthodox Churches in this regard³³ and proposed a “more pastoral

²⁹According to Catholic moral theology, a penitent is obliged to confess all grave/mortal sins s/he has committed after the previous confession. S/he has to confess also those grave/mortal sins that s/he had consciously retained in the previous confessions. From this obligation to confess only those sins which a penitent retained in the past, it is implied that the absolution of those confessed sins in the previous defective confession as valid. From this fact, it seems that it is possible to argue in favour of partial reconciliation as described above.

³⁰Walter Kasper, *The Gospel of the Family*, trans. William Madges, Mahwah, New Jersey: Paulist Press, 2014.

³¹Kasper, *The Gospel of the Family*, 44.

³²Kasper, *The Gospel of the Family*, 28.

³³Kasper, *The Gospel of the Family*, 46. It is to be observed that the way *oikonomia* was understood by the Orthodox Churches need not be fully in tune with the way it was presented by Cardinal Kasper. See, Basilio Petrà, *Divorzio e seconde nozze nella tradizione greca*, Assisi: Cittadella Editrice, 2014; Basilio Petrà, *Divorziati risposati e seconde nozze nella Chiesa: Una via di soluzione*, Assisi: Cittadella Editrice, 2012.

and spiritual” procedure in such cases where “the bishop could entrust this task to a priest with spiritual and pastoral experience as a penitentiary or episcopal vicar.”³⁴ In short, Kasper in his lecture argued for the possibility for the reception of the Eucharist at least to some divorced and remarried.

Though this lecture of Kasper is useful in understanding the context of footnote 351, it is to be remembered that AL cannot be considered simply and totally in the backdrop of this lecture, as the position of Cardinal Kasper was not widely welcomed by the Synod Fathers. In fact, before the synod itself, clear voices were heard arguing against his position and many rejected that position as contradicting the consistent teaching of the Catholic Church on this matter.³⁵ From the voting pattern³⁶ of the *Relatio Synodi* and *Relatio Finalis* too one can see that the position of Cardinal Kasper was not accepted by a good number of Synod Fathers. Moreover, AL reiterates the traditional teachings of the Catholic Church regarding the properties of marriage like unity and indissolubility in unambiguous terms.

However, given that footnote 351 expressly mentions the sacramental help and since Eucharist is presented as the medicine for the weak, it is to be concluded that the absolute prohibition of the reception of Eucharist by all those divorced and remarried as being lifted. It seems that a window of opportunity is open for the reception of the Eucharist to some of those who are divorced from their sacramental marriage and did not get so far the declaration of nullity of their marriage from an ecclesiastical tribunal but attempted a second marriage. Anyway, from the perspective of canon law it seems that the prospect of reception of Eucharist is impossible for

³⁴Kasper, *The Gospel of the Family*, 28. See also, *Mercy: The Essence of the Gospel and the Key to Christian Life*, trans. William Madges, New York/Mahwah, NJ: Paulist Press, 2014.

³⁵cf. Robert Dodaro, ed. *Remaining in the Truth of Christ: Marriage and Communion in the Catholic Church*, San Francisco: Ignatius Press, 2014; Juan José Pérez-Soba and Stephan Kampowski, *The Gospel of the Family: Going Beyond Cardinal Kasper's Proposal in the Debate on Marriage, Civil Re-Marriage, and Communion in the Church*, San Francisco: Ignatius Press, 2014; Marc Ouellet, *Mystery and Sacrament of Love: A Theology of Marriage and the Family for the New Evangelization*, trans. Michelle K. Borrás and Adrian J. Walker, Grand Rapids, Michigan/Cambridge, U.K.: William B. Eerdmans Publishing Company, 2015; Winfried Aymans, *Eleven Cardinals Speak on Marriage and the Family*.

³⁶Details of the voting regarding each paragraph of the above mentioned documents are given at the end of each document: See above, foot notes nos 14 &15.

those in second irregular union who have any amount of culpability in breaking the previous marriage, without fulfilling the obligations of *Familiaris Consortio*. It is not available to those who failed to approach the ecclesiastical tribunal, if the person was convinced of the certainty of the invalidity of his/her marriage. But perhaps it is possible, in the context of accompanying, discernment and integration, in the case of an innocent victim of a broken sacramental marriage where the ecclesiastical tribunal system also failed to fulfil the duty entrusted to it. It may be possible also to someone who has already repented of his/her second marriage and decided to separate, but foresee great spiritual harm to him/her or to the partner or to the family if s/he immediately puts into practice the firm resolve to lead a life of perfect continence in this civil union.³⁷

Regarding the possibility of the failure of the ecclesiastical tribunal or authorities, it is not totally uncommon that some tribunals refuse to receive a petition seeking the declaration of nullity stating that the address of the respondent is not given.³⁸ Though both Codes have provisions in such cases, either due to the ignorance or negligence of the judicial vicar, petitions of such a kind were sometimes not accepted. If the *libellus* is rejected, then one can appeal to a higher tribunal. But if the judicial vicar refuses to accept it, then many do not know what should be the next step, though legal remedies are still available. There can be similar situations where, though in fact the Canon Law has got provision, because of the failure of certain members in authority, there could arise occasion of a civil union without the declaration of nullity of first marriage. A confessor who knows about such a situation, where he believes that the person in question is in fact not totally culpable for the actual irregular situation, may be in a position to guide such a penitent to the path of reception of Eucharist,³⁹ even though at this stage, more questions are

³⁷cf. Francesco Coccopalmerio, *Il capitolo ottavo della esortazione apostolica post synodale*, Vatican City: Libreria Editrice Vaticana, 2017.

³⁸In fact, I have come across such a case, where in an arranged marriage, the wife eloped with her lover the day after their wedding. But for twelve years, the concerned tribunal refused to accept the petition stating that the address of the girl is to be there to accept the petition. Likewise, even now there are some eparchies in India which punish couples who enter into a civil marriage (for the purpose of visa) before their canonical wedding, even though they do not cohabit. The punishment stipulated by such particular law is that such couples are prohibited for a year from entering into a canonical marriage!

³⁹Regarding this, the German and Maltese Bishops' Conferences have given positive guidelines. See: Statement by German Bishops, "The Joy of Love

to be answered even in such a situation before recourse to the reception of Eucharist is made.

Conclusion

Based on the hermeneutical principles taken from Canon Law and looking into the canons governing the reception of the Eucharist and the continuous and consistent Magisterium of the Church regarding marriage and Eucharist, it is safe to conclude that AL does not contain any doctrinal errors. Much less, it need not be considered as containing any new doctrines. It is not logical to conclude that Pope Francis decided to introduce a radically new discipline into the Church regarding the reception of Eucharist by the divorced and remarried through a footnote of AL. It is safe to interpret the sacramental discipline regarding the reception of Eucharist as presented in CCEO c. 712 and CIC c. 915 as remaining intact because papal law can be changed only through reform of canon law enacted through *motu proprio*.⁴⁰ However, every rule can have an exception. If laws are meant for the common good of all, a dispensation or an exception which can facilitate the salvation of soul of an individual for a proportionate reason can be understood even by canonists in the context of equity. Of course, misplaced compassion or mercy, that does not take into consideration the reality and truth, is unacceptable in any pastoral practice. Pastoral should not be seen as opposed to juridical or whatever is legal should not be considered as opposing mercy or compassion. Antinomian attitude as well as legalism is to be rejected as not corresponding to the mind and teaching of Jesus

Experienced by Families is also the Joy of the Church: An Invitation to Renewed Pastoral Care of Marriage and of the Family in the Light of *Amoris Laetitia*," 23 January 2017, http://www.dbk.de/fileadmin/redaktion/diverse_downloads/presse_2017/2017-015a-Wortlaut-Wort-der-Bischoefe-Amoris-laetitia.pdf (30 March 2017); <http://ms.maltadiocese.org/website/2017/press%20releases/Norms%20for%20the%20Application%20of%20Chapter%20VIII%20of%20AL.pdf> (30 March 2017).

⁴⁰In the context of reception of the teachings of the Second Vatican Council into Canon Law, Ladislav M. Orsy observes that it is not uncommon that the legal system would lag behind in implementing the magisterial teachings: "We should remember that many of our classical legal structures took centuries to evolve. They served us reasonably well. They should not be dismantled unwisely, that is, not until we shall have found better ones to put in their place. But to design new institutions takes longer than to come to new insights. No wonder therefore that the law was slow to move, that the new Code exhibits much of the old system, or that it tends to settle on a compromise." Ladislav M. Orsy, *From Vision to Legislation: From the Council to a Code of Laws*," The 1985 P re Marquette Theology Lecture, Milwaukee, Wisconsin: Marquette University Press, 1985, 49.

Christ. In such a situation, it may be possible to understand AL as containing, in its eighth chapter, certain challenges and opportunities which may give rise to new ways of thinking and acting where the absolute prohibition of the reception of Eucharist to all those who are divorced and remarried could be lifted, though it is not yet evident exactly which are such situations and how they can be morally and legally justified without resorting to moral relativism and without rejecting the teaching of John Paul II as expounded in *Veritatis Splendor*, 81⁴¹ as well as all other hitherto consistent teachings of the Church on this particularly sensitive pastoral issue. However, one should note that the mind of the Pope in this regard is to remind the pastors of the souls that nobody is outside the loving embrace of the Church, and that nobody should feel really excluded from her pastoral care, and that a well formed conscience of an individual, who experiences the accompanying care that leads to the correct discernment does not find blocking walls, but caring and receiving hands to integrate them into the ecclesial life without turning a blind eye to the truth regarding their past and present.

⁴¹John Paul II, Encyclical *Veritatis Splendor*, 6 August 1993, http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor.html (Accessed 27 March 2017), n. 81 states: If acts are intrinsically evil, a good intention or particular circumstances can diminish their evil, but they cannot remove it. They remain “irremediably” evil acts; *per se* and in themselves they are not capable of being ordered to God and to the good of the person... Consequently, circumstances or intentions can never transform an act intrinsically evil by virtue of its object into an act “subjectively” good or defensible as a choice.