

## PASTORAL CARE OF COUPLES IN IRREGULAR MARRIAGE : A REFLECTION ON *AMORIS LAETITIA* - CHAPTER 8

Sebastian Payyappilly, CMI\*

*Amoris laetitia* has raised a number of theological as well as canonical questions, sometimes with apprehension in the context of the applications of traditional disciplines of the Church. Applying the norm of “an objective state of sin” the Exhortation makes a wider interpretation of the disciplines of the Church regarding marriage and pastoral care, especially the administration of sacrament to those in irregular marriage. The pastors are encouraged to act with mercy and compassion when administering the sacraments of penance and the Holy Eucharist.

In promulgating the apostolic exhortation *Amoris laetitia* (AL) on 19 March 2016, Pope Francis has brought out the continued reflection by the 2015 synod on the Church’s teaching about the sacrament of matrimony and the Christian understanding of the family. The exhortation again calls the Church to revitalize pastoral assistance to the people of God, and to do so in the light of God’s mercy and love. Regarding the sacrament of penance, the Holy Eucharist, and other pastoral care to be given to families in irregular marriages, *Amoris laetitia* calls forth more compassionate, practical and situational interpretation of the relevant canonical norms. The Holy Father takes a special step ahead and invites those involved in pastoral ministry to

---

\* Sebastian Payyappilly, CMI who has secured doctorate in canon law from St Paul University Ottawa, Canada, also holds a PhD in canon law from Ottawa University, Ottawa, Canada. His field of research is in Marriage Law and the research work has been published under the title *Mixed Marriage in the Code of Canons of the Eastern Churches and the Particular Law of the Syro-Malabar Church*. He has served as the Director of the Institute of the Oriental Canon Law, DVK, for a term of three years and served as judge of the Archdiocesan tribunal of Bengaluru. At present he continues as the resident professor at the Institute of Oriental Canon Law, DVK, and serving as a judge at the eparchial tribunal of Mandya. He is also the visiting faculty of Samanvaya Theologate, Vidya Deep Theology College, and Centre of Canon Law Studies, St Peters Pontifical Seminary.

strengthen the families and to reach out to those who are in irregular marriages, including those alienated from the life of the Church. His Holiness also exhorts that a sympathetic approach of accompaniment must be adopted toward persons with a distorted understanding of Christian teaching on marriage and family life. He instructs that the same approach be taken toward those, although they may have defected from the Catholic communion in some way, nevertheless desire to be more fully integrated into the life of the Church, especially by receiving penance and Eucharist.

Pope Francis situates all important challenges the Church faces today in the context of marriage and family. Family, the “domestic church” is to be pastorally attended by the parishes, ‘the family of families’, with care and compassion modeled after that of the Good Shepherd. The document carefully treats challenging circumstances, including those of persons: who are in mixed or disparity of cult marriages; who distrust marriage and live together; who, distrustful of marriage, break a marital commitment and immediately assume a new one; who flaunt an objective sin; and who have divorced and entered a new union. The exhortation invites not only those directly involved in the pastoral ministry but also experienced couples to offer help to younger couples confronting challenges in family life.

The exhortation is built on sound moral theology and canonical discipline regarding marriage and the discernment of conscience of persons involved in irregular marital situations. However, consciences can err, especially in cultures deeply confused about marriage, sexuality and family life. Hence, chapter eight of *Amoris laetitia* (nn. 291-312) requires a sensitive pastoral approach in all such situations.

### **1. Canonical Relevance of the Document**

The exhortation, noting that neither it nor the preceding synod could provide canonical rules sufficient for all pastoral situations, instead encourages responsible personal and pastoral discernment of particular cases. Since “the degree of responsibility is not equal in all cases,”<sup>1</sup> such discernment recognizes that the application of a particular rule may produce different results in different circumstances. Regarding sacramental discipline, discernment can

---

<sup>1</sup> *Relatio Finalis* 2015, 51.

recognize that no grave fault exists in a particular situation and, as a result, that the provisions of *Evangelii gaudium* apply.<sup>2</sup>

In this regard, the exhortation is in continuity with the teachings of previous Church Councils and magisterial documents. *Amoris laetitia* exhorts priests to help divorced and the remarried persons understand their situations in light of Church teaching and the guidelines of their diocesan bishop.<sup>3</sup> Canonical norms regarding sacramental discipline cannot have one universal interpretation. Rather, each pastor must discern how to interpret and apply these norms in each particular case and situation. Pastors are exhorted to follow the example of Jesus, the Good Shepherd who went after the lost sheep, and make a contextualized interpretation and a merciful application of the norms.

## 2. The Sacrament of Marriage

"Christian marriage, as a reflection of the union between Christ and his Church, is fully realized in the union between a man and a woman who give themselves to each other in a free, faithful and exclusive love, who belong to each other until death and are open to the transmission of life, and are consecrated by the sacrament, which grants them the grace to become a domestic church and a leaven of new life for society" (292).

When marriage is validly celebrated in the Catholic Church, it is considered a covenant between spouses modeled on the union of Jesus and the Church. Valid sacramental marriage confers grace and can deepen the couple's life in Christ,<sup>4</sup> especially through the privilege of procreation and Christian education of children. Both marriage and child-rearing are sources of great joy.<sup>5</sup>

---

<sup>2</sup> Cf. *Evangelii Gaudium* (24 November 2013), 44 and 47: AAS 105 (2013), 1038-1040.

<sup>3</sup> AL 300.

<sup>4</sup> "From the institution of Christ a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace" CCEO c. 776 §2; Ref. CIC c. 1134.

<sup>5</sup> Marriage is "by its nature ordered toward the good of the spouses and the generation and education of the offspring" CCEO c. 776 §1; CIC c. 1055.

### 3. The Irregular Marriages

The document emphasizes that any breach of the marriage bond “is against the will of God” (291). Accordingly, chapter eight refers to the following irregular situations: merely civil marriage; civil divorce and remarriage; and unmarried cohabitation.

### 4. The Approach of the Church Towards People in Irregular Marriages

- The Church’s way has been the way of Jesus, namely, that of mercy and reinstatement, since the Council of Jerusalem (296).
- The Church is not to perpetually condemn anyone. Such condemnations contradict the Gospel (297).
- God’s mercy is to be dispensed to all who request it sincerely (296).
- Judgments should consider the complexity of various situations.
- The Church is to be mindful of the distress people experience due to their particular situations<sup>6</sup> (296).
- Each person must be helped to find his or her proper way of participating in the ecclesial community, and thereby to experience “unmerited, unconditional and gratuitous” mercy (297).
- God’s grace is present even in the lives of those who participate in ecclesial life incompletely. It gives them the courage to do good, to care lovingly for one another, and to serve the community in which they live and work.<sup>7</sup>
- “The Church has the responsibility to help those in irregular marriages understand the divine pedagogy of grace in their lives, and to offer them assistance in reaching the fullness of God’s plan for them”.<sup>8</sup> This is always possible through the Holy Spirit (297)
- The Church is to be conscious of her children’s frailty.
- The Church upholds the call to perfection and asks for a fuller response to God.

---

<sup>6</sup> *Relatio Finalis* 2015, 51.

<sup>7</sup> *Relatio Finalis* 2015, 25.

<sup>8</sup> *Relatio Synodi* 2014, 25

- Like a lighthouse or torch, the Church is to enlighten those lost or caught in a storm. Her care is to be like that of a field hospital (291).
- The Church does not disregard constructive elements in situations that do not correspond to her teaching on marriage (292).
- Treating mitigating factors and situations shall not compromise the demands of the Gospel (301).
- The following conditions must be present: humility; discretion; love for the Church and her teaching; a sincere search for God's will; and a sincere desire to more perfectly respond to it.<sup>9</sup> (300)
- It is essential to avoid the grave danger of misunderstandings, such as the notion that any priest can quickly grant "exceptions", or that people can obtain sacramental privileges in exchange for favours (300).

## 5. Specific Irregular Situations

Chapter eight of the document identifies the following irregular situations in the marriage and family life.

### 5.1. Merely Civil Marriage and Simple Cohabitation

According to the norms of the Catholic Church, "only those marriages are valid which are celebrated with a sacred rite, in the presence of the local hierarchy, local pastor, or a priest who has been given the faculty of blessing the marriage by either of them, and at least two witnesses ...".<sup>10</sup> Hence, the merely civil marriages of Catholics who cohabit are invalid due to a lack of canonical form. Those in such irregular marriages are considered to have defected from Catholic communion by violating canonical discipline concerning marriage. The document states:

When such unions attain a particular stability, legally recognized, are characterized by deep affection and responsibility for their offspring, and demonstrate an ability to overcome trials, they can provide occasions for pastoral care with a view to the eventual celebration of the sacrament of marriage.<sup>11</sup>

---

<sup>9</sup> *Relatio Finalis* 2015, 86.

<sup>10</sup> CCEO c. 828 §1; CIC c. 1108.

<sup>11</sup> AL 293.

## 5.2. Married People who Distrust Marriage and Still Live Together

The document also identifies those who continue in their marital life having no trust in the sacrament of marriage and the Christian values and sanctity attached to it. The Church has the pastoral role of helping them, through experienced couples, to confront challenges in their family lives and to gain spiritual strength.

## 5.3. People who Distrust Marriage and Break a Commitment Already Made and Immediately Assume a New One

This category encompasses cohabiting persons who, because they are distrustful of marriage, indefinitely postpone marital commitment, and others who break a commitment already made and immediately assume a new one.

## 6. The Reason for Such Marriages

Looking compassionately at the faithful in irregular matrimonial situations, the Holy Father identifies the following reasons for such marriages:

- Not prejudice or resistance to a sacramental union, but cultural or contingent situations.<sup>12</sup>
- A general attitude opposed to anything institutional or definitive.
- Awaiting more security in life, such as a steady job and income.
- De facto unions entered not because of a rejection of marriage and family values, but because celebrating a marriage is considered prohibitively expensive in the social circumstances.

**Pastoral Care:** As members of the Church, such persons need merciful and helpful pastoral care that discerns their situations and enters into pastoral dialogue with them. Pastors are to identify elements that can foster evangelization and human and spiritual growth<sup>13</sup>; to show respect for signs of love which in some way reflect God's own; to be more specific in action:

- These couples need to be welcomed and guided patiently and discreetly. Discernment can lead to the full reality of marriage

---

<sup>12</sup> *Relatio Finalis* 2015, 1

<sup>13</sup> *Relatio Finalis* 2015, 41.

and family in conformity with the Gospel<sup>14</sup>, just as Jesus brought the Samaritan woman to the full joy of the Gospel (cf. Jn 4:1-26).

- Pastors are to show the "law of gradualness", aware that the human being "knows, loves and accomplishes moral good by different stages of growth".<sup>15</sup> They accomplish this by prudently applying the law to those who cannot understand, appreciate, or completely fulfil the objective demands of the law. The law, although a gift of God, must be effected through the grace of God<sup>16</sup> (295).

## 7. People who Flaunt an Objective Sin

This category encompasses persons who exhibit an objective sin as if it were part of the Christian ideal, or who want to impose something other than what the Church teaches. These cases separate the persons involved from the community (cf. Mt 18:17)

**Pastoral Care:** Persons who flaunt their objective sin can still participate in the life of community, such as in social services, prayer meetings or in other ways according to their initiative and the discernment of the parish priest.

## 8. The Divorced who have Entered a New Union

Divorced and remarried persons should evaluate: how they treated their children when the union entered into crisis; whether they attempted reconciliation; the situation of the abandoned party; the consequences of the new relationship for the rest of the family and community of the faithful; and the example being set for young people preparing for marriage. A sincere reflection can strengthen trust in God's mercy, which is never denied.<sup>17</sup>

**Pastoral Care:** By virtue of their baptism, these persons are brothers and sisters. the Holy Spirit pours gifts and talents into their hearts for the good of all. (299)

- Overly rigid classifications that leave no room for a suitable personal and pastoral discernment must be avoided.

---

<sup>14</sup> *Relatio Synodi* 2014, 43.

<sup>15</sup> Apostolic exhortation *Familiaris Consortio* (22 November 1981), 34: AAS 74 (1982), 123.

<sup>16</sup> FC 9.

<sup>17</sup> *Relatio Finalis* 2015, 85.

- Pastors must always discern “by adequately distinguishing”,<sup>18</sup> using an approach that “carefully discerns situations”.<sup>19</sup> No “easy recipes” exist for the care of persons in these situations.<sup>20</sup>
- The baptized who are divorced and civilly remarried must be more fully integrated into Christian communities. Increased integration will allow them to realize that they belong to the Church as the body of Christ and to have a joyful and fruitful experience within it. While avoiding any occasion of scandal (299), this participation can be expressed in different ecclesial services and in the liturgical, pastoral, educational and institutional framework.
- Care of these persons is a process of accompaniment and discernment. It “guides the faithful to an awareness of their situation before God (300)
- A conversation with the pastor occurs in the internal forum (300)

## 9. The Pastoral Understanding

- A subject may know full well the rule, yet have great difficulty in understanding “its inherent values”,<sup>21</sup> (301)
- A subject may know full well the rule, yet be prevented by a concrete situation from acting and deciding otherwise without further sin. (301)
- Someone may possess all the infused moral virtues may not clearly manifest one of them because its outward practice is difficult (301). Saint Thomas Aquinas himself recognized that someone in such circumstances may possess grace and charity, yet be unable to exercise any one virtue well:<sup>22</sup> “Certain saints are said not to possess certain virtues, in so far as they

---

<sup>18</sup> *Relatio Synodi* 2014, 26.

<sup>19</sup> *Ibid.*, 45.

<sup>20</sup> Benedict XVI, Address to the Seventh World Meeting of Families in Milan (2 June 2012), Response n. 5: *Insegnamenti* VIII/1 (2012), 691.

<sup>21</sup> John Paul II, Apostolic exhortation *Familiaris Consortio* (22 November 1981), 33: *AAS* 74 (1982), 121.

<sup>22</sup> Cf. *Summa Theologiae* I-II, q. 65, art. 3 ad 2; De Malo, q. 2, art. 2.



experience difficulty in the acts of those virtues, even though they have the habits of all the virtues".<sup>23</sup> (302)

- Circumstances may lessen or even extenuate moral culpability. The *Catechism of the Catholic Church* clearly mentions these factors: "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".<sup>24</sup> Another paragraph again, referring again to circumstances that mitigate moral responsibility, mentions at length "affective immaturity, force of acquired habit, conditions of anxiety or other psychological or social factors that lessen or even extenuate moral culpability".<sup>25</sup>
- For this reason, a negative judgment about an objective situation does not imply a judgment about the imputability or culpability of the person involved.<sup>26</sup>

### 9.1. The Pastoral Discernment (298)

- a. The second union consolidated over time, with new children, proven fidelity, generous self-giving, Christian commitment.
- b. The great difficulty of going back without feeling in conscience that one would fall into new sins.
- c. The Church acknowledges situations "where, for serious reasons, such as the children's upbringing, a man and woman cannot satisfy the obligation to separate".<sup>27</sup>

---

<sup>23</sup> Ibid., ad 3.

<sup>24</sup> No. 1735.

<sup>25</sup> Ibid., 2352; Congregation for the Doctrine of the Faith, Declaration on Euthanasia *Iura et Bona* (5 May 1980), II: AAS 72 (1980), 546; John Paul II, in his critique of the category of "fundamental option", recognized that "doubtless there can occur situations which are very complex and obscure from a psychological viewpoint, and which have an influence on the sinner's subjective culpability" (Apostolic exhortation *Reconciliatio et Paenitentia* [2 December 1984], 17: AAS 77 [1985], 223).

<sup>26</sup> Cf. Pontifical Council for Legislative Texts, Declaration Concerning the Admission to Holy Communion of Faithful Who are Divorced and Remarried (24 June 2000), 2.

<sup>27</sup> John Paul II, Apostolic exhortation *Familiaris Consortio* (22 November 1981), 84: AAS 74 (1982), 186. In such situations, many people, knowing and accepting the possibility of living "as brothers and sisters" which the Church

- d. "those who have entered into a second union for the sake of the children's upbringing, and are sometimes subjectively certain in conscience that their previous and irreparably broken marriage had never been valid".<sup>28</sup>
- e. Another thing is a new union arising from a recent divorce, with all the suffering and confusion which this entails for children and entire families.
- f. The case of someone who has consistently failed in his obligations to the family. It must remain clear that this is not the ideal which the Gospel proposes for marriage and the family.
- g. While taking into account a person's properly formed conscience, must take responsibility for these situations. Even the consequences of actions taken are not necessarily the same in all cases".<sup>29</sup>
- h. Individual conscience needs to be better incorporated (303).
- i. Encourage the development of an enlightened conscience
- j. Ever greater trust in God's grace.
- k. Remember discernment is dynamic; it must remain ever open to new stages of growth and to new decisions which can enable the ideal to be more fully realized.

## 9.2. Pastoral Discernment and the Rules

- It is to be understood that the formulation general rules set forth a good cannot provide absolutely for all particular situations.
- What is part of a practical discernment in particular circumstances cannot be elevated to the level of a rule. That would not only lead to an intolerable casuistry, but would

---

offers them, point out that if certain expressions of intimacy are lacking, "it often happens that faithfulness is endangered and the good of the children suffers" (Second Vatican Ecumenical Council, Pastoral Constitution on the Church in the Modern World *Gaudium et Spes*, 51).

<sup>28</sup> *Familiaris Consortio*, 186.

<sup>29</sup> *Relatio Finalis* 2015, 85.

endanger the very values which must be preserved with special care.<sup>30</sup>

- Laws are not stones to throw at people's lives. (305)
- Judge not with superiority and superficiality difficult cases and wounded families".<sup>31</sup>
- Do not discourage paths of sanctification which give glory to God.
- "A small step, in the midst of great human limitations, can be more pleasing to God than a life which appears outwardly in order, but moves through the day without confronting great difficulties".<sup>32</sup>
- invitation to pursue the *via caritatis* (306) "Maintain constant love for one another, for love covers a multitude of sins" (1 Pet 4:8).

### 9.3. Pastoral Discernment and the Logic of Pastoral Mercy

- Avoid lukewarm attitude, any kind of relativism in proposing the full ideal of the sacrament of marriage.
- Do not propose less than what Jesus offers to the human being.
- Pastoral effort to strengthen marriages and thus to prevent their breakdown.
- need to accompany with mercy and patience. (308)
- Gospel itself tells us not to judge or condemn (cf. Mt 7:1; Lk 6:37).
- "The Church is commissioned to proclaim the mercy of God, the beating heart of the Gospel, which in its own way must

---

<sup>30</sup> In another text, referring to the general knowledge of the rule and the particular knowledge of practical discernment, Saint Thomas states that "if only one of the two is present, it is preferable that it be the knowledge of the particular reality, which is closer to the act": *Sententia libri Ethicorum*, VI, 6 (ed. Leoniana, t. XLVII, 354.).

<sup>31</sup> Address for the Conclusion of the Fourteenth Ordinary General Assembly of the Synod of Bishops (24 October 2015): *L'Osservatore Romano*, 26-27 October 2015, p. 13.

<sup>32</sup> Apostolic exhortation *Evangelii Gaudium* (24 November 2013), 44: AAS 105 (2013), 1038-1039.

penetrate the mind and heart of every person. The Bride of Christ must pattern her behaviour after the Son of God who goes out to everyone without exception".<sup>33</sup> (309)

- Church is not a tollhouse; it is the house of the Father, where there is a place for everyone, with all their problems".<sup>34</sup>
- Avoid a cold bureaucratic morality in dealing with more sensitive issues. (312)
- A pastoral discernment filled with merciful love, which is ever ready to understand, forgive, accompany, hope, and above all integrate.
- "Open our hearts to those living on the outermost fringes of society".<sup>35</sup>

## 10. The Canonical Implications and the Pastoral Approach

A question arises here: can divorced and civilly-remarried persons, receive the sacraments? As a general principle, 'once a Catholic is always a Catholic,' a member of the Church is always invited to the sacraments. The confessional's doors are always open to the repentant and to the contrite of heart. Does this apply to Holy Communion? Here, attention must be focused on what the document states in footnote no. 336: "... with regard to sacramental discipline, since discernment can recognize that in a particular situation no grave fault exists. In such cases, what is found in another document applies: cf. *Evangelii gaudium* (24 November 2013), 44 and 47." It means the pastoral discernment plays a great role in the decision making of giving communion. The document states:

Everyone can share in some way in the life of the Church; everyone can be part of the community, nor should the doors of the sacraments be closed for simply any reason. This is especially true of the sacrament which is itself "the door": baptism. The Eucharist, although it is the fullness of sacramental life, is not a prize for the perfect but a powerful medicine and nourishment for the weak. These convictions have pastoral consequences that we are called to consider with prudence and boldness. Frequently, we act

---

<sup>33</sup> Bull *Misericordiae Vultus* (11 April 2015), 12: AAS 107 (2015): 407.

<sup>34</sup> Apostolic exhortation *Evangelii Gaudium* (24 November 2013), 47: AAS 105 (2013), 1040.

<sup>35</sup> Bull *Misericordiae Vultus* (11 April 2015), 15: AAS 107 (2015), 409.

as arbiters of grace rather than its facilitators. But the Church is not a tollhouse; it is the house of the Father, where there is a place for everyone, with all their problems.<sup>36</sup>

The document makes clear the mind of the Church regarding the administration of the sacraments, especially the Eucharist, which is "the fullness of sacramental life". Concerning administration of this sacrament, the document reminds the pastors that it "is not a prize for the perfect but a powerful medicine and nourishment for the weak." Hence, it is obvious that the sacrament shall not be denied arbitrarily to someone just because he/she is in an irregular or difficult situation of marital life.

The codes of canon law provide specific, relevant norms regarding sacramental discipline (CCEO cc. 711, 712; CIC cc. 915, 916).<sup>37</sup> CCEO canon 712 states that those who are publicly unworthy are forbidden to receive the Divine Eucharist. CIC canon 915 declares that those upon whom the penalty of excommunication or interdict has been imposed or declared, along with those who obstinately persist in manifest grave sin, are not to be admitted to Holy Communion. Both codes say that a person who is conscious of serious sin is not to celebrate the Divine Liturgy, nor to receive the Divine Eucharist with a serious reason and no opportunity to receive penance. The canons affirm that the existence of serious/grave sin (*peccatum gravum*) prohibits one from receiving the Divine Eucharist.<sup>38</sup> In this context, the codes also employ

---

<sup>36</sup> *Evangelii Gaudium*, 47.

<sup>37</sup> CCEO c. 711 - A person who is conscious of serious sin is not to celebrate the Divine Liturgy nor receive the Divine Eucharist unless a serious reason is present and there is no opportunity of receiving the sacrament of penance; in this case the person should make an act of perfect condition, including the intention of confessing as soon as possible.

CCEO c. 712: Those who are publicly unworthy are forbidden from receiving the Divine Eucharist.

CIC c. 915: Those who have been excommunicated or interdicted after the imposition or declaration of the penalty and others obstinately persevering in manifest grave sin are not to be admitted to Holy Communion.

CIC c. 916 A person who is conscious of grave sin is not to celebrate Mass or receive the body of the Lord without previous sacramental confession unless there is a grave reason and there is no opportunity to confess; in this case the person is to remember the obligation to make an act of perfect contrition which includes the resolution of confessing as soon as possible.

<sup>38</sup> CCEO c. 711; CIC c. 916.

the term *peccatum gravum* (CCEO cc. 719 and 720; CIC cc. 960, 962 §1, 988, 989).<sup>39</sup>

Some commentators have opined that CIC c. 915 (CCEO c. 712) would not be applicable to faithful who are divorced and remarried. In this context, on 24 June 2000, the Pontifical Council for Legislative Texts, in agreement with the Congregation for the Doctrine of the Faith and with the Congregation for Divine Worship and the Discipline of the Sacraments, affirmed that canon 915 of the Code of Canon Law (also CCEO c. 712) applies to persons living in a second, invalid marriage. The interpretation of the Pontifical Council states, “In the concrete case of the admission to Holy Communion of faithful who are divorced and remarried, the scandal, understood as an action that prompts others towards wrongdoing, affects at the same time both the sacrament of

---

<sup>39</sup> CCEO c. 719: Anyone who is aware of serious sin is to receive the sacrament of penance as soon as possible; it is strongly recommended to all the Christian faithful that they receive this sacrament frequently especially during the times of fasts and penance observed in their own Church *sui iuris*.

CCEO c. 720 §1: Individual and integral confession and absolution constitute the ordinary way by which the Christian faithful who is aware of a serious sin is reconciled with God and the Church; only physical or moral impossibility excuses one from confession of this type, in which case reconciliation can take place in other ways.

CIC c. 960: Individual and integral confession and absolution constitute the only ordinary means by which a member of the faithful conscious of grave sin is reconciled with God and the Church. Only physical or moral impossibility excuses from confession of this type; in such a case reconciliation can be obtained by other means.

CIC c. 962 §1: For a member of the Christian faithful validly to receive sacramental absolution given to many at one time, it is required not only that the person is properly disposed but also at the same time intends to confess within a suitable period of time each grave sin which at the present time cannot be so confessed.

CIC c. 988 §1: A member of the Christian faithful is obliged to confess in kind and number all grave sins committed after baptism and not yet remitted directly through the keys of the Church nor acknowledged in individual confession, of which the person has knowledge after diligent examination of conscience.

§2: It is recommended to the Christian faithful that they also confess venial sins.

CIC c. 989: After having reached the age of discretion, each member of the faithful is obliged to confess faithfully his or her grave sins at least once a year

the Eucharist and the indissolubility of marriage."<sup>40</sup> Pastors must strive to explain to the concerned faithful the true ecclesial sense of the norm, in such a way that they would be able to understand it or at least respect it. However, in those situations, in which these precautionary measures have not had their effect or in which they were not possible, the minister of Communion must refuse to distribute it to those who are publicly unworthy. They are to do this with extreme charity, and are to look for the opportune moment to explain the reasons that required the refusal. They must, however, do this with firmness, conscious of the value that such signs of strength have for the good of the Church and of souls.

On 14 September 1994 the congregation for the doctrine of the faith concerning the reception of Holy Communion by the divorced and remarried members of the faithful emphatically stated:

... a general admission of divorced and remarried to Eucharistic communion would not be possible, but the divorced and remarried members of the faithful could approach Holy Communion in specific cases when they consider themselves authorized according to a judgement of conscience to do so.<sup>41</sup>

The Letter undoubtedly states that there is no norm, applicable always and everywhere, that govern the admission of divorced and remarried persons to Eucharistic communion. It is left to the pastors' prudent and impartial judgment of parties' consciences. Nonetheless, the judgment made by the pastor will not have the force of an official authorization to receive the sacrament. The letter proposes that "in order objectively to examine their actual situation, the divorced and remarried would have to consult a prudent and expert priest. This priest, however, would have to respect their eventual decision to approach Holy Communion, without this implying an official authorization."<sup>42</sup> Moreover, the letter suggests some pastoral tips in evaluating a particular situation, "for example, when they had been abandoned completely unjustly, although they sincerely tried to save

---

<sup>40</sup> *Declaration 1*, accessed from [http://www.vatican.va/roman\\_curia/pontifical\\_councils/intrptxt/documents/rc\\_pc\\_intrptxt\\_doc\\_20000706\\_declaration\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/intrptxt/documents/rc_pc_intrptxt_doc_20000706_declaration_en.html) on 22 December 2017.

<sup>41</sup> Congregation for the Doctrine of Faith (CDF), "Letter to the Bishops of the Catholic Church Concerning the Reception of the Holy Communion by the Divorced and Remarried Members of the Faithful (Letter to the Bishops), 14 September 1994, n. 3.

<sup>42</sup> CDF, Letter to the Bishops, n. 3.

the previous marriage, or when they are convinced of the nullity of their previous marriage, although unable to demonstrate it in the external forum or when they have gone through a long period of reflexion and penance, or also when for morally valid reasons they cannot satisfy the obligation to separate.”<sup>43</sup>

Even in such a pastoral context, holding on to the doctrine and discipline, “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 while this situation persists.”<sup>44</sup> The Church finds a force of divine law in this norm, because the sacrament of marriage is a covenant founded by the Creator and instituted by Christ (CCEO c. 776). Justifying the force of the norm the letter states that it “is not at all a punishment or a discrimination against the divorced and remarried, but rather expresses an objective situation that of itself renders impossible the reception of Holy Communion”<sup>45</sup> for both theological and pastoral reasons. Theologically speaking, those involved “objectively contradict that union of love between Christ and his Church which is signified and effected by the Eucharist”. Pastorally, “if these people were admitted to the Eucharist, the faithful would be led into error and confusion regarding the Church’s teaching about the indissolubility of marriage.”

The pastoral solution offered in this regard is:

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. This means, in practice, that when for serious reasons, for example, for 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. In such a case

---

<sup>43</sup> CDF, Letter to the Bishops, n. 3.

<sup>44</sup> CDF, Letter to the Bishops, n. 4.

<sup>45</sup> CDF, Letter to the Bishops, n. 4.



they may receive Holy Communion as long as they respect the obligation to avoid giving scandal.<sup>46</sup>

The pastoral prudence suggests that in order to safeguard absolute indissolubility character of a ratified and consummated marriage, and to avoid public scandal, the couples who have divorced and remarried have "the duty to live in complete continence, that is, by abstinence from the acts proper to married couples," so that they may receive Holy Communion". The question is: if the absolute indissolubility of a sacramental marriage<sup>47</sup> has the force of divine law who on earth has the competence to judge the conscience of someone who persists in the sin against God's Law? Canonically even the invalid marriage enjoys the favor of the law, because "the validity of a marriage is to be upheld until the contrary is proven" (CCEO c. 779; CIC c. 1060). In the situations of the divorced and remarried, the Letter states that the case of those who are subjectively certain in conscience that their previous marriage, irreparably broken, had never been valid, "must be discerned with certainty by means of the external forum established by the Church whether there is objectively such a nullity of marriage."<sup>48</sup>

Further, the doctrine and discipline of the Church regarding the reception of the Holy Communion by those divorced and remarried, the Letter reaffirms the discipline envisaged in the apostolic exhortation *Familiaris consortio* that the constant and universal practice of not admitting the divorced and remarried to the Holy Communion is founded on Sacred Scripture. Hence, Letter says: "this practice, which is presented as binding, cannot be modified because of different situations."<sup>49</sup> In this regard the Congregation for the Doctrine of Faith continues:

Members of the faithful who live together as husband and wife with persons other than their legitimate spouses may not receive Holy Communion. Should they judge it possible to do so, pastors and confessors, given the gravity of the matter and the spiritual good of these persons as well as the common good of the Church, have the serious duty to admonish them that such a judgment of

---

<sup>46</sup> CDF, Letter to the Bishops, n. 4.

<sup>47</sup> CCEO c. 776 §3: "The essential properties of marriage are unity and indissolubility which in the marriage between baptized persons they acquire a special firmness by reason of the sacrament" (ref. CIC c. 1056).

<sup>48</sup> CDF, Letter to the Bishops, n. 9.

<sup>49</sup> CDF, Letter to the Bishops, n. 5.

conscience openly contradicts the Church's teaching. Pastors in their teaching must also remind the faithful entrusted to their care of this doctrine. This does not mean that the Church does not take to heart the situation of these faithful, who moreover are not excluded from ecclesial communion. She is concerned to accompany them pastorally and invite them to share in the life of the Church in the measure that is compatible with the dispositions of divine law, from which the Church has no power to dispense.<sup>50</sup>

According to this teaching, if a member of the faithful lives as husband or wife with someone other than his or her legitimate spouse, that person openly contradicts Church teaching by receiving Holy Communion. The Letter further instructs that the pastors "must do everything possible to ensure that this is understood not to be a matter of discrimination but only of absolute fidelity to the will of Christ who has restored and entrusted to us anew the indissolubility of marriage as a gift of the Creator" (n. 10). These disciplinary statements categorically reiterate the divine force of the norm regarding the indissolubility of the sacrament of marriage and that no human power can modify it. The Christian faithful who enter into a valid marriage establish themselves a covenantal relationship after the model of the union between Christ and Church by reason of the sacrament (CCEO c. 776 §3; CIC c. 1056). Anyone who breaches this relation defects oneself from the ecclesial communion, because,

The Church is in fact the Body of Christ and to live in ecclesial communion is to live in the Body of Christ and to nourish oneself with the Body of Christ. With the reception of the sacrament of the Eucharist, communion with Christ the Head can never be separated from communion with his members, that is, with his Church. For this reason, the sacrament of our union with Christ is also the sacrament of the unity of the Church. Receiving Eucharistic Communion contrary to ecclesial communion is therefore in itself a contradiction. Sacramental communion with Christ includes and presupposes the observance, even if at times difficult, of the order of ecclesial communion, and it cannot be right and fruitful if a member of the faithful, wishing to approach Christ directly, does not respect this order.

It does not mean that the faithful are completely excluded from the ecclesial communion. The Church "is concerned to accompany them

---

<sup>50</sup> CDF, Letter to the Bishops, n. 6.

pastorally and invite them to share in the life of the Church in the measure that is compatible with the dispositions of divine law." They are to be pastorally "helped to deepen their understanding of the value of sharing in the sacrifice of Christ in the Mass, of spiritual communion, of prayer, of meditation on the Word of God, and of works of charity and justice," and it is necessary to instruct them that their participation in the life of the Church is not "reduced exclusively to the question of the reception of the Eucharist." Hence, as long as the indissolubility of a consummated sacramental marriage has the force of divine law, any faithful who violate this indissolubility violate the divine law and thereby defect from ecclesial communion. Therefore, such persons cannot be admitted to Holy Communion, the sign of full ecclesial communion, until the first marriage is established null and void. However, they are not to be considered as excommunicated or fully defected from the ecclesial communion. Moreover, they are entitled to pastoral care and participation in ecclesial life to the extent that divine law and public propriety allow it.

Establishing a renewed encouragement to undertake a responsible personal and pastoral discernment of particular cases, *Amoris laetitia* presents the teaching on mitigating factors in pastoral discernment.<sup>51</sup> The document says, "The Church possesses a solid body of reflection concerning mitigating factors and situations. Hence, it can no longer simply be said that all those in any 'irregular situation' are living in a state of mortal sin and are deprived of sanctifying grace."<sup>52</sup> The aspects of full knowledge and complete consent affect the gravity of sin. Consequently, the gravity of an objective, grave sin is reduced by subjective responsibility and culpability. The documents such as *Persona humana* (10), *Reconciliatio et paenitentia* (16, 17), *Catechism of the Catholic Church* (1735, 1754, 1857, 1859, 2352), *Veritatis splendor* (70), etc teach on the reduced subjective responsibility and culpability.

This principle of diminished responsibility and culpability is implied in both codes of canon law.<sup>53</sup> The perpetrator of a violation is not exempt from a penalty, but the penalty established by law or precept must be tempered or a penance employed in its place if the delict was committed:

1<sup>o</sup> by a person who had only the imperfect use of reason;

---

<sup>51</sup> See AL 301-303.

<sup>52</sup> AL 301.

<sup>53</sup> Ref. CIC c. 1324; CCEO cc. 1413 & 1415.

2° by a person who lacked the use of reason because of drunkenness or another similar culpable disturbance of mind;

3° from grave heat of passion, which did not precede and hinder all deliberation of mind and consent of will and provided that the passion itself had not been stimulated or fostered voluntarily;

4° by a minor who has completed the age of sixteen years;

5° by a person who was coerced by grave fear, even if only relatively grave, or due to necessity or grave inconvenience if the delict is intrinsically evil or tends to the harm of souls;

6° by a person who acted without due moderation against an unjust aggressor for the sake of legitimate self defense or defense of another;

7° against someone who gravely and unjustly provokes the person;

8° by a person who thought in culpable error that one of the circumstances mentioned in can. 1323, nn. 4 or 5 was present;

9° by a person who without negligence did not know that a penalty was attached to a law or precept;

10° by a person who acted without full imputability provided that the imputability was grave.<sup>54</sup>

In its declaration of 24 June 2000, the Pontifical Council for Legislative Texts stated that *CIC* c. 915 applies also to the faithful who are divorced and civilly remarried. However, according to the Declaration: "To establish the presence of all the conditions required for the existence of mortal sin, including those which are subjective, necessitating a judgment of a type that a minister of Communion could not make *ab externo*... being that the minister of Communion would not be able to judge from subjective imputability." *Amoris laetitia* does not at all abrogate or modify existing canonical norms. Rather, it wants that these norms be applied in a way that recognizes the complexity of the contemporary family, offers hope, and mercifully re-incorporates people into the Church,

## Conclusion

The exhortation *Amoris laetitia* has raised a number of theological and canonical questions, sometimes with apprehension in the context of

---

<sup>54</sup> *CIC* c. 1324 §1.

applying traditional ecclesiastical discipline. Applying the norm of "an objective state of sin"<sup>55</sup>, *Amoris laetitia* more broadly interprets Church discipline regarding marriage and pastoral care,<sup>56</sup> especially sacramental reception by those in irregular marriage. Pope Francis encourages pastors to act mercifully and compassionately when administering penance and Holy Eucharist, justifying changes in the application of the traditional discipline as follows: "The Church possesses a solid body of reflection concerning mitigating factors and situations. Hence, it can no longer simply be said that all those in any "irregular" situation are living in a state of mortal sin and are deprived of sanctifying grace. More is involved than mere ignorance of the rule. A subject may well know the rule, yet have great difficulty in understanding 'its inherent values', or be in a concrete situation which does not allow him or her to act differently and decide otherwise without further sin." <sup>57</sup>

Allowing those who have publicly flouted Catholic discipline to receive Communion would lead the local Catholic community into error and confusion regarding the Church's teaching about the essential properties of marriage. People may come to think that the Church no longer considers violating the canonical discipline on marriage a prohibition to receive Holy Communion. The canonical prohibition of Holy Communion, mandated for those "who obstinately persist in manifest grave sin"<sup>58</sup>, is based on the reasonable presumption that a public sinner is not completely ignorant of the Catholic faith and is sufficiently aware that his behavior violates the Church's discipline.

Early in his papacy, Pope Francis exhorted pastors to have "the smell of the sheep". With *Amoris laetitia*, he asks them to have compassion for their sheep like that of the Good Shepherd who left the ninety-nine to find the one lost: "Naturally, every effort should be made to encourage the development of an enlightened conscience, formed and guided by the responsible and serious discernment of one's pastor, and to encourage an ever greater trust in God's grace. Yet conscience

---

<sup>55</sup> AL 305.

<sup>56</sup> See FC 84; Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful*, 1994, 4; The Pontifical Council for Legislative Texts issued a *Declaration*, 2000, 1.

<sup>57</sup> AL 30.

<sup>58</sup> CIC c. 915.

can do more than recognize that a given situation does not correspond objectively to the overall demands of the Gospel. It can also recognize with sincerity and honesty what for now is the most generous response which can be given to God, and come to see with a certain moral security that it is what God himself is asking amid the concrete complexity of one's limits, while yet not fully the objective ideal."<sup>59</sup> *Amoris laetitia* has introduced a broader interpretation of canonical norms and more pastoral sacramental practice, one which he sees as simply a "way of interpreting" or "drawing certain consequences."

---

<sup>59</sup> AL 308.