

## Marriage Endings, New Beginnings, Sin and Grace Reflections in Honor of Eberhard Schockenhoff\*

---

### *Facts & Figures*

The number of Catholic weddings in three dioceses in Switzerland (Sion, Lugano, and St. Gallen) has fallen by more than 40% in the last 15 years.<sup>1</sup> Increasingly, the churches have competition when it comes to the design of weddings. For example, in the canton of Geneva, a course for “officiants laïcs” is offered.<sup>2</sup> The same downward trend exists in Germany. The number of Catholic marriages in German dioceses has considerably fallen since 1990. As the German bishops state:

Many couples still choose to give their love a public and binding character through marriage. For Christians it is important to know that they are accompanied by God on their journey through life together. Catholic marriage is one of the seven sacraments. Nevertheless, the number of Catholic marriages has been declining sharply since 1990, falling from more than 110,000 in the late 1980s to 38,537 in 2019. After a relatively steady downward trend in recent years, this trend intensified for the first time in 2019.<sup>3</sup>

Why should a couple marry in the Church today?<sup>4</sup> What are the theological arguments for a Church wedding? What are the arguments for a wedding in general? In order to answer these questions, we need to interpret the faith tradition in a critical and constructive way. The juridical-disciplinary norms are not

\* The article has been translated from German by Brian McNeil.

1 Cf. <https://kirchenstatistik.spi-sg.ch/trauungen/> (accessed 22.07.2019).

2 These are people who perform marriages but are not part of a religious tradition. Cf. C. KÜNDIG: “Mit Schleier, aber ohne Gott: Konfessionslose Hochzeiten sind im Trend”, *Watson*, 23 July 2017; available at <https://www.watson.ch/schweiz/liebe/475842627-mit-schleier-aber-ohne-gott-konfessionslose-hochzeiten-sind-im-trend> (accessed 17.11.2020).

3 See GERMAN BISHOPS CONFERENCE: *Katholische Kirche in Deutschland: Zahlen und Fakten, 2019/20*, Bonn: Sekretariat der Deutschen Bishopskonferenz, 7 July 2020, 75; available at [https://www.dbk.de/fileadmin/redaktion/Zahlen%20und%20Fakten/Kirchliche%20Statistik/Allgemein\\_-\\_Zahlen\\_und\\_Fakten/AH-315-ZuF\\_2019-2020\\_Ansicht.pdf](https://www.dbk.de/fileadmin/redaktion/Zahlen%20und%20Fakten/Kirchliche%20Statistik/Allgemein_-_Zahlen_und_Fakten/AH-315-ZuF_2019-2020_Ansicht.pdf) (accessed 27.01.2021).

4 I posed this question in a paper delivered at a canon law conference: A. LORETAN: “Braucht es zum Glück eine kirchliche Heirat? Theologische Argumente für eine kirchliche Eheschließung in säkularer Gesellschaft”, in: *De processibus matrimonialibus: Fachzeitschrift zu Fragen des kanonischen Ehe- und Prozessrechtes* 15/16 (2008/2009), 141-171.

set in stone. In *Evangelii gaudium*, 43,<sup>5</sup> Pope Francis gives this encouragement to theologians and canonists:

Some of these customs may be beautiful, but they no longer serve as means of communicating the Gospel. We should not be afraid to re-examine them. At the same time, the Church has rules or precepts which may have been quite effective in their time, but no longer have the same usefulness for directing and shaping people's lives. Saint Thomas Aquinas pointed out that the precepts which Christ and the apostles gave to the people of God "are very few".<sup>6</sup>

### *Human Rights Hermeneutics*

We have to interpret the Codes of Canon Law (1983, 1990) in the light of the Second Vatican Council and not vice versa.<sup>7</sup> It is necessary to reinterpret the Codes with the personalist vision of Vatican II, which implies a theological human rights approach.<sup>8</sup> Karl Rahner said: "It will be a long time before the Church, which has received a Second Vatican Council from God, will [structurally] be the Church of the Second Vatican Council."<sup>9</sup> "Human dignity [is] an ethical point of reference for a revision of Canon Law" (DH 1).<sup>10</sup> Peter Kirchschräger, professor of theological ethics at the University of Lucerne, bases the necessity of a human rights-oriented hermeneutics of normativity "on the analysis of the correlation between Canon Law and Theological Ethics".<sup>11</sup> These normative principles of theological ethics and canon law will be discussed and justified in this article.

After the Second Vatican Council, theology and canon law must turn philosophically "from Substance to Person".<sup>12</sup> "In philosophy and theology of the twentieth century, the transition from Neo-Scholastic to personalist thinking constitutes the main paradigm change in Catholicism. Kant's concept of the human person as an autonomous being led to the abandonment of the medieval

5 Cf. POPE FRANCIS: Apostolic Exhortation *Evangelii Gaudium*, 24 November 2013, 43.

6 See THOMAS AQUINAS: *Summa Theologiae* 1-II, q. 107, a. 4.

7 Cf. T. MECKEL: *Konzil und Codex: Zur Hermeneutik des Kirchenrechts am Beispiel der Christifideles laici*, Paderborn: Ferdinand Schöningh, 2017 (Kirchen- und Staatskirchenrecht; 18).

8 Cf. A. LORETAN: "Human Rights and Canon Law", in: A. LORETAN/F. WILFRED (eds.): *Revision of the Codes: An Indian-European Dialogue*, Münster: Aschendorff, 2018 (Law and Religion; 24), 29-44; H. PREE: "Human Rights: Their Relevance and Validity within Canon Law", in: A. LORETAN/F. WILFRED (eds.): *Revision of the Codes*, 73-96.

9 C. BÖTTIGHEIMER/R. DAUSNER/P. HÜNERMANN: "Einführung", in: C. BÖTTIGHEIMER/R. DAUSNER (eds.): *Vaticanum 21: Die bleibenden Aufgaben des Zweiten Vatikanischen Konzils im 21. Jahrhundert: Dokumentationsband zum Münchner Kongress „Das Konzil ‚eröffnen‘*", Freiburg: Herder, 2016, 13-16, 16.

10 P. KIRCHSCHRÄGER: "Human Dignity as Ethical Point of Reference for a Revision of Canon Law", in: A. LORETAN/F. WILFRED (eds.): *Revision of the Codes*, 45-60.

11 Ibid. 45.

12 H. SCHMIDINGER: "From Substance to Person: A Paradigm Shift as a Thinking Condition for Human Rights in the Church", in: A. LORETAN/F. WILFRED (eds.): *Revision of the Codes*, 61-72.

scholastic concept of the human as an Aristotelian substance embedded in a given hierarchical order.”<sup>13</sup> This has not yet been carried out in the canons concerning matrimony (can. 1055-1165 CIC/1983).

Human rights in the Catholic Church must take into consideration “the general principle of equal treatment [LG 32 c. 208] and non-discrimination [GS 29]”.<sup>14</sup> According to Heribert Köck, Professor Emeritus of European, International, and Comparative Law, “human rights are founded in natural law and have been transformed into positive law by numerous international instruments and by the catalogues of human rights enacted by many States. Human rights are derived from the idea of preserving the dignity of a human being which is to be respected by all, whether individuals or communities, be it the political community of the State or the religious community of the Church.”<sup>15</sup>

In this new perspective of the normative principles of Catholic theology, we have to transform the Aristotelian ontological elements of matrimonial theology and law into modern human rights hermeneutics. In what follows, I will sketch a human rights perspective for matrimony in theology and canon law.

### *Holy Scripture: Improving the Legal Status of Women*

There are, as Eberhard Schockenhoff has already mentioned, several biblical verses regarding divorce. It is not sufficient to consider only a yes or no response to whether divorce is possible; it is also necessary to look more deeply into the context. Matthew 19,3-10 reads, in part:

Some Pharisees asked, “Is it lawful for a man to divorce his wife for any and every reason?”... “Why then”, they asked, “did Moses command that a man give his wife a certificate of divorce and send her away?” Jesus replied, “Moses permitted you to divorce your wives because your hearts were hard. But it was not this way from the beginning... The disciples said to him, “If this is the situation between a husband and wife, it is better not to marry.”

The disciples understood quickly that this new interpretation of divorce<sup>16</sup> improves the legal status of women, since the husband cannot give his wife a certificate of divorce for just any reason (see Dt 24). From a human rights perspective, the woman has become the subject of her own life. This is not the medieval Aristotelian concept of an ontological marriage bond.

<sup>13</sup> Ibid. 61.

<sup>14</sup> H.F. KÖCK: “Human Rights in the Catholic Church with Regard also to the General Principle of Equal Treatment and non-Discrimination”, in: A. LORETAN/F. WILFRED (eds.): *Revision of the Codes*, 97-129.

<sup>15</sup> Ibid. 97.

<sup>16</sup> See the previous article in this issue: E. SCHOCKENHOFF: “The Church as a Community of Reconciliation: In Favor of Allowing Divorced and Remarried Persons to Receive Communion”. Schockenhoff deals with the other important biblical texts concerning marriage, such as Mk 10,11 par., and pays special attention to the circumstances that allow or forbid divorce.

*Tradition: From the Ius in Corpus to the Personal Dimension (GS 47-52)*

The paradigm shift of the Second Vatican Council has not yet been legally implemented. The best examples that prove this are Pope John Paul II's Apostolic Exhortation *Familiaris consortio*<sup>17</sup> and the 1917 Code. On the one hand, as Schockenhoff observed regarding *Familiaris consortio*, 84 §2,<sup>18</sup> civilly remarried Christians are still the lay faithful and members of the Catholic Church who should, and are even obliged to, participate in the mission of the Church.<sup>19</sup> On the other hand, the very same paragraph of the exhortation shows that the shift to making the person central has not yet been implemented. The following questions unmask *Familiaris consortio*, 84 and the CIC 1917: Why is remarriage, not divorce, the violation of indissolubility? Why can remarried people receive communion if they live together like brother and sister?

Canon 1081 §2 of the 1917 Code, on matrimonial consent, says: "Matrimonial consent is an act of will by which each party gives and accepts the perpetual and exclusive rights to the body, for those actions that are of themselves suitable for the generation of children." The state of remarriage according to 1917 Code is a violation of the exclusive and lifelong *ius in corpus*. Civil remarriage in the 1917 Code is non-existent in the eyes of canon law. This is why the remarried couple lives in grave sin: because there is sexual congress outside the (first, valid) marriage. Therefore, the new partners are excluded from receiving communion.

From the *ius in corpus* perspective of can. 1081 §2 CIC 1917 to the permanent "intimate partnership of married life and love" (GS 48) at the Second Vatican Council, there is a paradigm shift, which was undertaken by the magisterium of the council but not by the legislator. Consequently, there is a certain contradiction between magisterium and legislation. Divorce, according to Vatican II, is the destruction of the personal "partnership of life and love".<sup>20</sup> A *ius in corpus* is no longer mentioned. The permanent "community of life and love" mentioned in GS 48 developed over time as a process.

*The Magisterium of Pope Francis on Equal Dignity and Equal Rights*

In his post-synodal apostolic exhortation *Amoris laetitia*, Pope Francis points out that the personalist vision of the Second Vatican Council implies a human rights approach: "We often present marriage in such a way that its unitive meaning, its call to grow in love and its ideal of mutual assistance, are overshadowed by an almost exclusive insistence on the duty of procreation."<sup>21</sup>

17 Cf. POPE JOHN PAUL II: Apostolic Exhortation *Familiaris consortio*, 22 November 1981, 84 §4.

18 See E. SCHOCKENHOFF: "The Church as a Community of Reconciliation", 72.

19 See can. 210, 211 CIC/1983; see also POPE FRANCIS: Post-synodal Apostolic Exhortation *Amoris laetitia*, 19 March 2016, 243.

20 *Gaudium et spes*, 48; can. 1055 CIC/1983.

21 *Amoris laetitia*, 36.

Francis emphasizes that women and men are equal in dignity and possess equal rights – in the marital relationship as well.<sup>22</sup> Therefore, he condemns the “excesses of patriarchal cultures that considered women inferior” to men. Some “modern” views blame the emancipation of women and their desire to be treated as equal as the cause of today’s problems. But a society that is built on fewer rights for women than for men discriminates against them, and is unacceptable<sup>23</sup> and cannot be justified against the background of human rights.

Hence, Pope Francis welcomes the “significant improvements” in women’s rights and participation in public life but also notes that there is still a ways to go until real equality is reached.<sup>24</sup> It is not enough just to promise improvements “but our decisions and reality tell another story”.<sup>25</sup> Although he is a bit skeptical towards extreme forms of feminism, Pope Francis generally holds the women’s movement in high esteem as the Spirit’s work for a clearer recognition of the dignity and rights of women.<sup>26</sup>

### *Marriage is the Icon of God’s Love*

Francis continues in *Amoris laetitia*: “Marriage is a precious sign, for when a man and a woman celebrate the sacrament of marriage, God is, as it were, ‘mirrored’ in them; he impresses in them his own features and the indelible character of his love. Marriage is the icon of God’s love for us.”<sup>27</sup> He also praises conjugal love as “the ‘greatest form of friendship’”,<sup>28</sup> which contains the *bonum coniugum* and “reciprocity, intimacy, warmth, stability and the resemblance born of a shared life”.<sup>29</sup> Here Pope Francis is completely in line with GS 47-52 and can. 1055 CIC 1983. He stresses the essentials of marriage: indissolubility and unity.<sup>30</sup>

22 Cf. can. 1135 CIC/1983.

23 Cf. POPE FRANCIS: Encyclical Letter *Fratelli tutti*, 3 October 2020, 121.

24 See *Amoris laetitia*, 54.

25 *Fratelli tutti*, 23.

26 Pope Francis declares: “I would like to stress the fact that, even though significant advances have been made in the recognition of women’s rights and their participation in public life, in some countries much remains to be done to promote these rights... History is burdened by the excesses of patriarchal cultures that considered women inferior... There are those who believe that many of today’s problems have arisen because of feminine emancipation. This argument, however, is not valid, ‘it is false, untrue, a form of male chauvinism’. The equal dignity of men and women makes us rejoice to see old forms of discrimination disappear, and within families, there is a growing reciprocity. If certain forms of feminism have arisen which we must consider inadequate, we must nonetheless see in the women’s movement the working of the Spirit for a clearer recognition of the dignity and rights of women.” (*Amoris laetitia*, 54)

27 *Amoris laetitia*, 121.

28 THOMAS AQUINAS: *Summa Contra Gentiles* III, 123; cf. ARISTOTLE: *Nicomachean Ethics*, 8, 12, cited from *Amoris laetitia*, 123.

29 *Amoris laetitia*, 123.

30 Cf. *ibid.*

“The Lord was witness [to the covenant] between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant... Let none be faithless to the wife of his youth. For I hate divorce, says the Lord.” (Mal 2,14.16)<sup>31</sup> These words of the prophet Malachi clearly and strongly reject divorce per se, but they are directed against a husband, who wants to divorce his wife for whatever reason. Jesus uses the same argumentation in Mt 19,3-10, which I have already mentioned above. The prophet Malachi and Jesus in that sense fought for the rights of women in a patriarchal culture.<sup>32</sup> Do we recognize this human rights imperative in the sacrament of love, which otherwise becomes a sacrament of injustice?

Although Francis highly values an ideal model for marriage, he is also realistic and aware of the fact that the perfect conjugal relationship is not actually lived everywhere. He also admits the necessity of the separation of the partners in some cases, if for example one spouse becomes violent against the other and also the children. This necessity is based on the protection of the non-violent partner and the wellbeing of the children. That is also true due to respect for the spouse’s own dignity.<sup>33</sup> Francis considers the human dignity of the spouse here. He or she is not bound by a pre-conciliar *ius in corpus* independent of any circumstances. The person’s own dignity contains the right that a spouse is not obliged to stay and suffer in a relationship that openly neglects the wellbeing of both spouses.

But what if the spouse who leaves a violent or dead covenant finds a new partner and even starts a family? So-called “irregular” situations are not a rare occurrence today. In general, it should never be forgotten that the indelebile character means that one is (still) part of the community of the faithful and God’s beloved child.

A first conclusion from this affirmation is that one has to be very cautious in judging personal situations. “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>34</sup> Accordingly, “the baptized who are divorced and civilly remarried need to be more fully integrated into Christian communities in the variety of ways possible, while avoiding any occasion of scandal.”<sup>35</sup> As a second conclusion, Francis warns against “apply[ing] moral laws to those living in ‘irregular’ situations, as if they were stones to throw at people’s lives”.<sup>36</sup> Pastoral care “would allow them not only to realize that they belong to the Church as the body of Christ, but also to know that they can have a joyful and fruitful experience in it”.<sup>37</sup>

31 Ibid.

32 Cf. *ibid.* and A. LORETAN: “Wie lässt sich die patriarchalische Kirchenstruktur heute noch rechtfertigen?”, in: *Cogito: Das Wissensmagazin der Universität Luzern* 3 (2019), 22.

33 Cf. *Amoris laetitia*, 241.

34 *Ibid.* 302. Cf. PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS: *Declaration Concerning the Admission to Holy Communion of Faithful Who are Divorced and Remarried*, 24 June 2000, 2.

35 *Amoris laetitia*, 299, quoting the *Relatio Finalis* 2015, 84.

36 *Amoris laetitia*, 305.

37 *Ibid.* 299. “It is possible, for example, that a husband’s way of being masculine can be flexibly adapted to the wife’s work schedule. Taking on domestic chores or some aspects of raising

### *Educate the Conscience*

Under certain circumstances people find it exceedingly difficult to act differently. Therefore, while upholding a general rule, it is necessary to recognize that responsibility with respect to certain actions or decisions is not the same in all cases. Pastoral discernment, 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>38</sup>

A person's conscience must be formed with the help of pastors who are themselves spiritually mature. Some of those who help to develop the consciences of spouses should also be married. But the person alone makes his or her life choices. These decisions must be respected, even if they do not live up to the minister's own moral code.

"In the replies given to the worldwide consultation, it became clear that ordained ministers often lack the training needed to deal with the complex problems currently facing families. The experience of the broad oriental tradition of a married clergy could also be drawn upon."<sup>39</sup> Here, the broad local tradition of woman ministers, who could also be drawn upon (LG 33; can. 228, 145 CIC/1983), was missed, but it was mentioned in the *Instrumentum Laboris* of the Amazonian Synod in Rome (no. 129).<sup>40</sup> This postulates that female ministers are respected and that they should take over management positions and responsibility in education and theology. The drafters are conscious that women will be heard only if they are involved in decision-making. Women and married people must also serve in the offices of the church (LG 33; can. 228). They must become equal subjects of their own salvation history in the church (LG 32; can. 208/CIC 1983). Women and married couples should no longer be discriminated against in the church (GS 29), and they should also be represented among church officials.<sup>41</sup> We have to be aware that the dependent status of lay people allowed the worldwide sexual abuse enacted by some celibate clerics.<sup>42</sup>

children does not make him any less masculine or imply failure, irresponsibility or cause for shame... Such rigidity, in turn, can hinder the development of an individual's abilities, to the point of leading him or her to think, for example, that it is...not very feminine to exercise leadership. This, thank God, has changed." (*Amoris laetitia*, 286).

38 *Relatio Finalis* 2015, 85, cited in *Amoris laetitia*, 302.

39 *Amoris laetitia*, 202.

40 THE SYNOD OF BISHOPS, SPECIAL ASSEMBLY FOR THE PAN-AMAZON: *Instrumentum Laboris: Working Document, the Amazon: New Paths for the Church and for Integral Ecology*, available at <http://www.synod.va/content/sinodoamazonico/en/documents/pan-amazon-synod--the-working-document-for-the-synod-of-bishops.html> (accessed 18.04.2021).

41 Cf. A. LORETAN: *Laien im pastoralen Dienst: Ein Amt in der kirchlichen Gesetzgebung: Pastoral-assistent/-assistentin – Pastoralreferent/-referentin*, Freiburg, Switzerland: University Press, 1994; second edition 1997 (Praktische Theologie im Dialog; 9).

42 Cf. *Journal of Church & State, Special Issue on Catholic Clerical Sexual Abuse* 62/1 (Winter 2020); available at <https://academic.oup.com/jcs/issue/62/1>; this special volume on Catholic sexual abuse in Ireland, the USA, Poland, etc. illustrates the importance of dealing with this worldwide and church-wide problem. Cf. also <https://www.sueddeutsche.de/politik/>

The human rights turn of the Magisterium must be applied to the canons of matrimony. This would make the lay person a subject instead of just an object of paternalistic care. The faithful should be helped and supported in the education of their conscience. It is easier just to apply rules to everyone without allowing exceptions or considering the details of their situation. But it is especially important to realize that personal situations differ. That, of course, makes law-making more difficult.

Pope Francis states this opinion by declaring that “neither the Synod nor this Exhortation could be expected to provide a new set of general rules, canonical in nature and applicable to all cases. What is possible is simply a renewed encouragement to undertake a responsible personal and pastoral discernment of particular cases.”<sup>43</sup> In the already famous footnote he declares that such discernment can also occur if in a situation “no grave fault exists”.<sup>44</sup> Francis mentions the importance that the eucharist is “not a prize for the perfect but a powerful medicine and nourishment for the weak”.<sup>45</sup> What does that merciful approach tell us about the situation for divorced and remarried faithful? From the outside, it is impossible to tell objectively that someone is in a state of mortal sin.<sup>46</sup> Pope Francis sketches a picture of an authority that empowers, drawing from Michel de Certeau.<sup>47</sup> Priests have the duty to “accompany [the divorced and remarried] in helping them to understand their situation according to the teaching of the Church and the guidelines of the bishop”.<sup>48</sup>

### *Human Dignity and the Rights Flowing from It*

The human rights approach of the Second Vatican Council highlights the importance of the development of one’s conscience (DH 1). This new understanding of the person and her rights must also shape marriage theology and canon law, since “no one is to be forced to act in a manner contrary to his own beliefs” (DH 2), not even divorced and remarried persons.

We can affirm that Pope Francis upholds the great value of marriage as it is described in GS 47-52 and partly introduced into can. 1055 CIC 1983. He shows

missbrauch-aachen-kirche-1.5112709?fbclid=IwAR2Jh5iQ3bOzT8LrA1 FjKEuku4CpNRz-Mkw1Kcn3Tf2YDrD4cKnZMVQnFw (accessed 17.II.2020). Cf. J. SCHEIPER: *Zensur im Dienst des Priesterbildes: Der Fall „Crottogini“*, Würzburg: Echter, 2019 (Forschungen zur Kirchenrechtswissenschaft; 42).

43 *Amoris laetitia*, 300.

44 *Ibid.* 300, footnote 340.

45 *Evangelii gaudium*, 47.

46 Cf. ST. ORTH/V. RESING: “‘Gott denkt größer’: Ein Gespräch mit dem DBK-Vorsitzenden Kardinal Reinhard Marx”, in: *Herder-Korrespondenz* 1 (2018), 17-21, 21.

47 I. BAUMER: “Ein Jesuit, der den Papst prägte: Michel de Certeau (1925–1986)”; available at <https://www.kirchenzeitung.ch/article/ein-jesuit-der-den-papst-praegte-michel-de-certeau-1925-1986-5635> (accessed 14.II.2020).

48 *Ratio finalis* 2015, 85, cited in *Amoris laetitia*, 300.

a realistic view of the fact that not every marriage or relationship reaches that high standard. Personal situations and causes of a couple's separation can differ widely, so that discernment of the individual case is necessary. On the legal front, the Motu Proprio *Mitis Iudex Dominus Iesus* tried to simplify and shorten the nullity process.<sup>49</sup> But that cannot be the best solution to deal with the discrepancy between the ideal and reality. In *Evangelii gaudium* and *Amoris laetitia*,<sup>50</sup> Francis encourages accompanying couples in “irregular” situations without generally seeing them as guilty. Rather, he calls for a continuing shaping of one's own conscience. The mission of pastoral workers is to accompany and support the faithful.

Apart from these recent developments, the evaluation of marriage and sexuality is still not consistent. If a remarried couple lives a spiritual marriage, no harm is seen in the civil marriage of divorced persons. But what about the community of love and life? The obligations that arise towards a new partner and children are mentioned. Is discernment a general remedy in pastoral care? Francis called justice and mercy “foundations of prosperity and the cornerstone of faith”.<sup>51</sup> We are still faced by the challenge to work for justice for the salvation of souls – of the community of the faithful, including divorced and remarried couples.

49 Cf. POPE FRANCIS: Motu Proprio *Mitis Iudex Dominus Iesus*, available at [http://www.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio\\_20150815\\_mitis-iudex-dominus-iesus.html](http://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html) (accessed 17.11.2020).

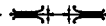
50 For example *Evangelii gaudium*, 44, 47; *Amoris laetitia*, 296-300.

51 *Fratelli tutti*, 285.

## SUMMARY

**Marriage Endings, New Beginnings, Sin and Grace:  
Reflections in Response to Eberhard Schockenhoff**

This article begins by mentioning the current situation in Switzerland and Germany with regard to the decreasing numbers of marriages today. This is true both of marriages in the Church and of civil marriages. Against this background, reasons must be given why a couple should marry. Starting from this point, the article develops a new post-conciliar perspective on marriage. The Second Vatican Council, especially in *Dignitatis humanae*, turned to a human rights approach by embracing human dignity and the rights flowing from it. The new perspective changed from a substance-oriented view to one starting from the individual person. This also affects the church's opinion about the relation of the spouses in marriage, the rights of women in marriage, and the situation of persons in case of a civil divorce. The Vatican Council set aside the old *ius in corpus* paradigm of the 1917 Code and praised marriage as a community of life and love in *Gaudium et spes*, 47-52. The 1983 Code, however, contains the notion of marriage as a covenant (and contract) in can. 1055 CIC/1983 but has not yet totally implemented the new person-centered approach. Also, the inconsistent assessment of sexual relationships and spiritual relationships need further attention. It is questionable whether people should be prevented from taking part in the life of the church when their partner leaves them and they afterwards start a new family. How should their desire to live in harmony with ecclesiastical rules, and to take part actively in the community of the faithful, be dealt with? What is the value of a new union? In *Amoris laetitia* and also the new encyclical *Fratelli tutti*, Francis states the need to look at every situation in particular, as every history of a couple is different. What seems appropriate here is not a paternalistic act, but a pastoral support to educate one's own conscience. This article argues for the implementation of this differentiated perspective. The integration of the more person-oriented approach into the 1983 Code is still an open point.



Adrian Loretan holds the Chair of Canon Law & Law and Religion and is codirector of the Center of Comparative Constitutional Law and Religion in the Theology Faculty of the University of Lucerne, Switzerland. He is the editor of the book series "ReligionsRecht im Dialog" and "Religionsrechtliche Studien". His most recent publication is *Wahrheitsansprüche im Kontext der Freiheitsrechte*, Zürich: Theologischer Verlag, 2020.