

Untying the Gordian Knot: On the Strengthening of Moral Theology by *Amoris laetitia*¹

I. The “Gordian Knot”: Theological Entanglement and Remarried Divorced Catholics

The post-synodal Apostolic Exhortation *Amoris laetitia* (AL) of Pope Francis² and, to an even greater extent, the discussion within the church that arose around it, brings the history of moral theology out of the shadows like no other document of the past decades. Of course, all the church documents that sparked debate in moral theology or theological ethics, especially *Humanae vitae* (1968) and *Veritatis splendor* (1993), have made reference to history, but most of them were concerned with recent history in the transition from a moral theology shaped by neoscholasticism to a theological ethics in the garb of the Second Vatican Council. In the case of *Amoris laetitia*, however, and especially with regard to the controversial discussion about the situation of remarried divorced people in the Catholic Church, the discussion regularly reached further back into history, to moral judgments in the early church³ as well as to the medieval arguments of Thomas Aquinas and the approaches of a “Jesuit morality” from the 16th century on, but then also implicitly invoked the discussions since Vatican II.⁴

1 This contribution is an updated, English version of the article “Die Entflechtung des Gordischen Knotens: Zur Stärkung der Rolle der Moraltheologie durch *Amoris laetitia*”, in: *Studia Teologiczno-Historyczne Śląska Opolskiego* 37 (2017), 79-103, available at <https://czasopisma.uni.opole.pl/index.php/sth/article/view/714/509> (accessed 17.04.2021). I would like to thank the editors for the opportunity to publish an English version.

2 POPE FRANCIS: Post-Synodal Apostolic Exhortation *Amoris laetitia*, 19 March 2016, available at https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf (accessed 18.04.2021), hereafter: AL.

3 See E. SCHOCKENHOFF: *Chancen zur Versöhnung? Die Kirche und die wiederverheirateten Geschiedenen*, Freiburg: Herder, 2011, 49-70; H.-R. SEELIGER: “Vom Konzil erlaubt: Nicaea und die Wiederverheiratung Geschiedener”, in: *Theologische Quartalschrift* 192 (2012), 305-311; W. KASPER: *Das Evangelium von der Familie: Die Rede vor dem Konsistorium*, Freiburg: Herder, 2014, 73-77.

4 See S. ERNST: “‘Irreguläre Situationen’ und persönliche Schuld in *Amoris laetitia*: Ein Bruch mit der Lehrtradition?”, in: S. GOERTZ/C. WITTING (eds.): *Amoris laetitia – Wendepunkt für die Moraltheologie?*, Freiburg: Herder, 2016, 136-159. Ernst discusses the topic with reference to Aquinas. M. GRAULICH: “Am Anfang war es nicht so...: Die kirchliche Formpflicht und die Zivilehen von Katholiken”, in: U. RUH/M. WIJLENS (eds.): *Zerreißprobe Ehe: Das Ringen der katholischen Kirche um die Familie*, Freiburg: Herder, 2015, 139-156, refers to the development since the Council of Trent; M.-J. THIEL: “Intégrer depuis le bas: Une relecture d’*Amoris*

This is not only about teaching in moral theology, but also about understanding moral theology in its relationship to related theological disciplines. For a long time moral theology was closely connected with other theological disciplines: with systematic theology or dogmatic theology, from which moral theology broke away in the Middle Ages; with canon law, since from the 16th century until the 20th century moral theology and canon law were often intimately connected; with practical theology, or catechetics which, like moral theology, in part traces its origins back to the establishment of the teaching of casuistry in the 16th century, but only became independent disciplines in the 18th and 19th centuries.⁵ In addition to this series of theological subjects, which are closely linked to moral theology, there is also philosophy as a non-theological discipline, which in the 18th and 19th centuries became a model for the deductive structure of numerous manuals of neoscholastic moral theology, which imitated its systematic method. The differentiation of theological topics has of course also led to the fact that the various theological disciplines have developed a life of their own, with their own logic. With regard to understanding the situation of remarried divorced persons, the diversity of methodological approaches has led to a lack of compatibility.

In the debates in the extraordinary (2014) and the subsequent ordinary Synods of Bishops on marriage and family (2015), the relationship between moral theology, dogmatic theology, canon law, and practical theology resembled a Gordian knot that could not be untangled by argumentation and logic, but was waiting to be cut with a sword. Issues in moral theology (e.g., the concept of grave sin, the role of norms, the understanding of intrinsically evil actions), canonical definitions (e.g., the interpretation of a sexually expressed partnership after a civil divorce as persistence in sin, and the exclusion from the sacraments as a consequence; the declaration of nullity as the only possible dissolution of a presumably sacramentally contracted marriage, allowing a new marriage⁶), and dogmatic

Laetitia", in: *Revue d'éthique et de théologie morale* 292/5 (2016), 49-91, pays attention especially to the Jesuit tradition; E. SCHOCKENHOFF: "Traditionsbruch oder notwendige Weiterbildung?: Zwei Lesarten des Nachsynodalen Schreibens 'Amoris laetitia'", in: *Stimmen der Zeit* 235 (2017), 147-158, offers further references to Alphonsus of Liguori. *Amoris laetitia* refers to Ignatius of Loyola in no. 94, and to Aquinas in nos. 99, 102, 120, 123, 126, 127, 134, 148, 162, 301, 304.

5 See S. MÜLLER/M. BESLER: "Moraltheologie als universitäre Disziplin: Eine historische Skizze", in: A. LOB-HÜDEPOHL/R. SCHEULE/K. SCHLÖGL-FLIERL (eds.): *Moraltheologie und Universität: Eine Verhältnisbestimmung*, Freiburg: Herder, 2020 (Jahrbuch für Moraltheologie; 4), 33-48, at 43.

6 This view is based on the understanding developed in the 16th century that sacramental marriage is established by consent. The formation of a marriage is therefore judged under canon law according to formal criteria of the formation of the contract, not according to the matter, mutual love. This leads to difficulties with regard to the dissolution of a marriage in a case where mutual love no longer exists but, due to lack of evidence, no proof necessary for the annulment can be provided that the marriage did not come into being validly. In this way, the question of whether the sacrament of marriage has an effect is ignored. Central questions such as the effectiveness of sacramental grace, which presupposes free acceptance by the person, and the special nature of the sacrament of marriage, which comes into being through the love of the two spouses, remain outside the field of vision while the focus in canon law remains on the contract. P. HÜNERMANN describes the tension between the understanding of contract,

questions (understanding of the sacraments with regard to marriage, meaning and determination of guilt in regard to admission to the sacraments) formed a tangle of close cross-references, historical interlinking, and insufficiently clarified relationships between the various theological disciplines.⁷ As a result, the insights of moral theology from tradition and reflection, especially those from the second half of the twentieth century, could not be applied to the official teaching on pastoral care for remarried divorced persons.

In the discussion on possible developments during the two family synods, the canonical interpretation and the dogmatic approach, at least in the German-speaking context, seemed to present a limitation of the space for development in moral theology. The post-synodal letter of the pope himself, on the other hand, questioned the self-understanding of moral theology in a quite different way. Moral theology is cast in a negative light and portrayed as a normative authority that makes life difficult for people instead of accompanying and supporting them.⁸ This criticism of moral theology is directed against a moral theology that is pre-occupied with formulating laws and norms, as was mostly the case in the German-speaking world during the period of neoscholasticism, but moral theology set aside this approach to a large degree after Vatican II, bringing into play the role of personal conscience, freedom, and responsibility as fundamental parameters.

which goes back to Augustine and is still present in the encyclical *Casti connubii*, and an understanding of marriage as a covenant and effective sign of grace in *Amoris laetitia* in his contribution “Das Sakrament der Ehe: Eine dogmatische Lektüre von ‘Amoris laetitia’”, in: *Theologische Quartalschrift* 196 (2016), 299-317. E. SCHOCKENHOFF: *Chancen zur Versöhnung?*, 144-151, traces the historical conditionality of the connection between contract and sacrament as well as the understanding of marriage in canon law. The question of how one should deal with the lack of effect of the sacrament of marriage was brought to the attention of the German language group during the Synod of Bishops – albeit only with regard to a spouse who is a Catholic without faith: “While the sacraments do not come about through the faith of the recipient, neither do they come about without it or even against it; at least grace remains unfruitful because it is not freely willingly received with faith, which is determined by love”, in: C. SCHÖNBORN (ed.): *Berufung und Sendung der Familie: Die zentralen Texte der Bischofssynode, mit einem Kommentar von P. Michael Sievernich SJ*, Freiburg: Herder, 2015, 90 (my translation).

7 For a discussion of these questions see also E. SCHOCKENHOFF: *Chancen zur Versöhnung?*, 152-172.

8 This criticism can be found especially in AL 311: “The teaching of moral theology should not fail to incorporate these considerations, for although it is quite true that concern must be shown for the integrity of the Church’s moral teaching, special care should always be shown to emphasize and encourage the highest and most central values of the Gospel, particularly the primacy of charity as a response to the completely gratuitous offer of God’s love.” See also AL 312: “This offers us a framework and a setting which help us avoid a cold bureaucratic morality in dealing with more sensitive issues. Instead, it sets us in the context of a pastoral discernment filled with merciful love, which is ever ready to understand, forgive, accompany, hope, and above all integrate.” See AL 305: “For this reason, a pastor cannot feel that it is enough simply to apply moral laws to those living in ‘irregular’ situations, as if they were stones to throw at people’s lives. This would bespeak the closed heart of one used to hiding behind the Church’s teachings, ‘sitting on the chair of Moses and judging at times with superiority and superficiality difficult cases and wounded families’.” The quotation is taken from POPE FRANCIS: “Address for the Conclusion of the Fourteenth Ordinary General Assembly of the Synod of Bishops”, 24 October 2015, available at https://www.vatican.va/content/francesco/en/speeches/2015/october/documents/papa-francesco_20151024_sinodo-conclusioni-lavori.html (accessed 12.04.2021).

In what follows, I will show that the pope in *Amoris laetitia* actually asks of moral theology a new approach that it, in fact, has already developed. Likewise, I will discuss how Pope Francis begins to unravel this Gordian knot of the theological disciplines by his discreet but significant comments regarding canon law and by indicating a need for development and reflection in some areas of doctrine. He thus creates the necessary space in which the insights of moral theology can be brought to bear consistently and without contradiction on other theological disciplines. The pope incorporates the preliminary work of his predecessors and uses it in the spirit of the Second Vatican Council. Nevertheless, his apostolic exhortation does not merely confirm the approach of German-speaking moral theology since the Second Vatican Council. Differences can be seen above all in the conception of the human person and in the concern that moral theology ought to be more strongly aligned to lived practice and so serve pastoral ministry.

2. Pope Francis's Untying of the Gordian Knot

The main concern of the pope is a pastoral, not one of moral theology. At the center of his concern is the proclamation of the merciful, loving God in church teaching and especially in the actions of the church. From this perspective, he strives to remove everything that obscures this message or that could prevent an experience of this loving, merciful God. This motivation can also be seen, for example, in his more recent pronouncements on canon law.

2.1. The Untying of the Knot in Terms of Canon Law

A first point where the pope has intervened and initiated changes is canon law, which was judged to impose an unnecessary burden when it keeps couples who petition for annulment involved in legal proceedings longer than is necessary. Despite all the criticism from canon lawyers who fear for the balance of the procedure, Pope Francis, through the *motu proprio Mitis Iudex Dominus Iesus* (and for the Eastern Churches through the *motu proprio Mitis et Misericors Iesus*), has created the possibility of shortened procedures for simple cases.⁹

As a further step, it would now be necessary to change the authentic interpretation of the second part of canon 915 of the CIC.¹⁰ The current interpretation

9 On the changes introduced by *Mitis Iudex Dominus Iesus* and further proposals for streamlining and accelerating processes of annulment, see C. PEÑA GARCÍA: "Agilización de los procesos canónicos de nulidad matrimonial: De las propuestas presinodales al *motu proprio Mitis Iudex Dominus Iesus* y retos pendientes tras la reforma", in: *Ius Canonicum* 56 (2016), 41-64.

10 Can. 915 CIC/1983 states: "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." This canon has been interpreted in the *Catechism of the Catholic Church* (CCC) to cover the situation of remarried divorced persons.

holds that this canon applies to the situation of divorced and civilly remarried persons who do not abstain from sex with their new partner. This means that such a situation is interpreted as “persisting in a grave sin”, which in turn excludes the couple from receiving the sacraments. This blanket judgment for all those who – regardless of their respective backgrounds – find themselves in such a legal situation contradicts the necessity in moral theology of distinguishing between different situations.¹¹

Cardinal Kasper, in his reflection *The Message of Amoris Laetitia*, argues that the wording of the canon can be maintained if “in the concrete situation, de facto subjectively serious culpability and stubbornness are present”. However,

See no. 1650: “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 ecclesial 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.” See also 2384: “Divorce is a grave offense against the natural law. It claims to break the contract, to which the spouses freely consented, to live with each other till death. Divorce does injury to the covenant of salvation, of which sacramental marriage is the sign. Contracting a new union, even if it is recognized by civil law, adds to the gravity of the rupture: the remarried spouse is then in a situation of public and permanent adultery”. PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS: “Declaration II: Concerning the Admission to Holy Communion of Faithful who are Divorced and Remarried”, 24 June 2000, available at https://www.vatican.va/roman_curia/pontifical_councils/intrptxt/documents/rc_pc_intrptxt_doc_20000706_declaration_en.html (accessed 9.4.2021), refers to no. 1650 of the Catechism. There are, however, many questions related to the identity of contract and marriage covenant or sacrament, see G. RIEDL: “Macht der Vertrag das Sakrament? Theologische Überlegungen zu einem heiklen Thema des kanonischen Eherechts (Can. 1055 CIC)”, in: *De Processis Matrimonialibus* 13 (2006), 93-105, esp. 94. Peter Hünemann, from a dogmatic perspective, sees a clear shift from understanding marriage as a contract to understanding marriage as a covenant, which includes moral and legal aspects and requires a change to a personal accompaniment of couples “down to death, and [in] each phase”; see P. HÜNEMANN: “The Sacrament of Marriage: A Dogmatic Theologian Reads *Amoris Laetitia*”, in: T. KNIÉPS-PORT LE ROI (ed.): *A Point of No Return? Amoris Laetitia on Marriage, Divorce, and Remarriage*, Berlin: Lit, 2017, 87-104, at 102-103. Similarly, and in the same volume, Martin M. Lintner hints at the connection of a contract-oriented understanding of marriage and its historical interpretation as a “right to the body” (*ius in corpus*), which leads to interpreting sexual acts of a married couple solely as an expression of “regularity/irregularity”. See M.M. LINTNER: “Divorce and Remarriage: A Reading of *Amoris Laetitia* from a Theological-Ethical Perspective”, in: T. KNIÉPS-PORT LE ROI (ed.): *A Point of No Return?*, 123-140, at 132.

- 11 The necessity of discernment has a long spiritual history that influences moral theology from Saint Paul through the desert fathers, penitential books, scholasticism, Jesuit spirituality, and moral manuals up to the present. The form of discernment in moral theology can, of course, take different forms. It has its roots in Paul and the Desert Fathers in the perception of the spiritual growth of a person. According to this understanding, not every person can be expected to have the same degree of Christian freedom. For early examples of discernment of the spirit see the collection of the *Apophthegmata Patrum: The Anonymous Sayings of the Desert Fathers*, trans. J. Wortley, New York: Cambridge University Press, 2013.

he continues: “If, after conscientious examination, this is not the case, then in the internal forum, if nothing else is in the way, absolution and therewith admission to communion is possible.”¹² This means that a change in the interpretation of the canon is needed so that it can respect such differences made on the basis of individual situations evaluated according to various degrees of moral culpability. Consequently, the evaluation of sexual acts cannot take place from a contract-oriented legal interpretation alone: the internal reality of the person involved, which is linked to the context of the individual situation, must be respected as part of the “objective” assessment.

If the authoritative interpretation of canon 915 followed the pastoral rules developed in *Amoris laetitia*, the differentiations of the judgment of moral theology could be reflected in a differentiated canonical treatment.¹³ This in turn would correspond to the tradition of canon law, which itself has also developed instruments of differentiation.¹⁴ C.A. Cox reminds us that the present canon law is

12 W. KASPER: *The Message of Amoris Laetitia: Finding Common Ground*, trans. W. Madges, Mahwah, NJ: Paulist Press, 2018, 42.

13 Without an entangling of these aspects, a distinction of different situations is not possible. This is reflected when critics of AL’s proposal to admit divorced remarried persons to the sacraments refer especially to sexual infidelity as the main evil of the situation of divorced and remarried persons, see, e.g., M. LEVERING: *The Indissolubility of Marriage: Amoris Laetitia in Context*, San Francisco: Ignatius Press, 2019, 102. However, a high esteem for sacramental marriage, which inspires Levering’s account, is not bound to lead to only one “right” answer. There is no need to stop with proposing healing processes for marriages in danger, which are indeed necessary; these are not the only possible pastoral answer, because the situations are indeed different. If one does not deny the lived reality of those whose marriage has fallen apart and cannot be healed, the same esteem for sacramental marriage can also lead to a different conclusion. For example, S.C. ILO, who shares this esteem for marriage, argues for the application of a two-step procedure of first engaging in trying to heal marriages *and* of an official procedure of granting a new possibility for married life to persons whose marriage is in a situation that is impossible to heal. The author shows that such two-step approaches already exist, e.g. in African culture, and could be adopted also for Christian pastoral practice because they mediate between subjective situations and the objective recognition of the situation, allowing for a new start without diminishing the appreciation of marriage. See S.C. ILO: “*Amoris Laetitia* and the Logic of Mercy and Integration in an Illuminative Church (Commentary on Chapter 8)”, in: S.C. ILO (ed.): *Love, Joy, and Sex: African Conversation on Pope Francis’s Amoris Laetitia and the Gospel of Family in a Divided World*, Eugene, OR: Wipf and Stock Publishers (Studies in Word Catholicism; 6), 201-236.

14 The objective validity and the permissibility of the administration of the sacraments, and their subjective effect, are distinguished in canon law. Legal presumptions, which refer to external facts, are also distinguished from sin, which escapes external judgement. See S. DEMEL: *Handbuch Kirchenrecht: Grundbegriffe für Studium und Praxis*, Freiburg: Herder, 2013, 547-549 (Sakramente), 203-206 (Eucharistieempfang). B. PETRÀ: “Il peccato grave tra morale e diritto”, in: *Rivista Liturgica* 92 (2005), 891-898, online version at <http://sacerdotisposati.altervista.org/?p=1712> (accessed 10.04.2021), points to the problem that in the current CIC the term “grave sin” is used both for the canonical perspective on the “objective” facts and for the consideration in moral theology of the subjective side of the person acting. This can lead in individual cases to the contradictory situation that remarried divorced persons without grave moral guilt are nevertheless not admitted to the sacraments. This seems tantamount to a pure disciplinary measure. Cardinal F. Coccopalmerio refers to the principle of canonical equity which ought to be applied where internal or external impossibility to act according to the norm of the church exists, and he refers to the existing means of “exception, dispensation,

built on the rule that the “gap between the standing of a person as recognized externally by the law of the church (external forum) and the real standing of the person before God (internal forum)” should be diminished as much as possible.¹⁵ Cox detects the need to overcome “the disconnect between the pastoral practice of the authentic interpretation and the pastoral practice recommended by *Amoris Laetitia*”, and asks whether the process of the annulment of marriages could not be converted to a process of accompanied discernment. After such a process the couple and not the judge could have the final say when they assess their situation before God: “At the conclusion of the process, might not the church then ask the parties themselves to take the responsibility before God and the church and decide whether they understand themselves to be held bound by God to their previous exchange of vows?”¹⁶

2.2. *Untying the Knot in Terms of Dogmatic Theology*

2.2.1. *Dogmatic Developments in the Popes before Francis*

This pending change in the legal interpretation of the CIC is also necessary because it would correspond to the dogmatic doctrinal development since the Second Vatican Council. As G. Uríbarri and others have shown, popes Paul VI, John Paul II, and Benedict XVI have increasingly emphasized that people who live in a relationship characterized as “irregular” (since it runs contrary to prescriptions of church law), should participate in church life and continue to be members of the church community. The Madrid dogmatist, who is also a member of

and *epikeia*”; see F. COCCOPALMERIO: “Chapter Eight of the Post-Synodal Apostolic Exhortation *Amoris Laetitia*”, in: *Homiletic and Pastoral Review* (1 May 2017), <https://www.hprweb.com/2017/05/chapter-eight-of-the-post-synodal-apostolic-exhortation-amoris-laetitia/> (accessed 14.04.2021), at 14. M. GRAULICH: “*Amoris laetitia* – eine kirchenrechtliche Lektüre”, in: *INTAMS review* 22 (2016), 182-201, argues differently that *Amoris laetitia* could have opened more ways if it had referred more to canon law. He argues that a solution must be sought within the valid regulations of canon law, since the indissolubility of marriage has been based on Christ’s word and confirmed by John Paul II in his address to the Tribunal of the Roman Rota, 21 Jan 2000, http://www.vatican.va/content/john-paul-ii/en/speeches/2000/jan-mar/documents/hf_jp-ii_spe_20000121_rota-romana.html (accessed 12.4.2021). He presents as the only viable solution the so-called “dissimulation” by which in a single case and for a situation that cannot be changed, the law renounces the implementation of a legal standard. It is interpreted as “a deliberate silence, but not approval” (199). Such a response to the situation of a divorced and remarried couple is possible in order to correspond to the pastoral call of the pope. The author defines as conditions for dissimulation that a declaration of nullity is not applicable, that the first marriage cannot be restored, that the persons asking for dissimulation are not mainly responsible for the breakup of the first marriage, and that the legal consequences of the first marriage (e.g. maintenance of partner and children) have been resolved. He also argues that no official blessing of the second marriage should be granted. In addition, a few further recent studies in the field of canon law examine in more detail ways in which pastoral aspects can be more fully integrated into the existing canonical practice.

15 C.A. COX: “Some Implications for Canon Law”, in: T.P. RAUSCH/R. DELL’ORO (eds.): *Pope Francis on the Joy of Love: Theological and Pastoral Reflections on Amoris Laetitia*, Mahwah, NJ: Paulist Press, 2018, 74-81, at 75.

16 C.A. COX: “Some Implications for Canon Law”, 78 and 80-81, here 78 and 80.

the International Theological Commission, points out that the three popes before Francis were particularly concerned about the pastoral care for remarried divorced people. Even though they confirmed that access to Holy Communion was denied to them,¹⁷ a clear development can be seen, which Pope Francis is now consequently continuing.

A central first text in this context is the address to the Pontifical Council for the Family by Pope Paul VI, in which he stresses the need for pastoral attention to remarried divorced couples: “even those whose illegitimate situation does not allow them to live in full communion with the Church should not be excluded from your reflection and attention”.¹⁸ Subsequently, the International Theological Commission, in its statement *The Catholic Doctrine on the Sacrament of Marriage* in the same year (1977), noted that there are “new problems for which a satisfactory answer has yet to be found” and that “the Church can further define the concepts of sacramentality and consummation by explaining them even better, so that the whole doctrine on the indissolubility of marriage can be put forward in a deeper and more precise presentation”.¹⁹ The next text that is significant for this doctrinal development is found in no. 84 of John Paul II’s Apostolic Exhortation *Familiaris consortio* (1981), which also emerged from a synod of bishops on the family. In it, the pope instructs priests that, out of love for the truth, they are obliged to “discern well the situations”.²⁰ The third text, finally, was written by Benedict XVI, in the post-synodal letter *Sacramentum caritatis* (2007) following the Synod of Bishops on the Eucharist. There the pope does not go beyond his predecessors when he writes in no. 29 that remarried divorced persons are part of the body of Christ but cannot be admitted to Communion.²¹ However,

- 17 G. URÍBARRI BILBAO: “La comunión de los divorciados vueltos a casar: Cambio en la doctrina?”, in: *Razón y Fe* 271/1399-1400 (2015), 453-464.
- 18 PAUL VI: “Discours du Pape Paul VI aux Assemblées des Trois Organismes Post-Conciliaires”, 4 November 1977, available at http://www.vatican.va/content/paul-vi/fr/speeches/1977/november/documents/hf_p-vi_spe_19771104_organismi-post-conciliari.html (accessed 19.04.2021): “Que ceux-là même dont la situation illégitime ne permet pas de vivre en pleine communion avec l’Église ne soient pas exclus de votre réflexion et de votre attention.”
- 19 INTERNATIONAL THEOLOGICAL COMMISSION: *Propositions on the Doctrine of Christian Marriage*, 1977, available at http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_1977_sacramento-matrimonio_en.html (accessed 10.04.2021), 2.3 and 4.4. See G. URÍBARRI BILBAO: “La comunión de los divorciados vueltos a casar”, 454-455.
- 20 JOHN PAUL II: Apostolic exhortation *Familiaris consortio*, 22 November 1981, available at http://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html (accessed 12.4.2021) (hereafter: FC), 84: “Pastors must know that, for the sake of truth, they are obliged to exercise careful discernment of situations. There is in fact a difference between those who have sincerely tried to save their first marriage and have been unjustly abandoned, and those who through their own grave fault have destroyed a canonically valid marriage. Finally, there are those who have entered into a second union for the sake of the children’s upbringing, and who are sometimes subjectively certain in conscience that their previous and irreparably destroyed marriage had never been valid.”
- 21 BENEDICT XVI: Post-Synodal Apostolic Exhortation *Sacramentum caritatis*, 22 February 2007, available at http://www.vatican.va/content/benedict-xvi/en/apost_exhortations/documents/hf_ben-xvi_exh_20070222_sacramentum-caritatis.html (accessed 12.4.2021), 29: “The Church’s pastors, out of love for the truth, are obliged to discern different situations carefully, in order

Pope Benedict XVI, in a revised version of an article originally published in 1972, expands the spectrum of ecclesiastical tasks and stipulates that those affected can also take on parish ministries and the role of godparent and, instead of receiving Communion, are connected with Christ and the Church through spiritual communion.²²

The three popes have thus emphasized to an increasing extent that the situation of remarried divorced persons does not lead to their exclusion from the community of Christians and that they can even be united with Christ in spiritual communion. However, this means that exclusion from the Eucharist no longer appears to be rooted in sacramental theology. On the contrary, there is even a contradiction regarding sacramental theology, which can be formulated in terms of moral theology as follows: If remarried divorced persons can have full communion with Christ in spiritual communion, that is, if they are by no means excluded from Christ's grace, by what right can they be excluded from Eucharistic communion on the moral grounds of a grave sin whose characteristic feature is the loss of sanctifying grace?²³

These doubts are confirmed by studies on the history of the meaning of spiritual communion and its relationship to the Eucharist. These recall that Aquinas, and the Council of Trent, regarded spiritual communion as an end of Eucharistic communion, and Eucharistic communion as a medicine that grants redemption from sins, even grave ones, through the celebration of Christ's sacrifice.²⁴ The interpretation of spiritual communion as a form of devotion separate from the

to be able to offer appropriate spiritual guidance to the faithful involved. The Synod of Bishops confirmed the Church's practice, based on Sacred Scripture (cf. Mk 10:2-12), of not admitting the divorced and remarried to the sacraments, since their state and their condition of life objectively contradict the loving union of Christ and the Church signified and made present in the Eucharist. Yet the divorced and remarried continue to belong to the Church, which accompanies them with special concern and encourages them to live as fully as possible the Christian life through regular participation at Mass, albeit without receiving communion, listening to the word of God, eucharistic adoration, prayer, participation in the life of the community, honest dialogue with a priest or spiritual director, dedication to the life of charity, works of penance, and commitment to the education of their children... Finally, where the nullity of the marriage bond is not declared and objective circumstances make it impossible to cease cohabitation, the Church encourages these members of the faithful to commit themselves to living their relationship in fidelity to the demands of God's law, as friends, as brother and sister; in this way they will be able to return to the table of the Eucharist, taking care to observe the Church's established and approved practice in this regard."

22 J. RATZINGER: "Zur Frage nach der Unauflöslichkeit der Ehe – Bemerkungen zum dogmengeschichtlichen Befund und zur seiner gegenwärtigen Deutung", in: J. RATZINGER: *Gesammelte Schriften*, vol. 4: *Einführung in das Christentum: Bekenntnis-Taufe-Nachfolge*, ed. G.L. MÜLLER, Freiburg: Herder, 2014, 621; J. RÖSER: "Ratzinger 1972, Benedikt 2014", in: *Christ in der Gegenwart* 66 (2014), 535, shows the differences between this revised version and the original text of the article published in 1972, which proposed admission to Communion. For the reference to the inclusion of divorced remarried persons in the community of the church, see the letter of the Congregation for the Doctrine of the Faith in fn. 31, below.

23 For references, see fn. 10, above.

24 A. PORRECA: *Eucaristia e divorziati risposati: Il grande disegno della piccola nota 351 di Amoris laetitia*, Canterano (RM): Aracne, 2017 (quazan; 17), 73-83; W. KASPER: *The Message of Amoris Laetitia*, 44.

Eucharist after the Council of Trent has created a distinct tradition that has made the church forgetful of its original setting.

The reason for exclusion therefore seems to be mainly based on disciplinary or pedagogical considerations, guided by the concern that Communion for remarried divorced persons could endanger the marital morals of other members of the ecclesial community and become a bad example for those who, being personally in a marital crisis, struggle to maintain their marriage.²⁵ This, however, creates an intermediate state between belonging and exclusion. While, in the attitude of faith, a sense of belonging to Christ, and, in the resulting commitment to the parish, a sense of belonging to the church can become visible, those affected are denied the deep symbolism of Eucharistic communion with Christ and the church.

2.2.2. *Dogmatic Questions Regarding the Current Canonical Regulation*

This obvious contradiction also provokes questions from the side of dogmatic theology. If divorced people who are remarried belong to the Body of Christ, why can they be excluded from Eucharistic communion? Gabino Uríbarri pursues this question and shows the following lines of argument.²⁶

First, these documents argue that access to communion is closed because one cannot go to communion unworthily. The statement of Paul in 1 Cor 11,27-28 is used to give this biblical justification: “Whoever, therefore, eats the bread or drinks the cup of the Lord in an unworthy manner will be answerable for the body and blood of the Lord. Examine yourselves, and only then eat of the bread and drink of the cup.” May this quotation be used to justify the exclusion of divorced people who are remarried from Communion? The context of Paul’s admonition is very different. He is responding to a situation where Christians lacked consideration for one another and did not wait for the others to begin eating. Thus, “each of you goes ahead with your own supper, and one goes hungry and another becomes drunk” and this “humiliate[s] those who have nothing” (11,21-22). There is then the statement about unworthy eating and drinking, after which Paul concludes, “If you are hungry, eat at home, so that when you come together, it will not be for your condemnation” (11,34).²⁷ The demand not to take communion unworthily is in reality a criticism of the arrogance and lack of empathy of some for others who are worse off than them. There is, then, no prescription that some should be excluded, but, instead, a call for the unity of the community in eating and drinking.²⁸

25 See FC 84: “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.”

26 G. URÍBARRI BILBAO: “La comunión de los divorciados vueltos a casar”, 453-464.

27 See *ibid.* 460-461; E. SCHOCKENHOFF: *Chancen zur Versöhnung?*, 152-172.

28 The caution that one should not eat of the bread and drink of the cup unworthily is accompanied by the call to self-examination, since a lack of self-examination entails the judgement of God (1 Cor 11,27-29). In this context, only a possible self-exclusion is spoken of, not the active exclusion of others.

Secondly, from the perspective of systematic theology, the statements of the above-mentioned popes form a contradiction to an ecclesiology of the Body of Christ when they say that divorced people who are remarried are not admitted to Communion because their life situation objectively contradicts the unity of love between Christ and the church, which is expressed and renewed in the Eucharist (FC 84; *Sacramentum caritatis* 29). How can one, it is asked, be part of the sacramental communion and be invited to cooperate in the Body of Christ and yet not be officially admitted to this sacramental communion? The International Theological Commission says that the situation does not allow one to live in full communion with the church.²⁹ At the same time, however, these people are not excluded from the grace of God and are closely linked to the church. As baptized persons, according to *Familiaris consortio*, they should and must participate in the life of the church (FC 84) and, according to *Sacramentum caritatis*, they continue to belong to the church (29).³⁰

Uríbarri therefore argues as follows. The church is the body of Christ. Divorced people who are remarried are in communion with the Body of Christ because they can receive grace. Where does grace come from in the church, which is the Body of Christ? The source is God, who gives us grace, specially mediated by the Body and Blood of his Son. The grace by which the Body of Christ as church lives is always a paschal grace. It must therefore be the grace of Christ, the source of Eucharistic grace and of the church, because, according to *Dominus Iesus* 16, every grace of Christ is at the same time ecclesial grace.³¹

29 G. URÍBARRI BILBAO: “La comunión de los divorciados vueltos a casar”, 461, with reference to the text of the INTERNATIONAL THEOLOGICAL COMMISSION: *Propositions on the Doctrine of Christian Marriage*, 5.4: “While this illegitimate situation does not permit a life of full communion with the Church, still Christians who find themselves in this state are not excluded from the action of divine grace and from a link with the Church. They must not, therefore, be deprived of pastoral assistance (cf. *Address of Pope Paul VI*, 4 November 1977). They are not dispensed from the numerous obligations stemming from baptism. They ought to be concerned about the Christian education of their offspring. The paths of Christian prayer, both public and private, penitence, and certain apostolic activities remain open to them. They must not be ignored but rather helped, like all other Christians who are trying, with the help of Christ’s grace, to free themselves from sin.”

30 See CCC 1651 with quotation from FC 84: “Toward Christians who live in this situation, and who often keep the faith and desire to bring up their children in a Christian manner, priests and the whole community must manifest an attentive solicitude, so that they do not consider themselves separated from the Church, in whose life they can and must participate as baptized persons: ‘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 for 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.’” For the text in *Sacramentum caritatis*, see fn. 21, above.

31 See G. URÍBARRI BILBAO: “La comunión de los divorciados vueltos a casar”, 462. He asks the question of what this communion of remarried divorced people with the church and with God can look like. Is there such a thing as imperfect communion with the Body of Christ? This tension is also evident in the letter of the Congregation for the Doctrine of the Faith to the Bishops of the Catholic Church on the reception of Communion by remarried divorced believers, signed by J. Ratzinger, in: *Acta Apostolicae Sedis* 86 (1994), 974-979, English version at: http://www.vatican.va/roman_curial/congregations/cfaith/documents/rc_con_cfaith_

Uríbarri therefore asks: Does it make sense to forbid participation in the Eucharist and to assert communion with the church? If the church is the Body of Christ (LG 7) and if Christ established his body, which is the church, as the universal sacrament of salvation, can there be a communion in the body of Christ which is not at the same time sacramental communion? Can there then be a sacramental unity with the Body of Christ and – as a contrast – the prohibition of sacramental access to the Body of Christ? How does this prohibition relate to the other sacraments, when baptism is the source of the effect and the obligation to be incorporated into the sacramental body? Uríbarri concludes that a deepening of these questions could lead to a new practice.³²

A third reference begins with the description of the situation in the texts of the popes, especially in situations in which there has been a definitive rupture in a canonical marriage and in which obligations that cannot be resolved have arisen from a second relationship, such as the raising of children. Uríbarri now asks about the wellbeing of the persons at stake in these situations. According to Uríbarri, the church has historically emphasized above all the good of the child (*bonum prolis*) and the good of the sacrament (indissolubility). In regard to the third good, the good of the spouses (*bonum fidei*, unity and fidelity as an expression of mutual love), the church has demanded self-renunciation; that is, for the sake of the bond of fidelity and children, it has taught that the good of the spouses was to be sacrificed. Uríbarri therefore asks how the Church cannot find value in a relationship or civil second marriage in which the spouse's welfare and the welfare of the children are protected, but not the good of the first marriage (i.e. indissolubility), even though there is stability and fidelity in that second marriage.³³

The absence of the good of the spouses (even those who are separated) was not a reason for exclusion from the Eucharist. Why then, he asks, is the absence of the good of the sacrament (indissolubility) more serious in this regard than the absence of the spouses' good?³⁴ Maybe because it is more visible to the public? Why does this aspect definitively prevent the reception of communion? This

doc_I4091994_rec-holy-comm-by-divorced_en.html (accessed 12.04.2021). Uríbarri is referring to paragraphs 6 and 9: "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"; "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."

32 G. URÍBARRI BILBAO: "La comunión de los divorciados vueltos a casar", 462-463, with reference to documents of the Second Vatican Council: LG 48; see LG I, 9, 59; SC 5, 26; GS 42, 45; AG I, 5.

33 G. URÍBARRI BILBAO: "La comunión de los divorciados vueltos a casar", 463.

34 On the importance of the welfare of the spouses, see also B. LAUKEMPER-ISERMANN: "Lieben heißt, jemandem Gutes zu wollen' (Thomas von Aquin): Die Gemeinschaft des ganzen Lebens und das Gattenwohl", in: U. RUH/M. WIJLENS (eds.): *Zerreiẞprobe Ehe: Das Ringen der katholischen Kirche um die Familie*, Freiburg: Herder, 2015, 119-137.

would mean that today the most important characteristic of marriage would be insolvency. Uríbarri proposes to take Jesus as a guide. He points out that Jesus was difficult for his contemporaries to evaluate. Despite his strict statements, he behaved towards persons in “irregular situations” in such a way that he did not condemn them (see the pericopes of the adulteress in Lk 8,1-11 and that of the woman with many husbands in Jn 4,16-18). Truth and mercy go hand in hand with Jesus, says Uríbarri, and one might add that mercy does not compromise the truth, but is the way Jesus both leads people to the knowledge of their own guilty situation and at the same time makes a new life possible: “In the actions of Jesus, truth and mercy go hand in hand”.³⁵

If one takes these dogmatic objections seriously, it is not possible to say that every person who lives in an “irregular” or “unregulated” situation³⁶ necessarily lacks grace. Therefore, if a true and at the same time merciful encounter takes place, as in Jesus’s conversation with these women, then according to the biblical example, admission to the Eucharist should be possible.

2.2.3. *The Continuation of Papal Developments and Dogmatic Reflections in Amoris Laetitia*

Amoris laetitia seems to take up these dogmatic concerns. The text refers to the need to distinguish situations, and thus makes use of *Familiaris consortio*.³⁷ Moreover, Pope Francis sees the situation of the irrevocable failure of a marriage, which is connected with a moral obligation towards children who are born in the second marriage, reducing possible guilt involved, in line with his predecessors.³⁸

35 G. URÍBARRI BILBAO: “La comunión de los divorciados vueltos a casar”, 464: “en la actuación de Jesús verdad y misericordia caminan de la mano”.

36 See POPE FRANCIS: “General Audience, Saint Peter’s Square, Wednesday, 24 June 2015”, available at http://www.vatican.va/content/francesco/en/audiencias/2015/documents/papa-francesco_20150624_udienza-generale.html (accessed 11.4.2021): “It is true, on the other hand, that there are cases in which separation is inevitable. At times it becomes even morally necessary, precisely when it is a matter of removing the weaker spouse or young children from the gravest wounds caused by abuse and violence, by humiliation and exploitation, by disregard and indifference. There are, thanks be to God, those who, sustained by faith and by love for their children, bear witness to their fidelity to a bond they believed in, although it may seem impossible to revive it. Not all those who are separated feel called to this vocation. Not all discern, in their solitude, the Lord calling them. Around us we find various families in so-called irregular situations – I don’t really like this word – and it causes us to wonder. How do we help them? How do we accompany them? How do we accompany them so that the children aren’t taken hostage by either dad or mom?”

37 See CCC 2386: “It can happen that one of the spouses is the innocent victim of a divorce decreed by civil law; this spouse therefore has not contravened the moral law. There is a considerable difference between a spouse who has sincerely tried to be faithful to the sacrament of marriage and is unjustly abandoned, and one who through his own grave fault destroys a canonically valid marriage.” It references FC 84.

38 AL 301 refers to the situation when one is “in a concrete situation which does not allow him or her to act differently and decide otherwise without further sin.” This situation is described in AL 298 with a quotation from FC 84: “One thing is a second union consolidated over time, with new children, proven fidelity, generous self giving, Christian commitment, a consciousness

Several times the pope emphasizes that confession is not a court of law or a torture chamber, that sacraments should not appear as a reward but should be a means of help and grace. The Eucharist is not to be understood as a reward for the perfect, but as an aid to growth in faith.³⁹ These preliminary considerations then form the background against which the famous footnote 351 of *Amoris laetitia* becomes understandable. In this note, the pope states that, in individual cases, divorced people who are remarried may be admitted to Communion.⁴⁰

Pope Francis therefore takes a logical step forward in the perception of the complex situation of remarried divorced people that his predecessors prepared.⁴¹ In this way, he allows the resolution of the existing contradictions in an ecclesiology of the Body of Christ. This step also makes it possible to meet the demand for equal treatment of the goods of marriage and to interpret the choice of mercy as Jesus's answer to the sober naming of truth in the sense that the Eucharist can be given as a strengthening in the concrete individual case. This consistent continuation of the ecclesiological developments made by his predecessors allows moral theology to look at individual human beings in their concrete situation and to evaluate, according to the tradition of moral reflection, not only the action itself but also the concrete capacity for guilt and the actual guilt of the persons

of its irregularity and of the great difficulty of going back without feeling in conscience that one would fall into new sins. The Church acknowledges situations 'where, for serious reasons, such as the children's upbringing, a man and woman cannot satisfy the obligation to separate'."

39 See footnote 351 of AL (for the text see fn. 52 below). Similarly, *Evangelii gaudium* (EG) 44 stresses the importance of mercy where it quotes CCC 1735: "Moreover, pastors and the lay faithful who accompany their brothers and sisters in faith or on a journey of openness to God must always remember what the *Catechism of the Catholic Church* teaches quite clearly: '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'. Consequently, without detracting from the evangelical ideal, they need to accompany with mercy and patience the eventual stages of personal growth as these progressively occur. I want to remind priests that the confessional must not be a torture chamber but rather an encounter with the Lord's mercy which spurs us on to do our best. 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. Everyone needs to be touched by the comfort and attraction of God's saving love, which is mysteriously at work in each person, above and beyond their faults and failings." Furthermore, the repeated emphasis on God's mercy and the reference to the necessary "pedagogy of small steps" support this interpretation. See EG 171, with a quotation from JOHN PAUL II: *Ecclesia in Asia*, 6 November 1999, 20: "Hence the need for 'a pedagogy which will introduce people step by step to the full appropriation of the mystery'."

40 A. Porreca has dedicated a study on the background and importance of this footnote and explains that the exclusion from the Eucharist is a consequence of a static understanding of the sacrament that is offered only to those who have achieved the state of grace beforehand through confession. The celebration of the Eucharist therefore does not provide a spiritual way, a celebration of Christ's redeeming power that creates communion among the believers. Instead, it is reduced to a static consummation by persons who may not even be really in need, instead of being medicine for the wounded. See A. PORRECA: *Eucaristia e divorziati risposati*, 85-89.

41 See E.-M. FABER/M.M. LINTNER: "Theologische Entwicklungen in *Amoris laetitia* hinsichtlich der Frage der wiederverheirateten Geschiedenen", in: S. GOERTZ/C. WITTING (eds.): *Amoris laetitia – Wendepunkt für die Moraltheologie?*, 279-320.

concerned in a differentiated way and, depending on the degree, entrust them to God's forgiveness. In this way, a blanket assessment in the interpretation of canon law is replaced by the assessment of the situation of the persons concerned.

2.3. *The Unravelling of the Knot with Regard to Pastoral Theology*

The Florentine theologian Basilio Petrà points out that, in the tradition, exclusion from communion was never understood absolutely. Even with objective "disorder" there was the possibility of admission to Holy Communion.⁴² This was based on a number of principles. Firstly, in confession, the condition was always made that one should not demand more from a penitent than he or she could provide. One cannot demand of someone in confession that he or she leave a morally grave situation if this would cause great harm to persons for whom he or she is responsible ("obligatory situations"). Furthermore, it has been emphasized that there are always circumstances in which one must not try to change the opinion of a person who does not understand or cannot understand the opinion of the church before he or she can be admitted to communion. This is an insurmountable ignorance of a subjectively justifiable conscience. The situation of a perplexed conscience must also be considered, where the rule of the lesser evil applies: if there are only two bad options, one should choose the less bad one. For this reason, concrete values, which can be realized in the respective situation, have priority over abstract values.

Petrà's conclusion is that the objective situation does not necessarily exclude a person from the reception of Communion. Rather, the subjective situation of the person concerned is to be considered. The criterion to be applied is that of the salvation of souls. This means that even the question of whether a grave sin separating us from God exists can only be answered by taking into account the subjective situation, and is not determined solely on the basis of the external situation. *Amoris laetitia* draws on this broader pastoral tradition⁴³ and embeds it in the perspective of the logic of church action, which is described as the path of "mercy and inclusion".⁴⁴

42 B. PETRÀ: "Da *Familiaris consortio* ad *Amoris laetitia*: Un passo avanti nella continuità dell'attitudine pastorale, Il multiforme discernimento del capitolo VIII", in: *Il Regno Attualità* 8 (2016), 243. A pre-print version of the contribution is available online: http://www.webdiocesi.chiesacattolica.it/cci_new/documenti_diocesi/75/2016-06/23-4/I%20passi%20da%20FAMILIARIS%20CONSORTIO%20ad%20AMORIS%20-%20Basilio%20Petra.pdf (accessed 12.4.2021). I would like to thank Martin M. Lintner for the reference. The English version of the text, "From *Familiaris Consortio* to *Amoris Laetitia*: Continuity of the Pastoral Attitude and a Step Forward", has been published in: *INTAMS review* 22 (2016), 202-216, for the following text, see 212-213.

43 A. FUMAGALLI: *Camminare nell'amore: La teologia morale di papa Francesco*, Vatican City: Libreria Editrice Vaticana, 2017, 101-102, with footnote 60, supports this interpretation. By referring to AL 300, footnote 336 and AL 305, footnote 351 (where EG 44 and 47 are quoted), Fumagalli argues that divorced remarried persons can be admitted to the sacrament of Confession and Eucharist when there is no grave sin.

44 AL 297.

In pastoral work, this path leads to the question of how external, objective observation and internal, subjective attitudes can lead to an overall, i.e. jointly responsible, consideration by the pastor and those affected. To this end, in *Amoris laetitia*, which follows the “Five Attention Points” developed by the Diocese of Vienna, external and internal criteria of discernment are mentioned.⁴⁵ External criteria are the stability and public visibility of the new relationship, mutual affection, and responsibility towards the children. Internal criteria are the effort to reconcile truth and love, personal modesty, restraint, love for the Church and her teaching, and the honest search for the will of God as well as the continual search for the best resolution of the problem. The hope is that, according to AL 300, ideally a responsible and discreet person, who does not want to put his or her own wishes above the common good of the church, and a priest who knows the seriousness of the questions will reach a common conclusion. It is in this spirit that the German bishops have established guidelines for the pastoral care of remarried divorced Catholics.⁴⁶

The role of the priest or pastor changes in the light of *Amoris laetitia*. From one who maintains a standard, he becomes the personally involved companion of the faithful on their faith journey. His task is to consider which goods are involved, with a merciful eye and with therapeutic intent. This requires a personal commitment. Neither rigorism nor laxism are good, but a personal and appropriate accompaniment is required, with an attitude of humility, namely the knowledge that one would have committed similar sins if grace had not prevented it.⁴⁷

45 AL 300: “The divorced and remarried should ask themselves: how did they act towards their children when the conjugal union entered into crisis; whether or not they made attempts at reconciliation; what has become of the abandoned party; what consequences the new relationship has on the rest of the family and the community of the faithful; and what example is being set for young people who are preparing for marriage.” See PLATFORM WIGE (ed.): *Aufmerksamkeiten: Seelsorgerliche Handreichung für den Umgang mit Geschiedenen und mit Menschen, die an eine neue Partnerschaft denken*, Vienna: Platform WIGE, 2011, available at www.erzdioezese-wien.at/dl/ptOuJKJLLLLLNJqx4KJK/wige_broschuere_aufmerksamkeiten.pdf (accessed 19.04.2021).

46 See DIE DEUTSCHEN BISCHÖFE: „*Die Freude der Liebe, die in den Familien gelebt wird, ist auch die Freude der Kirche*“: *Einladung zu einer erneuerten Ehe- und Familienpastoral im Licht von Amoris laetitia*, 23 January 2017, available at https://www.dbk-shop.de/media/files_public/ac3dce34364e45e2582597894919ca9f/DBK_11104.pdf (accessed 06.04.2021). The bishops address marriage preparation, marriage accompaniment, and family as a place of learning the faith and dealing with fragility under the three steps “accompany – discern – integrate”.

47 This wording was chosen by the German bishops in their proclamation “*Die Freude der Liebe, die in den Familien gelebt wird, ist auch die Freude der Kirche*”, 14-15: “Both the attitude of laxism without intensive scrutiny in accompanying, differentiating, and integrating, as well as a rigoristic attitude that resorts to a quick judgement of people in so-called irregular situations are to be avoided. Such extreme attitudes should be replaced by discernment (Lat. *discretio*) in personal dialogue. We see it as our task to deepen the way of conscience formation for the faithful. To this end, it is necessary to empower our pastors and to provide them with criteria. The Holy Father gives such criteria for the formation of conscience in *Amoris laetitia* in a detailed and excellent way (see AL 289-300)” (my translation).

With regard to the assessment of the individual situations, it is obvious that there is a clear rejection of the idea of a fundamental sinlessness of church members, which could lead to a general exclusion of sinners. In addition, the focus is not so much on sin, but rather on the suffering and burden of people, which is to be eased by pastoral care. To be human and to be Christian means to be on a journey to holiness and to be encouraged to take the next step in order to grow in trust and love. While the pope, with regard to the ability of human beings to make decisions of conscience and to orient themselves towards a goal, refers to elements from the moral theology of Aquinas, the Jesuit motto *Deus semper maior*, the search for the ever-greater glory of God, stands behind the complementary attitude toward pastoral care. This is meant to lead the members of the order to allow themselves to be determined entirely by Jesus. In this way, they become free to engage in everyday circumstances outside their community and to subtly guide people in their search for God.⁴⁸ From this perspective, it is not a fixation on sin and guilt that is important but a focus on conversion and a new beginning, growth in faith and love. Instead of concentrating on the law (What is a grave sin? What is a venial sin?), a pastor's pedagogical-therapeutic skills are required: How can I accompany brothers and sisters in Christ on the path of growth in faith and love, inner freedom and responsibility, and encourage them to take a new step?

3. *The Position and Task of Moral Theology in the Aftermath of Amoris laetitia*

In light of the previous reflections, we can now turn to the question of the consequences of these observations for the position and the task of moral theology in the wake of *Amoris laetitia*.

3.1. *Position and Task of Moral Theology*

The efforts of Pope Francis are directed towards the reorientation of ecclesiology, canon law, and pastoral care to their function for the salvation of souls and the experience of a merciful and loving God. Canon law and dogmatic reflections as well as pastoral action must be measured by their applicability to the message and experience of the living reality of God. Through this focus, the pope creates a new space for moral theology to consider the situations of remarried divorced people; such a space contains various elements.

48 See H. WALDENFELS: "Papst Franziskus und seine geistlichen Quellen: Jesuitische Inspiration für die Neue Evangelisierung", in: *Zeitschrift für Missionswissenschaft und Religionswissenschaft* 98 (2014), 28, 34. For Thomas Aquinas, see C.M. KELLY: "The Role of the Moral Theologian in the Church: A Proposal in Light of *Amoris Laetitia*", in: *Theological Studies* 77 (2016), 929. See also D. BOGNER: "Angedeuteter Wandel: Die Ambivalenz von 'Gradualität' in *Amoris Laetitia*", in: S. GOERTZ/C. WITTING (eds.): *Amoris laetitia – Wendepunkt für die Moraltheologie?*, 201-223.

In *Amoris laetitia*, a graduality of pastoral care is called for, without introducing a graduality of the law. At the same time, the law does not assume the character of a judicial sentence but rather that of a judicial encouragement. There is a reversed perspective which no longer looks from the (perfect) goal to the (imperfect) situation, but rather directs one's gaze from the concrete situation to the next attainable goal for the future; as Cardinal Schönborn formulated in an interview, "*Il faut entrer dans le concret*".⁴⁹ One must start by getting involved with the concrete person and his or her situation. The *forum internum* is the focus of attention.⁵⁰

With regard to approaches in moral theology, this has the consequence that one cannot find solutions by arguing in a neoscholastic sense, by deduction from the general law to the concrete situation. The focus is not on the objectively visible action as an object of observation from the outside but on the manifold relationships between the human person and his or her action, its object, the circumstances of life, and intentions.⁵¹ In this respect, one could speak of a subject orientation in *Amoris laetitia*.

The subject orientation in this context means a recourse to the dynamic relationship of object, circumstances, and intention in the ethical reflection of the actor in Aquinas. For epistemological reasons, Thomas emphasizes that the overall assessment of an action arises in the consideration of the actor, who considers his goals of action, his view of the circumstances and of the concrete act in the light of the good aspired to. Thus, a discrepancy between an external view and a personal view is always possible. This discrepancy can go hand in hand with a limited understanding and restricted freedom, thus reducing moral guilt.

A second point of departure seems to suggest itself where the pope continues the teaching of his predecessors, stating that people in "irregular situations" have full participation in the ecclesial community and can continue to grow in faith and love. This suggests that it is still possible to orient oneself to God and to goodness, and that there is therefore no final separation from God, i.e. no "mortal sin". According to Pope Francis, it is more important to look from the situation towards a goal to which people are journeying. This structure of thought has similarities with the doctrine of the *optio fundamentalis*, which takes as its starting point the idea that each person has a basic orientation that can be compromised by bad actions, but recognizes that single actions do not necessarily change the basic orientation. Therefore, in our context, the mere fact of a divorce and remarriage does not directly imply the existence of mortal sin, and therefore an overall exclusion from the sacraments cannot be demanded.⁵²

49 C. SCHÖNBORN: *Entretien sur Amoris Laetitia avec Antonio Spadaro*, Paris: Parole et Silence, 2016, 79-80.

50 Ibid. 80.

51 See E. SCHOCKENHOFF: "Traditionsbruch oder notwendige Weiterbildung?", 147, 158, especially fn. 10.

52 See AL 305, footnote 351, which quotes EG 44: "In certain cases, this can include the help of the sacraments. Hence, 'I want to remind priests that the confessional must not be a torture

3.2. *Suggestions for Moral Theology in Amoris Laetitia and Moral Theology after the Second Vatican Council*

These concerns of the pope seem to confirm the above-mentioned shift in moral theology from a neoscholastic focus on the law towards a valuation of the human person as the subject of human acts, as it has occurred during and since the Second Vatican Council. What the pope demands, namely a personalistic turn of pastoral practice and respect for the acting subject and his or her conscience, has long since been developed in moral theology and can now take effect.⁵³ Nevertheless, there are also differences, which lie above all in the perspective on the human person. Pope Francis does not assume to the same extent a strong, free, and rationally acting human person as do many texts of moral theology published during the decades following Vatican II. Rather, Pope Francis sees a limited, burdened person who should be encouraged in his or her everyday worries and limitations instead of having the stones of the law thrown at them.⁵⁴ In *Amoris laetitia* one does not find words lauding the greatness, freedom, and self-determination of humanity. Interestingly, the image of the flawed person, weighed down by the burden of everyday life, resembles in many ways the image of the person that the pope's critics embrace. The decisive difference lies in the answer given to this description of the person. The pope reacts to it with pastoral pedagogy. He is not concerned with washing away guilt, so that the white under the black shines out, but he argues for supporting the person, so that the dark grey of the human condition can turn into an ever-lighter grey while the human person is climbing the hill of life. The pope's concern is not to separate guilt from flawlessness, and black from white sheep, but rather to accompany the colorful flock to fresher springs and richer pastures.

chamber, but rather an encounter with the Lord's mercy' (EG 44). I would also point out that the Eucharist 'is not a prize for the perfect, but a powerful medicine and nourishment for the weak' (EG 47)."

- 53 This personalistic turn corresponds to a fuller expression of the moral conscience. See C.M. KELLY: "The Role of the Moral Theologian in the Church", 927; A. AUTIERO: "*Amoris laetitia* und das sittliche Gewissen: Eine Frage der Perspektive", in: S. GOERTZ/C. WITTING (eds.): *Amoris laetitia – Wendepunkt für die Moralthologie?*, 95-113; R. DELL'ORO: "Discerning the Complexities of Moral Life", in: T.P. RAUSCH/R. DELL'ORO (eds.), *Pope Francis on the Joy of Love*, 53-64.
- 54 AL 305: "For this reason, a pastor cannot feel that it is enough simply to apply moral laws to those living in 'irregular' situations, as if they were stones to throw at people's lives". AL 296, directly quoting the *Relatio finalis* of 2015, 51, expresses the need "to be attentive, by necessity, to how people experience distress because of their condition". Similarly, AL 291 states, quoting from the *Relatio synodi* of 2014, 28, that "the Church must accompany with attention and care the weakest of her children, who show signs of a wounded and troubled love, by restoring in them hope and confidence". In this context, Pope Francis compares the task of the Church to a field hospital (AL 291). AL 310 quotes EG 47 when it states that "the Church is not a tollhouse; it is the house of the Father, where there is a place for everyone, with all their problems".

This pastoral logic reminds us – while at the same time serious differences remain – of the Jesuit confessional practice of the 16th and 17th centuries and of the pastoral practice of Alphonsus of Liguori, who was aware that different situations had to entail different normative applications. Even then, this brought the Jesuits the accusation of laxism (think of Pascal’s *Provincial Letters*), and one hears the same criticism today, although Pope Francis in no way abandons the norms which serve as a guideline and as the perspective of perfection. From the point of view of moral theology, his pastoral focus on the reality of human life could be described as an expression of an ethics of ability and facilitation⁵⁵ that always keeps in mind the personal limits of concrete people.⁵⁶

The characteristic features of Pope Francis’s pastoral and moral approach show that such an ethics is focused on growing in virtue. Yet, this approach to virtue refers above all to the theological virtues, faith, hope, and love, which are to be practiced and reinforced. Moral virtues have more of a supporting function and are not at the center of attention.

The development that we have observed with regard to canon law, dogmatic theology, and pastoral work, which is directed towards promoting and facilitating the life of people in the communion of the church, corresponds in large part to what had already been considered and developed in moral theology during the “turn to the subject” at the time of Vatican II. This also includes the importance of individual conscience, which the pope emphasizes. In this sense, the pope could fall back on numerous preliminary works of moral theologians.

Nevertheless, the pope’s challenging question as to what extent the theological disciplines see themselves as promoting communion with the church also applies to moral theology. This is true inasmuch as moral theology, like the other theological disciplines, has developed a subsystem of its own, and in the course of this has – at least in part – paid seemingly little attention to its service to the concrete life of the faithful. It would be probably helpful, as a first step, to show that the differentiated approaches that moral theology has developed in the past decades are in correspondence to the kind of moral theology that Pope Francis

55 For the concept of an “ethics of ability and facilitation”, see G. AUGUSTIN/I. PROFT: “Vorwort”, in: G. AUGUSTIN/I. PROFT (eds.): *Ehe und Familie: Wege zum Gelingen aus katholischer Perspektive*, Freiburg: Herder, 2014, II. See C.M. KELLY: “The Role of the Moral Theologian in the Church”, 934-940. Kelly shows in a historical review that the central difference between the new approach in *Amoris laetitia* and the classical role of moral theology in the tradition is that, for the first time, moral theology is supposed to focus on supporting the decisions of the faithful based on their conscience in concrete terms, rather than emphasising the expert judgement of the moral theologian.

56 AL 300, quoting the *Relatio finalis* of 2015, 51, argues: “since ‘the degree of responsibility is not equal in all cases’, the consequences or effects of a rule need not necessarily always be the same.” This sentence is followed by footnote 336, which explains the consequences for sacramental practice and refers to EG 44 and 47: “This is also the case 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”.

is calling for, namely one understood as a loving answer to a loving God.⁵⁷ Such an answer can be given if faith encourages people to act according to well informed and enabled consciences while being aware of God's helping hand in the midst of failure. It is obvious that the gap between theoretical and concrete practical approaches might have had a great deal to do with church politics related to moral theology's reflections on *Humanae vitae*, and with a partially lacking cooperation between bishops and moral theologians in pastoral questions of the dioceses. Pope Francis seems to invite moral theology to help in working on the relationship between moral theory and pastoral practice. According to him, it is pastoral care to which all doctrine and canon law must be oriented because he applies a "missionary key" to all ecclesial activities.⁵⁸ Moral theology, thanks to Pope Francis's trend-setting actions in the field of marriage and the family, is able to present its insights in a more differentiated way and in better harmony with dogmatic theology, canon law, and pastoral care than before, even though further steps remain to be taken. What remains open is the challenging question of how moral theology can and should now, in the spirit of the papal concern, commit itself even more strongly to the pastorally relevant aspects and so possibly function as an intermediary between theological doctrine and pastoral practice.⁵⁹

57 A. FUMAGALLI: *Camminare nell'amore*, 107: "L'interpretazione della morale cristiana come risposta d'amore invita a considerare il suo duplice carattere, responsoriale e amoroso: si tratta, infatti, di 'risposta' e di risposta 'd'amore'".

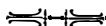
58 See G. MANNION: "Francis's Ecclesiological Revolution: A New Way of Being Church, a New Way of Being Pope", in: G. MANNION (ed.): *Pope Francis and the Future of Catholicism: Evangelii Gaudium and the Papal Agenda*, New York, NY: Cambridge University Press, 2017, 93-122, at 119.

59 A similar approach can be found in C.M. KELLY: "The Role of the Moral Theologian in the Church", 922-948.

SUMMARY

Untying the Gordian Knot: On the Strengthening of Moral Theology by *Amoris Laetitia*

The article begins with the proposal that the “Gordian knot” regarding the situation of remarried divorced people in the Catholic Church is caused by the interweaving of moral theology with canon law, dogmatic theology, and pastoral theology. That the various theological disciplines have developed their own logic in the course of their historical differentiation has led to a lack of compatibility in dealing with remarried divorced persons. The article aims at showing how Pope Francis, especially in *Amoris laetitia*, is contributing to untying the knot which hinders the application of principles developed in moral theology to the concrete situation of these Catholics. Therefore, it analyzes developments in canon law, dogmatic theology, and pastoral theology that gradually will make it possible for moral theology to act more in accordance with these other disciplines. With regard to canon law, pastoral care for people who experience difficulty in regard to the church’s legal processes has led Pope Francis to introduce reforms in canon law intended to facilitate the declaration of nullity. According to the pastoral requests developed in *Amoris laetitia*, these efforts would need to be complemented by an adaptation of the authentic interpretation of canon 915, since this canon in its current interpretation impedes the full appreciation of subjective elements required for pastoral discernment in pastoral work with divorced remarried persons. With regard to the entanglement of dogmatic theology and moral theology, the pastoral approach of Pope Francis has led to new considerations. Regarding the understanding of the Eucharist in the light of an ecclesiology of the Body of Christ, new light has been shed on the presence of grace in remarried divorced persons in the church. Pope Francis has consequently built on the steps developed by his predecessors and rightly concluded that being divorced and remarried does not automatically result in exclusion from the Eucharist. This has contributed to bringing the positions of dogmatic and moral theology closer together. Equally, pastoral principles taken from the context of the practice of confession show that discernment is necessary and that different individual situations need to be distinguished with regard to what, from an exterior point of view, seems to be the same. By stimulating these developments and discussions, Pope Francis has undertaken important steps towards the untying of the Gordian knot. His discreet but trend-setting interventions into canon law and his indications of the need for development and reflection in some dogmatic and pastoral fields create the necessary space where the insights of moral theology regarding the situations of divorced and remarried persons can be brought to bear consistently and without contradiction on other theological disciplines.



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