

The Critics of Pope Francis and *Amoris Laetitia*

by Todd A. Salzman and Michael G. Lawler

The reaction to the publication of Pope Francis's Apostolic Exhortation *Amoris Laetitia* (henceforth *AL*) has been as contentious as the two Synods on Marriage and Family of 2014 and 2015 to which it is a papal response. We focus here on an "Open Letter to Pope Francis" from the Catholic philosophers John Finnis and Germain Grisez,¹ which was published on the website of *First Things* on December 9, 2016. That letter requested that the pope "condemn eight positions against the Catholic faith that are being supported, or likely will be, by the misuse of the Apostolic Exhortation *Amoris Laetitia*."² In an effort to initiate with Finnis and Grisez the kind of charitable dialogue so prized by Francis, a dialogue "of two different ways of thinking [that] can lead to a synthesis that enriches both" (*AL*, no. 139) we submitted our response to the editor of *First Things* who, regrettably, declined even to acknowledge its receipt let alone publish it. We publish it here, still in search of a charitable dialogue. To understand the terms of the dialogue, it is crucial for the reader to always be aware that each of the positions advanced by Finnis and Grisez are presumed by them to be contrary to the Catholic tradition and "are being supported, or likely will be, by the misuse of...*Amoris Laetitia*." We respond to these positions with both a "hard" critique, arguing that no specific position is contrary to Catholic doctrine, and a "soft" critique, arguing that *AL* cannot be used to defend the positions Finnis and Grisez condemn without distorting the text itself. Since *AL* is now part of magisterial teaching, it can and will be used in both hard and soft critiques.

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To Finnis and Grisez, our colleagues, we say: you have written to the Bishop of Rome concerning what you see as the actual or possible misuse of his recent Apostolic Exhortation *AL* and in it you set out positions you judge "contrary to Catholic faith, that is, to Scripture and teachings that definitively pertain to tradition, each interpreted in the other's light."³ We applaud that excellent Catholic principle for judging theological positions with one caveat. As is evident from your stated positions and other extensive writings, your

1 We acknowledge both Dr. Germain Grisez's death on February 1, 2018, and his extensive contributions to Catholic moral philosophy throughout his distinguished career.

2 John Finnis and Germain Grisez, "An Open Letter to Pope Francis," <https://www.firstthings.com/web-exclusive/2016/12/an-open-letter-to-pope-francis>, 1. Henceforth Letter.

3 Letter, 2.

use of “Tradition” is often defined narrowly in terms of magisterial teaching. We define tradition more broadly to include not only magisterial teaching but also the theological realities *sensus fidelium* and ecclesial synodality.⁴

Sensus fidelium is a theological concept that denotes “the instinctive capacity of the whole Church to recognize the infallibility of the Spirit’s truth.”⁵ It is a charism of discernment, possessed by the whole Church, which receives a Church teaching as apostolic and, therefore, to be held in both faith and *praxis*. One of the great debates during the birthing of the Second Vatican Council’s *Lumen Gentium* was over who should be consulted about Catholic doctrine. Vatican theologians argued Pius X’s position that it was only the Magisterium who determined doctrine, a claim that had become common since the definition of papal infallibility by the First Vatican Council in 1870. Conciliar bishops and theologians responded with the more historically accurate claim that the Church’s faith was preserved in the faith of *all* believers, lay and clerical together. They argued that, although the Magisterium spoke *for* the Church, it was also obliged to speak *from* the Church and that, when it ignored a clear *sensus fidelium* in the whole Church, it was being unfaithful to the Church’s rule of faith. *Lumen Gentium* is clear. “The body of the faithful *as a whole*, anointed as they are by the Holy One (cf. 1 Jn 2:20; 2:27), cannot err in matters of belief. Thanks to a supernatural sense of the faith (*sensus fidei*) which characterizes the people *as a whole*, it manifests this unerring quality when, ‘from the bishops to the last of the faithful,’⁶ it manifests universal agreement in matters of faith and morals.”⁷ In the Church now re-emerging from the Second Vatican Council, which is believed to be not Pius X’s unequal, hierarchical society but an equal ecclesial communion, any effort to evaluate a magisterial teaching will automatically include open dialogue, uncoerced judgment, and free consensus. That is the way genuine, authentic, and universal *sensus fidelium* is formed. Surveys leading up to the Synods and *AL*, which attempt to include the voices from those surveys, clearly reflect a useful process for discerning *sensus fidelium*.

The discernment of *sensus fidelium* is a complex process that takes time, patience, and a commitment to the kind of honest and charitable dialogue that Francis so appreciated at the two Synods and characterized as “a spirit of collegiality and synodality.”⁸ Some see, indeed, a defining characteristic of his papacy as seeking to realize synodality, the ecclesiology of Vatican II that focuses on journeying together and listening to input from all quarters of the Church, laity and clerics alike, to engage in charitable, honest, and constructive dialogue to discern God’s will and the path the Church must follow to live according to that will. This requires what both John Paul II and Francis frequently refer to as “dialogue in charity.” The two synods that laid the foundation for *AL* modeled this dialogue in a way that no synod in the past has done. Synodality is a central and defining dimension of Francis’s papacy and will open the door to further dialogue and development in the Church.⁹

In our broad definition of tradition, there can be, and today notably is, tension between magisterial teaching and the lived experiences of the Catholic faithful. This tension invites prayerful dialogue and reflection, or synodality, to discern its implications for magisterial teaching. We engage this broader definition of tradition when considering your positions.

4 The English word *synod* derives from the compound Greek word *sun*, meaning together, and *hodos*, meaning travelling or journeying, hence journeying together.

5 John E. Thiel, *Senses of Tradition: Continuity and Development in Catholic Faith* (Oxford: Oxford University Press, 2000), 47.

6 Augustine, *De praed. sanct.* 14, 27, *Patrologia Latina* 44, 980.

7 Second Vatican Council, *Lumen Gentium* (1964), no. 12, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html.

8 Speech at the conclusion of the 2014 Synod on Marriage and the Family (October 18, 2014), https://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco_20141018_conclusione-sinodo-dei-vescovi.html.

9 See Vatican Radio, “Papal Election Anniversary: Synodality a Key Change Under Pope Francis” (December 3, 2017), http://en.radiovaticana.va/news/2017/03/12/papal_election_anniv_synodality_a_key_change_under_francis/1297800.

Finnis and Grisez: Position A

A priest administering the Sacrament of Reconciliation may sometimes absolve a penitent who lacks a purpose of amendment with respect to a sin in grave matter that either pertains to his or her ongoing form of life or is habitually repetitive.¹⁰

We respond first to “Position A.” First, you seem to be concerned that *AL*’s consideration of “irregular situations” promotes a violation of the Sacrament of Reconciliation’s conditions for absolution, specifically the requirement for a purpose of amendment, by opening up the possibility for “fuller participation in the life of the Church” (*AL*, no. 300). This may include communion for a divorced and remarried couple who are not continent in their relationship. On the one hand, your concern that people may not show adequate repentance and, therefore, respect for the Sacrament of Reconciliation, is a legitimate concern. Pope Francis is not advocating that lack of respect in *AL*; rather, he is recognizing the complexity of human situations and the historical fact that there cannot be a one-size-fits-all moral assessment of people in irregular situations. *AL* notes that it can no longer be maintained that those living in irregular situations, such as the divorced and remarried, “are living in a state of mortal sin and are deprived of sanctifying grace” (no. 301). Whereas Pope John Paul II in *Familiaris consortio* (no. 84) proposed that the only acceptable arrangement for such couples is to live as brother and sister, *AL*, following *Gaudium et spes*, recognizes that if sexual intimacy is lacking in such relationships, “faithfulness is endangered and the good of the children suffers” (*AL*, no. 298, footnote 329, citing *GS*, no. 51). Living celibate as brother and sister may deepen commitment and family life for some couples, but it may also damage commitment and family life for others. If a couple continues to have sexual relations, it does not necessarily indicate that they lack a purpose of amendment; rather, it may indicate that, through the process of internal forum, discernment, and pastoral guidance (no. 300), the couple does not consider sexual relations in their situation a sin in grave matter, or perhaps, any sin at all. If this is the case, it is not that the couple lacks a firm purpose of amendment but that there is no sin, or no grave sin, present.

Second, “Position A” invites a hard critique of your understanding of Church doctrine that is at the root of that Position and too easily elides *grave matter* into *grave sin*. We remind you of the teaching of the Catholic tradition that “mortal [or grave] sin is sin whose object is grave matter and which is also committed with full knowledge [of the wrongness of the grave act] and deliberate consent.”¹¹ That divorced Catholics remarry without canonical annulment, for instance, may constitute *grave matter* in the eyes of the Magisterium but it constitutes *grave sin* only when the participants have also the required full knowledge and deliberate consent. Since divorced Catholics who remarry without annulment do not all fit, Francis asserts correctly, “into overly rigid classifications leaving no room for personal and pastoral discernment” (*AL*, no. 298), they cannot all be accused of grave sin and be prohibited from receiving communion. Whether or not the conditions for grave sin have all been fulfilled will have to be decided on a case-by-case basis in a process of discernment guided by a counselor inside or outside the Sacrament of Reconciliation (*AL*, no. 291-312), and culminating in an internal forum practical judgment of conscience. Those who are not guilty of grave sin because the conditions for grave sin have not all been met *must* be admitted to communion according to Canon 912 of the law of the Catholic Church: “Any baptized person who is not prohibited by law can and *must* be admitted to Holy Communion.”

¹⁰ Letter, 2.

¹¹ *Catechism of the Catholic Church*, no. 1857 (New York: Paulist Press, 1994).

Finnis and Grisez: Positions B and E

Some of the faithful are too weak to keep God's commandments; though resigned to committing ongoing and habitual sins in grave matter, they can live in grace.¹²

If one bears in mind one's concrete situation and personal limitations, one's conscience may at times discern that doing an act of a kind contrary to a divine commandment will be doing one's best to respond to God, which is all that he asks, and then one ought to choose to do that act but also be ready to conform fully to the divine commandment if and when one can do so.¹³

We consider "Positions B" and "E" to be so related that we will consider them together. With respect to "Position B," there is again a hard and a soft critique. First, we begin our hard critique with a fundamental distinction in Catholic ethics between the right and the good; this distinction has implications also for "Position A" above. According to that distinction, the ethical terms right and wrong pertain to acts and good and bad pertain to persons and their motives. A right or wrong act analyzes how that act impacts human beings and relationships; a good or bad person or motive analyzes the character of the person performing the act. Why this distinction? A person can perform a right act (giving alms to the poor) with a bad motive (for vainglory) or a person can perform a wrong act (stealing money) with a good motive (seeking justice by providing necessary needs for the poor). Morally evaluating the entire act requires that we consider both the motive and the act, including its morally relevant circumstances. The Magisterium often fails to recognize this distinction, as does Francis in his use of the phrases "objectively sinful" or "objective situation of sin" (*AL*, no. 305). Even if an act is objectively wrong, it may not be subjectively sinful.

The *Catechism of the Catholic Church* implicitly acknowledges this distinction when it teaches, for instance, that even though "masturbation is an intrinsically and gravely disordered *action*," "imputability and responsibility for an action can be *diminished and even nullified* by ignorance, inadvertence, duress, fear" and that "affective immaturity, force of acquired habit, conditions of anxiety, or other psychological or social factors...*lessen or even extenuate* moral culpability" and therefore grave sin.¹⁴ In other words, masturbation is a wrong act but, given personal psychological and social factors that influence the person, there may be little or no personal culpability in it and, therefore, no sin. Francis stands firmly in the long-established Catholic tradition that personal circumstances can nullify grave sin in grave matter and adds to it the extenuating circumstances of "dire poverty and great limitations" (*AL*, no. 50), drug use, and family and societal violence (*AL*, no. 51). We call to mind the consoling words of St. Paul in Romans: "Where sin increased, grace abounded all the more."¹⁵ The presence of God, grace, contra your position, is present even in sin where there is moral culpability and certainly abounds when wrong acts are chosen but moral culpability is diminished. By failing to distinguish between the rightness and wrongness of acts and the goodness and badness of persons, your blanket negation in "Position B" that people who are "resigned to committing ongoing and habitual sins in grave matter...can [still] live in grace" fails to make the distinction between acts and motives and ignores the traditional Catholic teaching that when moral culpability is nullified or extenuated people can and do still live in grace, even if they choose wrong acts.

Your focus on habitual sin, which too easily conflates the wrong and the bad, invites also a soft-critique of your interpretation of *AL*. Francis changes no doctrine in *AL*, but he does shift the focus from rules, laws, and norms that condemn wrong acts and places it on God's unconditional love of and mercy towards his human creatures.

12 Letter, 3.

13 Letter, 3.

14 *Catechism*, no. 1735 and 2352, emphases added.

15 Rom 5:20; *Catechism*, no. 1848.

He complains, justly, of those who “feel that it is enough 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.... ‘and judging at times with superiority and superficiality difficult cases and wounded families’” (*AL*, no. 305; emphasis added). At times, he continues, “we find it hard to make room for God’s unconditional love in our pastoral activity. We put so many conditions on mercy that we empty it of its concrete meaning and real significance. That is the worst way of watering down the Gospel.” He embraces the judgment of the International Theological Commission that all theologians, indeed all Catholics, should always heed: “we should always consider ‘inadequate any theological conception which in the end puts in doubt the omnipotence of God and, especially, his mercy’” (*AL*, no. 311).¹⁶

“Position E” explicitly introduces the idea of conscience, its role, function, and authority, which is foundational in the Catholic tradition and has been reinstated by Francis in *AL* to its preeminent place in the moral life. We begin with a hard critique of your position. The standard and long-traditional Catholic approach to making moral decisions in both grave and non-grave matters acknowledges the authority and inviolability of personal conscience. Already in the thirteenth century Thomas Aquinas, that source and pillar of the Catholic tradition, established the authority and inviolability of conscience. “Anyone upon whom the ecclesiastical authorities, in ignorance of the true facts, impose a demand that offends against his clear conscience, should perish in excommunication rather than violate his conscience.”¹⁷ After the upheaval created by Martin Luther’s Reformation and the Council of Trent’s defensive response to it, and especially after Vatican I’s declaration of papal infallibility in 1870, this teaching became submerged in claims for the doctrinal authority of the pope and bishops. The way that Catholics were to make a moral decision was perhaps best articulated by Pius X: “The Church is essentially an unequal society, that is, a society comprising two categories of persons, the Pastors and the flock.” The latter have “one duty...to allow themselves to be led and, like a docile flock, to follow the Pastors.”¹⁸ It could not be clearer: to make a moral judgment in this context all a Catholic need do is to follow the instructions of Pastors in hierarchical power. You seem to embrace this vision of conscience as is evidenced by your statement on the relationship between conscience and magisterial teaching: “For her members, the Catholic Church is the supreme moral authority under God. Catholics ought to *conform* their consciences to her teaching in every question, every detail, every respect. If they are faithful, they will.”¹⁹

Some sixty years after Pius X’s declaration, the Second Vatican Council subverted his assertion and followed Aquinas in decreeing the authority and inviolability of personal conscience. “In all his activity,” it decreed, “a man (sic) is bound to follow his conscience faithfully, in order that he may come to God...It follows that he is not to be forced to act contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious.”²⁰ Again, it could not be clearer. An individual Catholic makes concrete moral judgments by following his/her personal conscience, a practical judgment that he/she should do or not do this particular action, to kill this person threatening the lives of his family members, for instance, or to receive communion when divorced and remarried without an annulment. Given universal human weakness and finitude, any such practical judgment of conscience can be in error. If the error cannot be ascribed to moral fault, failure to gather the necessary evidence, to engage in the necessary deliberation, to take the necessary counsel, for

16 See International Theological Commission, *The Hope of Salvation for Infants Who Die Without Being Baptized* (2007), http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20070419_un-baptised-infants_en.html, 2.

17 Thomas Aquinas, *In IV Sent.*, dist. 38, q. 2, art. 4.

18 Pius X, *Vehementer nos* (1906), no. 8, http://w2.vatican.va/content/pius-x/en/encyclicals/documents/hf_p-x_enc_11021906_vehementer-nos.html.

19 Germain Grisez, *The Way of the Lord Jesus. Volume One: Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983), 566. Emphasis added.

20 Second Vatican Council, *Dignitatis Humanae* (1965), no. 3, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html; and Second Vatican Council, *Gaudium et Spes* (1965), no. 16, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html.

example, the practical judgment of conscience not only *can* but also *must* be followed. When we have done all we can in our circumstances and within our limitations to gather information, to take appropriate counsel, to deliberate, to discern, we can and must fall back on the practical judgment of conscience, even if, as Aquinas argued, it is contrary to Church authority.

A soft critique of “Position E” is that Francis stands firmly within and articulates the substance of the Catholic tradition when he teaches that “individual conscience needs to be better incorporated into the Church’s praxis in certain situations which do not embody our understanding of marriage” and insists that we “find it hard to make room for the consciences of the faithful, who very often respond as best they can to the Gospel amid their limitations, and are capable of carrying out their own discernment in complex situations” (*AL*, no. 303). We all must heed his insightful comment that is grounded in, and faithful to, the established tradition: “we have been called to form consciences, not to replace them” (*AL*, no. 37). There can be no doubt that in *AL* Francis acts to “make room for the consciences of the faithful,” perhaps especially for the consciences of the weakest among them. That making room includes *accompaniment* by Church ministers of the faithful as they seek to faithfully discern moral issues and make conscientious moral judgments about them. Catholic freedom of conscience, we insist, however, never means ignoring Church doctrine but rather discerning it faithfully and being guided by it in the process of making conscientious moral judgments.

Finnis and Grisez: Positions C and D

No general moral rule is exceptionless. Even divine commandments forbidding specific kinds of actions are subject to exceptions in some situations.

While some of God’s commandments or precepts seem to require that one never choose an act of one of the kinds to which they refer, those commandments or precepts actually are rules that express ideals and identify goods that one should always serve and strive after as best one can, given one’s weaknesses and one’s complex, concrete situation, which may require one to choose an act at odds with the letter of the rule.²¹

Again, we consider these two Positions so related that we respond to them together. Both circle around exceptionless moral rules. Your implication that they include errors against the Catholic faith are so far removed from the Catholic tradition that you must have ignored your own biblical and traditional rule when you wrote them. There are two solemn biblical injunctions, for instance, two of the great Commandments: “You shall not kill” and “You shall not steal.” Each is accepted in Catholic faith as a “divine commandment,” yet the Catholic tradition has always taught that they can have exceptions. One may kill without moral fault in a *just* war and in legitimate defense of oneself or one’s family. The *Catechism* makes clear that legitimate defense against an unjust aggressor is even “a *grave duty* for whoever is responsible for the lives of others or the common good.”²² It also makes clear that stealing another’s property is perfectly moral “in obvious and urgent necessity when the only way to provide for immediate, essential needs (food, shelter, clothing) is to put at one’s disposal and use the property of others.”²³ “To put at one’s disposal and use” is, of course, a euphemism for “to steal the property of others.” Stealing when one lacks the basic needs of life might be judged to be illegal by society, but the Catholic Church never judges it immoral. If such solemn “divine commandments” have exceptions, it is difficult for us to imagine any non-divine commandment or rule that is exceptionless.

²¹ Letter, 3.

²² *Catechism*, no. 2321.

²³ *Catechism*, no. 2408.

Finnis and Grisez: Position F

Choosing to bring about one's own, another's, or others' sexual arousal and/or satisfaction is morally acceptable provided *only* that (1) no adult has bodily contact with a child; (2) no participant's body is contacted without his or her free and clear consent; (3) nothing done knowingly brings about or unduly risks physical harm, disease transmission, or unwanted pregnancy; and (4) no moral norm governing behavior in general is violated.²⁴

This Position conjures up for Catholics the subject of human sexuality. We have addressed the ethics of that subject extensively elsewhere;²⁵ we wish here only to consider briefly the traditional Catholic moral norms governing sexual behavior. Sexuality is a gift of God's creation and is, therefore, good, but moral sexual intercourse is still restricted in official Catholic teaching to spouses in marriage for procreation, which since Aquinas has been established in Catholic moral theology as the primary end of marriage. Following the announcement of an ecumenical council by Pope John XXIII, a Central Preparatory Commission was established to receive, edit, and distribute documents to be discussed by the Bishops in the plenary sessions of the Council. Early in 1962, that Central Commission received from the Theological Commission chaired by Cardinal Alfredo Ottaviani, then Prefect of the Holy Office, a schema entitled "*De Castitate, Virginitate, Matrimonio, Famila*." It discussed that schema in May 1962 and rejected it as too negative and legalistic. A sampling from the schema will illustrate what led to its rejection and enable us to understand what was rejected, not only in the Central Commission but also in the Council itself.

Along with his schema, Cardinal Ottaviani had sent the Central Commission a note of explanation of the intent of the schema. "Before all else the Theological Commission has set out the objective order, that is, *that which God himself willed in instituting marriage and Christ the Lord willed in raising it to the dignity of a sacrament*. Only in this way can the modern errors that have spread everywhere be vanquished."²⁶ The most important among those errors are "those theories which subvert the right order of values and make the primary end of marriage inferior to the biological and personal values of the spouses, and proclaim that conjugal love itself is in the objective order the primary end."²⁷ The schema offers the traditional hierarchy of ends of marriage. "The one and only primary end is the procreation and nurture of children.... The other objective ends of marriage, rooted in the character of marriage but still secondary—such as the spouses' mutual love and the remedy of concupiscence" are subordinate ends.²⁸ The debate, both the preliminary one in the Central Commission and the decisive one in the Council itself, centered around the hierarchy of ends, specifically around the relative values of conjugal love and the procreation of children. The outcome of that debate entered the Catholic tradition in *GS*.

GS teaches that marriage is a "community of love" (no. 47), an "intimate partnership of conjugal life and love" (no. 48). In the face of strident demands from Cardinal Ottaviani and his supporters in the Theological Commission, who continued to champion their understanding of what God willed in instituting marriage, the Council declared conjugal love to be of the very essence of marriage. Conjugal love, in other words, is what God willed marriage to be. That love and the institution of marriage, it further declared, are both "ordained for the procreation and education of children, and find in them their ultimate crown" (no. 48), but that "does not make the other purposes of marriage of less account"; marriage "is not instituted solely for procreation" (no. 50). When it submitted the finished schema of *GS* for discussion at the Council, the Central Preparatory Commission added a note of expla-

²⁴ Letter, 3-4.

²⁵ See Todd A. Salzman and Michael G. Lawler, *The Sexual Person: Toward a Renewed Catholic Anthropology* (Washington, DC: Georgetown University Press, 2007); Todd A. Salzman and Michael G. Lawler, *Catholic Sexual Ethics: An Introduction* (Washington, DC: Georgetown University Press, 2012).

²⁶ *Acta et Documenta Concilio Vaticano II Apparando, Series II (Praeparatorio) II, III* (Typis Polyglottis Vaticanis, 1968), no. 937. Emphasis added.

²⁷ *Acta et Documenta Concilio*, no. 910 and 917 note 50.

²⁸ *Acta et Documenta Concilio*, no. 909.

nation that none of these texts was to be understood as suggesting the traditional hierarchy of ends “in any way.”²⁹ Conjugal love is an end of marriage; the procreation and education of children is an end of marriage; but the two ends are not ranked hierarchically. In the 1960s, the Catholic Church meeting in Council refused to rank them, leaving them doctrinally as co-equal ends.

Immediately following the Council, the co-equality as ends of marriage of conjugal love and the procreation and education of children provoked so much discussion about the morality of spouses’ use of artificial contraception that Paul VI continued and expanded John XXIII’s commission of Bishops, lay leaders, and theologians considering the morality of artificial contraception. A preliminary question put to the ethicists, “Is artificial contraception an intrinsically evil violation of the natural law?” resulted in fifteen “no” and four “yes” responses.³⁰ One of the “yes” responses was given by the Italian moral theologian Ermenegildo Lio, a close friend of Paul VI and the reputed main writer of *Humanae Vitae*. In response to a final question, “Is contraception, as defined by the Majority Report, in basic continuity with tradition and the declarations of the Magisterium?” nine bishops answered “yes,” five answered “no,” and one abstained.³¹ Both a Majority and a Minority Report were then submitted to Paul VI, the latter advocating the status quo, the former advocating a change in Catholic doctrine as monumental as the Council’s recent change from condemning to mandating religious freedom.³² Paul VI, sharing the minority’s concern that the Church could not repudiate its teaching on artificial contraception without undergoing a serious blow to its overall moral authority (completely ignoring its recent conciliar repudiation of its teaching on religious freedom with no loss of moral authority), approved the Minority Report in *Humanae Vitae*.³³ The differential between the two Reports is easily categorized.

The Minority Report, which became the controverted part of *Humanae Vitae* (1968), argued that “each and every marriage act must remain open to the transmission of life.”³⁴ This was the first time that the Church’s teaching was articulated in this way. The tradition had always been that it is *marriage* itself and not each and every act of intercourse in marriage that is to be open to procreation, and that is what the Majority Report argued. It judged that “what had been condemned in the past and remains so today is the unjust refusal of life...in short, the rejection of procreation as a specific task of marriage.” It went on to assert that “human intervention in the process of the marriage act *for reasons drawn from the end of marriage itself* should not always be excluded, provided that the criteria of morality are always safeguarded.”³⁵ In spite of Paul VI’s injunction, that judgment continues to be, we believe, the judgment of the majority of contemporary Catholic theological ethicists and of the documented vast majority of Catholic spouses worldwide.³⁶ *HV* tried to change the terms of the debate over marriage and sexual intercourse within marriage by teaching for the first time in Catholic history that “each and every marriage act must remain open to the transmission of life,” but that teaching has now been so controverted by a large majority of Catholic spouses that “in much of Catholic theology and ethics, the procreative norm as the sole or primary justification of sexual intercourse is gone.”³⁷

29 See Bernard Häring, “Fostering the Nobility of Marriage and the Family,” in *Commentary on the Documents of Vatican II*, vol. 5, ed. Herbert Vorgrimler (New York: Herder and Herder, 1969), 234.

30 See Robert McClory, *Turning Point: The Inside Story of the Papal Birth Control Commission and How Humanae Vitae Changed the Life of Patty Crowley and the Future of the Church* (New York: Crossroad Publishing, 1995), 99.

31 McClory, *Turning Point*, 127.

32 See the Second Vatican Council’s “Declaration on Religious Liberty” (*Dignitatis Humanae*).

33 For detail on this, see Janet E. Smith, *Humanae Vitae: A Generation Later* (Washington, DC: Catholic University of America Press, 1991), 11-33.

34 Paul VI, *Humanae Vitae* (1968), no. 11, http://w2.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae.html.

35 Cited by Robert Blair Kaiser, *The Politics of Sex and Religion* (Kansas City, KS: Leaven Press, 1985), 260-61.

36 See William V. D’Antonio, et al., *Laity American and Catholic: Transforming the Church* (New York: Sheed and Ward, 1996); Univision Communications, *Global Survey of Roman Catholics* (New York: Univision Communications, 2014).

37 Margaret A. Farley, *Just Love: A Framework for Christian Sexual Ethics* (New York: Continuum, 2006), 278.

With the reestablishment of the relational purpose for marriage and sexual intercourse, the judgment of the morality of sexual intercourse, within or without marriage, is now made by Catholic ethicists on the basis not of the biological *act of intercourse* but of its meanings for the couple within their *relational context*. There is newness here, as has been suggested by Francis's critics, but it is newness of "organic development,"³⁸ not of rupture, of doctrine. The focus of sexual ethics in *AL*, and indeed more generally in Catholic sexual ethics since Vatican II, is not on sexual *acts* but on the *relationships* in which those acts have meaning. Within a loving relationship, sexual intercourse is not just a naked physical act, it is also a way of making love to, affirming commitment to, and acceptance of another person. Francis teaches as much in his treatment of what he calls *de facto* unions, more commonly called cohabitation.

When the *Lineamenta* for the 2015 Synod was distributed, the group charged with the marriage preparation of those wishing to marry in the Church in England, Catholic Marriage Care, responded that nearly every couple attending their courses was already cohabiting. Couples seeking to be married in the Church and not already living together were a rarity, not only in England but throughout the world. The *Final Report* of the Synod condemned all cohabitation, correctly as they focused only on the Church prohibition of every act of sexual intercourse outside of marriage. By contrast, Francis makes a distinction between "cohabitation which totally excludes any intention to marry" (*AL*, no. 53) and cohabitation dictated by "cultural and contingent situations" (*AL*, no. 294) which demand a "constructive response." Among the widespread contingent situations is material poverty that yields the consideration that "celebrating a marriage is too expensive in the social circumstances...and drives people into *de facto* unions" (*AL*, no. 294) like cohabitation. Among the constructive responses Francis recommends is *accompaniment* by Church ministers of cohabiting partners that can *integrate* them into the Church community and eventually lead them to marriage. The Church must "never desist from proposing the full ideal of marriage, God's plan in all its grandeur" but neither must it ever desist from *accompanying* "with mercy and patience the eventual stages of personal growth as these progressively appear" (*AL*, no. 307). Neither must it desist, of course, from granting the authority and inviolability that Vatican II granted to an informed personal conscience, which we treated above. That teaching applies here in all its fullness. No cohabitor is to be forced to act contrary to his/her conscience, nor is he/she to be restrained from acting in accordance with his/her conscience, especially in matters religious and, we add, sexual. Paul VI's rule that each and every act of intercourse is to be open to the transmission of life is today no more an exceptionless norm than the divine commandments "Thou shalt not kill" and "Thou shalt not steal."

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A consummated, sacramental marriage is indissoluble in the sense that the spouses ought always to foster marital love and ought never to choose to dissolve their marriage. But by causes beyond the spouses' control and/or by grave faults by at least one of them, their human relationship as a married couple sometimes deteriorates until it ceases to exist. When a couple's marriage relationship no longer exists, their marriage has dissolved, and at least one of them may rightly obtain a divorce and remarry.³⁹

This position highlights the hot spot of the two recent Synods, namely, divorce and remarriage without annulment, and demands a consideration of official Catholic teaching on marriage, divorce, and remarriage. In 1994, the Congregation for the Doctrine of the Faith (CDF) sent a letter to the Bishops of the world claiming that Catholic doc-

38 See Gerard O'Connell, "'Amoris Laetitia' Represents an Organic Development of Doctrine, 'not a Rupture,'" *America* (April 8, 2016), <https://www.americamagazine.org/faith/2016/04/08/amoris-laetitia-represents-organic-development-doctrine-not-rupture>.

39 Letter, 4.

trine about divorce and remarriage is mandated by “fidelity to the words of Jesus Christ,”⁴⁰ citing Jesus’s words in Mk 10:11-12, and implying the doctrine is irreformable. That argument is disingenuous, perhaps even dishonest. It would be true and compelling if the words of Jesus cited from Mark were the only scriptural words on divorce and remarriage (remember your scriptural principle), but they are not. The New Testament has five reports about divorce and remarriage (Mk 10:11-12; Mt 5:32 and 19:9; Lk 16:18; 1 Cor 7:10-11), and they are not all in agreement and do not all prohibit divorce. Paul reports Jesus’s prohibition of divorce (1 Cor 7:10-11) and immediately nuances it in the contexts of his own churches (7:12-16); that nuance, permitting divorce and remarriage, passed into the tradition of the Catholic Church as the Pauline Privilege. “A marriage entered by two non-baptized persons is dissolved by means of the Pauline Privilege in favor of the faith of a party who has received baptism by the very fact that a new marriage is contracted by the party who has been baptized, provided the non-baptized party departs” (CIC, no. 1143). When one clears away the obfuscations, the Pauline Privilege permits divorce from a marriage considered to be *valid*, subsequent remarriage, and subsequent admission to communion. Matthew also nuances Jesus’s words with his own genuine exception (5:32; 19:9) to Jesus’s received words, though we agree with those biblical scholars who argue that the meaning of his exception, *epi tes porneia* (except for *porneia*, which is often translated as fornication) is not self-evident to contemporary readers.

There is veneration in the Catholic Church not only for biblical words but also for ecumenical councils, especially for the first of the great Councils, the Council of Nicea (325), whose Nicene Creed codified Christian belief. Nicea continued the nuancing of the words of Jesus based on contextual needs begun by Paul and Matthew, decreeing that those who belonged to the rigorous sect called the Novatians had to promise in writing to accept the teaching of the Catholic Church before they could be reconciled with it. Specifically, they had to accept its teaching concerning those who had been married twice (*digamoi*) and had to agree to live in communion with them after they had completed a period of penance and had been reconciled to the Church.⁴¹ That decree founds the practice of the Orthodox Churches known as *oikonomia* which the Council of Trent refused to condemn because it could not be shown to be contrary to the Gospel.⁴² That is laudable adherence to your biblical principle. The nuancing of the words of Jesus about divorce was continued in the sixteenth-century Church in the context of marital situations occasioned by the slave trade, and the decrees of Popes Paul III (1537), Pius V (1561), and Gregory XIII (1585) permitting divorce and remarriage passed into the Catholic tradition under the misleading heading of the Petrine Privilege.⁴³ This constant nuancing of the words of Jesus in the Church makes any argument about absolute indissolubility based exclusively on the Markan words of Jesus at best inaccurate and at worse dishonest. Because all the sources on divorce and remarriage, not only from Jesus but also from Paul, Matthew, the Council of Nicea, and the renaissance Church, are part of the overall word of God received in the Catholic Church, any effort to allow one instruction to override all the others as *the* word of God falsifies God’s word and should be discontinued.

The real doctrine and practice of the Catholic Church with respect to the indissolubility of marriage clearly demonstrates that fidelity to the biblical words of Jesus is far from the only criterion for its judgments about divorce and remarriage.⁴⁴ The actual teaching of the Church derives from yet another nuance, this time introduced by the canonist Gratian of Bologna and accepted in the twelfth-century Church, that only that marriage “which is ratified [as sacrament] *and* consummated cannot be dissolved by any human power other than death” (CIC, no. 1141).

40 Congregation for the Doctrine of the Faith, “Concerning the Reception of Holy Communion by Divorced and Remarried Members of the Faithful” (1994), no. 4, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_14091994_rec-holy-comm-by-divorced_en.html.

41 See J. D. Mansi, ed., *Sacrorum Conciliorum Nova Collectio* (Paris: Welter, 1903-27), II:672.

42 Heinrich Denzinger and Adolf Schönmetzer, *Enchiridion Symbolorum*, 32nd ed. (Barcelona: Herder, 1963), 1807, 1807n.

43 See Michael G. Lawler, *Marriage and Sacrament: A Theology of Christian Marriage* (Collegeville, MN: Liturgical Press, 1993), 92-3.

44 See also Kenneth R. Himes and James A. Coriden, “The Indissolubility of Marriage: Reasons to Reconsider,” *Theological Studies* 65, no. 3 (2004): 453-99.

The two conditions that make a marriage absolutely indissoluble in the Catholic Church, that it be simultaneously sacramental *and* consummated, are nowhere mentioned or even insinuated by the Gospel Jesus. If what was established by God, namely, the marriage bond, has been nuanced by the Church in the first century, the fourth century, the twelfth century, and the sixteenth century, what is there to prevent the Church from nuancing it again in the twenty-first century in the face of massive contextual circumstances and relational need? This is a question many historically conscious Catholic theologians ask, both outside and inside the recent Synods. One frequently offered possibility is the embracing of the Orthodox practice of *oikonomia*. The 1980 Synod on Marriage and the Family asked John Paul II to consider this practice but as yet there has been no response from the hierarchical magisterium.⁴⁵

Much ink has been spilled over whether Francis allows or does not allow admission to the sacraments of reconciliation and communion of divorced and remarried individuals who, after guided discernment, seek them in conscience. What Francis says is clear and firmly rooted in the Catholic tradition. “It is possible that in an objective situation of sin [like divorce and remarriage without annulment]—which may not be subjectively culpable, or fully such—a person can be living in God’s grace, can love and can also grow in the life of grace and charity, while receiving the Church’s help to this end” (*AL*, no. 305). The footnote he adds to this statement, the much-controverted footnote 351, makes his intention crystal clear: “In certain cases, this can include the help of the sacraments.”

There is a clearly documented trail of Church development on the issue of divorced and remarried Catholics and the reception of the sacraments. Prior to 1977, Catholics who were divorced and remarried without an annulment were excommunicated and could not receive any sacrament. In 1977, Pope Paul VI lifted that excommunication, but divorced and remarried Catholics could receive sacraments only if their marriage was regularized by a canonical tribunal.⁴⁶ In 1981 John Paul II ruled that the divorced and remarried could be admitted to the sacraments “when, for serious reasons, such as for example the children’s upbringing, a man and a woman cannot satisfy the obligation to separate they take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples.”⁴⁷

The historical, doctrinal, and pastoral development is obvious. Obvious also is the further such development introduced by Francis in *AL* in the text we cited above. Several Bishops Conferences have offered interpretations of Francis’s teaching, the most interesting being that from the Bishops of Buenos Aires. They wrote a letter to their priests explaining how they are to interpret Chapter Eight of *AL*, including the part related to Catholics divorced and remarried without annulment. The Bishops acknowledge John Paul II’s ruling that they must observe continence to receive the sacraments, but they add that if that is not possible a path of discernment is still possible. “When there is acknowledgment in a concrete case,” they explain, “of the existence of limitations that diminish the degree of responsibility and culpability—particularly when a person believes they would commit another mistake that could harm any children born into the new union—*Amoris Laetitia* introduces the possibility of access to the sacraments of Reconciliation and Eucharist.” The clincher is not the Bishops’ interpretation but Francis’s response to it. “The letter is very good,” he commented, “and fully captures the meaning of Chapter Eight of *Amoris Laetitia*. *There are no other interpretations.*”⁴⁸

45 See Michael G. Lawler, *Marriage in the Catholic Church: Disputed Questions* (Collegeville, MN: Liturgical Press, 2002), 113.

46 See Marjorie Hyer, “Vatican Eases Excommunication Rule,” *Washington Post* (November 11, 1977), https://www.washingtonpost.com/archive/politics/1977/11/11/vatican-eases-excommunication-rule/9b5ffdb9-8082-4dcf-97f3-87523973135b/?utm_term=.7282be4d832f.

47 John Paul II, *Familiaris Consortio* (1981), no. 84, http://w2.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html.

48 See James F. Keenan, “Reading *Amoris Laetitia* in the New Light of Easter,” *Crux*, <https://cruxnow.com/vatican/2017/04/21/reading-amoris-laetitia-new-light-easter>. Emphasis added.

Conclusion

There remains much work to be done, colleagues, to draw out the full anthropological, methodological, and normative implications of *AL* for Catholic sexual ethics, but it is already clear that it will stimulate debate about the moral issues involved in irregular situations that had appeared settled with the publication of John Paul II's *Veritatis splendor* in 1993. We are reminded of Jesus's response to his critics: "Think not that I have come to abolish the law and the prophets; I have come not to abolish them but to fulfill them" (Mt 5:17). Francis could say the same thing: "I have come not to abolish any Catholic doctrine but to point the way to a renewed, pastoral, Gospel, and therefore Catholic, way to interpret and apply it." We are pleased we have had this opportunity to collegially dialogue with you, because we accept it as seeking to do the theologian's task, namely, the pursuance in the scientific manner proper to theology of a deeper understanding of the words of God and of the Church, and the communication of that understanding to our fellow faithful. We will be pleased to pursue the matter further with you, for we are in full agreement with the words of *Dignitatis Humanae*: "Truth can impose itself on the mind of man only in virtue of its own truth, which wins over the mind with gentleness and power" (no. 1).