

formulated in the negative that are applicable “always and at all times” (*semper et ad semper*) from positively formulated precepts directing us toward acts of virtue to be effected in the presence of certain circumstances. Sinful acts such as are prohibited by the negative precepts of the moral law, affirms Aquinas, “are evil in themselves, and cannot become good, no matter how, or when, or where, they are done.”

The Church’s perennial teaching on the reality of exceptionless moral norms was reaffirmed by Pope St. John Paul II in the encyclical *Veritatis Splendor*:

Reason attests that there are objects of the human act which are by their nature “incapable of being ordered” to God, because they radically contradict the good of the person made in his image. These are the acts which, in the Church’s moral tradition, have been termed “intrinsically evil” (*intrinsece malum*): they are such always and per se, in other words, on account of their very object, and quite apart from the ulterior intentions of the one acting and the circumstances. (80)

Conclusion

Since the Apostolic age—and drawing upon the teaching of Jesus Christ himself—the Church has consistently taught that sexual intercourse with a person other than one’s spouse is always, without exception, a gravely disordered behavior “incapable of being ordered to God.” Sound pastoral discernment will embrace such true, exceptionless moral principles and endeavor to find a way, consistent with God’s mercy and justice, of explaining their application even to particular situations that call for personal asceticism and sacrifice.

A pastoral accompaniment, enlivened by genuine concern for the human and spiritual good of divorced and remarried individuals, requires leading them to a proper understanding of the nature of conscience. Pastoral ministers need to help them to discover that living according to the truth of the Gospel and the Church’s teaching is life-giving and possible with God’s grace. Even in those cases where individuals are subjectively convinced that their previous marriage was null, the ordinary means of determining the truth of such a conviction is a canonical investigation in the external forum. When by these means the marriage cannot be shown to have been null, and resumption of the still valid marriage is impossible, as is separation from the current partner, there is no other pathway to

the reception of the Eucharist other than confessional and the determination to live as “brother and sister.” Even in such a case, it is essential for the couple to do all that they can to avoid giving scandal.

Not admitting the divorced and remarried to communion remains the sound pastoral practice of the Church. Nothing in *AL* has changed that. *AL* offers no new protocol for some putative “discernment” to be engaged in by priests in the confessional according to which a penitent and his or her partner, without committing to continence in their irregular situation, could be directed to approach Holy Communion in good conscience.

Nor is such a practice at odds with a careful discernment of the particular situations that the divorced and civilly remarried find themselves in. On the contrary, the invitation to refrain from communion, in the context of genuinely accompanying a couple, can and should be the very fruit of sound pastoral discernment. By acting in this way,

[T]he Church professes her own fidelity to Christ and to His truth. At the same time she shows motherly concern for these children of hers, especially those who, through no fault of their own, have been abandoned by their legitimate partner. With firm confidence she believes that those who have rejected the Lord’s command and are still living in this state will be able to obtain from God the grace of conversion and salvation, provided that they have persevered in prayer, penance and charity. (*Familiaris Consortio*, 84) ✠

ENDNOTES

- 1 Portions of the present article are taken from are taken from my forthcoming essay, “*Amoris Laetitia*, ‘Pastoral Discernment’ and Thomas Aquinas,” to be published in *Nova et Vetera* 15, no. 2 (Summer 2017).
- 2 Available at: <http://www.laciviltacattolica.it/wp-content/uploads/2016/11/Q.-3995-3-DIALOGO-PAPA-FRANCESCO-PP-417-431.pdf>.
- 3 “The doctrine and discipline of the Church in this matter are amply presented in the postconciliar period in the apostolic exhortation *Familiaris Consortio*. The exhortation, among other things, reminds pastors that out of love for the truth they are obliged to discern carefully the different situations and exhorts them to encourage the participation of the divorced and remarried in the various events in the life of the Church. At the same time it confirms and indicates the reasons for the constant and universal practice, ‘founded on Sacred Scripture, of not admitting the divorced and remarried to Holy Communion’ (*Familiaris Consortio*, 84). The structure of the Exhortation and the tenor of its words give clearly to understand that this practice, which is presented as binding, cannot be modified because of different situations” (Congregation for the Doctrine of the Faith, “Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful” [*Acta Apostolicae Sedis* 86 (1994), 976 §5]).

4 See n. 1.

5 Michael Pakaluk, “The Other Footnote in *Amoris Laetitia*,” *First Things* (May 26, 2016).

6 See Christian Brugger, “Five Serious Problems with Chapter Eight of *Amoris Laetitia*,” *Catholic World Report* (April 22, 2016). We should note as well, that the presence of a “difficulty” in embracing a moral norm indicates that the person has some knowledge of both what the norm requires, and of how his or her behavior is at odds with the norm. Clearly then, *AL* 301 is not here referring to persons in a state of invincible ignorance. In the latter state “difficulties” of this sort simply do not arise, since one is (without guilt) either unaware of the norm or of the fact that one’s behavior is at odds with the norm. Consequently, this discussion rests within the domain of vincible ignorance which, of itself, does not excuse from culpability.

7 Germain Grisez and John Finnis have made the extremely important

point that discernment, in the tradition of St. Ignatius of Loyola, is not properly speaking the kind of process one engages in when attempting to arrive at moral determinations: “Discernment properly so-called, by contrast, is not concerned with the morally right and wrong but with the suitability of different morally acceptable possibilities for some purpose. For example, one discerns the suitability of different possible ways of using one’s gifts in service pleasing to God, or of different possible forms of recreation for one’s physical and mental health.” “The Misuse of *Amoris Laetitia* to Support Errors Against the Catholic Faith: A Letter to the Supreme Pontiff Francis,” 17. Available at: <http://www.twotlj.org/OW-MisuseAL.pdf>.

8 One cannot help but detect in chapter 8 of *AL* a proclivity for moral gradualism. This was also present in the two preparatory synods on the family. See my “Conscience, freedom, and the ‘Law of Graduality’ at the Synod on the Family,” *Homiletic and Pastoral Review* (September 2015).

The Canonical Position of *Amoris Laetitia*

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In the maelstrom following the publication of Pope Francis’s apostolic exhortation *Amoris Laetitia* (8 April 2016) so many questions about so many parts of the document erupted that one can scarcely do most of them, let alone all of them, justice in any one setting. Instead, I will highlight just three points that, if set out reasonably coherently, should help folks follow the many discussions surrounding *Amoris* and, in particular, help them to be better aware of when a participant in that discussion is making a claim for or against *Amoris* that is more significant or more complicated than it might at first seem.

The three points I wish to highlight are: (1) How many actors are involved in the “Communion event” and why does that number matter? (2) Where does *Amoris* fit in the canonical world and where does it fit in the spectrum of discussions about the admission of divorced-and-remarried Catholics to holy Communion? (3) Where, if anywhere, and how, if at all, does the “internal forum” apply to this discussion?

(1) How Many Actors Participate in the “Communion Event”?

Pretend for a minute: You are a student of marriage, studying theology, law, and pastoral practices related to marriage. You read an article on marriage and, while everything it says about marriage seems correct, the article focuses, you notice, almost exclusively on the bride who does this and the bride who does that. Odd emphasis, you think, but you go on to the next part of your study. You read another article, and you notice it does the same thing, it focuses almost entirely on the bride. Odd, you note again, but still you proceed. You then read a monograph on marriage, and an episcopal document on marriage, and an online commentary about marriage, and an interview with a famous cardinal on marriage, and nearly all of them, you find, nearly exclusively, talk only about the role and the place and various factors with impact on the bride in regard to marriage.

Your concern, again, is not that what these items say about brides in the context of marriage is wrong, it is that almost all of these discussions leave out one of

the two key actors in a wedding, the groom, and they seem quietly to assume that the bride is, in the end, the only one who really counts in a wedding.

Eventually this imbalance gets to you and you voice your concerns that everything you are reading about marriage and weddings deals with brides as if they were the only ones who matter, and the response comes back, “Don’t you care about brides? How unfeeling and narrow minded and downright chauvinistic of you. Brides are very important!”

Okay, if you can imagine this sort of scenario about discussions of weddings, you can empathize a bit with some of us who, in regard to the question of the reception of holy Communion by divorced-and-remarried Catholics, have been reading and reading and reading all of these discussions about the would-be communicant, and about what has an impact on his or her conscience, faith, personal story, and so on, to the near exclusion of the fact that there is another actor up there at Communion time—namely, the minister of holy Communion who also has decisions to make and who also has a crucial role to play in what I call “the Communion event.”

The “Communion event” is, then, a mildly awkward term I have invented to describe what happens during the congregation’s part of the Communion rite at Mass. I use this term in an effort to avoid prejudicing our discussion (as happens if we describe the Communion event simply as the “reception of holy Communion” or as the “distribution of holy Communion”). This Communion event does not, *pace* the overwhelming majority of discussions in the wake of *Amoris*, consist of one act by only one person, but instead of two distinct human acts performed by two different human beings: (1) the would-be communicant who requests the sacrament and (2) the minister of holy Communion who makes the decision, as a minister of the Church, to distribute the sacrament to the individual in question or to withhold it. Both of these acts are external, public, and have an impact on good Church order. As such they are both regulated by law, mostly canonical but some liturgical, to which ecclesiastical laws both actors are bound.

It is important to stress that the Communion event consists of two actions performed by two different actors because common parlance—which is acceptable enough during times of agreement on the fundamental principles involved in such events—and *Amoris* in particular, seem to discuss what happens at Communion time as if it were essentially an event

driven by considerations revolving around just one person (the would-be recipient), and not two persons (the would-be recipient and the minister of holy Communion). Again, as was the case in my analogy with discussions of marriage that are almost exclusively about brides, the problem is not that most of what is said about would-be communicants is wrong, the problem is that these discussions are imbalanced in focusing almost entirely on would-be communicants while forgetting about ministers of holy Communion. This pervasive imbalance in the discussion surrounding *Amoris* is becoming, I fear, a distortion of Church teaching and discipline.

If you will permit another analogy, consider how we use an ATM, with an emphasis on the word “automated” in the abbreviation for “automated teller machine.” One approaches the device, responds correctly to a couple of preprogrammed prompts, and the machine delivers the money.

The ATM exercises no discretion or independent judgment about what we may call the “money event.” It does not ask a customer, say, “Why do you want the money?” or “Do you understand what money is for?” or “Are you sure you will make good use of the money?” and so on. Rather, if the answer to its simple prompts comes back in due form, the money is dispensed. Period.

This is, I suggest, the way in which a startling number of people now seem to regard ministers of holy Communion, that is, as sacramental ATMs who state a programmed prompt (“Body of Christ”) and, upon getting the correct response (“Amen”), dispense the sacrament irrespective of any other factors. Better by far, because it is more accurate, I suggest, to view the two actors in the Communion event, the minister and the would-be recipient, as each doing two different things, and as acting in accord with two different laws.

For practical purposes Canon 916 is the main norm governing the acts of the would-be communicant in approaching for holy Communion while Canon 915 is the main norm governing the acts of the minister of holy Communion. There are different canons precisely because they apply to different people who are performing different roles in the one phenomenon I call the “Communion event.” These norms read differently, as the following texts make clear (emphasis added):

Canon 915. Those who have been excommunicated or interdicted after the imposition or declaration of the penalty and others obstinately persevering in manifest grave sin *are not to be admitted* to holy communion.

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

Now, the mere fact that the legislator (a canon lawyer’s term for the pope) has stated these two norms for conduct in law itself makes a demand on our conscience. But, I suppose, some, in this antinomian age, might see such laws and say, “Fine, I see they are canons. So what? Where does it say that I have to follow what canon law says?” That question is fair enough, and here is the answer. In the promulgating document by which the 1983 Code of Canon Law came into effect, the apostolic constitution *Sacrae Disciplinae Leges* (25 January 1983), John Paul II wrote: “*Finally, canonical laws by their very nature are meant to be observed.* The greatest care has therefore been taken to ensure that in the lengthy preparation of the Code the wording of the norms should be accurate, and that they should be based on a solid juridical, canonical, and theological foundation” (emphasis added).

So, in short, those who discuss *Amoris* and the admission to holy Communion of divorced-and-remarried Catholics without discussing the minister of holy Communion and the demands made by Canon 915, are making the same kind of distortional error that one who discusses weddings solely from the point of view of the bride is making, namely, they are leaving out one of the two actors in the event.

With that as background let’s turn to our second topic, the canonical status of *Amoris* itself and its place in the spectrum of the debate it has engendered.

(2) The Nature of *Amoris* and Its Place in the Spectrum of Discussion

Our next question is whether *Amoris* itself makes any legal or normative demands on our conduct. To answer this question, we need to examine the literary form and the content of *Amoris* for clues as to what kind of document it is.

The ecclesiastical genre of *Amoris* is that of a “post-synodal apostolic exhortation,” such as John Paul II’s *Familiaris Consortio* (1981) and his *Christifideles Laici* (1988) were. The lawyer in me notices that *Amoris* is not an “apostolic constitution,” which is the kind of docu-

ment that most Church laws are. Further, *Amoris* is not a “*motu proprio*,” which is the kind of document that most other Church laws are if they do not come out as apostolic constitutions. Moreover, in *Amoris* there is no “promulgating language” (as is necessary for most norms for behavior to become law under Canon 7), and this document has not appeared in the official journal *Acta Apostolicae Sedis* as is usually required by Canon 8 for something to become a law (although I suspect that at some point *Amoris* will come out in the AAS, along with numerous other papal, but *nonlegislative*, materials). Now, while it is possible that some norms for behavior, intended to be read as laws, could come out in other kinds of ecclesiastical documents, the less such documents look and feel like instances of these standard, legislative genres above, the more evidence would be required in order to conclude that the Legislator intended such a document to be normative. In short, little or nothing about the form of *Amoris* suggests that it is law or directive of conduct.

As for its content, especially its chapter 8, I think that *Amoris* consistently avoids juridic and directional language. The words “canon” or “canonical,” for example, show up maybe a half-dozen times, and in no instance in a way establishing a rule for behavior, which is, of course, the primary thing that canon law does in the Church. The same can be said of terms such as “law,” “norm,” “rule,” “directive,” or my personal favorite “guideline.” I grant some express or implied exhortational language in *Amoris*, but no relevant imperatives.

In short, neither the form nor the content of *Amoris* support its being read as any kind of canonical law or ecclesiastically normative document. And if it is not a norm-making document, then appeals to *Amoris* as somehow establishing new norms for conduct in the Church (say, in regard to new rules for sacramental participation) are suspect and probably just plain wrong.

Next we consider where *Amoris* fits in the spectrum of discussion about admission of divorced-and-remarried Catholics to holy Communion.

At one extreme there are, as of this writing, the Maltese bishops (8 January 2017), the German episcopal conference committee (1 February 2017), and Cardinal Coccopalmerio (14 February 2017), all of whom approve of the administration of holy Communion to those who, for various reasons, decide against living in accord with Church teaching on marriage and, moreover, decide not to live in a “brother-sister” relationship. I find such a position, of course, to be in flat contradiction to Canon 915 and the unanimous

sacramental and canonical tradition behind it.

At the other end of the spectrum are the positions taken by, for example, the Archdiocese of Philadelphia (1 July 2016), the Diocese of Phoenix (18 September 2016), and the Anglican Ordinariate (16 January 2017) reiterating, among other things, the just requirements of Canon 915. What is remarkable about these diametrically opposed applications of Canon 915, though, is that both schools of thought can invoke *Amoris* in support of their approach and neither needs to worry about being contradicted by anything in *Amoris*. Why? Because, in the final analysis, *Amoris* neither reiterates the requirement that ministers of holy Communion are to withhold the sacrament from divorced-and-remarried Catholics nor cancels it. This studied ambiguity on the very point most contested in its wake allows *Amoris*, ironically, to sit in the middle of the storm surrounding it, without taking a clear position for or against one practice or the other. I think such ambiguity to be a serious flaw in a papal document meant to guide concrete pastoral practice, but it is a failure of omission, not commission.

Finally, the Buenos Aires document (5 September 2016), notable in that apparently Pope Francis thinks it to be a masterful application of *Amoris*, shares *Amoris*'s ambiguity, but only narrowly so. While I hold that the Buenos Aires document can, without torturing its text, be given an orthodox interpretation, one can scarcely sense in that document anything less than an endorsement of holy Communion for divorced-and-remarried Catholics living together without observing a brother-sister manner of life.

(3) The Internal Forum

Moving to our final topic for consideration, the first question that comes to mind here is: Why are so many people talking about the internal forum in the context of *Amoris*? The external forum, per se, is never mentioned in *Amoris*, and the internal forum comes up only once: "Conversation with the priest, in the internal forum, contributes to the formation of a correct judgment on what hinders the possibility of a fuller participation in the life of the Church and on what steps can foster it and make it grow" (*AL* 300)—an obviously unremarkable comment on the internal forum. But because nearly everybody seems to think the internal forum has something to do, and not just tangentially, but centrally, with the question of admitting divorced-and-remarried Catholics to holy Communion, we should look at it too.

We set the stage thus: In administering holy Communion we are acting in the external forum, so we recall that Canon 915 (which, as we have seen, is meant to be observed) prohibits admission to holy Communion by, among others, divorced-and-remarried Catholics. Now, some folks come along and say that an "internal forum solution" obviates the demands of Canon 915. But I ask: How exactly? Without surrendering the important point that the "burden of proof" is on proponents of the "internal forum solution" to prove that it works here—and it does not fall on folks like me to prove that it doesn't—let's look at some places where canon law does indeed see an "internal forum" operation at work.

The internal forum can be the place for absolution from an undeclared, automatic excommunication, interdict, or suspension per Canon 1357, but of course divorced-and-remarried Catholics are not excommunicated or interdicted, and so there is no sanction to absolve them from in our case. Canon 915 is a sacramental disciplinary norm controlling ministers, not a penal law sanctioning would-be communicants.

Might the internal forum solution simply "dispense" from Canon 915, rather as internal forum dispensations release persons from matrimonial impediments (1078–1080)? There are several problems with this idea.

First, Canon 85 limits the notion of dispensation to matters of merely ecclesiastical law and one would be hard pressed to argue (let alone prove) that a norm prohibiting the distribution of the Body, Blood, Soul, and Divinity of Christ to Catholics who obstinately persevere in manifest grave sin is a merely disciplinary law unrooted in and unreflective of divine law. Second, recalling that Canon 915 binds ministers and not recipients, it is not clear how members of the faithful who wish to receive holy Communion could ask for a dispensation from a minister's canonical obligation to withhold it from them. Third, noting the common refrain that calls for pastors to "accompany" would-be communicants, even portraying them as "authoritative-ly" approving someone's reception of holy Communion, Canon 89 basically excludes priests and deacons from issuing dispensations, and thus certainly any that are contrary to the plain requirements of Canon 915.

In short, the main places that canon law might find the internal forum at work (for example, marriage impediments dispensation, penal sanction absolution) seem not to apply to our question. Nevertheless, might there yet be an internal forum solution available to divorced-and-remarried Catholics who wish to go to holy Communion but who are unable to separate? Yes, and you

likely already know what it is. You just have not heard it called by that name, and so you do not think of it as an "internal forum solution": it is the brother-sister relationship. That is the internal forum solution for these cases. How so?

Remember, it is the canonically "manifest" quality of divorce and remarriage that damages not just the couple but the community, and this is what is necessary to "trigger" Canon 915. The best solution to that public scandal is, of course, separation of residence. But all admit that there are times where separation is impractical. So, a spiritual director or a confessor could advise penitents, in the internal forum, maybe even the internal sacramental forum, that, if they live continently (that is, refrain from using the sexual rights of married people), they could approach for holy Communion, with the caveat that, if their irregular status is known in that community, they cannot make use of their "internal forum" permission to approach for holy Communion. That is the internal forum solution that can be offered in these cases, and we would all do well to bear

in mind that the "brother-sister relationship" is the only legitimate application of the term "internal forum" in this case, lest we allow people to continue slipping into the idea that there are, for cases such as these not only a "brother-sister solution" but also some kind of as-yet-to-be-articulated "internal forum solution" besides. But there isn't. The brother-sister relationship *is* the internal forum solution for these cases.

In sum: (1) The Communion event features two actors complying with two laws, laws that are meant to be observed. (2) Neither the form nor the content of *Amoris* suggests that it is making normative changes in sacramental discipline, and *Amoris* itself sits in the "non-committal middle" part of the spectrum of approaches here. (3) *Amoris* does not propose an internal forum solution (beyond the brother-sister relationship) as a way to permit reception of holy Communion by sexually active, divorced-and-remarried Catholics. Those who want to raise it anyway need to be very careful about proposing a solution that they seem not to understand to situations that it was never designed to cover. ✠

Michael Novak, 1933–2017

William L. Saunders
Americans United for Life

The renowned Catholic intellectual Michael Novak died recently. As every reader will know, Novak was a prolific writer whose work ranged widely over the decades, and he was a very public intellectual, highly influential in not only in Catholic, but also national conservative, circles. Readers will likely remember his close relationship and exchange (along with Fr. Richard Neuhaus and George Weigel) with John Paul II. It is one aspect of this relationship that readers may not know about on which I would like to offer a brief comment.

Novak, Weigel, and Neuhaus started the Tertio Millennio summer seminar in Poland. That seminar still exists and teaches post-college graduates from, chiefly, Central Europe about the principles of the free society and relies heavily on Catholic social teaching. But Novak also began a similar seminar a few years later in his ancestral nation, Slovakia, a key state in the heart of Central Europe. Called the Free Society Seminar (FSS), and now lead by Robert Royal of the Faith & Reason Institute, the FSS, in which I am one of the professors,

teaches a small group of students, composed mainly of Slovaks, other Central Europeans, and Americans, and engages intellectual, political, and moral issues in a manner similar to Tertio Millennio.

The point I wish to make is this: through the FSS, Michael Novak did a great work in the service of the Church. Many of the young leading intellectuals—chiefly, but not all, Catholics—in Central Europe have positively been influenced by it. It will help shape a region that struggles under the twin threats of Western consumerism and hedonism and heavy-handed Russian influence.

As he aged, Michael Novak was no longer able to teach in the FSS. However, I was there when he returned for the tenth anniversary. Not only did he give a standing-room only address in Bratislava, but the event was filmed and carried on Slovak television. In subsequent days, I would turn on the television and Michael was often there—carefully considering matters at the heart of Catholic social teaching, in a gentle and thoughtful way. I think John Paul II would have been pleased.

Michael has legions of friends and students in Central Europe. The FSS is one small but important part of his legacy. Rest in peace, my friend. ✠