The status of remarried divorcees in canon law: are we moving towards an overhaul in the light of continuity?

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1. Conjugality as a pastoral challenge

Nowadays, conjugality symbolizes a “pastoral challenge”, requiring a specific ecclesial engagement. The focus of debate has often been about the possible solutions to the painful condition of divorced and remarried couples: traditionally, their place within the Church community has been subject to the limit of exclusion from the sacraments.

For a long time there have been great expectations of modernization, and demands for a “change of paradigm”,[[1]](#footnote-1) in the light of a widening gap which has developed between ecclesiastical rules and individual behaviours. Complaints have arisen regarding: the separation between the theory of canon law and reality; canonical formalism and existential substantialism; the self-referential attitude of the Church, and its lack of dialogue with its addressees; the inadequacy of canon law rules regarding irregular situations; and the dubious effectiveness of the options that are consistent with canon law. For its part, the Church has often complained of a low perception of the Christian meaning of marriage, and of its ontological value and its sacramental aspects. The real question is whether the Church is called to find new ways of reconciling the truth of the sacramental indissolubility of marriage with charity and the doctrine of forgiveness: verifying whether the current rules are able to offer appropriate solutions or whether new forms of mediation are required. The new challenge for the Church is, in fact, the promotion of a message of mercy, which nevertheless cannot, in any case, become a tolerant form of accommodation; the Church cannot surrender to secular values simply for fear of being rejected in the light of modern cultural attitudes.

As we know, the current status of divorced and remarried couples is the result of a complex process within the synods and the Magisterium. These couples experience the contradiction between the maintenance of their marriage under canon law and the dissolution of their civil bond. The Catholic Church has traditionally expressed solicitude towards the difficult situation of remarried divorcees; at the same time, there is tension between the principle of indissolubility and the search for possible forms of balance between the strictness of the principle and the existential condition of frailty of the faithful.

2. The results of the Synods

The recent Synods of the Bishops on the topic of the family[[2]](#footnote-2) witnessed an ongoing deep process of meditation concerning the full dimension of conjugality, which is nowadays the expression of both an external and an internal crisis of the Church, owing to increasing social, cultural and juridical changes. The Church is living through a transition from modernity to postmodernity, in which inculturation and contextuality have become decisive factors, and demands are emerging for a multiplication of narratives, with more significance given to the historical element and the “experience of solidarity”.[[3]](#footnote-3) In this regard, we should not forget the doctrinal debate concerning the principle of indissolubility and the post-conciliar in-depth study of the parameters of what makes a marriage invalid, which attempted to extend the range of cases that could be deemed invalid.[[4]](#footnote-4) There was a strong division between the synodal fathers, whose standpoints ranged from the desire for a total change to a more conservative attitude, aiming to find solutions in general rules:[[5]](#footnote-5) some of the delegates opted to follow the doctrine of the Magisterium more closely, while others seemed more disposed to consider new interpretations. An emblematic example of that position was that taken by Cardinal Kasper, who suggested a penitential path for remarried divorcees that allowed them access to the sacraments after a careful discernment of their specific situations.[[6]](#footnote-6)

3. The exhortation *Amoris Laetitia* at the crossroads between continuity and discontinuity

Following this long, troubled synodal path,[[7]](#footnote-7) and drawing together the results of the process, on 19 March 2016 Pope Francis enacted the exhortation *Amoris Laetitia*, in an attempt to offer an answer to the unresolved crisis concerning present-day families. Taking as a starting point the complex experience of real couples,[[8]](#footnote-8) *Amoris Laetitia* confirms the peculiar care of the Church towards the status of remarried divorced couples, while at the same time trying to find solutions to readmit them more completely into the community of the Church.

In his exhortation, Francis urged the Church not to focus exclusively on the question of access to sacraments, because the main aim of *Amoris Laetitia* is to emphasize the vocation of marriage as “good news” for both Church and civil society.[[9]](#footnote-9) The question nevertheless remains; indeed, it forms the tip of the iceberg of the crisis of the canonical model of marriage, and of the gap between Catholic values and the models proposed by civil society. With this in mind, a perspective of marriage as a multifaceted reality has been developed: we should not concentrate on a “stereotype”[[10]](#footnote-10) of an ideal model, but rather on a “challenging mosaic” where many different realities coexist,[[11]](#footnote-11) and where such an ideal should be a “compass” that guides a path of growth.[[12]](#footnote-12) Taking this perspective, specific attention is devoted to the complexity of “irregular situations”, where the use of inverted commas underlines the fact that genuine ethical discernment cannot be founded solely on the parameter of irregularity. From its opening, *Amoris Laetitia* therefore weakens the negative definition of the status of divorced and remarried people confirmed in *Familiaris Consortio* (as an objective contradiction to the union of love between Christ and his Church),[[13]](#footnote-13) indicating instead a softer approach when it addresses “those situations that fall short of what the Lord demands of us”.[[14]](#footnote-14)

Even though the main intent of the exhortation is to reflect on the intricate issue of conjugal relationships, the crucial question is whether *Amoris Laetitia* represents a “point of no return”[[15]](#footnote-15) or is only a “step towards a new communication within the Church”,[[16]](#footnote-16) and specifically whether *Amoris Laetitia* “listens to the moral tradition of the Church more widely than *Familiaris Consortio*”[[17]](#footnote-17) or is in contradiction with it.

The exhortation has certainly received various differing interpretations, ranging from continuity[[18]](#footnote-18) to discontinuity.[[19]](#footnote-19) It has provoked divergent reactions among scholars and within the hierarchy of the Church. It has been criticized as being unclear and muddled, because it seems to contain declarations which could be interpreted as not being coherent with Magisterium teaching and tradition. Its ambiguous meaning has caused frustration on both the progressive and the conservative sides. Although it is debatable whether the exhortation contradicts the Church’s principle of indissolubility, it has an alarming impact on the traditional interpretation: for these reasons, such an exhortation “requires a work of appropriation” both by the faithful and by pastors, in the light of its “renewed approach”.[[20]](#footnote-20)

4. The status of injured families to the test of a process of discernment

In particular, Chapter VIII of *Amoris Laetitia* appears controversial, urging the Church “to accompany, discern and integrate the fragility” of damaged families, implementing “gradualness in pastoral care” and taking into consideration the presence of “mitigating factors”.

As we know, the traditional tool offered by the Church to marriage breakdown is the declaration of nullity of marriage, which assures, through a judicial investigation, an objective evaluation and moral assurance concerning the status of separated couples, with the main focus on their *salus animarum* (the salvation of their souls).

The last Magisterium tried to reconcile nullity and pastoral care as far as possible, facilitating the pursuit of religiously coherent paths for the faithful. In view of the XIV Synod, Pope Francis decided to reform the nullity procedure, in order to improve its effectiveness and to simplify and facilitate the clarification of the status of such couples for all the faithful.[[21]](#footnote-21) However, the declaration of nullity cannot be emphasized as a general solution to the problem of divorced and remarried couples, because it requires a convergence between the failure of a marriage and its nullity.

From a pastoral perspective, the Church’s teaching (*Familiaris Consortio*) has for a long time recommended that remarried divorcees be integrated as far as possible into the ecclesial community. The most recent synodal text stressed once again the need to welcome and integrate divorced and remarried people and to develop their role. So “integration” seems to be the keyword here. However, the synodal text and *Amoris Laetitia* both seem to promote and encourage an openness towards new ways of participation in the ecclesial community and a decline in “standardised pastoral work”. *Amoris Laetitia* reminds the Church that a “look of appreciation”[[22]](#footnote-22) can be extremely important: in quoting *Familiaris Consortio*, it shows that the common thread is the “discernment” of irregular situations, from both the personal and the pastoral perspective. In *Amoris Laetitia* a strong connection with a gradual process and with informed conscience is emphasized, even though it also underlines that the Gospel demands of truth and charity cannot be neglected.

5. The role of the law of gradualness

According to this view, a key role is entrusted to the “law of gradualness” (which should not be confused with a “gradualness of law”).[[23]](#footnote-23) There has traditionally been a dispute among scholars concerning the difficult accommodation between, on the one hand, the recognition of the relationship between human historicity and the accomplishment of a moral good through personal growth and, on the other hand, a strong protection of moral good by general norms ruling every human action – that is, between the identification of a dynamic factor connected with one’s own moral path of growth and a fully strict observance of the rules.[[24]](#footnote-24) The first formulation of such a distinction was elaborated by John Paul II. Reluctantly admitting the coexistence of different moral precepts on the basis of various specific circumstances, he refused the gradualness of law: such a gradualness in pastoral praxis cannot excuse a weakening of the doctrinal demands of canon law. *Amoris Laetitia* seems to encourage a more sensible balance between canon law (whose general range is not in dispute) and the responsible discernment of countless different concrete situations.[[25]](#footnote-25)

Gradualism is in fact connected with pastoral guidance along a path of growth and understanding, where the role of the guide is emphasized: theologians and ministers are increasingly seen as “facilitators of grace”.[[26]](#footnote-26) *Amoris Laetitia* highlights both personal and pastoral discernment,[[27]](#footnote-27) suggesting a coordination between a deep personal examination of one’s own conscience and a careful path followed in the company of a pastor. Discernment aims to offer the faithful the opportunity of becoming aware of their situation before God, of their possibility of participating fully in ecclesial life, and of the limits to this.[[28]](#footnote-28) At the same time, discernment cannot conflict with the “Gospel demands of truth and charity”.[[29]](#footnote-29) Even in its courageous attempt to remain coherent with the long ecclesial tradition, *Amoris Laetitia* seems to “go beyond” the rationale of *Familiaris Consortio*,[[30]](#footnote-30) listing various situations that have to be taken carefully into consideration,[[31]](#footnote-31) and inviting the Church to avoid judgements which do not sufficiently emphasize the complexity of those situations.[[32]](#footnote-32) In this sense, every situation has to be assessed on the basis of individual analysis; appropriate weight has to be given to mitigating circumstances (to which the Church has traditionally devoted a rich system of assessments, some of them quoted in *Amoris Laetitia*),[[33]](#footnote-33) which may limit or diminish personal responsibility, as long as an appropriate distinction is made between the subjective and objective dimensions of the judgement.[[34]](#footnote-34)

6. Emphasis on the meaning of conscience

Traditional Catholic doctrine underlined the authority and inviolability of the conscience, and the Second Vatican Council accorded a central role to the meaning of conscience.[[35]](#footnote-35) The robust debate about conscience, ranging from an objective to a subjective perspective, nowadays symbolizes a wider one concerning the “role of the Church in an era of change”.[[36]](#footnote-36) *Amoris Laetitia* overcomes the remains of a defensive approach towards conscience: due importance is accorded to it, as a key element in the process of discernment, whose favoured ambit is the internal forum.[[37]](#footnote-37) To that end, the crucial relationship between conscience, general rules and concrete situations is analysed, taking into consideration and highlighting the need for an interaction between norms and reality.[[38]](#footnote-38) Indeed, when concrete situations are involved, the search for truth interacts with experience and history; natural law, which often acts as a tool of modernization of religious law,[[39]](#footnote-39) shows its dynamic tendency here, where there is space for the personal element in decision-making.[[40]](#footnote-40)

In such an analysis some authors look back to the robust debate on “epikeia” (the principle that a law can be broken to achieve a greater good), even if it is not explicitly mentioned, as a parameter which permits a balance between the importance of norms in the development of moral judgement, the role of conscience and the influence of specific circumstances.[[41]](#footnote-41) Such a perspective requires intensive pastoral work focusing on the individual and his or her specific needs, avoiding the double risk of imposing excessive rigour, on the one hand, and adopting an excessively indulgent attitude, on the other.[[42]](#footnote-42) In such a framework, the emphasis accorded to the role of the individual conscience does not take away from the serious pastoral responsibility involved in reaching an informed conclusion.

Even though more weight is accorded to moral counselling,[[43]](#footnote-43) the transition from the non-sacramental internal forum to the sacramental external forum is not underestimated, together with the role of ecclesiastical courts: on the contrary, the development of a deep dialogue between the internal forum and the external forum, aimed at reaching a correct judgement in every concrete situation, is strongly encouraged. Assessment of the morality of an act cannot in fact be exclusively entrusted to the individual informed conscience: careful monitoring must be carried out to avoid the high risks involved in the fact both that the faithful cannot sometimes discern clearly the parameters required to evaluate the validity of their marriage, and that the pastor could, in good faith, encourage a subjective truth which is not coherent with the objective truth.

7. *Amoris Laetitia* and access to the sacraments for those living in irregular situations

The text of *Amoris Laetitia* does not address the question of access to the sacraments for those living in irregular situations. However, within the ambit of the debate on *Amoris Laetitia*, considerable attention (both positive and negative) has converged on a controversial footnote, which underlines that past life choices and specific situations can restrict one’s ability to make wise decisions, but they do not restrict an openness to welcoming God’s mercy.[[44]](#footnote-44) This note has received various interpretations: in the *Buenos Aires Bishops’ Guidelines*, for example, the difficulties arising from the choice of sexual continence are noted and the compulsory nature of the step of reconciliation is stressed, but a path of dynamic discernment is also encouraged,[[45]](#footnote-45) even though access to the sacraments is not necessarily involved.[[46]](#footnote-46) Other interpretations have emphasized key elements that seem to allow, in some cases, access to the sacraments by irregular couples,[[47]](#footnote-47) underlining the “possibility of evolution of every situation”, which could potentially “reach a vocational fullness” through a “dynamic process”. The close connection between irregular situations and mortal sin weakens when certain “worthy circumstances”[[48]](#footnote-48) are present, and the entanglement between the subjective responsibility and the objective dimension of every situation must be taken into consideration, in the light of grace and charity.[[49]](#footnote-49)

In the end, *Amoris Laetitia* seems to stress that a “hermeneutics of continuity” has to be promoted (rather than a “creative” hermeneutics which would clash with the previous Magisterium), in an effort to balance the need to safeguard the general law protecting the common good with the need to prevent individuals suffering injustices. Pope Francis underlines that by saying “‘without detracting from the evangelical ideal, there is a need to accompany…the eventual stages of personal growth as these progressively appear’, making room for ‘the Lord’s mercy, which spurs us on to do our best’”.[[50]](#footnote-50) However, mercy cannot become an excuse for excessive “pastoral leniency”.[[51]](#footnote-51) According to this perspective, even though sacramental help is intended for the good of the person in his or her Christian growth, cases of absolute exclusion from receiving sacraments are still maintained.[[52]](#footnote-52)

8. The impact of *Amoris Laetitia* on the relationship between the law and pastoral care

Within the ambit of the Church, there has always been a tension concerning the difficult equilibrium between more strict and more indulgent positions. *Amoris Laetitia* stands at the crossroads of the various pastoral perspectives, trying to accommodate different approaches, in order to give the right weight to our historical condition, which asks for a pastoral approach “which does not remain frozen in conformity to the rule”[[53]](#footnote-53) but, on the contrary, is aimed at supporting all families.

Even though the background to *Amoris Laetitia* is pre-eminently pastoral, its impact on the unresolved relationship between canon law and pastoral care unavoidably comes into play. *Amoris Laetitia* is not intended to offer new general canon law rules. However, a deep canonical reflection is needed, in the light of an interpretation of canon law norms (as defined in canon 915) more coherent with new pastoral trends: such trends are potentially intended to alter the definition of irregular situations versus general prohibition, as former assumptions weaken in the light of the variety of specific concrete situations.[[54]](#footnote-54) New balances between tradition and innovation, between the theological and canon law framework and its reformability, have to be cautiously explored, in order to adjust the parameters of the past, in view of the acceptance of new paradigms, resulting not only from interaction with external factors but also from new internal sensibilities.

In this sense *Amoris Laetitia* becomes a test to verify the resilience of the canonical model of marriage and of its ability to reflect individual and community expectations. It does not imply a de-juridicization of the principle of indissolubility, or even an attempt to mitigate the condition of the divorced and remarried, proposing instead solutions in dynamic continuity with the doctrine of the Church. The canonical model of marriage is strongly defended, and indissolubility remains a non-negotiable value, but *Amoris Laetitia* reveals a new openness (more coherent with the experience and sensibility of present-day church communities) to allowing, in some cases, the reception of the sacraments by the divorced and remarried, with less risk of generating scandal, discomfort, error or confusion concerning the doctrine of the Church.[[55]](#footnote-55) In fact, the canonical system, which is traditionally endowed with elasticity, adaptability and openness, contains its own resources to reconcile general and abstract norms with the needs of each specific case, holding in view the pursuit of a higher level of justice based on charity,[[56]](#footnote-56) aimed at putting the “existential fringes” at the centre of the Church’s attention.[[57]](#footnote-57)

9. Concluding remarks

*Amoris Laetitia* provides a framework both for discerning specific situations of human frailty, in the light of the dynamics of a route of spiritual growth, and for encouraging the faithful to become aware of the complexity of their position, which might be in contradiction of Church doctrine.[[58]](#footnote-58) From this perspective, the careful discernment of the situations of remarried divorcees is required on a case-by-case basis, and more weight is given to the role of conscience (without relapsing into forms of defence on the basis of the subjective), not only for discernment of situations but also for clarification of personal liability and guilt. Francis is aware that a more rigid pastoral approach, which would not give rise to any confusion, would be an easier path, but he strongly encourages the implementation of the “maternal care”[[59]](#footnote-59) of the Church, in the light of “missionary conversion”.[[60]](#footnote-60) Even though the interaction between the norms of the Magisterium and personal conscience has not been completely clarified,[[61]](#footnote-61) he signals new possibilities that can be cautiously explored, opening new “operative options”.[[62]](#footnote-62) The suggested route implies the “interaction of different skills” in view of “common research”, which does not underestimate the “complexity of ethical challenges”.[[63]](#footnote-63) In following such a path, the main emphasis is that “time is greater than space”,[[64]](#footnote-64) as “giving priority to space…is to crystallize processes and presume to hold them back”, favouring only unity and compliance to the Catholic tradition, as long as “giving priority to time means being concerned about initiating processes rather than possessing spaces”.[[65]](#footnote-65) It also means taking into consideration specific situations and the judgement of the consciences of the individuals involved.[[66]](#footnote-66)

In any case, such a stance does not involve a form of restraint on the part of the Church, establishing abstract moral and juridical norms, which would increase the gap between the teaching of the Magisterium and individual experience, but an enhancement of the role of individuals as the main actors in the processes of evangelization.[[67]](#footnote-67) The beginning of an advisory process “from the grassroots” before the most recent Synod reported just such a renewed attention to the People of God, in order to prevent a progressive distancing of the Magisterium from the faithful’s expectations, and their resulting disaffection.

Such a trend has a significant impact on the role of ministers: a new drive towards synodality has to be developed and local churches should be encouraged “to reflect on their practice in a more collective way”.[[68]](#footnote-68) As not every discussion on doctrinal, moral or pastoral issues requires the intervention of the Magisterium,[[69]](#footnote-69) the favoured approach is find solutions that work within the local culture: thus local churches should be organized to carry out new tasks, so that pastors are equipped to face new obstacles.[[70]](#footnote-70)

*Amoris Laetitia* includes a message of mercy, within the ambit of a “turning of the Church towards a semantics based on the relationship of love”.[[71]](#footnote-71) Without destabilizing the canonical ideal of marriage (which the Church is charged to implement), those faithful who are in irregular situations have to be considered as an opportunity for the Church to display the impact of God’s mercy on every experience of life, and support should be provide through pastoral guidance to bring them to maturity of personal faith and community life. Everyone, even in their frailty, remains “chosen”.[[72]](#footnote-72)

1. See Stephanie Höllinger, *Do We Expect Too Much? A Reflection on Expectations and Marriage in* Amoris Laetitia, in Thomas Knieps-Port Le Roi (ed.), *A Point of No Return?* Amoris Laetitia *on Marriage, Divorce and Remarriage*, Berlin, Lit Verlag, 2017, pp. 105 ff. [↑](#footnote-ref-1)
2. See Ombretta Fumagalli Carulli, Anna Sammassimo (eds.), *Famiglia e matrimonio di fronte al Sinodo. Il punto di vista dei giuristi*, Milano, Vita e Pensiero, 2015. [↑](#footnote-ref-2)
3. See George S. Worgul, Amoris Laetitia*: On the Need for a Contextual Theology and Inculturation in Practice*, in Thomas Knieps-Port Le Roi (ed.), *op. cit.*, p. 26. [↑](#footnote-ref-3)
4. See Enrico Vitali, Salvatore Berlingò, *Il matrimonio canonico*, Milano, Giuffrè, 2012, pp. 59 ff. [↑](#footnote-ref-4)
5. See Peter Hünermann, *The Sacrament of Marriage: A Dogmatic Theologian Reads* Amoris Laetitia, in Thomas Knieps-Port Le Roi (ed.), *op. cit.*, pp. 87 ff. [↑](#footnote-ref-5)
6. See Walter Kasper, *Il Vangelo della famiglia*, Brescia, Ed. Queriniana, 2014. [↑](#footnote-ref-6)
7. See Paolo Moneta, *L’*Amoris Laetitia *e il diritto canonico*, in Aa. Vv., *Studi in onore di Carlo Gullo*, III, Città del Vaticano, LEV, 2017, pp. 349–360. [↑](#footnote-ref-7)
8. See *Amoris Laetitia* §§ 32 and 36. [↑](#footnote-ref-8)
9. See Alain Thomasset, *Les conversions d’*Amoris Laetitia, «Études», 4237, April 2017, p. 68. [↑](#footnote-ref-9)
10. See *Amoris Laetitia* § 57. [↑](#footnote-ref-10)
11. See *ibidem*, §§ 292 and 299. [↑](#footnote-ref-11)
12. See Alain Thomasset, *op. cit.*, p. 67. [↑](#footnote-ref-12)
13. See *Familiaris Consortio* § 84. [↑](#footnote-ref-13)
14. See *Amoris Laetitia* § 6. See also Eva-Maria Faber, Martin M. Lintner, *Sviluppi teologici sulla questione dei divorziati risposati in* Amoris Laetitia, in Stephan Goertz , C. Witting (eds.), Amoris Laetitia. *Un punto di svolta per la teologia morale?*, Cinisello Balsamo (Milano), Edizioni San Paolo, 2017, p. 228. [↑](#footnote-ref-14)
15. See Arnaud Join-Lambert, *Accompanying, Discerning and Integrating the Fragility of Couples: Pastors and Theologians at Cross Roads*, in Thomas Knieps-Port Le Roi (ed.), *op. cit.*, p. 158. [↑](#footnote-ref-15)
16. See Michaela C. Hastetter, Via Caritatis – *Pastoral Care of the Divorced and Remarried: An Ecumenical Comparison in the Context of* Amoris Laetitia, in Thomas Knieps-Port Le Roi (ed.), *op. cit.*, pp. 195 ff. [↑](#footnote-ref-16)
17. See Basilio Petrà, *Un passo avanti nella Tradizione*, «*il Regno*», 8, 2016, pp. 243 ff. [↑](#footnote-ref-17)
18. See Carlo José Errázuriz, *La rilevanza pastorale della giustizia oggettiva nella situazione dei fedeli che vivono relazioni affettivo-sessuali non matrimoniali*, «Ius Ecclesiae», 28, 2016, pp. 579 ff. [↑](#footnote-ref-18)
19. For an in-depth examination of the various positions, see Stephan Goertz, Caroline Witting, *Un punto di svolta per la teologia morale? Contesto, ricezione ed ermeneutica di* Amoris Laetitia, in Stephan Goertz, Caroline Witting (eds.), *op. cit.*, pp. 13 ff. [↑](#footnote-ref-19)
20. See Alain Thomasset, *op. cit.*, p. 65. [↑](#footnote-ref-20)
21. See Francesco, Motu Proprio Mitis iudex dominus Iesus, «Acta Apostolicae Sedis», 107, 2015, pp. 946–957. See G. Boni, *La recente riforma del processo di nullità matrimoniale. Problemi, criticità, dubbi (parte prima)*, «Stato, Chiese e pluralismo confessionale, Rivista telematica» (www.statoechiese.it), 9, 2016, pp. 1–78; G. Boni, *La recente riforma del processo di nullità matrimoniale. Problemi, criticità, dubbi (parte seconda)*, «Stato, Chiese e pluralismo confessionale, Rivista telematica» (www.statoechiese.it)», 10, 2016, pp. 1–76; G. Boni, *La recente riforma del processo di nullità matrimoniale. Problemi, criticità, dubbi (parte terza)*, in «Stato, Chiese e pluralismo confessionale, Rivista telematica» (www.statoechiese.it)», 11, 2016, pp. 1–82; Aa. Vv., *La riforma del processo matrimoniale ad un anno dal* Motu Proprio Mitis iudex dominus Iesus, Città del Vaticano, Libreria Editrice Vaticana, 2017. [↑](#footnote-ref-21)
22. See *Amoris Laetitia* § 128. [↑](#footnote-ref-22)
23. “This is not a ‘gradualness of law’ but rather a gradualness in the prudential exercise of free acts on the part of subjects who are not in a position to understand, appreciate, or fully carry out the objective demands of the law” (*Amoris Laetitia* § 295). [↑](#footnote-ref-23)
24. See Branislav Kuljovsky, *The Law of Gradualness or the Gradualness of Law? A Critical Analysis of* Amoris Laetitia, in Thomas Knieps-Port Le Roi (ed.), *op. cit.*, pp. 45 ff. [↑](#footnote-ref-24)
25. See Alain Thomasset, *op. cit.*, p. 72. [↑](#footnote-ref-25)
26. See *Amoris Laetitia* §§ 37 and 305. [↑](#footnote-ref-26)
27. See *ibidem* § 37 and 300. [↑](#footnote-ref-27)
28. See Nadia Delicata, *Sin, Repentance and Conversion in* Amoris Laetitia, in Thomas Knieps-Port Le Roi (wd.), *op. cit.*, pp. 74 ff. [↑](#footnote-ref-28)
29. See *Amoris Laetitia* § 300. [↑](#footnote-ref-29)
30. See Martin M. Lintner, *Divorce and Remarriage: A Reading of* Amoris Laetitia *from a Theological\_Ethical Perspective*, in Thomas Knieps-Port Le Roi (ed.), *op. cit.*, p. 128. [↑](#footnote-ref-30)
31. *Amoris Laetitia* emphasizes that a second union may be “consolidated over time, with new children, proven fidelity, generous self giving, Christian commitment, a consciousness of its irregularity and of the great difficulty of going back without feeling in conscience that one would fall into new sins” (*Amoris Laetitia* § 298). [↑](#footnote-ref-31)
32. See *Amoris Laetitia* § 296. [↑](#footnote-ref-32)
33. “Because of forms of conditioning and mitigating factors, it is possible that in an objective situation of sin – 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” (*Amoris Laetitia* § 305). [↑](#footnote-ref-33)
34. See Martin M. Lintner, *op. cit.*, p. 130. [↑](#footnote-ref-34)
35. See Todd A. Salzman, Michael G. Lawler, Amoris Laetitia *and the Development of Catholic Ethics: A Reflection*, in Thomas Knieps-Port Le Roi (ed.), *op. cit*., pp. 30 ff. [↑](#footnote-ref-35)
36. Francis has said that we are not living in a era of change but the change of an era. See https://www.ncronline.org/news/vatican/catholicism-can-and-must-change-francis-forcefully-tells-italian-church-gathering (accessed 6 June 2018). [↑](#footnote-ref-36)
37. See *Amoris Laetitia* § 304. See also Reinhard Marx, *Reflections on the Synod Process and* Amoris Laetitia, in Thomas Knieps-Port Le Roi (ed.), *op. cit.*, p. 13; Timothy Radcliffe, *How Can We “Make Room for the Consciences of the Faithful”?*, in Thomas Knieps-Port Le Roi (ed.), *op. cit.*, pp. 65 ff. [↑](#footnote-ref-37)
38. See *Amoris Laetitia* §§ 300–301. [↑](#footnote-ref-38)
39. See S. Berlingò, *L’ultimo diritto. Tensioni escatologiche nell’ordine dei sistemi*, Torino, Giappichelli, 1998, pp. 72 ff. [↑](#footnote-ref-39)
40. See *Amoris Laetitia* § 305, Alain Thomasset, *op. cit.*, p. 74. See also *Amoris Laetitia* § 302: “The Catechism of the Catholic Church clearly mentions these factors: ‘imputability and responsibility for an action can be diminished or even nullified by ignorance, inadvertence, duress, fear, habit, inordinate attachments, and other psychological or social factors’. In another paragraph, the Catechism refers once again to circumstances which mitigate moral responsibil­ity, and mentions at length ‘affective immaturity, force of acquired habit, conditions of anxiety or other psychological or social factors that less­en or even extenuate moral culpability’. For this reason, a negative judgment about an objec­tive situation does not imply a judgment about the imputability or culpability of the person involved.” [↑](#footnote-ref-40)
41. See Antonio Spadaro, *“*Amoris Laetitia*”. Struttura e significato dell’Esortazione apostolica post-sinodale di Papa Francesco*, «La civiltà cattolica», 167, 2, 2016, p. 122; Eva-Maria Faber, Martin M. Lintner, *op. cit.*, pp. 239–240. [↑](#footnote-ref-41)
42. See *Amoris Laetitia* §§ 300–303. [↑](#footnote-ref-42)
43. See *Amoris Laetitia* § 301; Paul Galea, *Accompanying Fragility: A Reading of* Amoris Laetitia *from a Pastoral-Psychological Perspective*, in Thomas Knieps-Port Le Roi (ed.), *op. cit.*, pp. 162 ff. [↑](#footnote-ref-43)
44. See *Amoris Laetitia* § 305, note 351. [↑](#footnote-ref-44)
45. See *Buenos Aires Bishops’ Guidelines on* Amoris Laetitia, §§ 5, 6, 10. [↑](#footnote-ref-45)
46. See *ibidem*, § 4. According to the Holy Father, “there are no other interpretations of *Amoris Laetitia*”. [↑](#footnote-ref-46)
47. Regarding this, Francesco Coccopalmerio, *Il capitolo ottavo della Esortazione Apostolica postsinodale* *Amoris* *laetitia*, Città del Vaticano, LEV, 2017, suggests that these cases include the temporary character of the “irregular” situation, the awareness of the believer of his or her situation of sin, and the intention of the believer to change his or her relationship status. [↑](#footnote-ref-47)
48. See Paolo Moneta, *Introduzione al diritto canonico*, Torino, Giappichelli, 2016, p. 110. [↑](#footnote-ref-48)
49. See Stephan Ernst, *Situazioni “irregolari” e colpa personale in* Amoris Laetitia. *Una frattura con la dottrina tradizionale?*, in Stephan Goertz, Caroline Witting (eds.), *op. cit.*, pp. 112 ff. [↑](#footnote-ref-49)
50. See *Amoris Laetitia* § 308. See Paul Galea, *op. cit.*, p. 162. [↑](#footnote-ref-50)
51. See Martin M. Lintner, *op. cit.*, p. 136. [↑](#footnote-ref-51)
52. “If someone flaunts an objective sin as if it were part of the Christian ideal, or wants to impose something other than what the Church teaches, he or she can in no way presume to teach or preach to others; this is a case of something which sepa­rates from the community (cf. *Mt* 18:17). Such a person needs to listen once more to the Gos­pel message and its call to conversion” (*Amoris Laetitia* § 297). [↑](#footnote-ref-52)
53. See Alain Thomasset, *op. cit.*, p. 69. [↑](#footnote-ref-53)
54. See Paolo Moneta, *L’*Amoris Laetitia *e il diritto canonico*, *cit.*, p. 353. [↑](#footnote-ref-54)
55. See *ibidem*, p. 358. [↑](#footnote-ref-55)
56. See Salvatore Berlingò, *Diritto canonico*, Torino, Giappichelli, 1995, pp. 60 ff.; S. Berlingò, *Il diritto divino come fattore dinamico*, in Salvatore Berlingò, *Nel silenzio del diritto. Risonanze canonistiche*, Bologna, il Mulino, 2016, pp. 155 ff. [↑](#footnote-ref-56)
57. See Pierluigi Consorti, *Per un diritto canonico periferico*, «Quad. Dir. Po. Eccl.», 2, 2016, pp. 385–406. [↑](#footnote-ref-57)
58. See Martin M. Lintner, *op. cit.*, p. 136. [↑](#footnote-ref-58)
59. See Fabrizio Mattioli, *La questione dell’accesso al sacramento eucaristico nei divorziati risposati. La prassi dopo l’esortazione apostolica post-sinodale “Amoris Laetitia”*, «Dir. Fam. Pers.», 3, 2017, pp. 1002 ff. [↑](#footnote-ref-59)
60. See Alain Thomasset, *op. cit.*, p. 76. [↑](#footnote-ref-60)
61. See Aristide Fumagalli, *L’amore in* Amoris Laetitia*. Ideale, cammino, fragilità*. Cinisello Balsamo (Milano), Edizioni San Paolo, 2017, p. 124. [↑](#footnote-ref-61)
62. See Eva-Maria Faber, Martin M. Lintner, *op. cit.*, p. 230. [↑](#footnote-ref-62)
63. See Hermann J. Pottmeyer, *Popolo di Dio in cammino. La comprensione della Chiesa di Papa Francesco come chiave di lettura di* Amoris Laetitia, in Stephan Goertz, Caroline Witting (eds.), *op. cit.*, p. 253. [↑](#footnote-ref-63)
64. See *Amoris Laetitia* § 3. [↑](#footnote-ref-64)
65. See *Evangelii Gaudium* § 223. [↑](#footnote-ref-65)
66. See Hermann J. Pottmeyer, *op. cit.*, p. 250. [↑](#footnote-ref-66)
67. See *Evangelii Gaudium* § 120. [↑](#footnote-ref-67)
68. See Alain Thomasset, *op. cit.*, p. 74. [↑](#footnote-ref-68)
69. See *Amoris Laetitia* § 3. [↑](#footnote-ref-69)
70. See Arnaud Join-Lambert, *Accompanying, Discerning and Integrating the Fragility of Couples. Pastors and Theologians at Cross Roads*, in T. Knieps-Port Le Roi (ed.), *op. cit.*, p. 158. [↑](#footnote-ref-70)
71. See Stephan Goertz, Caroline Witting, *op. cit.*, p. 66. See also A. Mantineo, *Il ritorno al Concilio Vaticano II e l’“aggiornamento” del diritto ecclesiale nel tempo di Papa Francesco*, «Stato, Chiese e pluralismo confessionale, Rivista telematica» (www.statoechiese.it), 27, 2017, pp. 1–48. [↑](#footnote-ref-71)
72. See Vincent Mynem C. Sagandoy, *Canonical Imperatives of Pastoral Care in* Amoris Laetitia *Concerning Catholics in Irregular Marital Status*, in T. Knieps-Port Le Roi (ed.), *op. cit.*, pp. 181 ff. [↑](#footnote-ref-72)