

Beyond the Law-Conscience Binary in Catholic Moral Thought

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IN A CRUCIAL PASSAGE IN *AMORIS LAETITIA*, Pope Francis writes that “individual conscience needs to be better incorporated into the Church’s praxis in certain situations which do not objectively embody our understanding of marriage” (no. 303). Francis goes on to say that “conscience can do more” than recognize an objectively-wrong action; it can “recognize with sincerity and honesty what for now is the most generous response which can be given to God,” even that such a response “is what God himself is asking amidst the concrete complexity of one’s limits, while not yet fully the objective ideal” (no. 303). It is understandable that this passage has caused consternation; it is very difficult to reconcile it with Pope St. John Paul II’s criticisms of what he calls “a ‘creative’ view of conscience which diverges from the teaching of the Church’s tradition” (*Veritatis Splendor*, no. 54). This mistaken creative view rejects norms as “a binding objective criterion,” instead offering them as a “general perspective” which then must deal with “complexity.” The value of conscience, in such a mistaken view, leads to an understanding of God’s voice calling “not so much to a meticulous observance of universal norms as to a creative and responsible acceptance of the personal tasks entrusted to him by God” (*Veritatis Splendor*, no. 55). Instead, John Paul explains that “conscience...formulates moral obligation” for particular cases “in the light of the natural law” and its properly universal and obligatory character (*Veritatis Splendor*, no. 59).

In this essay, we want to suggest that this debate remains too shaped by a dominant binary of law and conscience. This binary has a history but one that is typically told primarily in terms of a twentieth century change from a static and objective legalism to a more dynamic, historically-conscious, empowering individual agency. The first part of this essay hopes to show that a more extended history roots the binary in a construal of particular moral cases in terms of an authority-versus-authority conflict, in which there is no resolution except to declare juridically one or the other “side” as the ultimate authority. Instead, the casuistry of *Amoris Laetitia* should be understood by a different approach, suggested by Cardinal Christoph Schönborn, which considers particular cases in terms of principles and prudence.

Cardinal Schönborn's suggestive remarks, however, require elaboration, explaining how a disciplined deployment of a principles-and-prudence framework can make better sense of "development" in Catholic moral teaching. We offer an analogy with the development of the Church's teaching on usury to suggest how *Amoris Laetitia's* casuistry might be understood in terms of the prudential judgments involved in act descriptions. Such an approach can make sense of the discernment Francis recommends, without enshrining a "creative" view of conscience; however, this approach also leaves several questions and concerns that would have to be addressed if the development is to be construed as we have described.

THE HISTORICAL CONSTRUCTION OF THE LAW-CONSCIENCE BINARY

The conceptual roots of the contemporary law-conscience binary in Catholic moral thought can be traced back at least to the dialectical tension between divine reason and will in Augustine's account of eternal law.¹ Although the tendency to emphasize or even elide one dynamic in favor of the other is present in Augustine's thought, in and around the fourteenth century, there is a palpable shift in emphasis toward divine will in the thought of late medieval nominalists such as William of Ockham (1285–1347). The emphasis advances through early modern Baroque Scholastic thinkers such as Francisco Suarez (1548–1617) and pervades the Manualist tradition in Catholic moral thought of the nineteenth and early twentieth centuries.

There are many complex aspects of late medieval and early modern thought conspiring to challenge the high medieval economy of theological thinking that make a simple narrative of decline insufficient. For example, Jeffrey Stout has traced the central social and intellectual difficulty of the Reformation, what he calls the "problem of many authorities," to the breakdown of the notion of *scientia* as the privileged form of intellectual argument to fourteenth-century nominalist empiricism. As Stout observes, the late medieval breakdown of *scientia* placed a heavy burden on the notion of authority, the domain of *opinio* and of probability, an epistemic category distinct from *scientia* in medieval intellectual inquiry and argument. As the notion of authority bore a disproportionate burden of intellectual and social weight, it became unstable.

As competing authorities multiplied and began to diverge more and more sharply, conventional means for resolving disputes arising from such competition became less and less effective. Where probability is

¹ For Augustine's legacy in moral theology, see John Mahoney, *The Making of Moral Theology: A Study of the Roman Catholic Tradition* (Oxford: Oxford University Press, 1989), 37–71.

a matter of what authorities approve, and the authorities no longer speak with one voice, it becomes anything but clear which opinions one should accept.²

Yet for our purposes there is a drastic shift in theological thinking during the fourteenth century that follows in the wake of widespread acceptance and popularity of Ockham's new intuitional epistemology.³ It is during this period that theological discourse abandons realism and intellectual abstraction as its primary form of thought, weakening the mind's direct link between the Creator and the predictable world order familiar to classical and early and high medieval cosmology. The speculative trust in nature many classical and early and high medieval theologians adopted and utilized from Greco-Roman thought, and which allowed them to synthesize the truths of natural theology with the data of divine revelation, disappears from theological discourse for a number of complex philosophical and historical reasons.⁴ Chief among them is the intellectual milieu that followed the Condemnation of 1277,⁵ where the ecclesial politics that ensued from early and high medieval theology's re-engagement with the primary sources of pagan philosophy, and the subsequent concern that Greek naturalism would exercise an undue influence on revelation, exerted a new set of pressures on reason's relation to revelation.⁶ In the place of classical and early and high medieval epistemic confidence in nature, nominalist thought focused on the doctrine of God's absolute power

² Jeffrey Stout, *The Flight from Authority: Religion, Morality, and the Quest for Autonomy* (Notre Dame: University of Notre Dame Press, 1981), 41. For context, Stout is interested in the medieval language and grammar Descartes inherits and its relation to the construction of modernity.

³ For Ockham's major theological and philosophical treatises, see William of Ockham, *Opera philosophica et theologica*, ed. Gedeon Gál, 17 vols. (St. Bonaventure, NY: The Franciscan Institute, 1967–88). The secondary literature on Ockham is vast. For an introduction to Ockham's thought, see Marilyn McCord Adams, *William Ockham*, 2 vols. (Notre Dame, Ind.: University of Notre Dame Press, 1989).

⁴ See Louis Dupré, *Passage to Modernity: An Essay in the Hermeneutics of Nature and Culture* (New Haven: Yale University Press, 1993), 15–41.

⁵ For an introduction to the discussion concerning Aquinas's relation to the Condemnation of 1277, see John F. Wippel, "Thomas Aquinas and the Condemnation of 1277," *The Modern Schoolman* 72 (1995): 233–272; and Roland Hissette, "Thomas d'Aquin directement visé par la censure du 7 mars 1277? Réponse à John F. Wippel," in *Roma, Magistra Mundi: Itineraria Culturae Medievalis: Mélanges Offerts au Père L.E. Boyle à l'occasion de Son 75e Anniversaire*, ed. Jacqueline Hamesse (Louvain-la-Neuve: Fédération des Instituts d'Etudes Médiévales, 1998), 425–437.

⁶ Cf. Pierre Félix Mandonnet, *Siger de Brabant et L'averroïsme Latin au XIII^e Siècle*, vol. 2, (Louvain: Institut Supérieur de Philosophie de L'Université, 1908–11), 175–191; Etienne Gilson, *Reason and Revelation in the Middle Ages* (New York: C. Scribner's Sons, 1938) and *History of Christian Philosophy in the Middle Ages* (New York: Random House, 1955), 402–410; and Fernand van Steenberghen, *Thomas Aquinas and Radical Aristotelianism* (Washington, DC: The Catholic University of America Press, 1980).

in the distinction between God's absolute and ordained powers (*potentia Dei absoluta et ordinata*).⁷ God's ordained power, what Lawrence Moonan refers to as "option-tied power," is God's option or *volitum* conceived in relation to the actual, concrete order of created things.⁸ God's absolute power, what Moonan refers to as "option-neutral power," is God's option or *volitum* conceived in abstraction, independent of its relation to the actual, concrete order of created things.⁹ The distinction had been a relatively insignificant feature of early and high medieval thought. It is found in Aquinas and Bonaventure, but it plays a negligible role in each thinker's account, functioning as a formal saving clause.¹⁰ Instead, there is a distinct yet fluid relation between the registers of faith and reason in each thinker's discourse,¹¹ captured in Aquinas's well-known aphorism from the first question of the *Summa theologiae*: "Grace does not destroy nature but perfects it." However, when the full impact of the reception of Aristotle and his commentators in the newly formed medieval universities became clear in 1277, the desire to protect the sovereignty and freedom of God and to eliminate Greek naturalism propelled the *potentia Dei absoluta et ordinata* distinction from the margins of medieval theological discourse to its center. The upshot of this new form of theological thinking was that "the essentially supernatural life of the Christian, seen in action in divine faith and love, and derived from a totally new and God-given principle of grace which had inspired and dominated the work of an Anselm, a Bonaventure or a Thomas, was now relegated,

⁷ A detailed analysis of the complex of distinctions that accompany the *potentia absoluta/ordinata* distinction is well beyond the scope of this article. For an excellent introduction to this distinction in nominalism, see George Lindbeck, "Nominalism and the Problem of Meaning as Illustrated by Pierre D'Ailly on Predestination and Justification," *Harvard Theological Review* 52 (1959): 43–60; Heiko Oberman, "Some Notes on the Theology of Nominalism: With Attention to Its Relation to the Renaissance," *Harvard Theological Review* 53 (1960): 47–76; and Francis Oakley, "Pierre D'Ailly and the Absolute Power of God: Another Note on the Theology of Nominalism," *Harvard Theological Review* 56 (1963): 59–73.

⁸ Lawrence Moonan, *Divine Power: The Medieval Power Distinction up to its Adoption by Albert, Bonaventure, and Aquinas* (Oxford: Clarendon Press, 1994), 18.

⁹ Moonan, *Divine Power*, 18.

¹⁰ For an analysis of Aquinas's and Bonaventure's use of this distinction see Moonan, *Divine Power*, 193–295.

¹¹ On the relationship between reason and revelation in Aquinas's thought see Etienne Gilson, *The Christian Philosophy of St. Thomas Aquinas*, trans. L.K. Shook (Notre Dame: University of Notre Dame Press, 1994), 3–25; and Per Eric Persson, *Sacra Doctrina: Reason and Revelation in Aquinas*, trans. J.A.R. Mackenzie (Oxford: Basil Blackwell, 1970). For Bonaventure see Joseph Ratzinger, *The Theology of History in St. Bonaventure* (Chicago: Franciscan Herald Press, 1971).

as unknowable and inexpressible, to the purely religious sphere of belief, and in practice ignored.”¹² As the *potentia Dei absoluta et ordinata* distinction was codified in the late medieval and early modern mind, there is a shift in thinking about God and God’s relation to the world that broached the previously unthinkable possibility that this “God of pure freedom might always posit and demand what is contrary; for instance, that man should hate him (Robert Holkot), [and] that the innocent should be damned and the guilty saved (Ockham).”¹³ In addition to the philosophical and theological specters produced by the late medieval and early modern nominalist shift toward God’s absolute power, it also subtly shifted the moral discourse in Catholicism toward a voluntarist view of law and atomistic vision of action that would create the conceptual conditions within Catholicism for the legalism of the Manualist tradition, personalist theories of conscience, and law-conscience binary.

The nominalist shift towards God’s absolute power moved away from the high medieval anthropology masterfully articulated in Aquinas’s understanding of the interrelationship between the natural desire for beatitude (happiness), the transcendental properties of being (truth, beauty, and goodness), human freedom, and law in its relations and various manifestations. The movement is captured well in Servais Pinckaers’s summary well worth quoting at length:

For St. Thomas the natural inclinations to goodness, happiness, being, and truth were the very source of freedom. They formed the will and intellect, whose union produced free will. According to him we are free not in spite of our natural inclinations, but because of them. For Ockham, on the contrary, freedom dominated the natural inclinations and preceded them, because of its radical indetermination and its ability to choose contraries in their regard. From this point of view, it could be said that freedom is more apparent when it resists natural inclinations. In his rejection of all natural inclination outside the will, Ockham outstripped his master, Duns Scotus, and was led to a stronger form of indeterminism.... As a consequence, natural inclinations, no longer included within the voluntary act, were something short of freedom and were relegated to a lower level in the moral world, to the order of instinct, sensibility, or to a biological ambience.

¹² David Knowles, *The Evolution of Medieval Thought*, 2nd edition, ed. D.E. Luscombe and C.N.L. Brooke (London: Longman, 1988), 299. Also see Gilson, *History of Christian Philosophy in the Middle Ages*, 488–499.

¹³ Hans Urs von Balthasar, *The Glory of the Lord*, Vol. V: *The Realm of Metaphysics in the Modern Age*, trans. Oliver Davies, Andrew Louth, Brian McNeil CRV, John Saward and Rowan Williams, ed. Brian McNeil, CRV, and John Riches (San Francisco: Ignatius Press, 1991), 20.

Ockham and his followers could no longer understand that in the human person there was a higher natural spontaneity, of a spiritual order, inspiring freedom itself.¹⁴

As a result of Ockham's rejection of the natural inclinations and his account of freedom, the determinate quality of the virtues as stable dispositions for acting in a determined way was deemphasized because it challenged and potentially diminished the power assigned to freedom and free choice, now that freedom preceded the natural inclinations and circumscribed them within the confines of choice in Ockham's account.¹⁵

The privileged place now held by the doctrine of God's absolute power prompted considerable conceptual change within Catholicism. The divine will in its unconditioned and unrestricted autonomy became the model for the human will and consequently gave new meaning to the modern notion of freedom. The distinguished Canadian Catholic philosopher Charles Taylor puts it this way:

The ancient notion of the good, either in Platonic mode, as the key to cosmic order, or in the form of the good life à la Aristotle, sets a standard for us in nature, independent of our will. The modern notion of freedom which develops in the seventeenth century portrays this as the independence of the subject, his determining of his own purposes without interference from external authority. The second came to be considered as incompatible with the first. The conflict was originally conceived in theological terms. Late mediaeval nominalism defended the sovereignty of God as incompatible with there being an order in nature which by itself defined good and bad. For that would be to tie God's hand, to infringe on his sovereign right of decision about what was good.¹⁶

That authority in modern conceptions of freedom began to reside in self-creation and choice, and authority of the law within the will of the lawgiver is crucial to the development of the law-conscience binary in contemporary Catholic moral thought. The independent authority ascribed to each was in part the result of the new conceptual apparatus used in nominalist thought. Within its philosophical ambit divine freedom was considered in absolute, not analogical terms, and

¹⁴ Servais Pinckaers, OP, *The Sources of Christian Ethics*, trans. Sr. Mary Thomas Nobles, OP (Washington, DC: The Catholic University of America Press, 1995), 245.

¹⁵ For an introduction to Ockham's moral vision, see Rega Wood, *Ockham on the Virtues* (West Lafayette, IN: Purdue University Press, 1997); Lucan Freppert, *The Basis of Morality According to William of Ockham* (Chicago: Franciscan Herald Press, 1988); and Marilyn McCord Adams, "The Structure of Ockham's Moral Theory," *Franciscan Studies* 29 (1986): 1–35.

¹⁶ Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Cambridge: Harvard University Press, 2001), 82.

therefore it was possible for such a diffuse and voluntaristic conception of divine freedom to impose itself arbitrarily and capriciously upon human freedom.¹⁷

It is helpful in this connection to unpack briefly the metaphysical differences between Ockham and his high medieval predecessors. In the traditional high medieval approach,¹⁸ the distinction between finite and infinite being is the key overarching metaphysical theme that creates the conceptual condition for the possibility of humanity's genuine participation in the divine life of God.¹⁹ It depends upon the prior proper distinction between God's "formal features" (simplicity and infinity) and God's "attributes" (goodness, beauty, justice, and mercy), the former establishing God's otherness so the latter can be analogically predicated.²⁰ Distinguishing the formal features of God's infinite being from finite being produces philosophically the otherness of finite being to infinite being, too, and brings into sharper focus that the condition for the possibility of humanity's participation in the divine life of God does not reside in finite reality, finite reality understood as possibly not having existed and with no decrease of goodness or greatness to God. Because Ockham had conceptually situated his account of freedom outside the categories of human and divine natures, the Creator/creature metaphysical bond that had previously linked God and creatures together disappeared and, in its place, a voluntaristic emphasis on law and obligation became the bond to God in his moral vision.

Thus, for Ockham "practical reason and prudence were simply intermediaries between law and free will. Their function was to transmit precepts and obligations."²¹ And the work of practical reason had standing only insofar as the present moral order was willed by God. God could change God's will at any moment. Right reason, according to Ockham, has the task of interpreting the demands of the divine will.

¹⁷ There is an ongoing debate concerning the question of Ockham's voluntarism in relation to his intellectual predecessor Duns Scotus that is well beyond the scope of this article. For an introduction to the debate, see Thomas Williams, "The Unmitigated Scotus," *Archiv für Geschichte der Philosophie* 80 (1998): 162–81; and Allan B. Wolter, OFM, "The Unshredded Scotus: A Response to Thomas Williams," *American Catholic Philosophical Quarterly* 77 (2003): 315–356. For a short introduction to Ockham's notion of divine freedom, see Harry Klocker, S.J., *William Ockham and the Divine Freedom*, 2nd ed. (Milwaukee, Marquette University Press, 1996).

¹⁸ Here we have in mind Aquinas's important distinction in *Summa Theologiae* I, qq. 3 and 7.

¹⁹ On the significance of this distinction for Christian theology, see Robert Sokolowski, *The God of Faith and Reason: Foundations of Christian Theology* (Notre Dame, IN: University of Notre Dame Press, 1982), 21–30.

²⁰ For an excellent discussion of Aquinas's distinction, see David Burrell, "Distinguishing God from the World," in *Language, Meaning, and God: Essays in Honor of Herbert McCabe, O.P.*, ed. Brian Davies (London: Geoffrey Chapman, 1987), 75–91.

²¹ Pinckaers, *Sources*, 250.

“The will that opposed right reason was by that fact opposing the will of God.” And “an action was virtuous when the will tended, through its action, to what reason commanded, precisely because it commanded it and for no other motive.”²² But for the will to be good, it was not enough for it to act in conformity with the obligation dictated by right reason. It must also act in conformity with the divine command transmitted by it. Here obligation was instantiated as a major feature of Ockham’s moral vision. In Ockham’s thought disseminated through nominalism, we see the formation of a new moral structure that will exact its influence on all modern thought. Obligation was always present in classical and medieval thought but as a secondary influence not its prominent moral feature. The upshot of the voluntarist shift in Ockham is that there is a new-found emphasis on the “will” of the lawgiver rather than the intrinsic rationality of the law.

In an effort to reply to the Reformation, to implement the reforms of the Council of Trent, including the establishment of seminaries for the formation and preparation of priests, and under the changing cultural, social, ecclesial, and theo-political pressures the ensued in the wake of the Reformation, post-Tridentine Catholic thought sought a new method of teaching.²³ It is out of this broader context that the nominalist tendency to substantiate the rightness of action as conformity to the law becomes pronounced in post-Tridentine Catholic thinkers such as Francisco Suarez. Suarez interprets Aquinas and other Thomists on the nature of the law and roles played in it by the mind and will of the lawgiver, and he expounds the views of the Franciscans (Scotus, Bonaventure, and Ockham) to arrive at a conclusion that subtly but significantly nuances Aquinas’s position. For example, Suarez, following Aquinas, contends that the purpose of the law is to make one good. But where Aquinas articulates this by arguing that law makes one good by directing one’s dispositions toward virtue, Suarez shifts the rationale of the means by which the law makes one good by arguing that law makes one good by force of obligation.²⁴ This subtle but significant shift from Aquinas to Suarez in the means by which the law performs its function in making human beings good is indicative of the broader conceptual shift we are tracing.

When seventeenth and eighteenth century probabilism emerged in Europe, it was in part the inevitable speculative product of the late medieval shift toward the divine will and the undetermined nature of human freedom refined through Baroque Scholasticism’s emphasis on conformity to law by means of obligation. It introduced a crisis of

²² Pinckaers, *Sources*, 250.

²³ For an excellent overview and summary of the reforms and the reformist tendencies that followed the Council of Trent, see John O’Malley, *Trent: What Happened at the Council* (Cambridge, MA: Belknap Press, 2013).

²⁴ Cf. Mahoney, *Making of Moral Theology*, 226–227, n. 5.

doubt into Catholic moral theology in which conscience became the battleground between law and freedom within the human person. Any situation in which clear doubt existed or could be expressed as a probable opinion seemed to vitiate the binding power of law on one's conscience. "The idea was simple, if a bit subtle. In weighing reasons in favor of freedom or of law in doubtful cases, it was permissible to follow the opinion in favor of freedom if it was probable and was supported by good reasons, even if the opposite opinion, maintaining a legal obligation, was based on better reasons."²⁵ The issue at stake was not determining the best reason for following one's legal obligation but how to negotiate the uncharted territory of an agent's obligation in the context of real doubt. The resolution to doubt of legal obligation and moral fault in probabilism was a matter of managing the reasons for opposing a law and its application and its opposites.

The trajectory of moral thought exemplified by probabilism and standardized in the early part of the seventeenth century when manuals appear made it inevitable that the law-conscience binary would have to be resolved only by arguing over authority. The manuals distinguished between speculative and practical theology and organized material around the commandments and cases of conscience. What they left out, despite their claim to follow Aquinas's *Summa (Prima Secundae)*, were questions on beatitude, the gifts of the spirit, and the treatises on grace. The question of humanity's final end was disregarded as "purely speculative and thus superfluous to moral theology."²⁶ In this new schema, the virtues were displaced but not forgotten. They were subordinated to obligations and commands. In the context of probabilism and with European Catholicism beginning its descent into "laxity," "rigorism," and the Jansenist controversy, the manuals focused almost all of their attention on individual cases of conscience. This was a significant departure from Aquinas's moral vision in the *Prima Secundae* of the *Summa*, where there is almost no discussion of cases of conscience (casuistry).

The treatise on conscience found in the seventeenth- and eighteenth-century manuals was the creation of casuist morality and assumed a place of prominence in modern manuals. It was transformed in the manuals from something akin to a virtue or an act that was formed and perfected through practice²⁷ to an intermediate faculty or power that negotiates the dialectical tension between law and freedom.²⁸ It was an adjudicative and interpretative faculty that received

²⁵ Pinckaers, *Sources*, 275.

²⁶ Pinckaers, *Sources*, 262.

²⁷ Here again we have in mind Aquinas's description of conscience in *Summa Theologiae* I, q. 79, a. 13.

²⁸ For example, see Ioanne Azorio, *Institutionum moralium, in quibus universae quaestiones ad conscientiam recte, aut prave factorum pertinentes, breuiter tractantur*, vol. 1 (Lugdini: I. Cardon & P. Cauellat, 1625), 102–143.

the law without forming and changing it, relayed it to freedom, and applied it to free action. Conscience in this juridical system of morality was the arbiter between freedom and law in the seventeenth and eighteenth-century manuals. Here, we see in its infancy the law-conscience binary that will come to reside within contemporary Catholic moral thought.

The late nineteenth and early twentieth-century manuals that emerged from their seventeenth and eighteenth-century predecessors are also the result of Catholicism's contentious relationship to modernity and, more specifically, the theo-political, philosophical, and social changes within nineteenth-century European culture and society.²⁹ After the French Revolution mercilessly persecuted Catholics who refused to swear an oath to the state's new church, murdered thousands of peasants in the Vendée, and attempted to replace Catholicism in France with the cult of reason, a conservative reaction within Catholicism set in that initiated an ecclesial and conceptual transformation toward a more bureaucratic understanding of Catholicism that concentrated on ecclesiastical authority, the juridical structure of tradition, and adherence to Church doctrine and regulation. The Revolution was not the only source of the Church's conservative reaction in the nineteenth century. Because the Revolution produced Napoleon, it also meant the beginning of the end of the close alliance of the Catholic church and the state throughout Europe. To make matters worse, Na-

²⁹ It is common to narrate the origins of the Manualist tradition to Catholicism's conservative response to the radical and anti-theological figures of the seventeenth- and eighteenth-century Enlightenment such as the Jewish philosopher and lens-grinder Baruch Spinoza, the Protestant philosopher Pierre Bayle, and the French philosopher and writer Denis Diderot. There is a modicum of truth to this narrative. However, recent historical scholarship suggests that only a radical minority of Enlightenmenters were hostile to religion. This is not to suggest that Enlightenmenters were uncritical of Christianity, unwary of excessive piety and superstition within Christianity, and regularly attended church. It is to suggest that there is a spectrum of Enlightenment thought. Inspired by the new discoveries in science and philosophy and motivated by the reforms of the Council of Trent, Catholic Enlightenmenters used the Enlightenment criteria of reason to explore, teach, and refine faith and belief, while at the same time revelation, tradition, and the testimony of Scripture were recognized as authoritative. Catholicism's reaction to various European Enlightenmenters is nuanced, complicated, and resists simple and unitary classification. For the most recent scholarship on the history of the Enlightenment, see Jonathan Israel, *Radical Enlightenment: Philosophy and the Making of Modernity, 1650–1750* (New York: Oxford University Press, 2001); Darrin McMahon, *Enemies of the Enlightenment: The French Counter-Enlightenment and the Making of Modernity* (New York: Oxford University Press, 2001); David Sorkin, *The Religious Enlightenment: Protestants, Jews, and Catholics From London to Vienna* (Princeton, NJ: Princeton University Press, 2008). For an overview of the Catholic Enlightenment, see Ulrich L. Lehner, *The Catholic Enlightenment: The Forgotten History of a Global Movement* (New York: Oxford University Press, 2016).

oleon's occupation of the Rhineland at the beginning of the nineteenth century and the German princes' dissolution of all monasteries and seizure of all Catholic institutions of higher learning had a devastating effect on European Catholicism and serious implications for Catholicism's relation to European modernity. "The church lost its intellectual bastions, its charity organizations, its religious orders, and its bishoprics. Pope Pius VI had died a prisoner of Napoleon in 1799, and in 1802, it looked as if his successor would share this same fate. But, being deprived of leadership, Catholics looked upon Napoleon's prisoner as the new moral authority who could lead the church after the failure of local bishops and prelates."³⁰ It should come as no surprise then that by the nineteenth century the majority of Catholic theologians considered their common intellectual enemy to be the forms of rationalism that emerged from the European Enlightenments since all, in their own ways, now disavowed politically, intellectually, and morally the claims of Christian revelation in the minds of Catholics.³¹

In the latter half of the nineteenth century, Pius IX's early affection for liberalism and later disaffection from liberal ideas, and his exile from Rome and eventual return, set in motion a political and an ecclesiological reaction by the Vatican that complicated the intellectual life of the church. Whatever fondness Pius IX may have held for political liberalism officially ended in 1854 when the dogma of the Immaculate Conception was decreed, without a doubt, as a reflection of his genuine Marian piety but also as a "political statement of the first order," implying "[s]in-weakened man was incapable of self-government," according to one author.³² Ten years later, Pius IX reaffirmed this view in the 1864 *Syllabus of Errors*, arguing political liberalism offered an attenuated account of civic life when it envisaged this life free from the church's authoritative voice. He reasserted the church's authoritative voice in the First Vatican Council's definition of papal infallibility in the document *Pastor Aeternus* (1870). These documents, along with their theological rhetoric and value, contain political gestures signaling the Vatican was becoming increasingly isolated in the latter part of the nineteenth century from the traditional centers of European power. They also suggest that the preponderance of intellectual value in Catholicism seemed to be assigned to the magisterium's authority, a factor that would contribute to the entrenchment of the law-conscience binary as a battle of competing authorities.

³⁰ Lehner, *The Catholic Enlightenment*, 11.

³¹ Cf. Gerald McCool, SJ, *Nineteenth-Century Scholasticism: The Search for a Unitary Method* (New York: Fordham University Press, 1989), 32–35.

³² James Hennessey, SJ, "Leo XIII's Thomistic Revival: A Political and Philosophical Event," *The Journal of Religion* 58 (1978): S187.

Pius IX's ecclesiological and theological emphasis on authority was expressed in an unprecedented spate of condemnations in Catholic theology that spanned eleven years, between 1855 and 1866.³³ For the most part, this Roman intervention was an expression of the church's reaction to political liberalism and liberalism's anti-clerical thrust.³⁴ In its reaction to anticlerical liberalism in the nineteenth century, the Church practiced an unstated policy of appointing bishops whose ecclesiological sympathies were Ultramontane rather than Febronian or Gallican.³⁵ In so doing, Catholic theological education throughout Europe was consolidated within the walls of the Vatican, which, in turn, advanced the role of such Roman congregations as the Congregation of the Holy Office and the Congregation of the Index in the mid and latter half of the nineteenth century.³⁶

For the inchoate yet burgeoning neo-Thomism movement of the nineteenth century, liberalism's anti-clericalism, especially in France, was a political expression of the intrinsic animus toward Christian revelation endemic to modern philosophy. "The negative conclusions which the rationalists had reached concerning the credibility of the Christian mysteries were the logical consequence of applying modern philosophy to religion and morals."³⁷ That is to say, the conclusions of modern philosophies need not necessarily be true since they are the logical outcome of the antagonism toward religion inherent to all modern philosophy. Indeed, for neo-Thomism, no modern philosophy "could provide a sound solution for the problem of faith and reason,

³³ Pius IX's emphasis on authority, though not unwarranted given his predecessor's (Gregory XVI) condemnation of the attempts of Félicité de Lamennais and his followers to reinvigorate French Catholicism by adopting some of the democratic principles of the Revolution, may have given some people reason to pause, particularly those who assumed he harbored some affection for liberal ideals.

³⁴ The church's reaction to liberalism ought not to be read merely as a political event. Instead, one ought to read it as a part of Catholicism's broader attempt to work out the relationship between faith (grace) and reason (nature) in modernity. For an account of how this distinction continued to plague much twentieth-century European theology and the implications it had, see Joseph Komonchak, "Theology and Culture at Mid-Century: The Example of Henri de Lubac," *Theological Studies* 51 (1990): 579–602. For an interesting example of how this distinction paralyzed ecclesial life in the twentieth century outside of Europe, see William T. Cavanaugh, *Torture and Eucharist: Theology, Politics and the Body of Christ* (Oxford: Blackwell Publishers, 1998), 121–202.

³⁵ Cf. McCool, *Nineteenth-Century Scholasticism*, 129–134.

³⁶ Cf. McCool, *Nineteenth-Century Scholasticism*, 134.

³⁷ McCool, *Nineteenth-Century Scholasticism*, 18. See also P.J. Fitzpatrick, "Neoscholasticism" in *The Cambridge History of Later Medieval Philosophy: From the Rediscovery of Aristotle to the Disintegration of Scholasticism 1100–1600*, ed. Norman Kretzmann, Anthony Kenny, Jan Pinborg and Eleonore Stump (Cambridge: Cambridge University Press, 1982), 838–852; and Pierre Thibault, *Savoir et pouvoir: Philosophie thomiste et politique cléricale au XIX^e siècle* (Quebec: Presses de l'Université Laval, 1972).

and any attempt to correct and adapt them in the hope that they could do so was doomed in advance to failure.”³⁸ The Cartesian and post-Kantian theories of knowledge espoused by Catholic traditionalists and ontologists did precisely what the neo-Thomists thought they ought not to have done; namely, they grounded their first principles of knowledge in the intuition of God, shattering the metaphysical unity of man and nature and dissolving the necessary distinction between philosophy and theology.³⁹ Once these alternate schools of thought within the intellectual life of Catholicism accepted the Cartesian *co-gito* as their metaphysical point of origin, they committed themselves too deeply to the modern problem of representation of knowledge obtained through the senses, and, consequently, they were required to turn to the category of intuition as the objective first principle of their metaphysic.⁴⁰ The chief flaw of such a metaphysic was its individualistic account of reason inherently set up as an authority juxtaposed to the Church’s authoritative teaching tradition. The only remedy to the pathology of modern philosophy and its malignant influence on Catholicism, according to neo-Thomism, was for Catholicism to extricate modern philosophy from its intellectual tradition and rebuild itself on the scholastic period’s clear distinction between the natural and the revealed knowledge of God.

The Thomistic renewal of Catholicism during the Leonine papacy (1878–1903) saw itself as the epistemological alternative to the encroaching secularism of the modern world. Leo’s vision for the Roman renewal of Thomism at the end of the nineteenth century extended beyond the purview of seminary curricula; it imagined implementing an objective and immutable order in the modern world, for which the church would be gatekeeper and Thomistic philosophy the key to its implementation.⁴¹ The neo-Thomists saw the problem of modernity as one “grand system,” as Joseph Komonchak observes, to which the only suitable response was to offer an alternative “grand system”: Thomism.⁴² The Thomistic renewal of Catholicism during the Leonine

³⁸ McCool, *Nineteenth-Century Scholasticism*, 19.

³⁹ See McCool, *Nineteenth-Century Scholasticism*, 139–141.

⁴⁰ In retrospect there is a certain irony to the neo-Thomist charge of Cartesianism against its interlocutors, for more than one scholar has observed how neo-Thomism itself seems to resemble more a form of Cartesianism than a development of Aquinas’s thought. See Wayne Hankey, “Making Theology Practical: Thomas Aquinas and the Nineteenth Century Religious Revival,” *Dionysius* 9 (1985): 91–92.

⁴¹ Cf. Hennessey, “Leo XIII’s Thomistic Revival,” S189–S190. For Leo’s “grand design,” as it has been called, see Paul Misner, “Catholic Anti-Modernism: The Ecclesial Setting,” in *Catholicism Contending with Modernity: Roman Catholic Modernism and Anti-Modernism in Historical Context*, ed. Darrell Jodock (Cambridge: Cambridge University Press, 2000), 79–80.

⁴² See Joseph Komonchak, “Modernity and the Construction of Roman Catholicism,” in *Modernity as a Social Construct*, ed. George Gilmore (Mobile: Spring Hill College Press, 1991), 11–41. See also Maurice Larkin, *Religion, Politics and Preferment in*

papacy recovered philosophical, theological, and moral discourse about nature and principles for Catholicism that seemed to have disappeared from modern philosophy's register. This was evident in the Leonine encyclical *Aeterni Patris* (1879), which was an attempt to rehabilitate the listless intellectual life of Catholic seminaries and universities, that had seemed to lend themselves disproportionately to fideism, and it was also an effort to protect seminarians from the rationalism pervading secular philosophy.⁴³

It is out of the larger political events in Europe and the Church's reaction to them that the neo-Thomist movement and its prominent role in adjudicating orthodoxy was born, consolidated in influential Roman tribunals, advanced as a unitary theological system for Catholicism, and instituted within Catholic moral theology through its manuals. The principal manuals of the late nineteenth and early twentieth-century were written in Latin, took a propositional view of revelation, employed deductive theological reasoning, categorized doctrinal teachings based on the degree of their ecclesiastical authority, and with a remarkable degree of uniformity, mapped out with precision and unequivocal detail the topography of Catholic theology to be thought and taught, and evil to be avoided.⁴⁴ The objectivism and legalism of the manuals was perceptible in the strictly *a priori* sequence that the manuals' apologetic argument unfolded, beginning with the possibility of revelation, demonstrating revelation's uncontestable supernatural origin in signs such as miracles and prophecies, and then moving on to a discussion of the miracles of Jesus Christ, particularly his resurrection, as historically verifiable proof of his claim to be sent by God. The power of the manuals' argument depended upon the epistemological validity of Christ's claim to speak with divine authority and the certainty of the Church's authority as custodian of divine truth under the assistance of the Holy Spirit, and its appeal stemmed from the objectivist and universalist claims to moral truth it conveyed with juridical certainty.

The construction of the contemporary law-conscience binary in Catholic moral theology belongs to this older genealogy, broader speculative setting, and richer conceptual history. However, as the story is usually more simply and abruptly told, the climactic moment in the development of the binary comes after the Second World War, when European Catholic moral theology, inspired by the pioneering

France Since 1890: La Belle Époque and Its Legacy (Cambridge: Cambridge University Press, 1995), 6–7.

⁴³ Gabriel Daly, *Transcendence and Immanence: A Study in Catholic Modernism and Integralism* (Oxford: Oxford University Press, 1980), 9–11.

⁴⁴ For an English moral manual, see Thomas Slater, *A Manual of Moral Theology for English-Speaking Countries* (London: Benziger Brothers, 1906).

work of Bernard Häring, moved away from “objectivist” and “positivist” views of law and toward a “more personalistic, pastoral, and biblically based system of moral theology that [was] as concerned with one’s fundamental relationship with Christ.”⁴⁵ Häring’s influence on post-war European Catholic moral theology is peerless. The rich and extensive discussion of conscience in *The Law of Christ*⁴⁶ was essential to the Second Vatican Council’s famous definition of conscience in the Pastoral Constitution of the Church in the Modern World (*Gaudium et Spes*) as “man’s most secret core, and his sanctuary,” where “he is alone with God, Whose voice echoes in his depths” (no. 16). For Häring and other European Catholic moral theologians, the major events of the twentieth century, including two world wars and the turbulent social changes of the 1960s, to name just a few, were indicative of the need to recover conscience as a fundamental category within Catholic moral thought. The authority of conscience, in this view, was seen as an aspect of a Christian Catholic humanism, opposed to all authoritarian rule, whether ecclesial or secular.

In the twenty-first century, many Catholic moral theologians see the Francis papacy as an opportunity to advance the twentieth-century turn to conscience, a “robust notion of conscience that requires more from the ordinary Christian and that sees the conscience as the source of moral agency.”⁴⁷ Contemporary personalist theories of conscience are considered part of the post-Conciliar process of development in Catholic moral thought. This process involves maintaining the corrective arc away from the pre-Conciliar juridical emphasis on ecclesial obedience to Church regulation. In this story, this earlier period featured an impersonal, bureaucratic focus on law’s “objectivity” that crowded out conscience to become the prominent feature of Catholic moral theology’s framework. The “universalist” claims to moral truth

⁴⁵ Robert J. Smith, *Conscience and Catholicism: The Nature and Function of Conscience in Contemporary Catholic Moral Theology* (Lanham, MD: University Press of America, 1998), 74.

⁴⁶ Bernard Häring, *The Law of Christ: Moral Theology for Priests and Laity*, 3 vols. trans. Edwin G. Kaiser (Westminster, MD: Newman Press, 1961–66).

⁴⁷ James F. Keenan, SJ, “To Follow and to Form over Time: A Phenomenology of Conscience,” *Conscience and Catholicism: Rights, Responsibilities, and Institutional Responses*, ed. David E. DeCosse and Kristin E. Heyer (Maryknoll, NY: Orbis Books, 2015), 12. For an example of a constructive personalist theology of conscience, see Linda Hogan, *Confronting the Truth: Conscience in the Catholic Tradition* (Mahwah, NJ: Paulist Press, 2000). For an overview of conscience in Catholic moral thought at the beginning of the twenty-first century, see *Conscience: Readings in Moral Theology No. 14*, ed. Charles E. Curran (New York: Paulist Press, 2004) and James F. Keenan, SJ, “Redeeming Conscience,” *Theological Studies* 76 (2015): 129–147; For conscience in the context of the Francis papacy, see Paul Crowley, SJ, ed., *From Vatican II to Pope Francis: Charting a Catholic Future* (Maryknoll, NY: Orbis Books, 2014); For conscience in the context of *Amoris Laetitia*, see Conor M. Kelly, “The Role of the Moral Theologian in the Church: A Proposal in Light of *Amoris Laetitia*,” *Theological Studies* 77 (2016): 922–948.

were methodologically instituted and standardized for Catholic theology through Roman textbooks and manuals, which became the main source of theological reflection and moral formation in Catholicism between the two Vatican Councils. The “Manualist” tradition was part of the Catholicism’s apologetical and polemical machinery intended to defend and demonstrate the objective order of the Church’s divine teachings in response to the subjectivism of liberal Protestantism and modern rationalism. The main philosophical problem with the Manualist tradition was that its objectivist and universalist claims to moral truth obscured the subject, without whom there is no moral truth, and failed to recognize that the subject is always already epistemologically situated, historically located, socially embedded, and culturally conditioned in its encounter with the moral truth.⁴⁸ Instead, the Manualist tradition offered a “classicist” monolithic representation of past and present reality that Nietzsche pilloried for attempting to impose objective stability between representation and reality at the expense of human subjectivity.⁴⁹ As a corrective to the Manualist tradition’s ahistorical, objectivist framework for truth, personalist theories of conscience are cognizant of the epistemic fact that conscience is shaped by cultural traditions and socio-political factors. Conscience is not a caricature of the *tabula rasa* mind found in certain forms of British empiricism.⁵⁰ That is, it is not a blank slate awaiting experience and sense impressions to develop its ideas and content. Nor is conscience hermetically sealed, floating freely through history unaffected by its contingencies and conditions. As one moral theologian puts it, “The cultural and historical forces that converge to make up both the general and proximate context of one’s life inevitably shape one’s worldview and therefore what one understands by ‘the good,’ how one conceptualizes human subjectivity, and how one sees the possibilities for action and impact in one’s environment.”⁵¹ Conscience is, as personalist theories avow, formed by tradition and shaped by the lived experiences and communities human beings inhabit.

So, while personalist theories of conscience have recovered the important dimension of subjectivity for contemporary moral thought,

⁴⁸ Cf. Charles Curran, *The Moral Theology of John Paul II* (Washington, DC: Georgetown University Press, 2005), 33–34.

⁴⁹ See Friedrich Nietzsche, “On the Uses and Disadvantages of History for Life,” *Untimely Meditations*, trans. R.J. Hollingdale, ed. Daniel Breazeale (Cambridge: Cambridge University Press, 1997), 57–123.

⁵⁰ See “Book II: Of Ideas,” in John Locke, *An Essay Concerning Human Understanding*, ed. Kenneth P. Winkler (Indianapolis: Hackett Publishing Company, 1996).

⁵¹ Linda Hogan, “Marriage Equality, Conscience, and the Catholic Tradition,” *Conscience and Catholicism: Rights, Responsibilities, and Institutional Responses*, ed. David E. DeCosse and Kristin E. Heyer (Maryknoll, New York: Orbis Books, 2015), 90.

they struggle to address fundamental moral questions because they remain within the jurisdictional logic of the law-conscience binary. For example, in light of the emphatic role human subjectivity plays in perceiving the good, is it possible to adjudicate competing moral truths by subjecting the claims of conscience to “self-critical reflection to ensure that they are not merely the embodiment of inherited values and prejudices”?⁵² Within a personalist framework of conscience, how can one avoid the “self’s self-serving presentation of itself to itself, a presentation designed to sustain an image of the self as well-ordered, free from fundamental conflict, troubled perhaps by occasional akratic difficulties, but for the most part entitled to approval both by itself and others”?⁵³ Where competing claims of conscience exist between different groups with different moralities, different practices, and where no shared account of the good exists, is it sufficient to maintain that one is justified in holding a particular moral position to “the extent to which it is intelligible and persuasive within the moral framework within which it is articulated.”?⁵⁴ Persuasively and intelligibly articulating the moral framework within which one is situated is an important and essential task. But does such contextualizing mean that one’s truth is simply “one’s own truth,” no longer responding to the truth about the good? And twenty-first century personalist theories also struggle to delineate conscience’s proper relationship to law. Most see themselves as advancing the corrective arc to the theological aridity, intellectualism, and legalism of the Manualist tradition, or whatever remains of it, that Häring and other twentieth-century European Catholic moral theologians sought to overcome. But in defining conscience in opposition to the imposition of objective laws and as its corrective, conscience unwittingly perpetuates and entrenches the law-conscience binary rather than overcoming it.⁵⁵

It is a paradox of the history of Catholic moral thought that the contemporary law-conscience binary arises from a sense of the significance and role historical context plays in the moral life, and yet the

⁵² Hogan, “Marriage Equality, Conscience, and the Catholic Tradition,” 88.

⁵³ Alasdair MacIntyre, “What Has Christianity to Say to the Moral Philosopher?” in *The Doctrine of God and Theological Ethics*, ed. Alan J. Torrance and Michael Banner (New York: T & T Clark, 2006), 22.

⁵⁴ Hogan, “Marriage Equality, Conscience, and the Catholic Tradition,” 92.

⁵⁵ It would require an essay in itself to examine the extent to which the magisterium of John Paul II, and in particular *Veritatis Splendor*, also remained within the binary. In brief, it seems to us that the focus on the relationship of freedom and truth in the second part of *Veritatis Splendor*, and especially the focus on the perspective of the acting person, was an attempt to transcend the authority-versus-authority binary. However, the document’s focus on dealing with dissenting views on the question of intrinsically evil acts limited the extent to which John Paul drew on the larger framework outlined in the next section of the paper, in particular the importance of a thorough virtue approach and an attention to Ignatian practices of discernment.

contemporary positions within the binary remain insufficiently historicized and contextualized. When the history of the development of the law-conscience binary is situated within the broader speculative setting of late medieval shifts in thinking about God's relation to the world, the rearrangement of moral theology after the Council of Trent, and the understandable but excessive reaction to modernity through the reassertion of ecclesiastical authority, one recognizes that the problems of overly "creative" forms of personalist conscience and of the ahistorical imposition of objective laws derive in part from conscience's and law's detachment from larger theories of the good and the virtues. Conscience's and law's self-understandings depend in part on defining themselves in opposition to each other and on each conceiving itself as the corrective alternative to the other. Thus, the law-conscience binary becomes the site of conflict between two different wills, where each will competes with the other's notion of moral authority. The tragedy is that the framework of the binary presents every moral case as an either/or in which the narrowly defined categories of law and conscience vie for primacy of moral authority.

BEYOND THE CONSCIENCE/LAW BINARY: TOWARD A SYNTHETIC FRAMEWORK OF PRUDENCE AND PRINCIPLES

We can see that the law-conscience binary is a product of a longer history in which the work of moral theology became overly focused on the task of adjudicating authority between individual conscience and the external authority of the church. If some post-Vatican II arguments sought to swing the pendulum toward the agency of the individual, through an expanded notion of conscience, it was nevertheless the same pendulum. It is certainly possible to read Pope Francis this way; however, it is also possible to construe *Amoris Laetitia* in a different way, as a "paradigm shift" that moves out of that framework into something different.⁵⁶

What exactly is the "new paradigm" *Amoris Laetitia* potentially offers? An important place to start would be the extensive comments offered by Cardinal Christoph Schönborn. Schönborn was part of the presentation of *Amoris*; more importantly, he is a protégé of Joseph Ratzinger and was the principal organizer of the *Catechism of the Catholic Church* under John Paul II. Perhaps more than anyone else, he is in a position to articulate how the developments in *Amoris* constitute a legitimate development.

The basic framework he offers might be termed a principles-prudence framework. In this section of the essay, we parse the extended

⁵⁶ John L. Allen, "Pope Aide Says Tensions around 'Amoris' Reflect a 'Paradigm Shift,'" *Crux*, January 11, 2018, cruxnow.com/pope-in-chile-and-peru/2018/01/pope-aide-says-tensions-around-amoris-reflect-paradigm-shift/.

interview he gave immediately following the release of *Amoris Laetitia*. The interview gives many hints as to the new framework, but some work needs to be done in differentiating this framework from two others he also explains are part of Francis's writing. After zeroing in on the heart of the framework, we attempt to fill it out by relating it to the treatment of two other thinkers of the development of moral teaching around usury—John Noonan and John Finnis—and then finally return to the target case of *Amoris*, specifying with more precision how the framework might be applied.

Schönborn's interview affirms the importance of Francis's work for the general development of Catholic moral theology as a whole. He explains:

"The Joy of Love" is the great text of moral theology that we have been waiting for since the days of the Second Vatican Council and that develops further the choices that were already made by the Catechism of the Catholic Church and by "The Splendor of Truth." Probably only a Jesuit could have done justice with such acuteness and lucidity to the alchemy of the singular and the universal, of the conditioning and the norm of the dynamics of the moral act.⁵⁷

Schönborn's analysis moves beyond the trajectory we have highlighted in the previous section's genealogy. The document aims at "the clarification of the relationships between objective and subject, to which neither the ethics of obligation nor situation ethics is able to do justice." Schönborn criticizes "the ethics of obligation, which have an extrinsicism that generates both laxity and rigorism," while at the same time noting that the approach of *Amoris* is "the opposite of a situation ethics in which the norm is always perceived as extrinsic to the act that is performed.... In a situation ethics, the subject liberates himself from the objective norm (which is considered in an abstract manner) and embraces a pragmatism that looks to the specific circumstances." While the language of conscience is retained, it is developed in a way that is not a matter of simply opposing it to (objective) law. The problem with either pole in the traditional dichotomy is an "extrinsicism," in which the morality of the specific act is something assigned to it from outside, either by law or by the subject in a situation.

But what exactly is the alternative? Before articulating it, we need to recognize that, in both *Amoris* and the Cardinal's wide-ranging interview, the "new framework" is made somewhat murky by appeals to two other ideas about what Francis is up to. Neither of these two ideas

⁵⁷ Christoph Schönborn and Antonio Spadaro, "Cardinal Schönborn on 'The Joy of Love': The Full Conversation," *America*, August 9, 2016, www.americamagazine.org/issue/richness-love.

qualifies as a “paradigm shift”; they are applications of classic ideas that are quite at home in the Manualist tradition.

The first is what might be called the “straight pastoral” reading of *Amoris*, in which Francis’s chief concern is that anyone, in any situation, not be driven away from the Church by rules thrown like stones at particular sinners. Francis (and Schönborn) never fails to remind us that we are all sinners, all “unworthy,” and that the Church must do as much as possible to meet people where they are. Schönborn notes the unfailing “positive pastoral style” of the document, noting that “[w]e must help everyone to find his or her own way of participating in the ecclesial community, so that they may feel they are the object of compassion that is unmerited, unconditional and gratuitous.” Such an approach highlights “the attractiveness of the good” instead of a “defensive pastoral style.” To call this a matter of “style” is not to diminish its importance; rather, it is to locate the distinctiveness of Francis’s approach in terms of the ways and contexts in which norms are presented, a distinctiveness which would not touch core matters of moral theology. On this reading, the problem with moral theology is simply a matter of a defensiveness and a self-righteousness in teaching the Church’s norms.

It is obvious that *Amoris* seeks more than simply increasing pastoral sensitivity (though it includes that!). However, a second way of understanding its advance—which we might call “mixed pastoral/moral”—is also firmly at home in the Manualist binary: the question of culpability and mitigating circumstances, particularly when assessing the seriousness of sin and its relevance for exclusion from the Eucharist. This move is indicated by Schönborn, quoting key passages from the *Catechism*:

It is possible that the imputability of guilt may be strongly diminished. We read in the *Catechism*: “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” (No. 1735). These are all things that influence “full knowledge” or “complete consent” (No. 1859) and that can therefore lessen the perception here and now of the significance or the centrality of the norm.

Schönborn is obviously correct that this emphasis on “mitigating factors” is “in the heart of the great ecclesial tradition.” Indeed, this is a straightforward (if contestable) application of Manualist categories, recognizing that certain actions might subjectively not be mortal sins, and therefore not necessarily preclude the reception of the Eucharist. The next step could be a revival of the categories of Probabilism in resolving the disputes in moral theology about this case of conscience!

However, a further development can also be seen. Schönborn explains that “[t]he evolution that is present in the exhortation is principally the new consciousness of an objective evolution, namely of the conditionings that are specific to our societies. Discernment takes greater account of those elements that suppress or attenuate imputability.” This comment suggests that Francis is identifying changes in the larger social context which, though not affecting the formal Church teaching on marriage, do affect the possibilities any particular person might have in receiving these teachings. It could be that such a context only affects “imputability”—that is, it is merely an illumination of what the mitigating circumstances are. However, as we will see further on, this attention to changing social contexts is a significant factor in the “evolution” of other moral teaching. More extensively, Schönborn observes, in reference to *Amoris Laetitia*, note 351:

The non-imputability, faith in the sacrament of matrimony, the search for possible paths that allow a response to the project of God in the reality of an objective significant process. We are witnessing here a development by means of the addition of a complementary truth, just as the “primacy” formulated at the First Vatican Council has undeniably been developed through the addition of the “collegiality” of the Second Vatican Council. “The Joy of Love” does not develop the objective requirements of the marriage bond, which were already formulated clearly in “The Family in the Modern World,” but it contributes a complementary reflection on the present-day conditionings of the married couple in the exercise of their freedom.

In this description, however, we begin to understand why it is not easy to put one’s finger exactly on what is being said about development. For example, Schönborn’s analogy here is questionable: the primacy/collegiality complementarity is clearly a matter of correcting an intrinsic imbalance in ecclesiology (the “ideal” or “doctrine”); this does not match up with the pairing of “objective requirements” plus “present-day conditionings” in the marriage documents. But what he is (rightly) pointing to is the idea that somehow the articulation of John Paul II was imbalanced and required some kind of balancing.

This balancing could be merely a matter of a more extensive and generous attention to mitigating circumstances. However, elsewhere in the interview, Schönborn describes what is going on in a way that brings us much further in recognizing Francis’s contribution to moral theology. This is indicated in the preceding quote, where Schönborn speaks not simply of “non-imputability,” but of “the search for possible paths that allow a response to the project of God in the reality of an objective significant process.” Note that this is a prospective, not retrospective, claim; it is not a claim about past actions, as is the case when dealing with traditional assessment of culpability for sin, but of the path forward. As Nicholas Healy rightly notes in his essay in this

volume, “mitigating circumstances” is a category that cannot be applied prospectively.⁵⁸

Thus, Schönborn’s explanations require some teasing out. In the most important passage in the interview, he indicates that what Francis is doing is recovering an ethics of virtue:

In a virtue ethics, which is emphasized by the Catechism, morality and its principles are located in the action under the conditioning of prudence, not of theoretical knowledge. “The truth about the moral good, stated in the law of reason, is recognized practically and concretely by the prudent judgment of conscience” (No. 1780). The moral rightness of such a concrete act includes inseparably the search for the objective norm that applies to the complexity of my case—a case that is never as simple as an abstract analysis of the exterior act might suggest—and the rootedness of the virtues that lead one to perform the good that one has recognized. This is the nodal point of the clarification of the relationships between objective and subject, to which neither the ethics of obligation nor situation ethics is able to do justice.

Schönborn goes on to describe this work of prudence, further quoting the Catechism:

“Prudence is the virtue that disposes practical reason to discern our true good in every circumstance” and that “immediately guides the judgment of conscience.” It is precisely “with the help of this virtue” that “we apply moral principles to particular cases without error and overcome doubts about the good to achieve and the evil to avoid” (No. 1806). It is in view of what I am, and of the context in which I exist, that the prudential judgment searches, judges and chooses what appears to it to be just and right in a concrete case. This is indeed an objective norm, but it is the objective norm that corresponds to the specificity of my case in seeking and loving the true and the good.

Note that what prudence does is “discern our true good.” Here we have escaped the law-conscience binary that tends to think about acts ultimately in terms of competing authorities. In this sense, Schönborn explains his statement that *Amoris* is a marrying of Thomistic virtue ethics and Ignatian spirituality, drawing “inspiration from the great Ignatian tradition (the discernment of the conscience) and the great Dominican tradition (virtue ethics)..., which allows us to integrate the entire contribution of personalism.” The point of both approaches is to emphasize an *intrinsic* morality of an act in relation to a person’s concrete good, rather than focus on extrinsic questions of the authority of either law or conscience.

⁵⁸ Nicholas J. Healy, Jr., “Interpreting Chapter Eight of *Amoris Laetitia* in Light of the Incarnation,” *Journal of Moral Theology* 10, no. 2 (2021): 140–155.

The prudence described here is very much indebted to Ignatius. As he says later on, what “Francis appeals to” is “the praxis of the great tradition of spiritual directors whose role has always been that of discernment, taking into account both the interior dispositions and the real possibilities of transforming these existential situations with the aid of grace. Between everything and nothing there lies the path of grace and of growth....” Notice here that the issue of “conditioning situations” runs considerably deeper than the question of assigning culpability. Instead, there is a concreteness to “reality” in which it is possible to discern pathways that require something other than “everything.” Here we hit something like bedrock: the description of an act analysis that moves completely outside the law/conscience binary.

Into what? Throughout the interview, Schönborn most consistently uses the language of “principles” that never apply themselves but require “prudence” to generate a concrete sense of the good to be done here and now. This concrete sense of what is required here and now (which is equivalent to “conscience”) must be tied to “reality.” What exactly is meant by a concrete sense of the good to be done here and now? Schönborn explains:

The complexity of family situations, which goes far beyond what was customary in our Western societies even a few decades ago, has made it necessary to look in a more nuanced way at the complexity of these situations. To a greater degree than in the past, the objective situation of a person does not tell us everything about that person in relation to God and in relation to the church. This evolution compels us urgently *to rethink what we meant when we spoke of objective situations of sin.* And this implicitly entails a homogeneous evolution in the understanding and expression of the doctrine. (italics added)

This is not an easy explanation to understand. It is difficult to understand such an approach without sliding into the “situation ethics” that Schönborn insists *Amoris* avoids. How does moral theology take into account changing contexts while preserving the continuity of a doctrine’s “principles,” even to the point of expressing these quite differently?

Some assistance is gained by leaving Schönborn’s text here and turning to the work of two other authors. Both John Noonan and John Finnis bring a lawyer’s rigor to their analysis of the Church’s moral teaching, and both have grappled with how to understand its development. Comparing their approaches to the moral teaching on usury is particularly instructive for offering a beginning description of what a principles-prudence framework looks like on an important and complex moral question whose development largely predates the rise of the Manualist tradition and its law-conscience binary.

The treatment of the development of the Church's teaching on usury in both authors is intriguing for both their similarities and their differences. Two similarities should be noted, both of which flesh out aspects of Schönborn's comments. First, and perhaps more easily, the authors agree that some account must be given of *shifting context*. Finnis describes this in terms of a changing grasp of "complex social facts," specifically about how financial systems work. He notes that the medieval prohibition on usury did allow for various "charges associated with a money-loan," particularly to cover expenses incurred in association with the loan.⁵⁹ However, according to Finnis, increasing sophistication in the existence and function of liquid markets for investment led to a new situation, in which "a fair charge by way of interest could...be identified as a genuine compensation for a calculable cost of lending as opposed to investing." Excessive interest beyond a market charge, however, was (and is) still condemned, because that excessive charge was not compensation to the lender for an expense, but rather "a theft made possible by the borrower's need."⁶⁰ Noonan's treatment instead focuses on "experience,"⁶¹ but what he means by this term is clearly the same as Finnis's "complex social facts"—that is, a context in which market interest rates actually made possible win-win exchanges that might otherwise not take place.

A second, more complicated similarity can also be seen. Noonan notes that the shift was propelled by a recognition "that the person of the lender, not the loan, should be the focus of evaluation."⁶² Finnis makes an analogous point by noting that the teaching improved because it shifted the focus from externals [i.e. the legal terms of an agreement] to "a clear analysis of the morally-relevant intentions... in a multi-layered and linguistically shifting social context."⁶³ Both authors call attention to how the traditional concern for moral evaluation became more precise: it focused on the intention of a lender making an unjust charge that took advantage of another's need. "What counted" as such an (external) act might shift through time, but what would *not* shift was the target of the moral condemnation: the intention of the actor contrary to the principles of morality—that is, the end of the action. (Note here that "intention" need not mean the *acknowledged* intention of the agent but can be "built-in" to a particular act. So, for example, credit card companies or pay-day lenders might not

⁵⁹ John Finnis, "A Radical Critique of Catholic Social Teaching," in *Catholic Social Teaching: A Volume of Scholarly Essays*, eds. Gerard V. Bradley and E. Christian Brugger (Cambridge: Cambridge University Press, 2019), 548–584, at 560–561.

⁶⁰ Finnis, "Radical Critique," 560.

⁶¹ John T. Noonan, Jr., "Development in Moral Doctrine," in *Change in Official Catholic Moral Teachings*, ed. Charles E. Curran (Mahwah, NJ: Paulist, 2003), 287–305, at 297.

⁶² Noonan, "Development," 293.

⁶³ Finnis, "Radical Critique," 561.

be people with subjectively-felt bad intentions, but when they charge very high, far-beyond-market interest rates, they “intend” to take advantage of others’ need, or at least their ignorance. Thus, the objective question of whether a particular rate of interest is just remains a *part* of the moral analysis, but the mere *existence* of any interest charge need not indicate an unjust intention on the part of the lender.)

In the attention to (a) increased contextual understanding and (b) increased precision in evaluating agents, Noonan and Finnis agree on how the usury teaching develops. Yet they differ on the question of “change.” Noonan is comfortable suggesting that the church’s teaching changed, while Finnis protests that the impression “that the Church was for centuries mistaken in its teaching on a moral absolute” is “erroneous.” Thus, Finnis notes, many believe (also erroneously) that the teaching is no longer “in force” and “true.”⁶⁴

This difference about the raw claim of “church teaching that changes” closely parallels the debate over *Amoris*, where we have sincere people construing the overall impact of development in opposing ways. Has Francis “changed Church teaching”? In addressing this question of “change,” it is important to note a piece of Noonan’s argument that is *not* paralleled in Finnis’s. Noonan notes that the process of development involves “[t]he *displacement* of a principle or principles that had been taken as dispositive... by principles already part of Christian teaching.”⁶⁵ In the case of usury, the “principle already part of Christian teaching” is the idea of focusing on the intention of the lender—but what is “displaced” is another principle that “a loan confers no right to profit.”⁶⁶ But notice that Finnis never suggests that there is a new “right to profit.” At this point, we have to go beyond the texts at hand; it may be that Finnis would protest that an appropriate payment of an opportunity cost is not to be described as “profit” at all but actually as a kind of fair compensation for expenses or losses. Thus, Finnis might object to Noonan’s whole way of construing the development in terms of anything being “displaced.” From Noonan’s perspective, two principles came into conflict, and one was “displaced.” Previously, there was no “right to profit,” but now there is, provided it is not excessive. But from Finnis’s perspective, there is not a conflict between two principles at all; rather, there is a *continuous principle* that lenders can be compensated for reasonable expenses associated with a loan, and the *changing context* meant that what counts as a “reasonable expense” could now include the opportunity cost represented by the market interest rate. What Noonan describes as “profit” Finnis instead might describe as a “reasonable expense.”

⁶⁴ Finnis, “Radical Critique,” 560.

⁶⁵ Noonan, “Development,” 293, italics added.

⁶⁶ Noonan, “Development,” 293.

Now we can work back from particular act descriptions to “principles.” In this regard, it is important to point out that Schönborn (like Finnis, but unlike Noonan) does not talk about development in terms of *competing* principles where one is displaced. For Schönborn, “principles” are understood to be continuous, but their application via prudence is significantly affected by emerging and contingent historical, social, and personal contexts. This way of accounting for *Amoris* is much more like Finnis’s account. If this is correct, then the real questions for a principles-prudence framework become clear: what are the *principles* that form the continuity, and what aspects of context have led to a new construal (by *prudence*) of the key particular act descriptions?

One difficulty of the first question is that the concept of “principle” is not very precisely defined, either in Catholic moral theology or in modern moral philosophy.⁶⁷ We follow the careful argument of Alasdair MacIntyre who maintains that “first principles” in practical reasoning are a matter of establishing claims about *final ends*. The original Latin indicates a “starting point.” As MacIntyre explains, moral first principles are only available “within a universe characterized in terms of ends which provide a standard by reference to which our individual purposes, desires, interests, and decisions can be evaluated as well or badly directed.”⁶⁸ Thus, the “principles” of Catholic moral theology are not first and foremost fixed rules or norms but fixed *ends*. Principles understood as ends represent a recovery, in some form, of the fundamental realism that preceded the law-conscience binary. This approach helpfully links up with existing Catholic

⁶⁷ For example, Terence Irwin’s massive study on the history of ethics (*The Development of Ethics*, 3 vols. [Oxford: Oxford University Press, 2007]) does not include an entry in its (extensive) third-volume index for the concept of “principles,” though many similar terms (norms, objectivity, fact/value) receive extensive entries. Fifty years ago, Gene Outka perceptively complained that the debate over situation ethics “will remain more loquacious than clarifying until far more elucidative work has been done on a quite elementary matter: the possible kinds of things people may mean when they talk of ‘norms,’ ‘principles,’ ‘rules,’ and the like, and some of the connections between these things” (“Character, Conduct, and the Love Commandment,” in *Norm and Content in Christian Ethics*, eds. Gene Outka and Paul Ramsey [New York: Scribner’s, 1968], 37–66, at 37). Outka attempts some of this elucidative work, ending up (roughly) discussing two sorts of things as “principles”: formal general claims about what moral reasoning looks like (such as universalizability/the Golden Rule) and substantive claims (like the command to love your neighbor as yourself). Indeed, as William May points out, Aquinas himself names Jesus’s great commandment as “the first principle of morality,” and suggests that the new natural law theory of Germain Grisez and John Finnis agrees with this, though formulating it in different terms (*An Introduction to Moral Theology* [Huntington, IN: Our Sunday Visitor, 1994], 74). But all these attempts to define “principles” remain quite loose.

⁶⁸ MacIntyre, “First Principles, Final Ends, and Contemporary Philosophical Issues,” in *The MacIntyre Reader*, ed. Kelvin Knight (Notre Dame: University of Notre Dame Press, 1998), 171–201, at 173–174.

moral thought; its various subfields ordinarily involve some account of the ultimacy of the “thing” in question. For example, when dealing with property, the Catholic tradition identifies the final end now known as “the universal destination of goods” (*Catechism*, nos. 2402-2403). This end (“principle”) grounds all particular (“prudential”) judgments about the use of property (understood as any form of wealth). The universal destination of goods is normally assumed to be the principle (end) that guides the ownership of property that is used for one’s needs and those in one’s charge. But just exchanges can be consistent with universal destination of goods when they are win-win: I have something you need, you have something I need, and we are both better off making an exchange. Ultimately just agents must intend their use of property in accordance with the principle (end) of the universal destination of goods but can do so in many ways, including win-win exchanges of lending in which a person without an immediate need allows another to pay to use the wealth for productive purposes. Such lending (e.g. low, fixed-rate mortgages) is in accord with the universal destination of goods.

Within this context, it becomes relatively easy to see how the teaching on usury can develop, since, both “before” and “after” development, the teaching is animated by the same principle of intending the universal destination of goods through a just exchange. As both Finnis and Noonan note, the crucial continuous element of the teaching against usury is the intention of the lender to charge *in excess of* the standard interest rate *simply because* the borrower is in need. In this, the lender takes what does not belong to him, thwarting the universal destination of goods precisely insofar as the borrower is deprived even of necessities. The bad consequence (genuine impoverishment of the borrower) is not the *reason why* usury is wrong, but it does help us see clearly why the intention of the lender (to take advantage of the borrower’s need) is contrary to the enduring guiding principle—that is, the final end—governing the morality of property.

Can an analogous case of principles and act description account for what is going on in *Amoris Laetitia*? Yes, although we offer it here tentatively, in order to illustrate what a principles-prudence framework looks like when applied in more detail than Schönborn offers.

The final end of marriage is well-established in the tradition. It involves an inseparable combination of the “intimate union of [the spouses’] persons and their actions” that receives its “ultimate crown” in the raising of children (*Gaudium et Spes*, no. 48). Nowhere in *Amoris Laetitia* is this altered or amended; quite the contrary, it is reinforced repeatedly. For example, in paragraph 80, it is reiterated and linked explicitly to the teaching of *Humanae Vitae*, by noting that “no genital act of husband and wife can refuse this meaning.” Our first

question about principles has been cleared up considerably, by identifying principles with final ends. On this score, *Amoris Laetitia* is clearly consistent with the Catholic tradition.

When we work out the parallel with the case of usury, all our authors then invite us into an analysis of concrete contextual matters. Which ones? It becomes crucial to specify the target case of *Amoris*: the person who is in a stable, committed second union, with children. *Amoris* does not engage in a whole range of cases that differ from this particular one. For example, *Amoris*'s argument gives no basis for a spouse to "discern" that he or she needs to divorce a partner. Nor does it address the already-divorced, who should presumably remain unmarried or seek an annulment. Rather, we are dealing with a set of cases—perhaps not a very large set—where, for various reasons, there is a divorce "in the past" and a new, stable union has been pursued.

Parallel to the earlier teaching on usury, defined simply as the external act of taking interest, the sexual acts of this new, stable union are adulterous. But the parallel discloses another obvious, if a bit curious understanding. Just as the development of the teaching required a recognition that there are cases where "taking interest on a loan" ought not to be described as "usury," so too there may be cases where "sex with the current spouse" ought not to be described as "adultery."

Such a case would have to appeal directly to the foundational scriptural text for all Catholic teaching in this matter, Jesus's controversy with the Pharisees over divorce (Mark 10:2-10). Let us say directly, Jesus most certainly thinks routine divorce to be a very bad action, a teaching of Jesus that was apparently so well-known that even St. Paul knew of it (1 Corinthians 7:10). But what exactly is the context for understanding Jesus's teaching? As John Martens's essay in this volume outlines in much greater detail, biblical scholarship has long identified the first-century rabbinic debate about conditions for divorce, with a spectrum of positions running from more rigorous to more lax.⁶⁹ As one expects from such debate stories in the gospels, Jesus does not simply take a position on this spectrum but turns the tables on the questioners. Put simply, "when am I justified in divorcing my spouse?"—the question animating the rabbinic debate—is the wrong question to ask, just like "who is my neighbor?" is the wrong question. Each assumes an attempt to limit one's self-giving relations to others. God's intention for the permanence of marriage is more important than becoming, shall we say, "doctors of the [Mosaic] law."

By the way, this does not support the reading of Jesus offering an "ideal," at least in any way that would differ from loving your neighbor as a mere "ideal." More practically, it would seem that the primary

⁶⁹ John W. Martens, "'But from the beginning it was not so': The Jewish Apocalyptic Context of Jesus' Teaching on Marriage, Divorce, and Remarriage," *Journal of Moral Theology* 10, no. 2 (2021): 1–29.

application of Jesus's teaching would be a couple facing difficulties in their marriage, who ought to be encouraged not to consider questions about "when to give up," and instead they ought to expend all their efforts to save the marriage.

But the more freighted question involves Jesus equating "divorcing a spouse and marrying another" with adultery. Since it's adultery, the tradition has reasoned, it's always a grave sin. True. But is another marriage always to be understood as adultery? The question is about the act description Jesus is giving here. In light of the positions in the rabbinic debate, it is not unreasonable that what Jesus characterizes as adultery is an act that can be described as "divorcing-to-marry-another." Indeed, as we know all too well in contemporary society, such an approach to divorce and remarriage is quite common because one partner discovers "someone else." If we are looking for a clear exceptionless norm here, it is a norm against the specific decision to leave one spouse for a "better" one. The whole notion of discovering "someone else" is the end most obviously contrary to God's intention for marriage as quoted in Genesis. And so agents who divorce their spouse in order to marry another are the ones guilty of adultery.

This analogous approach to the development of usury involves a complex of interactions between judicious analysis of contexts and conditions in a particular society and a careful (and yes, narrower) understanding of the targeted sinful act that focuses on an agent's intentions. Within this framework, Schönborn's interpretation of *Amoris*'s target case might be articulated as follows: what we might have previously described as "adultery" is, in fact, not adultery. As with usury, there is a shift from looking only at the externals of the act (all interest-taking is usury, all sex after divorce is adulterous) to looking more precisely at the agent's intention (taking advantage of the borrower's need is usury, divorcing to "marry another" who is "better" than this original spouse is adultery). Such divorcing-to-marry-another is to make a mistake about both one's first marriage and one's second that involves an intention contrary to the basic first principle of marriage.

But what can it mean that a particular prospective action is not accurately described as "adultery"? This is clearly the objection that any defense of Schönborn's framework needs to overcome. Such a defense requires two things: a very clear understanding of the "principle" involved and an explanation for how principles interact with act descriptions. As noted earlier, such principles are "certain determinate, fixed, and unalterable ends"; that human sexuality has such ends is consistently held by the Catholic tradition. It is also important to note that the Catholic tradition consistently rejects two positions that in recent times have come to characterize many culturally-powerful narratives of sexuality: (1) that sexuality as such has no fixed ends prior to agent intentionality, and (2) that sexuality has as its end the expression of a

certain sort of mutual feeling between two people. Both of these erroneous principles can easily be seen to underlie some, perhaps many, decisions about divorce, and indeed about marrying overall.

How might these two mistaken principles operate in relation to the act description “adultery”? In the first case, “adultery” may not be conceivable, since there is no fixed principle to violate. But for the second understanding, consider the common case of a young, sexually-active couple who break up after a year of dating, and “move on.” Surely neither would argue that, if one of them moves into a new sexual relationship, that that person is committing “adultery.” Their relationship might involve some kind of a commitment to sexual monogamy, but such a commitment need last only as long as the relationship lasts. Yet for many in our culture, there may be a difference of degree, but not in kind, of a “committed couple” breaking up and “moving on” and a married couple divorcing and “moving on.” It is widely presupposed that the marriage commitment itself is merely a stronger form of “committed relationship” but is subject to the same conditions as such relationships, the most important of which is that there comes a point where one or both partners are “no longer in love” and that the relationship should be ended at such point if it seems beyond repair.

We have described these details because we want to explain Schönborn’s appeal to “complexity” in terms of how difficult it becomes for a conventional person to grasp what the Church means by the act description “adultery,” when applied to their stable second union. Charles Pinches unpacks this crucial point that “moral descriptions must be sustained by a group of language users who not only speak in certain patterns but also act on them.”⁷⁰ Pinches is explaining that debates over “intrinsically evil acts” run into an impasse because, ultimately, such acts can only be conceived in terms of descriptions—“adultery”—and that such descriptions are never just “there,” nor are they simply derivable from a set of physical actions. Rather, the species descriptions themselves are “learned” by acquiring a “rational grasp” of using them in accord with “a practical grasp of the way of life of the group,” a way of life one has made one’s own.⁷¹ Pinches stresses that this does not mean they are somehow made up; only that they never stand alone, by themselves, apart from the language and practices of a group. Grasping what counts as “adultery” is an achievement, and it is not simply a matter of the act analysis itself, but the ability to understand the act within a much larger web of descriptions encompassing a way of life.

In the target case for *Amoris*, simply indicating to the person that they are committing adultery must deal with the contextual questions

⁷⁰ Charles Pinches, *Theology and Action* (Grand Rapids, MI.: Eerdmans, 2001), 159.

⁷¹ Pinches, *Theology and Action*, 149–151.

that make the act description implausible to them. Such a person may, if they have or formerly had the conventional understandings of sexuality, be able to understand “adultery,” yet they would not apply it to their case of sexual relations in a stable, committed second marriage. Such a person may come to understand the Church’s full teaching on the principles of marriage and so come to see *past* actions as adultery—and may, to a greater or lesser extent, apply the idea of mitigating circumstances to those actions. The target case, however, is the prudent application of the description prospectively, to the sexual activity in their current state. Are such acts also “adultery”?

This is the difficult question. We might point out three things. First, such acts do not appear to be the acts Jesus quite provocatively targeted in his original teaching. For example, if the person was abandoned or sought a second marriage long after the dissolution of the common life of the first, it is hard to understand how Jesus’s description applies. Second, this point is reinforced when we recall that both Noonan and Finnis (despite their differences) agreed that a key factor in developing the usury teaching was a recognition that the morally-relevant description needed to be understood in terms of the intention of the lender, and not simply the external structure of a given agreement. What Jesus’s story targets by equating divorce with adultery is a particular intentionality by the divorcing-and-remarrying person. Both these points strengthen the case that “adultery” is not the right act description for the target case.

But thirdly, it then must be asked what the status of the first marriage is. It is a mistake to assume that this is merely a “legal” question that can be brushed aside, as was sometimes done in some post-Vatican II theology that suggested such marriages, in which there was no common life and no common life possible, could be presumed “dead” in some fashion. While the pastoral intentions of such an assumption are understandable, we must go back to the “principles” here and recognize that, if the “fixed” reality of what marriage is is a matter of genuine permanence, over against a cultural assumption of a conditional, revisable “commitment,” then we are not just quibbling over a legal matter here.

In actuality, it seems this third point is, in practical terms, the real “dubium” that must somehow be resolved. Obviously, the Church has an annulment process by which the status of an earlier marriage may be resolved, and one might first and foremost encourage the “target case” to pursue this avenue. Francis has done work to make this process more available; our understanding is that tribunals and the appropriate processing of paperwork is considerably more difficult and inefficient in many other places in the world compared with most dioceses in the United States, so the situation of someone remarried but unable to enter the process may be much more of a possibility in those contexts. There may well be arguments over this process as well, but

in terms of pastoral care, at least the arguments over *Amoris* would then shift to a broader question of Church reform (one way or another), rather than falling simply on individual agents.

Thus, in light of both the earlier-noted cultural confusion about the true “principles” of human sexuality and the possible recourse to a more efficient canonical determination of the status of the earlier marriage, we suggest two conclusions might be drawn about the target cases in *Amoris Laetitia*, both of which have relevance for understanding the development of moral teaching.

First, however the sexual relations of the new union are described, the specific act description of “adultery” does not apply to them prospectively, at least in light of certain circumstances. This would not be a matter of law confronting conscience but of maintaining clarity of principles and exercising prudence in understanding how to act amidst certain circumstances. An analogy here might be made with St. John Paul II’s re-description of capital punishment, inasmuch as certain circumstances (though “rare if not non-existent”) might require social self-defense. The case of the development of capital punishment is one in which clarifying principles leads to a certain development, though here prudence is still required. It can realistically be said that John Paul no longer supports the act description “capital punishment” or “the death penalty,” insofar as both descriptions involve seeing the death as a justly retributive act. Instead, any “exceptions” are not really the death “penalty,” but simply a matter of self-defense.

This point would seem to support the idea that *Amoris* marks a significant development, along the lines of the development of teaching on usury and capital punishment. Secondly, a significant and important qualification must be added, one which we recognize challenges the analogy we are drawing. In both of the other cases, the development of circumstances and subsequent revision of the core act description were intended to be in better accord with basic moral principles, and this represented a *positive* development. On both Finnis’s and Noonan’s description, the revision of the usury teaching was based on an *improved* understanding and practice of economic transaction. (Note: not all agree!) Similarly, most Catholics have agreed with John Paul that the minimization and elimination of the use of the death penalty marks an *advance* in our overall system of criminal justice, achieving the ability to protect the dignity of life and protect the common good from aggressors at the same time.

By contrast, “the complexity of family situations” today, to which Schönborn refers and out of which the target case of *Amoris* emerges, is largely a *negative* development. In the target case, the Church is not indicating that the person was right in divorcing or even accepting the divorce of the earlier marriage. Presumably, *Amoris* is not suggesting that the *pursuit* of a second union was the right thing to do at the time the person sought and entered it. That is, the current “complexity of

family situations” looks much like a (quite different) case envisioned in the economic sphere: the well-known case where a person in dire need may take another’s property without the act description “stealing” being applied. While it is accepted that, in such a case, a person may even prospectively do such an act at the particular time in the circumstances, it is also recognized that the whole situation is “complex” in a *negative* way—some dire emergency need has combined with the lack of generosity and injustice of those who possess more than they need.


CONCLUSION

In working through the target case of *Amoris Laetitia*, we can conclude that a consistent deployment of a principles/prudence framework for the consideration of cases calls our attention to a different set of matters than does the law/conscience framework. Most importantly, the principles/prudence framework avoids devolving moral cases into jurisdictional questions of authority. Presumably, any such application would have to make clear its assent to the “principles” involved in the case. Moreover, a richer, more precise account of the virtue of prudence needs to be developed to avoid the pitfalls involved in ordinary speech to define conscience in an intuitionist, subjectivist way. Instead, our account requires clarity about what constitutes the “fixed, unalterable ends” of Catholic morality (i.e. its principles) but in tandem with attention to the complexity involved in act descriptions, where “prudence” must always function, including (and especially!) attention to how those act descriptions cannot be removed from a whole practical way of life of a community.⁷² Put in a different way, the disciplined work of moral casuistry would not have as its primary analogue the consistency of code characteristic of legal approaches but a consistency with communal life.

This understanding of the development of teaching analogously with the premodern development of the teaching on usury also breaks the *impasse* of Francis “critics” who in effect reject parts of the document and Francis “advocates” who are too ready to read it as licensing far more than it actually does. The text of *Amoris Laetitia* explicitly makes two crucial points that emphasize the *restrained* yet necessary character of the development. On one side, the document makes clear that any such casuistry must involve serious discernment, repentance, and “humility, discretion, and love for the Church and her teaching” (no. 300). Francis says it cannot be construed as “the notion that any priest can quickly grant ‘exceptions’” (no. 300). This could be seen as

⁷² Pinches’s *Theology and Action* remains an under-utilized resource for this task, but we should also mention the key role of linguistic communities in Herbert McCabe’s summary of moral thought, *The Good Life* (New York: Continuum, 2005), 67–72.

the “Ignatian” side of Francis’s approach, in which it should be recognized the level of spiritual maturity and depth involved in Ignatian discernment (i.e. the *Spiritual Exercises*).

Also encouraging restraint is Francis’s explanation of the proper context for this casuistry: the field hospital (no. 291), where the Church must at all costs avoid a “casting out” approach. “No one can be condemned forever, because that is not the logic of the Gospel!” (no. 297) Yet he contrasts this “reinstating” approach with a different one: “Naturally 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” (no. 297; italics added). This contrast suggests how limited the application of *Amoris*’s logic would be to many cases of dissent from the Church’s moral teachings. Francis consistently preaches inclusion of any and all who might be struggling with living out the fullness of the Church’s teachings—and we might add that this is true regardless of the area of teaching, sexual or social, life issue or economic justice issue. Yet that inclusion does not legitimate views contrary to the Church’s teachings, when construed properly not simply as arbitrary ecclesial laws but as the “principles” of the final end of human sexuality involved in the Church’s moral vision. 

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