

Moral Impossibility and Communion to the Divorced and Remarried

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Abstract: In a letter to bishops from Buenos Aires, Pope Francis supports a praxis of Communion to the divorced and remarried which diverges from magisterial precedent, and theologians have asked if this praxis is a rupture in the church's moral tradition on intrinsically evil objects and adultery. Using criteria provided by Pope John Paul II's Thomistic personalism, supplemented by Aquinas's teaching on the essential elements of natural law marriage, this article demonstrates how, in situations of moral impossibility, Pope Francis's proposal is in continuity with, and not a rupture from, the church's moral tradition regarding intrinsically evil objects.

AMORIS LAETITIA IS SO NAMED BECAUSE OF TWO SYNODS convoked prior to its publication: an extraordinary synod in 2014, and an ordinary synod in 2015, both on the theme of marriage and family life. Pope Francis explains that, in writing this post-synodal Apostolic Exhortation, he synthesized the contributions that arose from these synods while also “adding other considerations as an aid to reflection, dialogue, and pastoral practice.”¹ With regards to the dimension of pastoral practice, one of the most discussed aspects of *Amoris Laetitia*, both within the antecedent synods and following its publication, has been the theme of Communion to the divorced and remarried.

For those interested in this discussion, the most debated principles are found in chapter 8 and specifically footnote 351, which states that a person in an objective situation of sin can, in certain cases, receive “the help of the sacraments.”² For some theologians and pastors, there was uncertainty about what the pope meant by “help” of the sacraments. A clarifying commentary was promulgated six months after the

¹ Pope Francis, *Amoris Laetitia* [AL], no. 4.

² Pope Francis wrote in his introduction that “everyone should feel challenged by Chapter Eight” (AL, no. 7). The number of commentaries about this chapter confirms the pope's intuition, and some of the most relevant ones have been footnoted according to their connection to this paper, but many other important works are not included due to restriction of space and focus of the theme.

publication of *Amoris Laetitia*, and it came through two inter-related documents: the Buenos Aires guidelines for interpreting *Amoris Laetitia* and a letter from Pope Francis supporting their interpretation. These guidelines, written by the bishops overseeing the pastoral region of Buenos Aires, unambiguously interpret footnote 351 as magisterial precedent for allowing Communion to some persons in irregular marital situations:

In other more complex situations, and when it is not possible to obtain a declaration of nullity, the [option to live as brother and sister] may not be feasible. Nevertheless, a path of discernment is still possible. If it comes to be realized that, in a concrete situation, there are limitations that mitigate responsibility and culpability (cf. 301–302), especially when a person thinks they may commit further wrongdoing by harming the children of the new union, *Amoris Laetitia* opens the possibility of access to the sacraments of Reconciliation and the Eucharist (cf. notes 336 and 351). These in turn dispose a person to continue maturing and growing with the power of grace.³

These guidelines refer to a path of discernment which, in “more complex situations,” may allow for a divorced and remarried person to receive the Eucharist even when not living as brother and sister, a praxis which diverges from previous magisterial writings.⁴ However, Pope Francis wrote a letter to these bishops and expressed his unambiguous support for their interpretation, and both his letter and the Buenos Aires guidelines were included in *Acta Apostolicae Sedis* and appended with a note from the Secretary of State indicating that both documents are to be considered authentic magisterial teaching.⁵

Despite these clarifications, theological discussion was far from over, for two months later, Pope Francis received a set of *dubia* from four cardinals which critiqued the proposed praxis.⁶ These cardinals emphasized the incompatibility of the Buenos Aires guidelines, not on the basis of sacramental theology or canon law, but of moral theology, focusing four of the five *dubia* on absolute moral norms and the moral object of adultery. Because it is adulterous to have sexual relations with someone who is not one’s rightful spouse, and those in irregular

³ Región Pastoral Buenos Aires, *Criterios básicos para la aplicación del capítulo VIII de Amoris Laetitia*, *Acta Apostolicae Sedis* 108, no. 10 (2016): 1072, trans. the author. It seems relevant to recall that, prior to his election to the papacy, Pope Francis was the archbishop of Buenos Aires for 15 years, the same region from which these guidelines emerged.

⁴ *Familiaris Consortio*, no. 84; *Sacramentum Caritatis*, no. 29; *Catechism*, no. 1650.

⁵ *Acta Apostolicae Sedis* 108, no. 10 (2016): 1071–1074.

⁶ Edward Pentin, “Full Text and Explanatory Notes of Cardinals’ Questions on ‘Amoris Laetitia,’” *National Catholic Register*, www.ncregister.com/blog/full-text-and-explanatory-notes-of-cardinals-questions-on-amoris-laetitia.

situations are not married to each other, the *dubia* conclude that sexual intercourse in such a situation must be considered adultery and thus a mortal sin. Because the Eucharist cannot be given to anyone in a state of mortal sin, the *dubia* desire an explanation for how this praxis explicitly permitted in the Buenos Aires guidelines could be compatible with the church's moral teaching on intrinsically evil objects like adultery.

The typical answer to such a question, found within *Amoris Laetitia* and commentaries, is that objective sin is not the same as subjective responsibility for sin.⁷ For those engrossed in the church's teaching on moral objects and absolute moral norms, this answer is unsatisfactory, for the very meaning of an absolute moral norm is that subjective factors do not change a moral object which, when intrinsically evil, always is (*semper et pro semper*) an illicit act.⁸

Such a critique is both insightful and important, and so this paper will seek to reconcile these conflicting views between intrinsically evil objects and subjective sin. Because this critique has been rooted in an appeal to the Catholic moral tradition, this paper will include a variety of authorities from this tradition which provide deeper insight into the relevant themes connected to the praxis in question. Furthermore, because this paper is written from the perspective of moral theology and not strictly ethical theory, documents from the magisterium serve as normative authority, whereas individual theologians are referenced only when they illustrate, challenge, or elaborate such teaching. When it comes to elucidating moral objects, no magisterial text is more important than *Veritatis Splendor*, so it is from this document that the proposed task of reconciliation will begin.

⁷ AL, no. 305; Francesco Cardinal Coccopalmerio, *Il capitolo ottavo della esortazione apostolica post sinodale Amoris Laetitia* (Vatican City: Libreria Editrice Vaticana, 2017), 42; Alain Thomasset and Jean-Miguel Garrigues, *Une morale souple mais non sans boussole* (Paris: Cerf, 2017), 140–142; Stephan Ernst, “Situazioni ‘irregolari’ e colpa personale in *Amoris Laetitia*. Una frattura con la tradizione dottrinale?,” in *Amoris Laetitia: un punto di svolta per la teologia morale?*, ed. Stephan Goertz and Caroline Witting (Milan: San Paolo, 2017), 112–129; Gianfranco Girotti, *Amoris Laetitia: L'importanza della coscienza, del discernimento e il ruolo del confessore* (Vatican City: Libreria Editrice Vaticana, 2021), 29–30; Gianpaolo Lacerenza, “La concezione del peccato tra situazione oggettiva e responsabilità personale: percorsi di riconciliazione in *Amoris Laetitia*,” in *Sui sentieri di Amoris Laetitia: svolte, traguardi e prospettive*, ed. Roberto Massuro (Assisi: Cittadella, 2022), 203–221.

⁸ *Veritatis Splendor* (no. 52) articulates the firmness of this principle: “The *negative precepts* of the natural law are universally valid. They oblige each and every individual, always and in every circumstance. It is a matter of prohibitions which forbid a given action *semper et pro semper*, without exception, because the choice of this kind of behavior is in no case compatible with the goodness of the will of the acting person, with his vocation to life with God and to communion with his neighbor.”

INTRINSICALLY EVIL OBJECT OF ADULTEROUS ACTS

This section provides first a brief outline of a moral object and absolute moral norms, as described in *Veritatis Splendor*. Then, two divergent but interrelated definitions of the intrinsically evil object of adultery are presented, with one definition coming from the authors of the *dubia* and another from Karol Wojtyła. Finally, a complex marital scenario from the thought of Aquinas will be presented which corroborates the subtle personalistic distinction articulated by Wojtyła.

Before analyzing moral objects and absolute moral norms in *Veritatis Splendor*, it is necessary to state a general principle of morality that permeates the entirety of this paper: namely, that morality is a discipline which concerns itself with acts freely chosen and not merely circumstantial occurrences that happen to a human person. To the extent that these “happenings” lie outside the willful choice of a human person, they are non-moral events, but once the will is directed towards things happening in an event, a person then commits a moral act.⁹

To elucidate the role of the will in such moral acts, Pope John Paul II’s 1993 encyclical on moral theology, *Veritatis Splendor*, uses a theoretical framework that posits three “sources” of every moral act: the object, the intention, and the circumstances.¹⁰ *Veritatis Splendor* further holds that some acts are always illicit by way of their object, and these illicit objects form the basis of absolute moral norms that bind without exception.¹¹

However, there is need for caution when categorizing any human act as a violation of an absolute moral norm because Pope John Paul II defines the moral object as “the proximate end of a deliberate decision which determines the act of willing on the part of the acting person.”¹² This is a dense definition with at least three vital components.

First, an object involves a “proximate end” (*finis proximus*) which determines what a person is doing when they are performing a moral

⁹ Karol Wojtyła describes this founding principle in the following manner; “Only that which derives from the will can be a sin—only an act of a conscious and voluntary nature” (*Love and Responsibility*, trans. H. T. Willetts [New York: Farrar, Strauss, and Giroux, 1981], 161). Saint Augustine says that this is an obvious truth, agreed upon by all. See *On True Religion*, 14 (PL 34, 153) with additional commentary in *Revisions*, 1.13.5 (PL 32, 603–604).

¹⁰ *Veritatis Splendor*, no. 74; Aquinas, ST I-II, q. 18, aa. 2–4.

¹¹ *Veritatis Splendor*, nos. 78–82.

¹² *Veritatis Splendor*, no. 78.

act.¹³ Second, an object involves a “deliberate decision” (*deliberata delectio*), which means that the will has freely and deliberately chosen to pursue this proximate end. Third, the object is determined from the perspective of the acting person, which means that the object cannot be determined exclusively by factors outside the acting person because these details only describe what is *happening* in an event and not necessarily what a person is *doing* when they are acting in the context of an event.¹⁴

Taking these considerations together, it is now possible to examine various attempts to define the intrinsically evil moral object of adultery. The authors of the *dubia* define adultery as “any kind of sexual relations other than those engaged in with one’s rightful spouse,” determining the moral object by way of the marital status of the sexual partners.¹⁵ While the *dubia* are correct in asserting that adultery is always evil by way of its object, this definition of adultery makes no reference to a proximate end, deliberate decision, or the perspective of the acting person, which means, per *Veritatis Splendor*, that it has failed to define the moral object. This definition describes adultery, not according to the object, but according to the circumstances.¹⁶

Distinguishing the circumstances from the object of adultery might seem academically scrupulous, but there are authorities in the Catholic tradition who labor to uphold this distinction with great care. One of

¹³ By equating the proximate end with an object, Pope John Paul II is appealing to logic found in Aquinas: “The proximate end is the same as the object, and . . . we need to speak about the proximate end and the object in the same way,” *De Malo*, trans. Richard Regan (Oxford: Oxford University Press, 2001), 189 (q. 2, a. 7, ad 8). Because Pope John Paul II does not define “proximate end” in the text, other sources must be used to understand it, creating extensive discussion around this critical term in moral theology. This article hopes to contribute to the discussion of this term, but does not seek to define it.

¹⁴ For example, if a hunter fires his gun in the direction of an animal but kills an innocent person, a grave evil has happened, but a definitive judgment about whether this was murder or involuntary manslaughter (two different objects) can be difficult to determine, especially as the case develops in complexity. Basil the Great comments on such a scenario in one of his letters (*Letter* 188.8 [PG 32, 675]), as does Theodoret of Cyrus (*Graecarum affectionum curatio*, Discourse 12 [PG 83, 1150]), and both Basil and Theodoret rely on the perspective of the acting person to determine the moral object in these situations. It is in continuity with this tradition that Pope John Paul II teaches that the object “cannot mean a process or an event of the merely physical order, to be assessed on the basis of its ability to bring about a given state of affairs in the outside world” (*Veritatis Splendor*, no. 78).

¹⁵ Pentin, “Full Text and Explanatory Notes,” Doubt no. 1.

¹⁶ Aquinas states explicitly that the marital status of the sexual partners is a circumstance of the sexual act: “If a man should have sexual intercourse with a married woman, he commits adultery. . . . But being a married or unmarried woman is a circumstance of the act (*circumstantia actus*)” (*De Malo*, 173 [q. 2, a. 6, s.c. 2]). Alphonsus Liguori likewise speaks of “the circumstance of matrimony” (*circumstantiam matrimonii*) in *Theologia Moralis* (Rome: Typographia Vatican, 1905–1912), 5.2.8.

these authorities is Karol Wojtyła, who gives considerable attention in *Love and Responsibility* to describing precisely the intrinsically evil object in adulterous acts. One crucial paragraph summarizes his analysis:

“Sinful love” comes into being when affirmation of the value of the person, and intentness on the true good of the person, (which are at the core of true love), are absent, and instead a hankering after mere pleasure, mere sensual enjoyment connected with “sexual experiences” invades the relationship between man and woman. “Enjoying” then displaces “loving.” The moral evil embodied in sin consists, of course, in the treatment of one person by another, or of each of the partners by the other, as an “object of enjoyment.”¹⁷

According to this personalistic definition, the proximate end of “using a person exclusively as an object of enjoyment” is the object of the sexual act Wojtyła asserts is always sinful to choose and thus forms an absolute moral norm that can never admit exceptions. Wojtyła goes on to demonstrate how various deviations of the sexual act (homosexual acts, contraception, adultery, etc.) involve this illicit object, but he is careful not to equate this object with the circumstances.

So, the *dubia* and Wojtyła determine the illicit object of adultery in two related but different ways: the *dubia* ask whether the two sexual partners are in a valid marriage, but Wojtyła asks whether the two sexual partners are using one another exclusively as objects of enjoyment. Indeed, there are many situations in which these two perspectives converge, but convergence is not equivalence, and Wojtyła is not the only moral theologian for whom this distinction is both real and essential.

Another authority who relied on this same distinction to explain complex marital scenarios is Thomas Aquinas, seen especially in his commentary on the liceity of concubines in certain passages of scripture. Setting up the complexity of his question, Aquinas first says “the name of concubine expresses that union in which sexual intercourse is sought for its own sake.”¹⁸ He equates adultery with using the sexual partner exclusively as an object of enjoyment (sexual intercourse “sought for its own sake”). He concludes that “to have a concubine is against a precept of the Decalogue, namely, *thou shall not commit adultery*.”¹⁹ The present question is thus the following: if this is what always happens in a sexual act with a concubine, was

¹⁷ Wojtyła, *Love and Responsibility*, 164.

¹⁸ Thomas Aquinas, *ST supplementum tertia pars (suppl.)*, q. 65, a. 3. All English translations of the *Summa* within this article are my own.

¹⁹ Aquinas, *ST suppl.*, q. 65, a. 5, s.c.

Abraham's sexual act with Hagar an instance in which God allowed someone to choose the intrinsically evil object of adultery?

Aquinas answers by saying that "wherever one reads in the Old Testament of men who have taken concubines and yet are to be excused from mortal sin, it should be understood that they are joined in marriage and yet called concubines, because these women have some basis for being considered a wife and some basis for being considered a concubine."²⁰ For Aquinas, it is not inherently against the natural law to have multiple wives, and when he considers what transforms a concubine like Hagar into a "wife," it is the intention to live together permanently and raise children together: "the natural law demands that a father and mother dwell together for a long time, so that they may jointly assist their children. . . . This obligation for the husband to dwell together with the woman brings about matrimony (*matrimonium facit*)."²¹

Aquinas's logic can be thought of in this way: if Sarah found Abraham and a concubine engaged in the sexual act, she could ask her husband, "What are you doing?" (a question about the object of his act). If Abraham was pursuing the proximate end of procreation and did not intend to sever his fellowship with this concubine, then he should respond, "I am procreating with another wife." If he did not intend to remain with this concubine after their sexual act, he would be obliged to respond, "I am committing adultery." Even if a patriarch was intending to generate a child from this sexual act and not seeking mere physical pleasure, Aquinas states that such a sexual act must still be considered an act of adultery *if* this patriarch did not intend to raise this child in mutual fellowship with the concubine.²² Thus, what is being analyzed by Aquinas to determine a violation of the sixth commandment in these complex situations is not the presence or absence of a marriage license between the sexual partners; instead, he is looking at the proximate end of their sexual act, and determining which proximate end is chosen by the will (procreation or adultery) partially depends on whether or not the acting person intends to maintain mutual fellowship with the sexual partner.²³ In this way, Aquinas relies on the perspective of the acting person to determine the

²⁰ Aquinas, ST *suppl.*, q. 65, a. 5.

²¹ Aquinas, ST *suppl.*, q. 65, a. 3.

²² Aquinas, ST *suppl.*, q. 65, a. 3.

²³ For Aquinas, the good of the children (*bonum prolis*) is "the principal end (*principalis finis*) of marriage" (ST *suppl.*, q. 65, a. 5), and only by remaining together in a durable bond can this *principalis finis* be realized. Therefore, Aquinas does not fall into the error of intentionalism here because the intention to remain in mutual fellowship with the concubine is intrinsically connected to realizing a proximate end of the act (*bonum prolis*/"procreation"). This logic is also a helpful illustration of how sometimes a proximate end is not realized instantaneously but rather only begun in some act.

moral object of the sexual act in certain complex situations involving two people not formally married to one another.

SITUATIONAL VERSUS SINFUL ADULTERY: THREE PARADOXES

In the previous section, both Aquinas and Wojtyła account for the moral object of adultery in such a way that the marital status of the sexual partners neither is the ultimate nor the lone criterion. Because their distinction touches upon a much-disputed topic within *Amoris Laetitia* (objective situations versus subjective sin), this section will present three paradoxes from the Catholic moral tradition which illustrate more convincingly that Aquinas and Wojtyła have not altered the objective morality of adulterous acts but rather have secured this objectivity more firmly.

Although both Aquinas and Wojtyła articulate an essential distinction between the circumstantial evil of adultery (a sexual act between two unmarried people) and the evil object of adultery (using a person exclusively as object of enjoyment), there remains a strong connection between the two evils. In fact, Wojtyła says that “sexual relations outside marriage automatically put one person in the position of an object to be used by another” and “sexual relations outside the institution of *matrimonium* are always morally bad.”²⁴ However, in these comments, Wojtyła is speaking about the institution of marriage in general, not the sacrament of marriage specifically, and the divorced and remarried participate in the civil institution of marriage without participating in the sacrament of marriage; similar to the logic of Aquinas, such persons “have some basis for being considered a wife and some basis for being considered a concubine” (*aliquid habebant de ratione uxoris et aliquid de ratione concubinae*).²⁵ Because this quasi-marital status was relevant for Aquinas’s understanding of a sexual act with concubines, it may be relevant for the church’s understanding of sexual acts happening in irregular situations.

Such a quasi-marital status was relevant to the sacramental praxis of the early church, for the question arose as to whether a baptized person could maintain sexual relations with a concubine and still receive Communion *without* transforming the relationship into permanent, lawful wedlock. This question received its own canon at the first Council of Toledo (400 CE), which declared that “If a man has no wife, but a concubine instead of a wife, let him not be refused Communion; only let him be content to be united with one woman,

²⁴ Wojtyła, *Love and Responsibility*, 221–222. Aquinas similarly states that “every sexual union of a man and a woman outside the law of marriage . . . is of itself disordered” (*De Malo*, 777 [q. 15, a. 1]).

²⁵ Aquinas, *ST suppl.*, q. 65, a. 5.

whether wife or concubine.”²⁶ According to this canon, it was possible for a man to receive Communion while continuing sexual relations with a concubine who, although not his wife, was someone to whom he was committed in a durable union.

In this first paradox, Wojtyła’s and Aquinas’s distinction illustrates its great worth, for if the church were to define the intrinsically evil object of adultery as “any kind of sexual relations other than those engaged in with one’s rightful spouse,” then the fathers of the Council of Toledo allowed people to choose an evil object and still receive Communion, which would be a rupture of the church’s moral tradition. However, a rupture is avoided by affirming that sexual relations “outside of marriage” are not an evil object but instead an evil circumstance tolerated by the church in some instances.

Another informative paradox is found in the church’s teaching regarding a woman whose husband went to war and did not return. The church allows such a woman to remarry after the bishop issues a declaration of presumed death of her original husband, but if the original husband ever returns, the woman is obliged to dissolve this second union.²⁷ Sometimes the original husband does return, and if the church defined the evil object of adultery as “any kind of sexual relations other than those engaged in with one’s rightful spouse,” then the church has allowed such a woman to choose an intrinsically evil object because this second man was not her spouse. How, then, should the evil present in this sexual act be understood?

The personalistic distinction in Wojtyła and Aquinas again provides an improved frame of reference, for if it is affirmed that her sexual act happened in evil circumstances (sexual intercourse with a man who was not her rightful spouse) but did not pursue an evil object, and because there was no willful participation in this circumstantial evil, then it is possible to uphold that she did not commit the *sin* of adultery, even though she was in a *situation* of adultery. If, on the other hand, it is judged that her sexual act with this second man necessarily involves the moral object of adultery, then the church is obliged to stop issuing declarations of presumed death because such declarations would expose a person to the risk of choosing an intrinsically evil object, something this same church teaches can never admit exceptions.

²⁶ H. A. Gaynor, *The Catholic Encyclopedia*, ed. Charles Herbermann, Edward Pace, Condé Pallen, Thomas Shahan, and John Wynne (New York: Robert Appleton, 1908), s.v. “Concubinage.” The Latin text of this canon is in J. D. Mansi, *Sacrorum Conciliorum*, vol. 3 (Graz: Akademische Druck und Verlagsanstalt, 1960), 1001.

²⁷ *Code of Canon Law*, no. 1707, § 1–3. Only actual death, not presumed death, can dissolve the bond of the original marriage. See *The New Commentary on the Code of Canon Law* (New York: Paulist, 2000), 1798.

A third paradox comes from Wojtyła's pastoral insight that conflating the circumstance with the object of adultery already contributes to some lacunas in the church's sacramental praxis. For example, when a couple is cohabitating and engaging in pre-marital sexual intercourse, Wojtyła argues that it is insufficient to think that their moral conflict disappears once they get married, for this is to reduce their moral conflict to their marital status. For Wojtyła, the fundamental moral conflict is not that they are unmarried but that they are likely using one another as objects of enjoyment. Thus Wojtyła says, "Where a person of the other sex is regarded as 'an object representing only sexual value,' the institution of marriage will be treated as though it is based on and serves that value alone, not as a means of bringing two people together in a union of persons."²⁸ The objectification of the human person leads to the deterioration of the institution of marriage, and while the church must continue to encourage people to engage in the sexual act only in the context of marriage, rehabilitating the institution of marriage, both for specific couples and society in general, is impossible without converting the various mindsets and habits leading to objectification. Furthermore, Wojtyła does not think that repeating the sexual act in marriage is an effective way to bring about this needed conversion, for he states,

The main objective of (sexual) education is to create the conviction that 'the other is more important than I.' Such conviction will not arise suddenly and from nothing, merely on the basis of physical intercourse. It can only be, must be, the result of an integral education in love. Sexual intercourse itself does not teach love.²⁹

If Wojtyła is correct, the church must recognize that moral conflicts are not eliminated by only ensuring that sexual acts are happening in the context of a valid marriage; in addition to this basic criterion, the church must also construct supplemental pathways to conversion by helping couples attain a deeper logic of Christian love that can extend to their sexual act. Incorporating such insight into pastoral praxis requires acknowledging that the definition of the moral object provided by the *dubia* is too narrow in scope, for this definition lacks sufficient dexterity to speak of the intrinsic evil of adultery within sexual acts between two people who *are* married to one another, an idea found not only in these observations by Wojtyła but also in Aquinas.³⁰

²⁸ Wojtyła, *Love and Responsibility*, 214.

²⁹ Wojtyła, *Love and Responsibility*, 274.

³⁰ Aquinas, ST II-II, q. 154, a. 8, ad 2.

MORAL IMPOSSIBILITY: THEORY AND APPLICATION

Through the paradoxes presented above, one encounters an escalation of critical anomalies pointing to the judgment that the definition of the moral object of adultery provided by the *dubia* is insufficient to bear the weight of the Catholic moral tradition. This insufficiency is due to a lack not of strength but of flexibility: because this definition provided by the *dubia* has limited itself to criteria found only in the third-person perspective, it lacks the ability to “extend” into the first-person perspective of the human will in more complex marital scenarios. Because complex scenarios are the topic addressed in *Amoris Laetitia*, a more secure foundation of the moral object is needed for the discussion. This paper proposes that such a foundation can be found in Wojtyła’s personalistic moral object because, in continuity with the personalistic paradigm imprinted within *Veritatis Splendor*, the intrinsically evil object of adultery should be articulated from the perspective of the acting person, not exclusively from the perspective of circumstances.

Even if the sacramental, canonical, and pastoral praxis of the church were to acquire greater attentiveness to the personalistic object of a sexual act and not rely solely on circumstances, a practical question soon emerges: how could the church ever come to make prudential judgments about a moral object determined from the perspective of the acting person? Conveniently, theological precedent for such a pastoral judgment already exists in the principle of moral impossibility. Accordingly, this section establishes the essential principles of moral impossibility. These principles will then be applied to one case study already judged by the church, the discernment of personal culpability in situations involving unwanted contraception in a sexual act between spouses. After establishing the theoretical framework used by the church for articulating the moral object in this complex marital situation, the same framework will be used in the next section to discern the moral object of the sexual act for those in an irregular situation.

The idea of moral impossibility, as it connects to law and legal observation, is expressed in the latin phrase *ad impossibilia nemo tenetur*: no one is bound to the impossible. This is an idea found in ancient Roman law that derives from a deeper philosophical principle; namely, to say that someone “ought” to do something implies it is possible for them to do it.³¹ One of the most difficult theoretical

³¹ *Guide to Latin in International Law*, ed. Aaron Fellmeth and Maurice Horwitz (Oxford: Oxford University Press, 2021), s.v. “Ad impossibilia nemo tenetur”; James Ward Smith, “Impossibility and Morals,” *Mind* 40, no. 279 (1961): 362–375, doi.org/10.1093/mind/LXX.279.362.

aspects of moral impossibility is distinguishing what, exactly, makes some act “impossible,” and this deeper philosophical ambiguity always manifests itself when trying to apply this principle to specific cases.

Such ambiguity notwithstanding, the principle of moral impossibility has been used in the Catholic tradition to describe moral obligation in a variety of complex situations, including medical ethics,³² canon law,³³ and general scenarios such as the restitution of debt.³⁴ In the application of this principle, the church makes a distinction between moral impossibility and physical impossibility: “Physical impossibility exists if the means required for the fulfillment of an obligation are lacking; for example, if a singer loses his voice. Moral impossibility exists if it is physically possible to perform an obligation, but the obligation involves a grave inconvenience, either for the subject acting or others connected intimately with the act.”³⁵ This distinction is critical because it moves beyond a less-debated point (namely, that a person is not obliged to sing if they cannot sing, to confess their mortal sins while in a coma, etc.) and enters into the more ambiguous realm of “grave inconvenience.”

It is only moral impossibility, specifically applied to complex situations of sexual intercourse, that is of particular importance for the theme of this paper, and it is necessary to provide a case study to aid further discussion. One relevant case can be found in a document published by the Pontifical Council for the Family, titled *Vademecum for Confessors Concerning Some Aspects of the Morality of Conjugal Life* (henceforth *Vademecum for Confessors*) and promulgated in 1997, which addresses pastoral approaches to complex marital situations that arise in the confessional.³⁶ The most relevant commentary within this document, as it relates to this paper, is the church’s analysis of the moral object for a person involved in a sexual act with a spouse who continues to use contraception. For example, if a husband wants the sexual act to be procreative but his wife persists in the use of contraceptives, can this husband engage in the sexual act with his wife without incurring mortal sin?

³² Congregation for the Doctrine of the Faith, “Responses to Certain Questions of the United States Conference of Catholic Bishops Concerning Artificial Nutrition and Hydration: Commentary,” *Communiones* 39, no. 2 (2007): 199–203, www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20070801_nota-commento_en.html.

³³ *Code of Canon Law*, nos. 844, § 2, 960.

³⁴ A. Doolan, *New Catholic Encyclopedia*, ed. Berard Marthaler (Washington, DC: The Catholic University of America, 1967), s.v. “Restitution.”

³⁵ Giuseppe Graneris, *Dictionary of Moral Theology*, ed. Pietro Palazzini, trans. Henry Yannoni (London: Burns & Oates, 1962), s.v. “Impossibility.”

³⁶ www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_12021997_vademecum_en.html.

From a normative standpoint, the moral dynamics of such a situation is clear, for the church has been unwavering in its stance that contraceptive acts are intrinsically evil and thus never to be permitted.³⁷ Alongside this consistent repudiation of contraceptive acts, *Vademecum for Confessors* teaches that, under certain conditions, a person could licitly engage in such an act. Here is the logic presented in the document:

Special difficulties are presented by cases of cooperation in the sin of a spouse who voluntarily renders the unitive act infecund. . . . This cooperation can be licit when the three following conditions are jointly met: 1. When the action of the cooperating spouse is not already illicit in itself; 2. When proportionately grave reasons exist for cooperating in the sin of the other spouse; 3. When one is seeking to help the other spouse to desist from such conduct (patiently, with prayer, charity and dialogue; although not necessarily in that moment, nor on every single occasion).³⁸

From the third-person perspective, such a teaching is contradictory and erroneous, for an act which is intrinsically evil, *semper et pro semper*, cannot suddenly be licit in situations with “special difficulties.” However, *Veritatis Splendor* has made the perspective of the acting person the reference point for establishing the object of the act, and from this perspective the church teaches that the proximate end of the non-consenting spouse may be a licit object. As long as “the action of the cooperating spouse is not already illicit in itself” (notice that this criterion has taken on the perspective of the acting person), and even when it is *physically* possible for a non-consenting spouse to refuse participation in this sexual act, the church acknowledges that there may be “proportionately grave reasons” to cooperate in a contraceptive sexual act because of the moral impossibility present.³⁹ Because all the

³⁷ *Catechism*, no. 2370; *Humanae Vitae*, no. 14; *Evangelium Vitae*, no. 13.

³⁸ *Vademecum for Confessors*, 3.13. This document cites the pontificate of Pius XI (*Casti Connubii*, no. 59) as precedence for its judgment: “Holy Church knows well that not infrequently one of the [spouses] is sinned against rather than sinning, when for a grave cause he or she reluctantly allows the perversion of the right order. In such a case, there is no sin, provided that, mindful of the law of charity, he or she does not neglect to seek to dissuade and to deter the partner from sin.” Theological sources that precede this papal decision are described in John Noonan, *Contraception: A History of its Treatment by Catholic Theologians and Canonists* (Cambridge: Harvard University Press, 1965), 380–383.

³⁹ This logic is a notable exception to the theory that the distinction between an objectively sinful situation and subjective culpability “is valid only for interpreting *past* actions. It cannot be prescriptive for future behavior; it cannot form the basis for pastoral direction or accompaniment” (Nicholas Healy, “Interpreting Chapter Eight of *Amoris Laetitia* in Light of the Incarnation,” *Journal of Moral Theology* 10, no. 2 [2021]: 154). Such logic is applied to future actions in other complex situations, such

stated criteria must be fulfilled to permit such cooperation in this intrinsic evil, additional clarifications are needed.

First, the action of the cooperating spouse cannot already be “illicit in itself.” While not explained in the text directly, the footnotes clarify this distinction, referencing the reader to various judgments which consider the action of the cooperating spouse exclusively from a biological and natural perspective.⁴⁰ Thus, when this document teaches that the action of the cooperating spouse must not be “illicit in itself,” it is demanding that the sexual act happen in a natural and non-deviant manner.

Second, there must be “proportionately grave reasons” for this cooperation. Again, this is not explained directly in the text, but the footnotes clarify what is left ambiguous. Specifically, the footnotes refer the reader to paragraph 59 of *Casti Connubii* where Pius XI speaks of the “secondary ends” of a marital act, defined as “mutual aid, the cultivating of mutual love, and the quieting of concupiscence,” understood as licit ends to pursue in these intrinsically evil circumstances. The footnotes further explain a crucial conclusion about these licit secondary ends, that they are to be understood as a proximate end (and thus the moral object) of the sexual act when such moral impossibility is present.⁴¹ Thus, when a spouse is having sexual

as *not* requiring those who repent of a vasectomy to have it reversed to participate licitly in future marital acts. See William May, *Catholic Bioethics and the Gift of Human Life* (Huntington, IN: Our Sunday Visitor, 2008), 149; Tad Pacholczyk, “Making Sense of Bioethics: Column 106: A Path for Renewal for the Catholic Sterilized Couple,” *National Catholic Bioethics Center*, April 30, 2014, www.ncbcenter.org/making-sense-of-bioethics-cms/column-106-a-path-of-renewal-for-the-catholic-sterilized-couple.

⁴⁰ The document refers the reader to a distinction in Denzinger, *Enchiridion Symbolorum*, nos. 2795 and 3634. There, one finds a distinction between the sins of “Onanism” and “the Sodomites,” with the judgment that a wife can engage in an onanistic sexual act with her husband but not a sodomistic sexual act (referring to the distinction between vaginal intercourse as opposed to oral or anal intercourse) because such a sodomistic act is “illicit in itself.” Such an interpretation is corroborated by the document’s reference to *Casti Connubii*, no. 59, where Pius XI speaks of the need to preserve “the intrinsic nature of the act,” thus emphasizing the natural mode of the act and maintaining a negative moral judgment of all sexual acts that deviate from this natural mode.

⁴¹ Denzinger, *Enchiridion Symbolorum*, no. 3634 (footnote 47 in *Vademecum for Confessors*, which is a Response of the Sacred Penitentiary from April 3, 1916) teaches that the acting person in these situations chooses “a licit object and act” (*rei et actioni licitae*), the object/act understood as mutual aid, cultivating mutual love, or some other licit secondary end. A note on translation: although *objectum* is the Latin word often used to identify a moral object, sometimes *res/rei* is conceptually equivalent: besides this text from *Enchiridion Symbolorum*, see also Aquinas (ST I-II, q. 18, a. 2, obj. 1) which says “the object of an action is a thing” (*objectum enim actionis est res*). It is also logically necessary for this person to be choosing a licit object,

intercourse in a situation that fulfills all three criteria, *what* this spouse is doing (the moral object) is not “contracepting” but rather “cultivating mutual love” or “quieting concupiscence.” Given that these guidelines are made for confessors, a precise knowledge (on the part of the confessor) of which proximate end is chosen can only be determined through interaction with the conscience of the acting person.

The conscience of the acting person is also important to establish fulfillment of the third criterion listed in this document, the obligation “to help the other spouse to desist from such conduct.” The document provides few details to determine the amount of “help” required, but does state that an overly-rigorous interpretation is to be avoided, encouraging an attitude of patience and prayer and noting that such a person is not obliged to resist “on every single occasion.” Only the conscience of the acting person can manifest how much help is being carried out and, alongside the judgment of this person’s confessor, whether such help is sufficient to fulfill this criterion.

So, despite the absolute prohibition of contraceptive acts because of the intrinsic evil involved, the teaching in *Vademecum for Confessors* results in a more nuanced moral norm: if a person is in a situation that fulfills the essential criteria listed (and these criteria are explained more through footnotes than the main body of text, a methodology that parallels *Amoris Laetitia*’s treatment of similar complexities), then the confessor can consider this person trapped within a moral impossibility, and this changes how to understand the object of the act. While it is true that contraceptive acts are intrinsically evil, *semper et pro semper*, a person who willingly enters a contraceptive sexual act is not *always* participating in the proximate end of contraception, for in more complex situations the church discerns a lack of freedom to resolve this evil circumstance. So long as there is some other proportionally relevant good being pursued and accomplished through this contraceptive sexual act, the church judges that the intrinsic evil (in this case, contraception) can be tolerated because it is not chosen by the acting person.⁴² Similar to the situations

because if the moral object was illicit (such as contracepting), the act would not be permissible.

⁴² *Vademecum for Confessors* does not attempt to reconcile this teaching with Aquinas’s assertion that “an action is not good simply” (*non tamen est actio bona simpliciter*) unless all three sources (object, intention, circumstances) are good (ST I-II, q. 18, a. 4, ad 3; see also ST I-II, q. 18, a. 3). Although some acts are not “good simply” because of evil present in the circumstances, the acting person can still be doing something good in more complex (i.e., *not* simple) acts, as illustrated in *Vademecum for Confessors* and throughout this paper. To state that the circumstances are intrinsically evil only means that a good which should be present is absent (such as openness to life, a valid marriage, etc.), but the acting person is not always

recounted in section II of this paper, such a person is acting within a known *situation* of contraception but not committing the *sin* of contraception, and moral impossibility provides the logic for this distinction.

MORAL IMPOSSIBILITY AND AMORIS LAETITIA

In *Vademecum for Confessors*, a theoretical framework has been provided for discerning, in certain situations of “special difficulty,” the object of the sexual act which potentially differs from a strict definition of the act considered normatively. The framework used in the document is no invention of the Pontifical Council for the Family but rather rooted in a long tradition of reflection on moral impossibilities, itself rooted in ongoing contemplation of morality as a discipline concerning itself with acts derived from the will and not primarily from circumstances. Because of the complexity of these situations and the moral intricacies involved, the church helps clarify when to apply moral impossibility to a variety of acts. Such guidance has already been provided for situations of contraception, and in this section, this same logic will be applied to situations of adultery.

Paradoxically, a precedent for applying moral impossibility to situations of adultery is found in *Amoris Laetitia*’s esteemed predecessor, *Familiaris Consortio*. It is important to recall that, prior to this document, *all* couples in irregular situations were required to separate, even if they were living as brother and sister. This obligation to separate was considered gravely serious, so much so that those who failed to comply were to be penalized with excommunication.⁴³ However, through the pastoral judgment of Pope John Paul II in *Familiaris Consortio* (no. 84), this penalty of excommunication was lifted for those living as brother and sister, and for the following reasons: “When, for serious reasons, such as for example the children’s upbringing, a man and a woman cannot satisfy the obligation to separate,” then they may continue to live together (albeit in continence). This development is rooted in the logic of moral impossibility, for if a couple “cannot” satisfy the obligation to separate because of a “serious reason” such as the children’s upbringing, it is permissible for them to

responsible for the absence of this good, which influences how the church understands the moral object.

⁴³ 1917 *Code of Canon Law*, no. 2356. Theologians applied this canon in various ways, sometimes literally and sometimes leniently. See James Connell, “More about the ‘Bad-Marriage’ Dilemma,” *American Ecclesiastical Review* 130, no. 1 (1954): 391–397; Gerald Vann, “Moral Dilemmas: I. The Muddled Marriage,” *Blackfriars* 34, no. 402 (1953): 374–380, doi.org/10.1111/j.1741-2005.1953.tb06153.x.

live together.⁴⁴ Indeed, such couples are acting within circumstances that are intrinsically evil, for the *Catechism* says that all those divorced and remarried are in a situation of “public and *permanent* adultery.”⁴⁵ The proximate end of “the good of the children’s upbringing” is understood as both the licit and true object of choice while acting in these circumstances, even when the first union remains a valid marriage. Thus these people are in a situation of sin, but not committing sin because of the factors which constrain their freedom to act outside these evil circumstances and the authentic good being pursued.

This precedent within *Familiaris Consortio* leads to the critical moral question of this paper: since the church already teaches that persons in irregular situations can be dispensed from the obligation to separate due to a moral impossibility, may there also exist irregular situations in which a person could be dispensed from the obligation to continence due to the same principle? In reflecting on this question, one must descend into the concrete details of a specific situation, for it is only in light of these details that a proper judgment on continuity can be established. Therefore, one non-fictional scenario involving an irregular marriage will now be introduced, with sufficient specificity to draw helpful conclusions and also sufficient generality to be applicable to other irregular situations.

A woman has been civilly married for ten years, and her husband has a previous sacramental marriage which was never annulled. This woman begins to grow in her faith and regrets the gravity of her situation, and although she has not received Communion since her civil marriage, she desires to have her irregular situation reconciled. She therefore asks the husband to pursue an annulment so that they might convalidate their civil union, but he refuses to do so. They fight and argue about this issue for several weeks, but the husband refuses to initiate the annulment process. He works for the military, and he eventually is sent to a foreign country for several months, and with the permission of the pastor, she can receive the Eucharist because she is not having sexual relations with this man, although she is first required to go to confession. The husband returns after several months, and because the woman desires to continue receiving the Eucharist, she refuses to have sexual intercourse with him. This leads to more fights, arguments, and bitter disagreements in the home, and after two weeks of this situation, the woman tells the pastor that she has decided to resume sexual relations with him for the good of their home and their children who live with them.

⁴⁴ For more commentary on how this rationale was a development in praxis, see Maurizio Faggioni, “La teologia del matrimonio in *Familiaris Consortio* e *Amoris Laetitia*: aspetti pastorali,” *Studia Moralia* 60, no. 1 (2022): 149–150.

⁴⁵ *Catechism*, no. 2384, emphasis added.

There are many parallels to note between this woman and the moral impossibilities described in *Vademecum for Confessors*. First, there is an intrinsic evil present in the circumstances, not from contraception but the invalid marriage. However, to oblige this woman to engage in a sexual act within the context of a valid sacramental marriage is, if not a physical impossibility, then certainly a moral impossibility because of the “grave inconveniences” that prevent resolution of the husband’s previous marriage. Only the husband can initiate this annulment process; there is nothing this woman can do to resolve the irregular situation besides urging her husband to act on her desire. According to the logic of *Vademecum for Confessors*, this woman has sufficiently fulfilled the third criterion to help the other spouse overcome the barrier causing the intrinsically evil circumstance.

Two other criteria must be considered: her action in this sexual act must not be “illicit in itself,” and there must be “proportionately grave reasons” for the act. As long as she is engaging in a natural sexual act with her civil husband and not some deviant form of the sexual act, the first of these two criteria is fulfilled. Furthermore, the gravity of the conflict with her civil husband, combined with the harm done to the children in their home, is equivalent to the reasons mentioned in *Familiaris Consortio* to dispense from the obligation to separate and equivalent to reasons mentioned in *Vademecum for Confessors* to tolerate a contraceptive act.

Therefore, if one were to ask “*what* is she doing” in her sexual act, it seems more reductive than insightful to conclude that her moral object is “using her civil husband as an object of enjoyment.” To the contrary, the existence of her moral impossibility leads to the prudential judgment that the moral object of her act is more likely “quieting her husband’s concupiscence” or “building mutual love with her spouse,” both of which are licit proximate ends in situations of moral impossibility and thus not violations of an absolute moral norm. Furthermore, her situation contains all the essential elements of a natural law marriage according to Aquinas’s criteria for the Patriarchs, which corroborates the conclusion that the object of her act is not objectification but something else entirely. Thus, from the testimony provided, combined with criteria established both by Aquinas and *Vademecum for Confessors*, it seems that this woman is in a situation of adultery but not committing the sin of adultery, and moral impossibility provides the logic for this distinction. While it is never permissible to *do evil* so that good may come, the principle of moral impossibility teaches that it is permissible to *do good* even when acting in circumstances that are intrinsically evil, and this woman seems to be doing something good in her act. To the extent that this may be true, it is necessary to consider the role of discernment in

clarifying these situations in such a way that this person could receive the Eucharist.

INTEGRATING DISCERNMENT INTO SACRAMENTAL PRAXIS

As demonstrated in the above examples, in some situations of moral impossibility a circumstantial evil does not immediately determine an intrinsically evil object of the sexual act, requiring the church to enter the perspective of the acting person to determine what the sexual partners are doing. But the reception of Communion, like marriage itself, is a communal not a private act, which has consequences for the pastoral praxis of Communion to the divorced and remarried. It is one thing to establish, through the principle of moral impossibility, that such a person is free from sin, but being in a situation of “public and permanent adultery” has consequences for the public distribution of Communion. Therefore, a few other considerations must be appended to the discussion of this praxis.

First, discernment of these situations requires the presence of an ecclesial authority,⁴⁶ needed when discerning whether an irregular couple can be dispensed from the obligation to separate, and whether a person in this same situation can be dispensed from the obligation to continence. Pastors already serve as an ecclesial authority for the former, so it is reasonable to conclude that they can do so for the latter. However, pastors must not try to function as another tribunal; instead, they are seeking to understand, by integrating the conscience of the

⁴⁶ Cardinal Coccopalmerio cites the juridical principle *nemo iudex in causa propria* (“no one should judge their own case”) to explain why an ecclesial authority is needed in these situations (*Il capitolo ottavo della esortazione apostolica post sinodale Amoris Laetitia*, 27). See also Gianfranco Girotti, *Amoris Laetitia: L'importanza della coscienza, del discernimento e il ruolo del confessore* (Vatican City: Libreria Editrice Vaticana, 2021), 65. Other commentators highlight *Amoris Laetitia*'s insistence that such discernment must be both personal *and* pastoral and thus should not be reduced to the autonomous judgment of the acting person: Giacomo Rossi, “Il significato di *Amoris Laetitia* nel Magistero di Papa Francesco,” in *La teologia morale dopo l'Amoris Laetitia* (Assisi: Cittadella, 2018), 30; Phillippe Bordeyne, *Portare la legge a compimento: Amoris Laetitia sulle situazioni matrimoniali fragili* (Vatican: Libreria Editrice Vaticana, 2018), 62–71; Basilio Petrà, *Amoris Laetitia: accompagnare, discernere, e integrare la fragilità* (Assisi: Cittadella, 2016), 10–11. Furthermore, AL states explicitly that “Conversation with the priest, in the internal forum, contributes to the formation of a correct judgement” on steps to be taken in these situations (no. 300). Affirmation of the essential role of a priest in this discernment has been made explicit in subsequent clarifications from the Dicastery for the Doctrine of the Faith. See “Response to a Series of Questions Posed by His Eminence, Dominik Cardinal Duka, OP, Regarding the Administration of the Eucharist to Divorced People Living in a New Union” (September 25, 2023), nos. 5 and 10, www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_pro_20230925_risposte-card-duka_en.html.

acting person with the criteria of moral impossibility, what such a person is doing in their sexual act (the object).

Second, this path of discernment must not replace annulments; to the contrary, the pursuit of an annulment should be a required first step for determining whether it is “impossible” for someone in an irregular situation to participate in the sacrament of marriage.⁴⁷ The juridical details of a person’s irregular situation demand resolution to the maximum extent possible. So long as a path of discernment limits its scope of inquiry to the moral considerations and does not usurp the juridical process, it would be a legitimate development of praxis, for it would supplement annulments without eliminating them.

These considerations are only initial factors that would influence sacramental discipline for the divorced and remarried. Another serious contradiction remains to be considered if these persons are to receive the Eucharist, for Pope John Paul II said that those in irregular situations “are unable to be admitted thereto from the fact that their state and condition of life objectively contradict that union of love between Christ and the church which is signified and effected by the Eucharist.”⁴⁸ Although this is not the fundamental contradiction cited by the *dubia*, this contradiction must be addressed if persons in irregular situations are to receive Communion.

Aquinas himself argued that this contradiction cited by Pope John Paul II is not always a violation of the natural law and thus can be overcome in certain situations.⁴⁹ According to Aquinas, the Patriarchs objectively contradicted this principle in their marriages with multiple women, but such a rupture was permitted by the natural law because a sacramental signification persisted:

In some manner the sacrament remains, for although plurality of wives does not signify the union of Christ to the one church, such plurality does signify the distinction of rank in the church, which indeed is found not only in the church militant but also in the church triumphant. And for that reason, these marriages in some manner signify the union of Christ both to the church militant (as some have

⁴⁷ The Buenos Aires guidelines state this explicitly, describing complex situations as those in which “it is not possible to obtain a declaration of nullity.” One canonist notes that, with the publication of *Mitis Iudex Dominus Iesus* and subsequent legislation, Pope Francis has “confirmed the judicial path” in these irregular situations as opposed to advocating for its removal. See Eugenio Zanetti, “La considerazione del tema della ‘coscienza’ dal punto di vista del diritto matrimoniale,” in *Coscienza e cause di nullità matrimoniale*, ed. Eugenio Zanetti (Milan: Ancora, 2020), 24. Affirmation of the juridical process in these situations has been made explicit by the Holy See. See Dicastery for the Doctrine of the Faith, “Response to a Series of Questions,” no. 6.

⁴⁸ *Familiaris Consortio*, no. 84.

⁴⁹ Aquinas, *ST suppl.*, q. 65, a. 1.

said)⁵⁰ and to the church triumphant, in which there are *many mansions* (John 14:2).⁵¹

For Aquinas, licit sexual acts with multiple women still had scriptural and sacramental signification, and because the good of procreation was unhindered in these sexual acts “outside of marriage,” Aquinas concludes that the objective contradiction mentioned by Pope John Paul II in *Familiaris Consortio* is not always a violation of the natural law and thus can admit of a dispensation. Furthermore, Aquinas states that such a dispensation is to be understood not as a contradiction, but rather as an exception to the normative rule.⁵²

Although this distinction from Aquinas illustrates how the objective contradiction articulated by Pope John Paul II does not form an absolute norm within Catholic moral tradition, it is still a relevant norm. Therefore, for those divorced and remarried, a further distinction must be made: any person whose sexual act involves objectification of the sexual partner is choosing an intrinsically evil object and thus subject to all moral and canonical requirements that regulate the reception of Communion when in a state of mortal sin. However, a person in a situation of moral impossibility only participates in the above contradiction by way of circumstance and not by way of the object, which would mean that such a person could be dispensed to receive Communion precisely because they are not in a state of sin.⁵³ Just as the Council of Toledo permitted concubinage but did not elevate it as the ideal of marriage, and the church currently permits irregular couples to live as brother and sister and yet understands their situation to be one of “public and permanent adultery,” such a dispensation would express something the church tolerates but does not promote as the ideal of married life.⁵⁴

The church currently has a pope who clearly thinks that some complex situations call for such a dispensation because of moral

⁵⁰ The commentators cite here a reference to Albert the Great, *Sentences*, 4.33.6.

⁵¹ Aquinas, *ST suppl.*, q. 65, a. 2, ad 5.

⁵² Aquinas, *ST suppl.*, q. 65, a. 2, ad 2.

⁵³ Such a dispensation should not be given permanently, for once any of the above criteria are no longer met, a person is not in a situation of moral impossibility and thus not free of sin when acting in this situation.

⁵⁴ This logic also applies to those rare instances in which divorce and remarriage did not seem to prevent the reception of Holy Communion in the early church. See Origen, *Commentary on Matthew*, 14.23 (PG 13, 1246); Saint Basil, *Letter 188.8* (PG 32, 675), *Letter 199.35* (PG 32, 727). For commentary on these patristic texts, see Guido Bendinelli, “Il matrimonio nel *Commentario a Matteo* di Origen,” in *Origeniana Decima: Origen as Writer*, ed. Sylwia Kaczmarek and Henryk Pietras (Leuven: Peeters, 2011), 393–394; Theodore Mackin, *Divorce and Remarriage* (New York: Paulist, 1984), 146–149.

impossibilities.⁵⁵ So long as he is not permitting members of the church to violate natural law and only dispensing from obligations rooted in ecclesial law, he is teaching a legitimate praxis proper to one who has “supreme, full, immediate, and universal ordinary power in the church,” a power “he is always able to exercise freely,” even when writing a letter to a group of bishops from Buenos Aires.⁵⁶ Allowing irregular couples in a situation of moral impossibility to receive Communion would be a development of praxis, but not a rupture of the church’s moral tradition, nor without precedent.

One such precedent, closely connected to the topic of this paper, involves Canon 844. Specifically, the 1917 Code of Canon Law forbade administering the sacraments of Anointing, Penance, or the Eucharist to anyone outside formal Communion with the Catholic Church, but as the church developed her understanding of *extra ecclesiam nulla salus*, it became possible, in certain situations, to allow those not in full Communion with the Catholic Church to receive these same sacraments.⁵⁷ Thus the 1983 code explains:

If the danger of death is present or if, in the judgment of the diocesan bishop or conference of bishops, some other grave necessity urges it, Catholic ministers administer these same sacraments licitly also to other Christians not having full Communion with the Catholic Church, who cannot approach a minister of their own community and who seek such on their own accord, provided that they manifest Catholic faith in respect to these sacraments and are properly disposed.⁵⁸

Two important details in this canon relate to the church’s praxis of Communion to the divorced and remarried. First, this canon has incorporated the logic of moral impossibility, for the distribution of these sacraments is licit only if a person “cannot” approach a minister of their own community and there is a “grave necessity” to provide these sacraments. Second, this canon explains that bishops, either by themselves or in conference, can legitimately discern diverse criteria for what constitutes a grave necessity for the distribution of the Eucharist to those not in full Communion with the church.

⁵⁵ Other authorities have identified moral impossibilities in some of these situations. For example, Joseph Ratzinger once embraced the idea that Communion could be given when it was “practically impossible” for the irregular couple to end their civil marriage or practice abstinence within it, but he changed his position after the publication of *Familiaris Consortio*. See Mats Wahlberg, “Communion for the Divorced and Remarried: Why Revisionists in Moral Theology Should Reject Kasper’s Proposal,” *Nova et Vetera* 13, no. 3 (2015, English Edition): 767.

⁵⁶ 1983 *Code of Canon Law*, no. 331.

⁵⁷ 1917 *Code of Canon Law*, no. 731, § 2.

⁵⁸ 1983 *Code of Canon Law*, no. 844, § 4.

One critique of the implementation of *Amoris Laetitia* is that it has given an imprudent amount of responsibility to bishops, both in council with one another and independently, to decide how to integrate the divorced and remarried into the sacramental life of the church. However, if bishops already provide diverse guidelines for the reception of the Eucharist by a person not in full Communion with the church, then it is not a theological rupture to teach that bishops could do likewise for those not married in the church. Furthermore, a diversity of guidelines from various bishops is to be expected, for so long as these guidelines are not redefining mortal sin or permitting the pursuit of intrinsically evil objects, the scope of inquiry is limited to clarifying conflicts of ecclesial law, and do not seek to dispense from violations of natural law, the diversity of guidelines represent a legitimate spectrum of thought on how to integrate the divorced and remarried into the sacramental life of the church.⁵⁹ Such diversity is already present in canon law, and its presence within Pope Francis's magisterium is a continuation of this same principle.

EXPANDING THE FORMULA

A recurring moral question within this article is determining the extent to which knowledge about circumstances of the sexual act (lack of a valid marriage between sexual partners) determines the object of the sexual act. While this distinction between circumstance and object has always been present for sexual acts, it has traditionally been irrelevant because theologians often saw only two primary ends to the sexual act: procreation and pleasure. This creates a binary logic encountered in many places in Catholic tradition, including the following words of Augustine: "Sexual union that is necessary for the purpose of having children is blameless, and it alone is part of marriage. If it goes beyond that necessity, it is no longer ruled by reason but by sensuality."⁶⁰ According to Augustine, sexual activity

⁵⁹ Recent clarifications from the Dicastery for the Doctrine of the Faith envision the local ordinary (no. 1) and episcopal conferences (no. 10) providing some criteria to help priests carry out this pastoral discernment. See "Response to a Series of Questions," nos. 1, 10. Many bishops and episcopal conferences have already fulfilled this task: besides the guidelines from the Buenos Aires bishops, see the bibliography of diverse pastoral letters from various episcopal conferences in Italy provided in *Sui sentieri di Amoris Laetitia*, 379–382. The varying application of *Amoris Laetitia* in some international churches (Kenya, Chile, Italy, Spain, and the Philippines) is presented in *Pratiche pastorali, esperienza di vita e teologia morale: Amoris Laetitia tra nuove opportunità e nuovi cammini*, ed. Maurizio Chiodi and Miguel Yáñez (Milan: San Paolo, 2023), 35–116.

⁶⁰ Saint Augustine, *The Excellence of Marriage*, no. 11 (PL 40, 381), trans. Ray Kearney, in *The Works of Saint Augustine: A Translation for the 21st Century*, vol. 9 (Hyde Park, NY: New City, 1999), 42.

for any reason other than procreation is a sin because the only other conceivable reason for such activity is self-pleasure.⁶¹

Rooted in a similarly binary logic, the church's sacramental praxis involving the divorced and remarried has been a formula: "If you are having sexual intercourse with someone to whom you are not married, then you are using them for self-pleasure and committing adultery ('living in sin'), and therefore you cannot receive the Eucharist." John Henry Newman has pointed out that, in the presence of authentic theological development, "a mere formula either does not expand or is shattered in the expanding."⁶² For all its fittingness in the past and continued relevance today, the church's sacramental formula was "shattered in the expanding" when it added other licit proximate ends to the sexual act.

If the above formula is inadequate for some situations of moral impossibility, what could take its place? A path of discernment, as articulated by the Buenos Aires bishops and supported by Pope Francis, could serve as a helpful supplement. However, there is hesitancy to follow such a path because it requires interaction with the conscience of the acting person to better determine what a person is doing in the sexual act, and conscience is susceptible to error. So the following must be asked: Does integrating a potentially errant variable into moral questions involving marriage and divorce threaten the objective and indissoluble nature of the institution of marriage?

In reflecting on the woman caught in adultery, Pope John Paul II provides a relevant insight: "When Jesus addressed those who wanted to stone the woman caught in adultery, he did not appeal to the precepts of Israelite law, but exclusively to the conscience. The discernment of good and evil engraved in the human conscience can prove to be more profound and more correct than the content of a legal norm."⁶³ Although conscience can err, this passage reveals how a norm is also subject to error when applied to every situation. Herein

⁶¹ Augustine makes this point explicit: "When [sexual intercourse] slips beyond the bounds of the marriage contract, that is, beyond what is needed for procreation, with a wife it is a venial sin, but with a mistress it is a mortal sin" (*The Excellence of Marriage*, no. 12 [PL 40, 382]), 42. This perspective dominates the patristic and medieval commentary on marriage: Caesarius of Arles, *Sermons*, 42.4 (CCL 103, 187); Clement of Alexandria, *Christ the Educator*, 2.10.92, 95, 98 (PG 8, 507); Gregory the Great, *Pastoral Rule*, 3.27 (PL 77, 102); Peter Lombard, *Sentences*, 4.31.8.3; Bonaventure, *Commentary on the Sentences*, 4.31.2.3; Thomas Aquinas, *Commentary on the Sentences*, 4.31.2.2–3. A discussion of some nuances within these texts is provided in John Noonan, *Contraception*, 145–152, 193–199, 250–257.

⁶² John Henry Newman, *An Essay on the Development of Christian Doctrine* (London: Longmans, Green, 1888), 186 (5.3.2).

⁶³ Pope John Paul II, "General Audience," August 13, 1980, trans. the author, www.vatican.va/content/john-paul-ii/it/audiences/1980/documents/hf_jp-ii_aud_19800813.html.

lies the gift of conscience to the moral life, for according to Pope John Paul II, conscience can supplement the deficiencies of a norm by providing it with “more profound” and “more correct” judgments about a specific situation. Thus the inclusion of conscience in the church’s moral analysis of irregular situations can potentially strengthen the objective norms involving the institution of marriage, for conscience has the potential to align complex situations with the full teaching of the church instead of forcing every situation to comply uniformly with a particular norm of the church. While the inclusion of conscience can undoubtedly be abused, norms can be abused as well (as experienced by the woman caught in adultery), and if Jesus could appeal *exclusively* to conscience when handling a normative conflict involving the manifest and public *sin* of adultery, it is not a rupture of the church’s moral tradition to *include* conscience in other normative conflicts involving similarly manifest and public *situations* of adultery.⁶⁴

Pope Francis thinks some norms of the church could benefit from interaction with conscience, for he states, “It is reductive simply to consider whether or not an individual’s actions correspond to a general law or rule, because that is not enough to discern and ensure full fidelity to God in the concrete life of a human being.”⁶⁵ Despite his assertion that norms can be “reductive,” this statement need not be understood as the dissolution of norms in Catholic moral teaching, for even Karol Wojtyła said, “For all the fitness and adequacy of the attributes *right* and *wrong* with reference to norms, it seems that they tend to leave in the shadow the moment of truthfulness, of the experience of truth as value.”⁶⁶ Because norms do not fully account for what Wojtyła calls the “moment of truthfulness,” Pope Francis is asking for such moments to be exposed to the light of discernment and not remain hidden under the circumstances of a rule. In this way, Pope Francis’s call for discernment follows as a pastoral consequence of Pope John Paul II’s Thomistic personalism, for although *Veritatis Splendor* teaches that the object is determined in the perspective of the acting person, the object can still be discerned by those outside the

⁶⁴ Dependence on conscience for the discernment of irregular situations is already present in praxis, for the church relies on the conscience of the ecclesiastical judge to reach moral certitude about an annulment case (1983 *Code of Canon Law*, no. 1608, § 3). Therefore, an official judgment on the indissoluble bond, a bond which “no man can put asunder” (Matthew 19:16), is nonetheless dependent on the conscience of a human person. This judgment of conscience is authoritative, but not infallible.

⁶⁵ AL, no. 304.

⁶⁶ Karol Wojtyła, *The Acting Person*, 165, cited in Petar Popović, “Securing the Foundations: Karol Wojtyła’s Thomistic Personalism in Dialogue with Natural Law Theory,” *Nova et Vetera* 16, no. 1 (2018, English Edition): 245, doi.org/10.1353/nov.2018.0009.

acting person, and some valuable elements (but not the only elements) of such discernment can be found in the conscience of the acting person.

So, for its praxis of Communion to the divorced and remarried, should the church depend on conscience or a norm? According to the Buenos Aires guidelines, both remain fully relevant, for although both have limitations, their union in a path of discernment can yield a more accurate analysis of specific moral situations. This is a development of praxis worthy of the church's full attention and consideration, but its integration into the life of the church requires the insight of other disciplines beside moral theology. 

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