

Interpreting Chapter Eight of *Amoris Laetitia* in Light of the Incarnation

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EVERY SPIRITUAL CRISIS AND EVERY heresy that has beset the Church in the past two thousand years has its own unique characteristics. At the very beginning of the Church's life and growth, the insidious heresy of Gnosticism claimed to offer a higher wisdom and a path to salvation for a select group of spiritual souls – a wisdom unavailable to the simple faithful. In the fourth century, the heresy of Arianism seemed to overwhelm the Church, gaining the support of a majority of the Church's bishops, leading to what John Henry Newman described as a “temporary suspension of the function of the *ecclesia docens*.”¹ In the sixteenth century, what began as a protest against corruption in the Church and a movement for spiritual reform degenerated into a schismatic and heretical rejection of key elements of the deposit of faith.

Looking back at these times of crisis, it is noteworthy that the role of the Church's shepherds—the successors of the Apostles—is decidedly mixed. At times, bishops (including the Bishop of Rome) have been a guiding light and a touchstone for orthodoxy and at other times a source of confusion and shame, as when Pope Honorius abetted and exacerbated the Monothelite heresy with his infamous letter to Sergius, Patriarch of Constantinople.²

But there is a feature that is common to each and every heresy and spiritual crisis. What is common is a denial that the Word has become flesh, that God's love reaches all the way down into matter, and that his incarnate love remains present in the Church and her sacraments as a pledge of hope for the resurrection of the body. This is why the *First Letter of John* presents the Incarnation as the fundamental criterion for discernment: “By this you will know the Spirit of God ... by the confession that Jesus Christ has come in the flesh” (1 John 4:2).

¹ John Henry Newman, *On Consulting the Faithful In Matters of Doctrine*, no. 1.

² The correspondence between Honorius and Sergius is conserved in the acts of Third Council of Constantinople (680/681); it was republished in Latin, Greek and French by Arthur Loth, *La cause d'Honorius. Documents originaux avec traduction, notes et conclusion* (Paris: Victor Palmé, 1870). See also Georg Kreuzer, *Die Honoriusfrage im Mittelalter und in der Neuzeit* (Stuttgart: Anton Hiersemann, 1975).

For understandable reasons, much attention has been given in recent years to the spiritual and moral corruption of priests and bishops. In his Encyclical Letter *Veritatis Splendor*, John Paul II discerned a deeper dimension of the crisis: a false anthropological vision which detaches human freedom from its essential and constitutive relation to truth. After describing some of the moral failures of the time, he notes,

Indeed, something more serious has happened: man is no longer convinced that only in the truth can he find salvation. The saving power of the truth is contested, and freedom alone, uprooted from any objectivity, is left to decide by itself what is good and what is evil. This relativism becomes, in the field of theology, a lack of trust in the wisdom of God, who guides man with the moral law (*Veritatis Splendor*, no. 84).

John Paul II goes on to explain that the tendency to separate freedom from truth is “the consequence, manifestation, and consummation of another more serious and destructive dichotomy, that which separates faith from morality” (no. 88).

Why is the separation of faith and the moral life harmful to both? To answer this question, it is helpful to reflect on the nature of Christian faith in relation to the central mystery of the Incarnation. Faith, writes John Paul II, involves “holding fast to the very Person of Jesus, partaking of his life and his destiny, sharing in his free and loving obedience to the will of the Father ... following the one who is Incarnate Wisdom” (*Veritatis Splendor*, no. 19). What, then, does faith’s participation in the Incarnate One imply about the relation of freedom and truth?

The first implication concerns the interrelation between truth, life, and the body. By assuming human nature and offering the totality of his life as gift to the Father and to the Church, Christ discloses the original and unbreakable unity of doctrine and life, words and deeds, theory and *praxis*. A faith that did not involve the whole of one’s life and deeds, including each action of the body, would not be adequate to the mystery of the Incarnation: “If you love me, keep my commandments” (John 14:15).

But there is a second implication. Just as the Word’s becoming flesh involves his total penetration into the flesh, faith’s decision for (or against) him is worked out in the flesh. This means that what we do in the body matters. But what we do in the body is not confined to private interiority. It has a visible presence and structure that exceed such privacy. Hence the Church’s unequivocal affirmation that there are certain kinds of behavior or specific acts that are intrinsically wrong. The choice to commit adultery, for example, is always and *per se* immoral; it is wrong on account of its very object, apart from concrete circumstances or the subject’s further intentions.

The mystery of the Incarnation, seen in the just-mentioned moral implication, provides a sure guide and compass for interpreting Pope Francis's Apostolic Exhortation *Amoris Laetitia* (AL). From the first announcement of the 2014 Extraordinary Synod on the theme of "Pastoral Challenges to the Family in the Context of Evangelization" through the promulgation of *Amoris Laetitia* in April of 2016, Pope Francis indicated that his fundamental aim was a rediscovery of the importance and missionary identity of marriage and the family amidst the ordinary circumstances and challenges of daily life.³ At the heart of this pastoral renewal is the grace of the sacrament of marriage, a gift of God's incarnate love. The Incarnation of the Word, which culminates in his spousal union with the Bride, is the reality sacramental marriage is called to embody in a special way:

Marriage is a precious sign, for "when a man and a woman celebrate the sacrament of marriage, God is, as it were, 'mirrored' in them; he impresses in them his own features and the indelible character of his love. Marriage is the icon of God's love for us...." This has concrete daily consequences, because the spouses, "in virtue of the sacrament, are invested with a true and proper mission, so that, starting with the simple ordinary things of life they can make visible the love with which Christ loves his Church and continues to give his life for her" (*Amoris Laetitia*, no. 121).

Reflection on the truth of the Incarnation also can illuminate the controversy and debate that has accompanied the reception and interpretation of *Amoris Laetitia*. The key questions revolve around the issue of whether civilly divorced and remarried Catholics can receive the Eucharist without "being ready to undertake a way of life that is no longer in contradiction to the indissolubility of marriage" (*Familiaris Consortio*, no. 84). How can the Church's pastors bear witness to the inexhaustible mercy of God in the context of the complexity and suffering of "irregular" marriage situations? How can these individuals "grow in the Church and experience her as a mother who takes care of them with affection and encourages them along the path of life and the Gospel" (*Amoris Laetitia*, no. 229)? What are the reasons for the Church's discipline of not admitting to Holy Communion those Catholics who are living in a sexual relationship with someone who is not their spouse? Does *Amoris Laetitia* change the Church's sacramental discipline as set forth in *Familiaris Consortio*, *Sacramentum Caritatis*, and the *Catechism of the Catholic Church*?

³ Cf. Fourteenth Ordinary General Assembly of the Synod of Bishops (2015), *Relatio finalis*, nos. 2, 3: "It is necessary to rediscover the family as an indispensable subject of evangelization.... The family is above all called by God to assume a new awareness of its own missionary identity."

An initial clue to answering these questions is found in *Amoris Laetitia*, no. 3: “Not all discussions of doctrinal, moral or pastoral issues need to be settled by interventions of the magisterium.” In response to the intense debate on the question of Holy Communion for civilly remarried Catholics—a debate that unfolded before, during, and after the two synods on the family—Pope Francis decided not to resolve this issue with an intervention of the magisterium, at least not in an obvious sense. “The complexity of the issues that arose,” he writes, “revealed the need for continued open discussion of a number of doctrinal, moral, spiritual, and pastoral questions” (*Amoris Laetitia*, no. 2).

Chapter Eight of *Amoris Laetitia* introduces further considerations on this disputed question, but this text is open to two very different interpretations. Various bishops and theologians, including the then Prefect of the Congregation for the Doctrine of the Faith, Cardinal Gerhard Müller, have argued that *Amoris Laetitia* has not changed the sacramental discipline of the Church. In an important address in Oviedo, Spain in May of 2016, shortly after the promulgation of *Amoris Laetitia*, Cardinal Müller said:

There have been claims that *Amoris Laetitia* has rescinded this [previous] discipline, because it allows, at least in certain cases, the reception of the Eucharist by remarried divorcees without requiring that they change their way of life as required by *Familiaris Consortio* The following has to be said in this regard: If *Amoris Laetitia* had intended to rescind such a deeply rooted and such a weighty discipline, it would have expressed itself in a clear manner and it would have given the reasons for it. However, such a statement with such a meaning is not to be found in [the exhortation]. Nowhere does the Pope put into question the arguments of his predecessors.⁴

Other bishops and theologians (including several bishops’ conferences) claim, to the contrary, that *Amoris Laetitia* authorizes a change in the Church’s sacramental discipline.⁵ Some have argued that the

⁴ Cardinal Gerard Müller, “Was dürfen wir von der Familie erwarten?” *Die Tagespost*, May 6, 2016, www.collationes.org/component/k2/item/2310-was-duerfen-wir-vonder-familie-erwarten; see also, Müller, “Warum ‘Amoris Laetitia’ orthodox verstanden kann und muss,” in *Zum Gelingen von Ehe und Familie: Ermutigung aus Amoris Laetitia: Für Walter Kardinal Kasper*, ed. George Augustin and Ingo Proft (Freiburg: Herder, 2018); Matthew Levering, *The Indissolubility of Marriage: Amoris Laetitia in Context* (San Francisco, CA: Ignatius Press, 2019).

⁵ See, *inter alia*, Cardinal Francesco Coccopalmerio, *A Commentary on Chapter Eight of Amoris Laetitia* (Mahwah, NJ: Paulist Press, 2017); Cardinal Christoph Schönborn, “The Joy of Love: The Full Conversation,” Interview by Antonio Spadaro, *America Magazine*, August 9, 2016, www.americamagazine.org/issue/richness-love; Víctor Manuel Fernández, “El capítulo VIII de *Amoris Laetitia*: lo que queda después de la

exhortation has inaugurated a new paradigm for the whole of the Church's moral teaching.⁶

In what follows, I explore this disputed question in two steps. Part One presents the background or context of Chapter Eight of *Amoris Laetitia*. Part Two examines the arguments of two prominent theologians who claim that *Amoris Laetitia* authorizes a change in the Church's sacramental discipline: Cardinal Marc Ouellet, who changed his position as a result of the Pope's exhortation, and Archbishop Victor Manuel Fernández, a close collaborator of Pope Francis and viewed by many as the first scribe or ghost writer of *Amoris Laetitia*.⁷ The aim throughout is a deeper understanding of the connection between the Church's sacramental discipline and the mystery of the Incarnation.

EUCHARIST AND MARRIAGE: THE BACKGROUND TO AMORIS LAETITIA

On July 10, 1993, less than a month before *Veritatis Splendor* was signed, the Bishops of the Upper Rhine (Oskar Saier, Karl Lehmann, and Walter Kasper) issued a joint letter on pastoral care for civilly divorced and remarried Catholics.⁸ This issue had been formally addressed by John Paul II in his 1981 Apostolic Exhortation *Familiaris Consortio*, where he wrote:

The Church reaffirms her practice, which is based upon Sacred Scripture, of not admitting to Eucharistic Communion divorced persons who have remarried. They 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 (no. 84).

tormenta," *Medellín* 168 (2017): 449–468, documental.celam.org/medellin/index.php/medellin/article/viewFile/182/182. English translation by Andrew Guernsey: rorate-caeli.blogspot.com/2017/08/full-text-pope-francis-ghostwriter-of.html.

⁶ For some representative voices, see the various essays published in *Amoris Laetitia: A New Momentum for Moral Formation and Pastoral Practice*, eds. Grant Gallicho and James F. Keenan (New York: Paulist Press, 2018); see also *A Point of No Return? Amoris Laetitia on Marriage, Divorce and Remarriage*, ed. Thomas Knieps-Port le Roi (Berlin: LIT Verlag, 2017).

⁷ Cardinal Marc Ouellet, "Accompanying, Discerning, Integrating Weakness," *L'Osservatore Romano*, November 17, 2017, www.osservatoreromano.va/en/news/accompanying-discerning-integrating-weakness; Fernández, "El capítulo VIII de *Amoris Laetitia*," 449–468.

⁸ Bischöf der Oberreinerischen Kirchenprovinz, "Zur seelsorgerlichen Begleitung von Menschen aus zerbrochenen Ehen, Geschiedenen und Wiederverheirateten Geschiedenen. Einführung, Irtenwort und Grundsätze," *Herder-Korrespondenz* 47 (1993): 460–467. An English translation appeared in Kevin T. Kelly, *Divorce and Second Marriage: Facing the Challenge*, 2nd ed. (London: Geoffrey Chapman, 1996), 90–117.

Referring to this teaching in *Familiaris Consortio* as a general norm that, while true, cannot address all of the complex individual cases, the Upper Rhineland bishops proposed a path of discernment and accompaniment that would allow individuals (guided by a pastor) to decide for themselves whether they could receive the Eucharist without undertaking the obligation to live continently.

One year later, the Congregation for the Doctrine of Faith responded to this pastoral proposal. Citing both *Familiaris Consortio* and the newly published *Veritatis Splendor*, the CDF letter upheld what it called “the constant and universal practice” of the Church:

Members of the faithful who live together as husband and wife with persons other than their legitimate spouses may not receive Holy Communion. Should they judge it possible to do so, pastors and confessors, given the gravity of the matter and the spiritual good of these persons ... have the serious duty to admonish them that such a judgment of conscience openly contradicts the Church’s teaching.⁹

This teaching, the letter goes on to say, is founded on Christ’s words in Sacred Scripture; it is not subject to revision, and it is exceptionless. Referring to *Familiaris Consortio*, the CDF letter states that “the structure of the exhortation and the tenor of its words give clearly to understand that this discipline, which is presented as binding, cannot be modified because of different situations.”¹⁰

The question was discussed and debated again during the 2005 Synod on the Eucharist. Benedict XVI’s Apostolic Exhortation *Sacramentum Caritatis* (2007) confirmed the Church’s sacramental discipline as based on Sacred Scripture: “The Synod of Bishops confirmed the Church’s practice, based on Sacred Scripture (cf. Mk 10:2–12), of not admitting the divorced and remarried to the sacraments, since their state and their condition of life objectively contradict the loving union of Christ and the Church signified and made present in the Eucharist” (no. 29).

For reasons that remain unclear, at the beginning of his Pontificate, Pope Francis decided to re-visit this question by convoking two synods on the theme of pastoral care for marriage and the family and entrusting Cardinal Walter Kasper with the task of providing the theological foundation and framework for the synods. In his speech to the Consistory of Cardinals in February of 2014, Cardinal Kasper addressed at length one and only one pastoral problem: how to integrate

⁹ Congregation for the Doctrine of the Faith, “Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful,” no. 6, www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_14091994_rec-holy-comm-by-divorced_en.html.

¹⁰ Congregation for the Doctrine of the Faith, “Letter Concerning Reception,” no. 5.

civily divorced and remarried Catholics into the sacramental life of the Church.¹¹ And he presented essentially the same proposal as contained in his 1993 pastoral letter—the proposal that had provoked an unequivocal response by the CDF.

The history from this point is well known: the sharp debates that unfolded before and during the 2014 and 2015 synods; the questionable decision to include the sections of the 2014 *relatio* that failed to gain the requisite approval of the synod fathers within the *Instrumentum Laboris* for the 2015 synod; charges of disobedience and counter-charges of heresy. There were voices on both sides that questioned the centrality of this issue. Here the observation of Livio Melina is surely correct:

From the viewpoint of genuine pastoral care for the family, this is certainly not the most urgent point. It may have been central forty or fifty years ago. Now, though, the problem is that young people no longer marry.... Yet, from the theological or doctrinal viewpoint this question [of communion for the divorced and remarried] is the crucial point, because it concerns the very identity of the Church. If this point of discipline changes, then doctrine about something essential changes.¹²

In April of 2016, Pope Francis promulgated his post-synodal exhortation, *Amoris Laetitia*. What exactly does *Amoris Laetitia* teach on the question of communion for divorced and remarried Catholics? It is not clear. Within chapter eight, there are two footnotes, 336 and 351, that refer to certain “irregular” situations where there is an objective situation of sin but diminished subjective culpability. In these cases, the Church can provide the help of the sacraments, including Penance and the Eucharist. These footnotes are vague; they do not explicitly refer to the situation of divorced and remarried Catholics and do not address the reason for the Church’s constant and universal discipline.

THE RECEPTION OF AMORIS LAETITIA

The most significant response to *Amoris Laetitia* was authored by Cardinals Caffarra, Brandmüller, Burke, and Meisner in November of

¹¹ Cf. Walter Kasper, *The Gospel of the Family*, trans. William Madges (New York: Paulist Press, 2014).

¹² Livio Melina, “Conference to the Penitentiaries” (Rome, November 10, 2015) [unpublished manuscript].

2016.¹³ Noting the divergent interpretations and the confusion and disorientation among the faithful, these Cardinals presented five questions or *dubia* to Pope Francis. The first *dubium* asks whether,

Following the affirmations of *Amoris Laetitia* (300–305), it has now become possible to grant absolution in the sacrament of penance and thus to admit to holy Communion a person who, while bound by a valid marital bond, lives together with a different person *more uxorio* without fulfilling the conditions provided for by *Familiaris Consortio*.¹⁴

The remaining *dubia* touch on questions of fundamental moral theology, including the nature of conscience and intrinsically evil acts. Of particular importance is the “explanatory note” appended to the *dubia*. Here the four cardinals elaborate the foundation of the Church’s sacramental discipline, and they show that a departure from this discipline entails a calling into question essential and foundational elements of the Church’s moral teaching.

Already in *Amoris Laetitia*, Pope Francis indicated that “not all discussions of doctrinal, moral or pastoral issues need to be settled by interventions of the magisterium” (no. 3). Neither Pope Francis nor the CDF has answered the *dubia*. The question of whether *Amoris Laetitia* has changed the sacramental discipline of the Church remains an open question. Among the theologians who have indirectly answered the *dubia* by interpreting *Amoris Laetitia* as authorizing a change in the Church’s sacramental discipline are Cardinal Marc Ouellet and Archbishop Victor Manuel Fernández. I examine their arguments before suggesting a path forward.

In his essay “Chapter VIII of *Amoris Laetitia*: What is left after the storm?” published in *Medellín*, the theology journal of the Latin American Bishops’ Conference, Fernández develops two complementary lines of argument, both of which find some support in *Amoris Laetitia*. The first point concerns the limitations of what he calls “general norms.” Fernández distinguishes between the norm itself, which is universal and exceptionless, and the formulation of the norm, which cannot cover every situation in its concrete complexity. For example, the norm “thou shall not commit adultery” is exceptionless, but only in an abstract sense. Given particular circumstances, there may be exceptions. He writes,

¹³ “Seeking Clarity: A Plea to Untie the Knots of *Amoris Laetitia*,” November 2016. Copy of the text can be found at www.ncregister.com/blog/edward-pentin/full-text-and-explanatory-notes-of-cardinals-questions-on-amoris-laetitia.

¹⁴ “Seeking Clarity.”

we should ask whether acts of a *more uxorio* cohabitation should always fall, in its integral meaning, within the negative precept of “fornication” I say, “in its integral meaning,” because it is not possible to hold that those acts in each and every case are gravely immoral in a subjective sense. . . . Indeed, it is not easy to describe as an “adulteress” a woman who has been beaten and treated with contempt by her Catholic husband, and who has received shelter, economic and psychological help from another man who helped her raise the children of a previous union, and with whom she had new children and cohabitates for many years.¹⁵

In order to better understand the possibility of an exception to a general norm, it is necessary to consider the second key point in Fernández’s essay.

The second line of argument, which he shares with Cardinal Ouellet, turns on the distinction between the objective order and subjective culpability. Citing the *Catechism of the Catholic Church*, *Amoris Laetitia* notes that various factors—ignorance, duress, inordinate attachments, etc.—can diminish or even nullify subjective culpability. It follows that “a negative judgment about an objective situation does not imply a judgment about the imputability or culpability of the person” (no. 302). Fernández argues that the novelty of *Amoris Laetitia* lies in its distinction between the objective good and subjective guilt. It is precisely this distinction which undergirds a change in the Church’s sacramental discipline. Cardinal Ouellet echoes this claim when he writes, “The great novelty of *Amoris Laetitia* is to observe and acknowledge that by virtue of ‘a solid body of reflection concerning mitigating facts and situations . . . it can no longer be said that all those in any “irregular” situation are living in a state of mortal sin and are deprived of sanctifying grace’ (no. 301).”¹⁶ Thus “without losing sight of the ideal even it has not yet been reached,” *Amoris Laetitia* is “open to exceptional cases”¹⁷—meaning that it is possible, in exceptional cases, to receive the Eucharist while living *more uxorio* with someone who is not one’s legitimate spouse.

Why is this distinction between the objective and subjective orders so central for both Ouellet and Fernández? First, both authors recognize the unchanging Catholic doctrine (set forth by the Apostle Paul and reaffirmed by the Council of the Trent) that it is not permissible for an individual in a state of mortal sin to receive the Sacrament of Holy Communion. If, therefore, it can be established that in certain

¹⁵ “Seeking Clarity.”

¹⁶ Ouellet, “Accompanying, Discerning.” Elsewhere in the article, Ouellet writes: “What is new, as I have noted, is the broadening of cases that are exceptional by virtue of the degree of subjective imputability of an objective fault.”

¹⁷ Ouellet, “Accompanying, Discerning.”

cases a person in an objective situation of sin may be living subjectively in a state of grace on account of mitigating factors, then it seems a door has been opened to a change in the Church's sacramental discipline for civilly remarried Catholics.

At the same time, the distinction between the objective and subjective orders allows both Ouellet and Fernández to claim a certain continuity between their interpretation of *Amoris Laetitia* and the traditional teaching as upheld by John Paul II. The continuity resides on the level of the objective analysis of the situation. On this level, the indissolubility of marriage and the prohibition of adultery remain in force, albeit *as an ideal* and *a general norm*, respectively. Meanwhile, on the subjective level, analysis of the concrete situation may reveal various factors that diminish subjective culpability. Hence the viability, according to our two authors, of a path of discernment and accompaniment that moves toward the ideal while acknowledging that what is concretely possible is less than ideal.

There are, however, at least two serious weaknesses in the common position of Archbishop Fernández and Cardinal Ouellet. The first point is fairly straightforward. The reason for the Church's unchanging and exceptionless sacramental discipline on the reception of Holy Communion by civilly remarried Catholics is not, in the first place, based on the fact that these individuals are in a state of mortal sin. Instead, as confirmed by John Paul II and Benedict XVI, the Church's discipline is based on the objective situation of living *more uxorio* with someone who is not one's spouse. Varying degrees of subjective culpability do not change the status of divorced and remarried—a status that is in objective contradiction to the bond that unites Christ and the Church, which is signified and actualized in the Eucharist. Cardinal Müller develops this point on the basis of the sacraments as visible signs:

The principle is that no one can really want to receive a Sacrament—the Eucharist—without at the same time having the will to live according to all the other Sacraments, among them the Sacrament of Marriage. Whoever lives in a way that contradicts the marital bond opposes the visible sign of the Sacrament of Marriage. With regard to his bodily existence, he turns himself into a 'counter-sign' of the indissolubility, even if he is not subjectively guilty. Exactly because his carnal life is in opposition to the sign, he cannot be part of the higher Eucharistic sign—in which the incarnate Love of Christ is manifest—by thus receiving Holy Communion. If the Church were to admit such a person to Holy Communion, she would be then committing that act which Thomas Aquinas calls "a falseness in the sacred sacramental signs." This is not an exaggerated conclusion drawn from the teaching, but, rather, the foundation itself of the sacramental constitution of the Church, which we have compared to the architecture of Noah's Ark. The Church cannot change this architecture because it stems

from Jesus Himself and because the Church was created in it and is supported by it in order to swim upon the waters of the deluge. To change the discipline in this specific point and to admit a contradiction between the Eucharist and the Sacrament of Marriage would necessarily mean to change the Profession of Faith of the Church. The blood of the martyrs has been shed for faith in the indissolubility of marriage—not as a distant ideal, but as a concrete way of conduct.¹⁸

The second problem with the interpretation of Ouellet and Fernández is more fundamental and far-reaching. It should be acknowledged by all that the distinction between an objectively sinful situation and varying degrees of subjective culpability is a classical and unproblematic dimension of the Church's moral teaching. In practical terms—for example, in the confessional—it may be very important to establish a diminished degree of subjective guilt. However, and this is the key point, this distinction is valid for interpreting *past* actions. It cannot be prescriptive for future behavior; it cannot form the basis for pastoral direction or accompaniment. The claim of Fernández is that there is an exception to the general norm “thou shall not commit adultery” given certain extenuating circumstances, like a woman abandoned by an abusive husband and is now raising new children with someone else who cares for her.

Archbishop Fernández's thesis is, given such circumstances, it is permissible to have sexual relations with someone other than one's spouse. But is this not an example of “situation ethics,” a moral theory condemned by John Paul II as contrary to the Church's faith? To be fair, Archbishop Fernández is not entirely unaware of this difficulty. His essay includes a section titled “Beyond Situationalism.” Here he writes, “It is not the concrete circumstances that determine objective morality. That forms of conditioning can diminish culpability does not mean that what is objectively evil may become objectively good.”¹⁹ And, “If the act remains objectively immoral and does not lose its objective gravity, then it is not possible that it can be ‘chosen’ with conviction, as if it were part of the Christian ideal.”²⁰

The last clause of this sentence, “as if it were part of the Christian ideal,” contains *in nuce* the Archbishop's analysis of what is, or would be, wrong with the act in question: the fact of considering this act as though it were consistent with the ideal or the abstract “general norm.” In other words, the wrong would consist in a (false) statement concerning the *objective* side of the act. However, the objective side of the act, in Archbishop Fernández's view, is an *ideal*. Hence the crucial point he wishes to make is that, so long as the distinction between the

¹⁸ Müller, “Was dürfen wir von der Familie erwarten?”

¹⁹ Fernández, “El capítulo VIII de *Amoris Laetitia*.”

²⁰ Fernández, “El capítulo VIII de *Amoris Laetitia*.”

objective ideal and what is possible for the subject is kept firmly in view, pastoral accompaniment can tolerate or even approve the behavior in question as consistent with God's plan. The door is open to situation ethics since it is now left to pastoral discernment to decide whether or not the act in question is sinful. Cardinal Blase Cupich follows the logic of this argument to its unavoidable conclusion when he writes (and here he is speaking about the novelty of *Amoris Laetitia* in its treatment of civilly remarried Catholics):

The voice of conscience—the voice of God—or if I may be permitted to quote an Oxford man here at Cambridge, what Newman called “the aboriginal vicar of Christ”—could very well affirm the necessity of living at some distance from the Church's understanding of the ideal, while nevertheless calling a person “to new stages of growth and to new decisions which can enable the ideal to be more fully realized.” (AL 303)²¹

In context, the euphemism “living at some distance from the Church's understanding of the ideal” stands for having sexual relations with someone who is not one's spouse. What, in obedience to Christ, the entire Catholic tradition calls a serious sin is re-described by Cardinal Cupich as perhaps a necessary requirement of obedience to the voice of God.

Neither Ouellet nor Fernández takes this final step, but they have laid the premises for this step to be taken. Notice in particular how, on the one hand, Fernández says that adultery is and remains objectively wrong. Yet at the same time, he seems to suggest that diminished subjective culpability can change the moral species of the act. This is why we have to avoid describing the act as adultery. In other words, the circumstances or the concrete situation do not simply pertain to diminished subjective culpability but entail a neutralization of the object of the moral act, which has been relegated to the realm of an objective “ideal” whose moral relevance for the subject depends on a variety of individual factors. This is a subtle form of situation ethics.

In a key footnote that references *Veritatis Splendor's* teaching on “intrinsically evil acts,” Cardinal Ouellet presents a similar argument, albeit more cautiously. He writes:

Adultery is always objectively a grave sin, but it is not always perceived as such by a conscience that has been led into error.... It is thus necessary to ‘discern’ the actual state of conscience of the concrete

²¹ Cardinal Blase J. Cupich, “Pope Francis' Revolution of Mercy: *Amoris Laetitia* as a New Paradigm of Catholicity,” Von Hügel Institute Annual Lecture, Cambridge, England, February 9, 2018, www.vhi.st-edmunds.cam.ac.uk/resources-folder/papers-presentations/cupich-annual-lecture-2018.

person in a pastoral dialogue ...*Amoris Laetitia* teaches how to accompany, discern, and shape decisions in the conscience in the concrete circumstances.²²

Elsewhere he clarifies that “pastoral accompaniment seeks to help persons...to discern the possible choices available in their situation here and now, without losing sight of the ideal even if it has not yet been reached.”²³ Note the slippage here: From the diminished culpability due to a malformed conscience (in a state of invincible ignorance?), Ouellet moves to the same relegation of the object of the act to the status of an objective ideal that does not yet tell us anything about the actual state of the subject’s moral situation before God.

How unfortunate that the commandments of God are reduced to an aspirational ideal beyond one’s current possibilities. This is a dramatic departure from John Paul II’s teaching in the third chapter of *Veritatis Splendor*, which presents martyrdom as the luminous witness to the holiness of God’s law and the inviolability of his commandments. To love God is to keep his commandments. And John Paul II says more:

It is in the saving Cross of Jesus, in the gift of the Holy Spirit, in the Sacraments which flow forth from the pierced side of the Redeemer (cf. Jn 19:34), that believers find the grace and the strength always to keep God’s holy law, even amid the gravest of hardships.... Only in the mystery of Christ’s Redemption do we discover the “concrete” possibilities of man. “It would be a very serious error to conclude... that the Church’s teaching is essentially only an ‘ideal’ which must then be adapted, proportioned, graduated to the so-called concrete possibilities of man. And of which man are we speaking? Of man dominated by lust or of man redeemed by Christ? This is what is at stake: the reality of Christ’s redemption” (no. 103).

But someone might wonder, is it not heartlessly legalistic to concentrate on the object of the moral act and insist on its role in determining the quality of that act? This approach would perhaps be guilty of such legalism if it excluded any role for degrees of subjective culpability. But, as we have seen, it does not do so. Rather than ruling out appeal to the subject’s diminished culpability, it seeks to preserve the intelligibility of such an appeal, which, after all, makes no sense unless there is such a thing as wrong acts for the subject to be less guilty of. It is only if there are kinds of actions, wrong in themselves by their very nature, that there can be any sort of subjective responsibility for them in the first place. The point is simply that the existence of such acts depends on the existence of “objects” that have an inner moral quality and are ordered *per se* to certain ends.

²² Ouellet, “Accompanying, Discerning.”

²³ Ouellet, “Accompanying, Discerning.”

But why, again, is this claim not just a subtle form of legalism? Jesus himself was as insistent on the objective, publicly available nature of actions as he was on the intentions of the heart: “By their fruits you will know them” (Matthew 7:16); “not everyone who says to me ‘Lord, Lord’ will enter the kingdom of heaven, but only those who do the will of my Father in heaven” (Matthew 7:21): These and similar passages highlight Christ’s insistence on the importance of what one actually does, *visibly and in the flesh*, as opposed to what one merely says or thinks one is doing. Christ’s own teaching, then, seems to require emphasis on the moral relevance of the object, which may not be vaporized into a mere “ideal” telling us nothing about the actual moral quality of the acting subject. Clearly, Christ is the last person one could plausibly accuse of legalism! No, the line between Christ’s teaching and the notion of the moral object sketched here has nothing to do with legalism and everything to do with the realism of the Incarnation, in which the Word becomes flesh and enfleshed action for all the world to see.

The Logos did not hover over the physical like a merely private, subjective intention, but fulfilled his salvific purpose in, through, and with the public, observable reality of human bodily action and its innate form. To deny or attenuate that reality and that form in our own lives is to enact a counterwitness to this fulfillment. It is to disavow the Incarnation and the divine love revealed and shared in the Logos’s unreserved commitment to the logos of our bodily nature.

CONCLUSION: INTERPRETING AMORIS LAETITIA IN LIGHT OF THE INCARNATION

In response to the tragic situation of divorce and remarriage, both *Familiaris Consortio* and *Amoris Laetitia* present the countenance of the Church as a “merciful mother” who encourages and accompanies the faithful along the path of life and the Gospel. The commandments of God and the sacraments of the Church are signposts and nourishment for the journey. What form does mercy take when there is an objective contradiction between one’s manner of life and the sacramental bond that signifies Christ’s union with the Church? After *Amoris Laetitia*, what is the Church’s teaching on the reception of Holy Communion by civilly divorced and remarried Catholics? What is required of Catholic theologians who want to think with the Church in obedience to the magisterium? In answer to these questions, I offer three concluding reflections.

Amoris Laetitia has not changed the sacramental discipline of the Church. Cardinal Müller is correct: “If *Amoris Laetitia* had intended to rescind such a deeply rooted and such a weighty discipline, it would have expressed itself in a clear manner and it would have given the

reasons for it.”²⁴ Where there is a doubt or uncertainty, an ecclesial text should be interpreted as being in continuity with the faith of the Church and in continuity with the received teaching of the Church’s magisterium.

Second, I consider a possible objection: What about the pastoral letter of the Bishops of the Region of Buenos Aires?²⁵ This letter, which seems to suggest a change in the Church’s discipline, received explicit papal approval. My response: this brief letter is itself unclear. It refers to complex circumstances where “it may not be feasible” for a person living with someone other than one’s spouse to live in continence. In certain cases, because of diminished subjective culpability, it may be possible to access the sacraments of Reconciliation and the Eucharist. These words repeat the ambiguity of *Amoris Laetitia*—they do not resolve the question. Once again, Cardinal Müller’s words are germane. He writes:

Recently groups of bishops or individual episcopal conferences have issued directives concerning the reception of the sacraments. For these statements to be orthodox, it is not enough that they declare their conformity with the pope’s presumed intentions in *Amoris Laetitia*. They are orthodox only if they agree with the words of Christ preserved in the deposit of faith. Similarly, when cardinals, bishops, priests, and laity ask the pope for clarity on these matters, what they request is not a clarification of the pope’s opinion. What they seek is clarity regarding the continuity of the pope’s teaching in *Amoris Laetitia* with the rest of tradition.²⁶

An appeal to the opinion or presumed intentions of the successor of Peter is not the decisive criterion of Catholic obedience to the magisterium. In order to obey the magisterium, it is necessary to know what the magisterium is teaching. It is entirely appropriate, and even necessary, to pose questions and seek clarification.²⁷ Here we can recall the words and the example of the late Cardinal Carlo Caffarra,

²⁴ Müller, “Was dürfen wir von der Familie erwarten?”

²⁵ The original letter, “Criterios básicos para la aplicación del capítulo VIII de *Amoris laetitia*,” together with the response of Pope Francis, is available at w2.vatican.va/content/francesco/es/letters/2016/documents/papa-francesco_20160905_regione-pastorale-buenos-aires.html.

²⁶ Cardinal Gerhard Müller, “Development or Corruption,” *First Things*, February 20, 2018, www.firstthings.com/web-exclusives/2018/02/development-or-corruption.

²⁷ Cf. Congregation for the Doctrine of the Faith, *Donum Veritatis* – Instruction on the Ecclesial Vocation of the Theologian (1990): “The Magisterium can intervene in questions under discussion which involve, in addition to solid principles, certain contingent and conjectural elements. It often only becomes possible with the passage of time to distinguish between what is necessary and what is contingent.... If, despite a loyal effort on the theologian’s part, the difficulties [in accepting a non-irreformable magisterial teaching] persist, the theologian has the duty to make known to the Mag-

who, while raising questions and encouraging the successor of Peter to fulfill his task of “strengthening the brethren” in their faith (cf. Luke 22:32), declared: “I was born a Papist, I have lived as a Papist, and I will die as a Papist.”²⁸

This leads to the third and final point: the document by Cardinals Caffarra, Brandmüller, Burke, and Meisner will be remembered by future generations as an important witness to the unbroken apostolic faith of the Church, and a witness to the unbreakable connection between faith and the moral life. In the Incarnation, God has entered human history and shared his own life and love. This gift of God in the flesh is, as it were, extended and communicated to us in the sacraments of the Church. Christian witness to the truth of the Incarnation, the indissolubility of marriage and the presence of Christ in his Eucharistic sacrifice, is measured not only in the interior intimacy of the conscience of each individual but in an action of the body, in a word that is spoken or unspoken.²⁹ The confession that Jesus Christ has come in the flesh is a truth to be lived. **M**

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isterial authorities the problems raised by the teaching in itself, in the arguments proposed to justify it, or even in the manner in which it is presented. He should do this in an evangelical spirit and with a profound desire to resolve the difficulties. His objections could then contribute to real progress and provide a stimulus to the Magisterium to propose the teaching of the Church in greater depth and with a clearer presentation of the arguments” (no. 24).

²⁸ Cf. Anthony Faiola, “Conservative dissent is brewing inside the Vatican,” *Washington Post*, September 7, 2015, www.washingtonpost.com/world/europe/a-conservative-revolt-is-brewing-inside-the-vatican/2015/09/07/1d8e02ba-4b3d-11e5-80c2-106ea7fb80d4_story.html?utm_term=.8572456632ac.

²⁹ Cf. Melina, “Conference to the Penitentiaries.”