

## Article

# Catholic Transitions and Tensions: Marriage, Divorce, Plural Normative Standards, and New Paradigms

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**Abstract:** In the framework of the process of secularization of civil society, the institution of marriage has traditionally been at the crossroads between religious and secular law, and it gives the opportunity to investigate whether and to what degree a religious law can develop when it interacts with a secular juridical context without weakening its identity. The Italian lawmaker has traditionally adopted a “benevolent secularism” approach, trying to balance new social expectations with the Catholic idea of marriage. The above-mentioned approach has resulted in aligning with the mainstream opinions in Italian society, which are consistent with the guidelines of the Catholic Church. Indeed, in Italy, the Catholic Church, which considers marriage as a sacred unbreakable bond between a man and a woman, has often had an open and incisive influence on legislative policy choices. Since 1970, there has been a gradual erosion of Catholic influence on public policies. New statutes and judicial rulings concerning such issue have emphasized a sharp ideological and political polarization between two opposite ethical narratives: the secular and the religious/Catholic one. Catholic tenets are no more able to influence political democratic processes. In the last fifty years, Italian legislation has followed a more progressive direction with regard to the issue of marriage, taking distances from the Catholic model. The Italian legal system has also started to face controversial issues, such as the status of same-sex unions, recognizing broader rights with a view to guaranteeing the coexistence of multiple views about marriage. Thus, the Catholic Church is challenged by new paradigms and is undergoing deep internal tensions and transitions. The present paper aims to focus on some new challenges, with regard to the status of divorcees who married again, unmarried couples, and same-sex couples in canon law. In the framework of the debate concerning the role and the reformability of religious laws, it will take into consideration new pontifical approaches.

**Keywords:** Catholic Church; marriage; remarried divorcees; access to sacraments



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## 1. Introduction: Marriage at the Crossroads between Secular and Religious Law

The institution of marriage has traditionally been placed at the crossroads between secular and religious law and gives rise to a complex interplay between individuals, religious communities and secular powers (Dieni 2002, p. 9; Madera 2015, p. 48). This intersection can lead to serious Church-State consequences and impels the need to investigate how and to what degree a religious law can develop within a secular juridical context, maintain its own identity, and still contribute to the building of a genuinely inclusive society (Consorti 2017, pp. 529–701). On the one hand, a disproportionately rigid interpretation of sacred texts risks to enhance the gap from everyday needs of the faithful; on the other hand, an excessively liberal approach could distort the original meaning of religious law (Madera 2017, p. 37).

The crucial question is whether canon law is flexible enough to adjust its internal rules to construct a dialogue with the secular narratives it interacts with, through a careful inner process of distinction between its core values and its more negotiable tenets, which can be adjusted to meet new expectations of the faithful (Witte and Nichols 2012, p. 371).

In contemporary legal systems the pattern of “one law for all” (Waldron 2002, p. 3) is increasingly the object of a process of erosion, as religious groups claim for accommodation

of their religious needs. Demands of religious freedom do not focus only on “entry freedom” but also on “exit freedom (Dieni 2002, p. 4)”.

The Italian legal system has adopted a pluralistic marriage system, where adherents to various faith communities can get married in accordance with their religious rituals. They can opt for a religious celebration which gains civil effects through a procedure of registration. The act of choosing the religious celebration, in alternative to the civil one, occurs before the civil registrar and is an ordinary pre-requirement to start the procedure aimed at recognizing civil effects to religious marriage. Such a procedure is completed through the registration of the marriage which aims to emphasize the right to religious freedom that Italian citizens enjoy. However, Italian pluralism is limping as it does not provide all the religious communities with an equal treatment. There is a complex architectural framework regulating religious marriage endowed with civil effects (the 1984 Villa Madama Church-State Agreement, state agreements with other faith groups, law no. 1159 of 1929, the relevant provisions of the Code of Civil Law), which gives rise to a disparate treatment of various religious communities.

The Catholic Church still enjoys a preferential treatment grounded on article 8 of the 1984 Villa Madama Church-State Agreement. Such a rule provides that concordat marriage not only takes place through a religious celebration, but is regulated by canon law and ecclesiastical courts have jurisdiction in the case of marriage nullity and their decisions can gain civil effects through a judicial *exequatur*. However, the new regulation limits ecclesiastical jurisdiction in comparison to the previous regime (the 1929 Agreement). First, ecclesiastical courts no longer enjoy exclusive jurisdiction on concordat marriages, and petitioners can opt to challenge the validity of their marriage before civil courts. Second, canonical judgements are not automatically recognized civil effects, but are subject to a more serious scrutiny before the Italian Court of Appeal, which is charged with the task to investigate whether the canonical judgements complies with the requirements grounded on article 8.2. of the Concordat. Actually, the reform aims to safeguard individual religious freedom, which gains protection not only in the entry phase (where a believer can opt for a religious marriage endowed with civil effects) but also in the exit stage (where an individual can change his mind and opt to challenge the marriage before the civil court).

Influential academics have underlined the incoherences of the 1984 regime: first of all, the failure of the Italian lawmaker, to enact an updated enforcement law with regard to the regulation of marriage, in order to replace the law no. 847/1929 (Domianello 2019, p. 208). Second, there has been a crystallization of the Concordat regime, which has not been revised either in the light of changes in state law (law no. 218/1995) or of the introduction of new procedures in canon law with regard to the declaration of nullity of canonical marriage (*m.p. Mitis Iudex Dominus Iesus*) (Domianello 2019, p. 209). The inability to adjust concordat provisions and make them compliant with new legal trajectories has weakened their real competitiveness with civil law (Fuccillo 2018, p. 427ff.).

Although the Italian system has a long tradition of cooperation with the Catholic Church, civil marriage has undergone a gradual process of secularization of marriage. It has, thus, resulted in a gradual dissociation from the religious/Christian model and led to an increasing skepticism toward the maintenance of a parallel system of ecclesiastical jurisdiction (Domianello 2011).

Indeed, Italian judges have progressively abandoned their traditional deferential approach toward canonical jurisdiction. The space of autonomy of the Catholic Church in the field of marriage has been progressively reduced by case law with regard to the recognition of civil effects to canonical judgements of nullity. The notion of public order plays the role of an “institutional filter” (Habermas 2011, p. 26) which defines the frontiers of the reasonableness of the *exequatur*. Thus, according to Italian Courts the accommodation of religious needs, even concerning marriage, cannot go so far as to compromise the compelling state interest to protect the most vulnerable party of the relationship (Cesarini 2020, pp. 955–68).<sup>1</sup>

In the Italian landscape, the increasing process of secularization has emphasized a departure of secular marriage from the religious paradigm. The State has traditionally accorded preference to religious narratives of the mainstream groups. For this reason, civil marriage was facially religiously neutral but substantially coherent with the majoritarian narratives (Ferrari 2002, pp. 19–59).

Such a perspective has been subject to a turnaround due to the rise of new social needs concerning conjugality (Bettetini 1996, p. 21ff.). The individualistic and private dimension of marriage has prevailed over its institutional and public aspects (Madera 2007, p. 2). In the meantime, there has been a fragmentation of the pattern of family, due to the legal recognition of civil partnerships, and the higher level of protection guaranteed to alternative models of temporary affectivity and temporary stability. Such a recognition shows the gradual detachment of civil law from Catholic influence and the progressive development of a genuinely secular pattern, which focuses on the relational dimension rather than on the establishment of a facial legal bond. However, the implementation of a pluralistic society means the effective recognition of equal respect and dignity (grounded on article 3 of the Italian Constitution) to multiple views, ideas, convictions and opinions, with a view to promoting an open forum where the State is charged with guaranteeing their harmonious coexistence (Domianello 2019, p. 211). Such a view has led to a progressive disentanglement between marriage and reproduction, mutual assistance, heterosexuality, indissolubility (Dieni 1999, p. 2).

Divorce has undergone an analogous process of deregulation. The link between divorce and a violation of marital responsibilities duties has been weakened. Nowadays divorce is no longer connected with fault and is increasingly perceived as a fundamental right in the case of failure of the marital union. The evolution of divorce combines with the introduction of facilitated procedures, a disempowerment of the role of courts, the admissibility of the possibility to resort to administrative boards where there is an agreement between the parties concerned, and to contract arrangements to rule the financial aspects of divorce (Madera 2016, pp. 8–10).

The Italian legal system introduced the so-called quick divorce, the possibility to resort to a civil registrar to reach an agreement about separation or divorce or to opt for assisted negotiation (Russo 2004, p. 373).

## 2. The Crisis of the Canonical Paradigm of Marriage

On its side, the contemporary Catholic Church has undergone a process of increasing disempowerment: it has lost its ability to influence democratic processes and it can no longer “speak as a majority” (Nejaime and Siegel 2015, p. 2516).

According to Edoardo Dieni, canonical marriage represents a crucial challenge and is undergoing a deep crisis, involving an “internal” and an “external” dimension, due to increasing cultural, cultural and social changes. The crisis is “external” as it comes from a secularized and globalized society. There is an increasing clash between Catholic and secular values. However, the crisis becomes “internal” and ideological when there is a lack of uniformity within the religious community which ranges between conservative and progressive approaches (Dieni 1999, pp. 1–2).

In the wake of the Second Vatican Council “expectations of modernization” have arisen within the community of believers, which called for new “paradigms” that were more coherent with the frailty of the human condition (Höllinger 2017, pp. 105–19). Indeed, a threatening gap has arisen between the canonical model, which has traditionally showed a “formalistic” and “self-referential” approach and the “lack of a dialogue” with its recipients (Dieni 1999, p. 2; Madera 2017, p. 590).

The inability of the Church to fulfill the expectations of the faithful has given rise to a high risk of their “disaffection” and of a progressive departure from the ecclesiastical community (Join-Lambert 2017, p. 142; Madera 2017, p. 605).

The debate has often focused on the crucial status of divorced-remarried couples, who were traditionally excluded from the sacraments (Fumagalli 2007, p. 534; Madera 2015,

p. 364ff.). Such couples suffered from the discrepancy between their civil divorce and the continuation of their canonical marriage (De Paolis 2016). Their full re-integration in the religious community was dependent on their commitment to live their second conjugal life *tamquam frater et soror* (namely, burdening the price of a “de-sexualization” of the marital relationship) (Dieni 1999, p. 10; Madera 2017, p. 591).

The traditional tool of the declaration of nullity (even though it had been subject to a recent reform) (Boni 2016a, pp. 1–78; 2016b, pp. 1–76; 2016c, pp. 1–82)<sup>2</sup> can provide only a partial solution where there is a convergence between the original invalidity of the bond and the concrete irreversible fracture of the conjugal relationship (Franceschi 2013, p. 208ff.; Madera 2015, p. 369).

### 3. The Urge to Provide a Response to Remarried Divorcees

The status of divorced-remarried couples has witnessed the clash between the conservative approach of the Synods and the Magisterium for a long time, unable to reconcile the principle of indissolubility of marriage with the frailty of the human condition, and more progressive approaches of theological and canonical doctrine. Such progressive approaches ranged from a de-juridization of the principle of indissolubility, an extension of the cases of canonical nullity, to the promotion of conscientious choices, to pastoral paths aimed at taking back divorced remarried in the ecclesiastical community (Madera 2015, p. 91ff. and its bibliographical references). Pastoral solutions take into serious consideration the more tolerant approaches toward the failure of marriage of the Anglican Church and the Orthodox Church (Petra 1995).

However, within the Catholic Church there has been a gradual transition from a strict exclusion under the 1917 Canonical Code to the identification of alternative ways to re-integrate remarried divorcees, culminating in Pope Benedict XVI controversial theorization of a “spiritual communion”.<sup>3</sup>

Given the tension between the magisterial doctrine and the real situation of many Catholic individuals, the Catholic Church has undergone an in-depth process of discernment, aimed at reflecting on the dimension of conjugality as a whole, which has been increasingly perceived as a “pastoral challenge”<sup>4</sup> requiring a “change of paradigm” (Höllinger 2017, p. 105ff.; Kasper 2014; Madera 2017, pp. 589–90).

The recent Synods on Family emphasized an alarming split between the Synodal fathers. Some of them strongly asserted the need to follow the traditional magisterial teaching while others invoked new effective changes aimed at providing a remedy to the painful condition of remarried divorcees (Hünemann 2017, p. 88; Knieps-Port le Roi 2017, p. 2ff.). In the wake of a complex synodal process, Pope Francis on March 19, 2016, enacted the Apostolic Exhortation, *Amoris Laetitia* (Morrisey 2016, p. 1),<sup>5</sup> with a view to provide acceptable solutions to the unsettled crisis concerning present-day families (Hünemann 2017, p. 88; Moneta 2017, pp. 349–60; Franceschi 2016, pp. 355–81)<sup>6</sup>. After five years of implementation, such a controversial exhortation still gives rise to a harsh debate between conflicting interpretations (Keenan 2021, p. 53; Keenan 2020, pp. 83–102; Knieps-Port le Roi and Brenninkmeijer-Werhahn 2016; Gallicho and Keenan 2018).

### 4. Chapter VIII of *Amoris Laetitia*

During the twentieth century many popes have analyzed the meaning, the role, and the scope of canonical marriage. John Paul II had a restrictive approach toward the status remarried divorcees, reiterating the traditional negative definition of a situation of objective contradiction to the union of love between Christ and the Church.<sup>7</sup> Instead, Pope Francis called on the Church to investigate the full dimension of conjugality as “good news” (Thomasset 2017, p. 68) for the religious community as a whole rather than to focus exclusively on the access of sacraments (Mattioli 2017, p. 1002ff.). He provided a new view of marriage as a “challenging mosaic” where many different realities co-exist (Petra 2016a, p. 243ff.; 2016b, pp. 202–16; Madera 2017, p. 593)<sup>8</sup>: the experience of many couples shows that often “love co-exists with imperfection” (Bartolomei 2017, pp. 56–70).<sup>9</sup> Following this

perspective, he stated that the canonical ideal should be considered as a “compass”, which leads the navigation toward “a path of growth” (Thomasset 2017, p. 67; Madera 2017, p. 593). From its start, *Amoris Laetitia* dilutes the traditional canonical view on the status of remarried divorcees, and adopts a softer approach toward “those situations that fall short of what the Lord demands of us” (Faber and Lintner 2017, p. 228)<sup>10</sup>.

Indeed, the canonists’ analysis on *Amoris Laetitia* focused on the Chapter VIII, concerning the role of the Church “to accompany, discern and integrate the weakness”, specifically on those parts which seem to open access to sacraments for irregular couples under certain circumstances (Madera 2017, pp. 594–95).

According to many canonical experts the range of canon 915 covers the situation of remarried divorcees, regardless of the lack of an express reference to it. However, some German commentators put in doubt that the situation of remarried divorcees always mirrors the standards identified in canon 915. They identified possible cases of lack of subjective imputability, that is the subjective perception of their gravely sinful condition, obstinacy, perseverance, manifest nature of the sinful situation (Lüdicke 2012, pp. 335–40). Disclaiming such a view, in 2000 the Pontifical Council for Legislative Texts clarified that the status of civil unions objectively met the requirements grounded on canon 915.

However, the Exhortation *Amoris Laetitia*, moved forward a more flexible approach, representing a genuine “point of no return” (Knieps-Port le Roi 2017).

## 5. The Issue of the Access to Sacraments for Irregular Couples

Francis emphasizes the need for a careful “discernment” of disparate concrete situations (Petra 2016a, p. 243ff.; 2016b, pp. 202–16). Discernment implies the ability to assess the terms of an issue and to make a judgement about the specific circumstances of a case. There is the case of who “flaunts an objective sin as if it were part of the Christian ideal, or wants to impose something other than what the Church teaches” and “this is a case of something which separates from the community”.<sup>11</sup> In other cases, proper relevance has to be given to mitigating circumstances, which may restrict or reduce personal responsibility (Reinhard 2017, p. 18; Lintner 2017, p. 130).<sup>12</sup> Such an approach urges a careful distinction between the “objective” and “subjective” dimensions of the pastoral assessment (Lintner 2017, pp. 130–39; Madera 2017, p. 597). Various situations are listed that require a close consideration (Petra 2016a, p. 243ff.; 2016b, pp. 202–16; Mattioli 2017, p. 1002ff.).<sup>13</sup> For this reason judgements have to be avoided which do not sufficiently scrutinize the “complexity” of those situations (Faber and Lintner 2017, p. 228; Madera 2017, p. 600).

As “the degree of responsibility is not equal in all cases,”<sup>14</sup> a path of responsible personal and pastoral discernment” is encouraged.<sup>15</sup> Remarried-divorcees should reflect on multiple factors: “how did they act toward their children when the conjugal union entered into crisis; whether or not they made attempts at reconciliation; what has become of the abandoned party; what consequences the new relationship has on the rest of the family and the community of the faithful; and what example is being set for young people who are preparing for marriage”.<sup>16</sup>

Conversation with a priest can support the individual to reach a correct discernment of his own situation and the concrete possibility of a fuller participation in the life of the Church. Francis emphasized that “the consequences or effects of a rule need not necessarily always be the same” (*Amoris Laetitia*, § 300).<sup>17</sup>

Furthermore, Francis acknowledged that there could be “conditioning and mitigating factors”<sup>18</sup> of a sinful situation; for this reason, “it is possible that in an objective situation of sin—which may not be subjectively culpable, or fully such—a person can be living in God’s grace, can love and can also grow in the life of grace and charity, while receiving the Church’s help to this end.”<sup>19</sup>

Footnote no. 351 of *Amoris Laetitia*, however, included the most puzzling statement, as Francis conceded that in “in certain cases, this can include the help of the sacraments”.<sup>20</sup> Such an argument is coherent with his previous statements he refers to, where he added that

“the confessional must not be a torture chamber, but rather an encounter with the Lord’s mercy”<sup>21</sup> and provided a new understanding of Eucharist as “not a prize for the perfect, but a powerful medicine and nourishment for the weak”.<sup>22</sup> We cannot underestimate that in a previous footnote he emphasized that discernment can be helpful to distinguish situations where “a grave fault” is lacking, the consequences and effects of a rule can be different.<sup>23</sup>

Footnote no. 351 has received various interpretations (Pentin 2016). The *Buenos Aires Bishops’ Guidelines* underlined the difficulties arising from the choice of sexual continence, stressed the compulsory nature of the step of reconciliation, and promoted a dynamic discernment of concrete situations, even though access to the sacraments is not possible in every situation.<sup>24</sup> Francis confirmed that the Guidelines are a correct interpretation and that a process of discernment can, in some cases, can lead the way to access to sacraments for irregular couples (Parolin 2016, p. 1071ff.).<sup>25</sup>

## 6. The Unavoidable Interplay between a New Pastoral Approach and Canonical Implications

Although *Amoris Laetitia* shows “theological depth or complexity” (Biliniewicz 2018, p. 7), it has a preeminently pastoral approach. However, the crucial question is whether and to what extent *Amoris Laetitia* can have an impact on canon law. Francis Morrissey underlined that “For Pope Francis, it is obvious that ‘persons’ and the context of their lives come before ‘laws’” (Morrissey 2016, p. 1).

Francesco Coccopalmerio emphasized an “hermeneutic of the person” which demonstrated Francis’ attention toward “a way of thinking, of evaluating reality, and of interpreting the world . . . through the person . . . What matters is the person, the rest comes as a logical consequence” (Coccopalmerio 2017, p. 53). One of the most influential Italian canonists, Paolo Moneta, underlined that the impact of the Exhortation on the unresolved relationship between canon law and pastoral care plays a key role (Moneta 2017, p. 352). A reflection on canon law is pressing, to provide an interpretation of canon 915 more coherent with the new pastoral trajectory. Such a trend weakens the strong connection between irregular situations and general prohibitions, in the light of the variety of specific concrete situations (Moneta 2017, p. 353; Lintner 2017, p. 140; Mattioli 2017, p. 1002ff.; Madera 2017, p. 601).

*Amoris Laetitia* underlined that “The divorced who have entered a new union, for example, can find themselves in a variety of situations, which should not be pigeonholed or fit into overly rigid classifications leaving no room for a suitable personal and pastoral discernment”.<sup>26</sup> Pope Francis stressed the painful situation of “those who made every effort to save their first marriage and were unjustly abandoned”<sup>27</sup> (*Amoris Laetitia*, § 298) and the uncertain condition of “those who have entered into a second union for the sake of the children’s upbringing, and are sometimes subjectively certain in conscience that their previous and irreparably broken marriage had never been valid”<sup>28</sup> (*Amoris Laetitia*, § 298).

Furthermore, *Amoris Laetitia* highlighted that a second union may be “consolidated over time, with new children, proven fidelity, and generous self-giving, Christian commitment, a consciousness of its irregularity and of the great difficulty of going back without feeling in conscience that one would fall into new sins”<sup>29</sup> (*Amoris Laetitia*, § 298). On this point, *Amoris Laetitia* referred to the Catechism of the Catholic Church, which clearly mentions factors that weaken personal responsibility: “imputability and responsibility for an action can be diminished or even nullified by ignorance, inadvertence, duress, fear, habit, inordinate attachments, and other psychological or social factors.”<sup>30</sup> It also referred to further circumstances which mitigate moral responsibility, mentioning “affective immaturity, force of acquired habit, conditions of anxiety or other psychological or social factors that lessen or even extenuate moral culpability”<sup>31</sup> (*Amoris Laetitia*, § 302). For this reason, Francis urges the need of a careful distinction between “a negative judgment about an

objective situation” and the effective “imputability or culpability of the person involved”<sup>32</sup> (*Amoris Laetitia*, § 302) (Madera 2017, p. 599).

As the close link between irregular situations and grave fault is reduced when certain «worthy circumstances» can be discerned (Moneta 2016, p. 110; Madera 2017, p. 601), “it is can no longer simply be said that all those in any “irregular” situation are living in a state of mortal sin and are deprived of sanctifying grace”<sup>33</sup> (*Amoris Laetitia*, § 301). Following this perspective Francis emphasized the maternal image of the Church, manifesting solicitude toward its most marginalized members: “I understand those who prefer a more rigorous pastoral care that leaves no room for confusion. But I sincerely believe that Jesus wants a church attentive to the goodness that the Holy Spirit sows in the midst of human weakness, a mother who, while clearly expressing her objective teaching, always does what good she can, even if in the process her shoes get soiled by the mud of the street. The church’s pastors, in proposing to the faithful the full ideal of the Gospel and the church’s teaching, must also help them to treat the weak with compassion, avoiding aggravation or unduly harsh or hasty judgments.”<sup>34</sup>

We cannot underestimate that a careful case-by case analysis of individual situations gives proper relevance to conscience in the process of discernment and in the clarification of personal responsibility (Lintner 2017, p. 139; Madera 2017, p. 604). Francis emphasized the role of individual conscience which “needs to be better incorporated into the Church’s praxis in certain situations which do not objectively embody our understanding of marriage”.<sup>35</sup>

Although Francis had no intent to promote a completely subjective perspective, such a new approach urges an in-depth reflection on the interplay between the norms of the Magisterium and personal conscience (Fumagalli 2017, p. 124), and encourages a cautious exploration of new “operative options” (Faber and Lintner 2017, p. 230). In any case, the aim of all the process, is the “discernment” of irregular situations, which has to combine both the personal and the pastoral perspective (Petrà 2016a, p. 243ff.; 2016b, pp. 202–16; Madera 2017, p. 596). Following this perspective, a “look of appreciation”<sup>36</sup> can play a pivotal role (Faber and Lintner 2017, p. 243).

### 7. *Amoris Laetitia* as a Test of Resilience of the Canonical Marriage

According to Morrissey, “Pope Francis has opened new doors for the faithful who have gone through the pain of divorce, and who have subsequently remarried” (Morrissey 2016, p. 25). *Amoris Laetitia* provides a powerful framework for discerning the complexity and plurality of irregular situations, with a view to promoting spiritual growth of the faithful, even of the frailest (Knieps-Port le Roi 2017, p. 5).

However, Francis’ intent is not to provide new canonical rules. He underlined that “If we consider the immense variety of concrete situations such as those I have mentioned, it is understandable that neither the Synod nor this Exhortation could be expected to provide a new set of general rules, canonical in nature and applicable to all cases”<sup>37</sup> (*Amoris Laetitia*, § 301). According to some commentators, the Exhortation shows an “hermeneutics of continuity” rather than a “creative” hermeneutics which would clash with the previous doctrine of the Magisterium, even though the Church makes an effort to reconcile the need to safeguard the general rules protecting the common good with the need to prevent unjust measures burdening single individuals (Mattioli 2017, p. 1002ff.). Following this perspective, the aim of the Exhortation is the “restoration” of a fair “balance between justice and compassion (Pasquale 2017, pp. 195–215). However, Francis Morrissey underlined that “the Exhortation tells us . . . that certain circumstances can diminish or even remove all culpability . . . Therefore, if this is the case, then the prohibition spelled out in canon 915 would no longer apply in all instances where a divorced person has entered into marriage without first obtaining a dissolution or declaration of nullity regarding the previous union” (Morrissey 2016, p. 21). Indeed, *Amoris Laetitia* deconstructs the traditional interpretation of canon 915, according to which all remarried divorcees meet a four-pronged standard: (1) o “[1] obstinately [2] persists in [3] manifest [4] grave sin” (Morrissey 2016, p. 21).

According to Judith Hahn, the aim of the Church was to rectify the restrictive position adopted with regard to the interpretation of canon 915 provided by the Congregation for the Doctrine of the Faith's 1994 "Letter to the Bishops of the Catholic Church Concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful" (Hahn 2021).

Indeed, *Amoris Laetitia* is placed at the crossroads of the various pastoral perspectives, trying to reconcile different approaches (Hastetter 2017, p. 212; Madera 2017, p. 602; Biliniewicz 2018), with a view to giving relevance to the frailty of the human condition. Such a fragility requires a pastoral approach which does not crystallize once for all a certain interpretation of a rule but aims to meet the concrete needs of contemporary families (Thomasset 2017, p. 69; Madera 2017, p. 602).

Following this perspective, *Amoris Laetitia* can be considered as a test of the resilience of canonical marriage. The Catholic Church shows its ability and adaptability to endure changes and manage an in-depth internal and external crisis without sacrificing its inner identity, with a view to finding the most appropriate solutions which fit new conditions. The solution provided does not imply a negotiation of the principle of indissolubility of canonical marriage, but instead suggests an approach which combines dynamism and continuity within the doctrine of the Church (Mattioli 2017, p. 1002ff.). In this way the Catholic Church does not renounce to its pastoral or religious role because of the secularization of civil society, but shows its ability to reframe its doctrine with a view to managing concrete situations. Crisis has become a driving force to accelerate changes with a view to supporting the faithful, providing guidance and spreading a message of mercy.

We cannot underestimate that Francis has opened a new challenging pastoral trajectory aimed at leading a transition in canon law (Autiero 2019). *Amoris Laetitia* promotes a "new language of accompaniment, discernment and conscience" within the Church in order to endorse a "new evangelization" of the Catholic community (Keenan 2021, p. 41; Thiel 2016, pp. 49–91). The aim is the promotion of a canonical approach incline to "overcome" its own "boundaries," in the pursuit of an inner dynamic process of redefinition which can boost the role of religious law (Colaianni 2012, p. 20). Indeed, it is not the first time that the Church has mitigated the too severe implications of the principle of indissolubility, where it results in "excessive burdensome" and non-enforceable duties upon one of the spouses (Berlingò 2000). On this point, Edoardo Dieni refers to the case of the remarried widower, where the Church "tempered" an "ideal of indissolubility," acknowledging an extraordinary case of "death of conjugality" (Dieni 1999, pp. 565–66). Francis, as the "reformer" Pope, aims to restore the genuine spirit of the Second Vatican Council, and to overcome the clash of two different set of values (the secular and the religious), which are unable to construct a fruitful mutual dialogue. Following this perspective, canon law should not be stereotyped as a crystallized law, as it shows its ability to gain a "new contextualization in the social arena", in the pursuit of a new reconciliation between tradition and expectations for reform, and new balances between fundamental tenets and new needs of the faithful (Consorti 2017, p. 529).

Indeed, "gradualism" does not imply a dilution of canon law, but the search for striking balances between the strictness of general rules and the real good of the person, in the pursuit of God's salvific project (Kuljovsky 2017, pp. 50–52; Petit 2018, pp. 205–22). According to this view, the faithful should not be considered as entrapped in, but as main actors of, their religious affiliation, and as active participants in the continuous process of re-definition of religious law (Volpp 2008, pp. 143–70; Madera 2015, p. 20, and its bibliographical references).

## 8. Concluding Remarks

Until the twentieth century there had been a strict convergence between the regulation of civil marriage and religious marriage, due to States' adoption of an institutional view of marriage. Nowadays, the privileged link between the predominant Church and the State with regard to marriage has been progressively dismantled, even in legal systems



where there has traditionally been an institutional Church-State cooperation (Italy, Spain) due to the new needs of pluralist societies. The increasing clash between progressive state regulation and harsh church reactions risks transforming cooperation into antagonism, giving rise to confusion and distrust of the citizens/faithful. Indeed, religious law cannot be dissociated from the external context in which a faith community lives, which can affect the experience of the faithful, exacerbating a feeling of exclusion from their faith community (Madera 2015, p. 41).

It goes without saying that canon law has given an important contribution to the evolution of marriage civil law. We cannot forget its role in the process of recognition of gender equality: in the Middle Ages the introduction of canonical indissolubility facilitated the empowerment of women in the marital relationship, preventing their repudiation in the case of infertility (Dieni 2002, p. 10ff). Nowadays canon law has to recover its dialogical dimension with secular society, through a careful balance between tradition and new expectations of the faithful. The Catholic Church has to revisit its traditional standards and to develop new paradigms with a view to implementing its interaction with, and its traditional open-minded attitude toward, secular reality (Madera 2015, p. 59).

Francis's Exhortation opened a new pastoral for the Catholic Church, with a view to implementing the synodal relationship between the Catholic Church and families. Such a project has been corroborated by the 2018 Synod of Youth and the proclamation of 2022 as the *Amoris Laetitia* Year. Following this perspective, *AL* has been a game-changer in the pursuit of a reconciliation of legal and pastoral language through love, mercy and discernment. Such a mercy cannot be conditional: indeed, "the experience of mercy enables us to regard all human problems from the standpoint of God's love, which never tires of welcoming and accompanying."<sup>38</sup> Following this perspective mercy plays a role of mediation between the strictness of the rule and the uniqueness of concrete situations of irregular couples, as "nothing of what a repentant sinner places before God's mercy can be excluded from the embrace of his forgiveness"<sup>39</sup> (O'Reilly-Gindhart 2017, p. 5).

According to Francis, "imposing straightaway a set of rules that only lead people to feel judged and abandoned by the true Mother", implies turning them into "dead stones to be hurled at others."<sup>40</sup> Furthermore, the Catholic Church has to provide "a response to each one's dignity and fulfilment in reciprocity, communion and fruitfulness. This consists not merely of presenting a set of rules, but of proposing values that are clearly needed today, even in the most secularized of countries."<sup>41</sup>

Therefore, *AL* emphasizes the fundamental canonical principle of charity, which implies that the accompaniment of frailty does not result in a fragilization of the genuine beliefs of a religious community, but rather its enhancement (Petrà 2021, p. 49). Indeed, the paradigm of responsible personal and pastoral discernment is strictly connected with charity, and implies that "since the degree of responsibility is not equal in all cases the consequences or effects of a rule need not necessarily always be the same"<sup>42</sup> (*Amoris Laetitia*, § 300). Thus, *AL* succeeds in preserving religious tenets from their assimilation to secular values, with a view to revitalizing their most genuine inner essence.<sup>43</sup>

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## Notes

<sup>1</sup> Civil Court of Cassation, nos. 16379/2014; 16380/2014; 5250/2017; 3315/2017; 30900/2019; 1199/2020.

<sup>2</sup> FRANCIS, *Motu Proprio Mitis iudex dominus Iesus*, in *Acta Apostolicae Sedis*, CVII, 2015, pp. 946–57.

<sup>3</sup> BENEDICT XVI, *Apostolic Exhortation Sacramentum Caritatis*, § 29.

- 4 SYNOD OF BISHOPS, *Preparatory Document to the Third Extraordinary General Assembly of the Synod of Bishops*, i, « il Regno-  
Documenti », 21, 2013, p. 696.
- 5 According to Francis Morrisey: “An “Apostolic Exhortation” is a form of document used by the Popes to express their thoughts  
on contemporary issues.”
- 6 FRANCIS, Apostolic Exhortation *Amoris Laetitia*. Francis drew up the exhortation starting from the outcomes of the Synod of  
Bishops on the issue of family. See SYNOD OF BISHOPS, Fourteenth Ordinary General Assembly, *The Vocation and Mission of  
the Family in the Church and in the Contemporary World. The Final Report of the Synod of the Bishops to the Holy Father, Pope Francis*,  
Vatican City, 24 October 2015, available at [www.vatican.va](http://www.vatican.va) (accessed on: 18 June 2022); Third Extraordinary General Assembly of  
the Synod of Bishops, *Relatio Synodi “The Pastoral Challenges of Family in the Context of Evangelization*, 18 October 2014, available at  
[www.vatican.va](http://www.vatican.va) (accessed on: 18 June 2022).
- 7 JOHN PAUL II, Apostolic Exhortation *Familiaris Consortio*, § 84.
- 8 See *Amoris Laetitia* § 57.
- 9 *Amoris Laetitia* § 113.
- 10 *Amoris Laetitia* § 6.
- 11 *Amoris Laetitia* § 297.
- 12 *Amoris Laetitia* § 305: “Because of forms of conditioning and mitigating factors, it is possible that in an objective situation of  
sin—which may not be subjectively culpable, or fully such—a person can be living in God’s grace, can love and can also grow in  
the life of grace and charity, while receiving the Church’s help to this end”.
- 13 *Amoris Laetitia* emphasizes that a second union may be «consolidated over time, with new children, proven fidelity, generous  
self-giving, Christian commitment, a consciousness of its irregularity and of the great difficulty of going back without feeling in  
conscience that one would fall into new sins» (*Amoris Laetitia* § 298).
- 14 *Amoris Laetitia*, § 79.
- 15 *Amoris Laetitia*, § 37 and § 300.
- 16 *Amoris Laetitia*, § 300.
- 17 See notes 16 above.
- 18 *Amoris Laetitia*, § 301.
- 19 *Amoris Laetitia*, § 305.
- 20 *Amoris Laetitia*, § 305, ft. 351.
- 21 FRANCIS, Apostolic Exhortation *Evangelii Gaudium*, § 44.
- 22 *Evangelii Gaudium*, § 47.
- 23 *Amoris Laetitia*, § 300, ft. 336.
- 24 See *Buenos Aires Bishops’ Guidelines on Amoris Laetitia*, available at <https://cvcomment.org> (accessed on: 28 June 2022), §§ 5, 6, 10.
- 25 According to Francis, “there are no other interpretations of *Amoris Laetitia*”. Pietro Parolin, *Rescriptum “Ex Audientia SS. MI”*, in  
*AAS*, 108, 2016, p. 1071ff.
- 26 *Amoris Laetitia*, § 298.
- 27 See notes 26 above.
- 28 See notes 26 above.
- 29 See notes 26 above.
- 30 *Amoris Laetitia*, § 302.
- 31 See notes 30 above.
- 32 See notes 30 above.
- 33 See notes 18 above.
- 34 *Amoris Laetitia*, § 308.
- 35 *Amoris Laetitia*, § 303.
- 36 See *Amoris Laetitia* § 128.
- 37 See notes 16 above.
- 38 *Amoris Laetitia*, § 14.
- 39 *Amoris Laetitia*, § 2.
- 40 *Amoris Laetitia*, § 49.
- 41 *Amoris Laetitia*, § 201.
- 42 See notes 16 above.
- 43 *Amoris Laetitia*, § 307.

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