

## **“Mercy vs. Law and Justice: A False Dichotomy”**

**Speaker Series for St. Catherine Laboure Parish  
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**† Most Reverend Thomas John Paprocki  
Bishop of Springfield in Illinois**

My dear brothers and sisters in Christ:

It is good to be back with you here at St. Catherine Laboure Parish, where I served as deacon from the summer of 1977 until my ordination as a priest in May of 1978. It is hard to believe that forty years have passed since then, but this parish and many of the parishioners still have a special place in my heart.

The topic of my presentation is, “Mercy vs. Law and Justice: A False Dichotomy.” Specifically, I will address the questions: how can God be just and merciful at the same time? Can there be mercy without judgment? I will describe how a well-formed conscience enables us to experience God’s mercy. I will also look at how moral law, canon law or church law and civil law bind us and how they free us.

By way of introducing these themes, I start by recalling one of my favorite movies, "Shadowlands," the 1993 film about the British author and Oxford University scholar C.S. Lewis, starring one of my favorite actors, Anthony Hopkins, who played the part of Lewis. After I saw that movie for the first time in the theater, I rented the video and did something that I had never done before and have never done since: I watched the video in my living room with a note pad and jotted down quotes from the profound theological insights that were being spoken by the character of Lewis in the movie, which was based on his real life experiences dealing with the terminal illness of his wife Joy, who was dying of cancer.

C.S. Lewis was the author of many significant books. He is best known for his fictional work, especially *The Screwtape Letters*, *The Chronicles of Narnia*, and *The Space Trilogy*, and for his non-fiction Christian apologetics, such as *Mere Christianity*, *Miracles*, and *The Problem of Pain*. After the death of his wife, he wrote *A Grief Observed*.

Lewis was not always a Christian. Although he was baptized as an infant, as a young adult he lived as an atheist for several years before embracing the practice of Christianity at the age of 32 largely through the

influence of his fellow novelist and Oxford University colleague, J.R.R. Tolkien, author of *Lord of the Rings*.

During the Second World War, Lewis gave a series of radio talks on BBC, which he eventually developed into a theological book called *Mere Christianity*, in which he intended to describe the common ground of faith shared by the various Christian Churches and denominations, aiming to explain the fundamental teachings of Christianity.

There are several passages of that book that are pertinent to our topic of the false dichotomy between mercy vs. law and justice. Lewis starts his book on *Mere Christianity* by discussing what he calls the “Law or Rule about Right and Wrong,” which he explains in this way:

Now this Law or Rule about Right and Wrong used to be called the Law of Nature. Nowadays, when we talk of the “laws of nature” we usually mean things like gravitation, or heredity, or the laws of chemistry. But when the older thinkers called the Law of Right and Wrong the “Law of Nature,” they really meant the Law of Human Nature. The idea was that, just as all bodies are governed by the law of gravitation, and organisms by biological laws, so the creature called man also had his law – with this great difference, that a body could not choose whether it obeyed the law of gravitation or not, but a man could choose either to obey the Law of Human Nature or to disobey it.<sup>1</sup>

In our Catholic tradition, we call this Law of Human Nature or the Law about Right and Wrong the Natural Moral Law. The *Catechism of the Catholic Church* describes the Natural Moral Law this way:

Man participates in the wisdom and goodness of the Creator who gives him mastery over his acts and the ability to govern himself with a view to the true and the good. The natural law expresses the original moral sense which enables man to discern by reason the good and the evil, the truth and the lie.<sup>2</sup>

The concept of the natural moral law says that the difference between right and wrong is written in the heart and is known by reason, not by some special divine revelation. Natural law is not an esoteric knowledge revealed only to Christians, but is accessible to all people through human reason.

Lewis says that morality seems to be concerned with three things:

Firstly, with fair play and harmony between individuals. Secondly, with what might be called tidying up or harmonizing the things inside each individual. Thirdly, with the general purpose of human life as a whole: what man was made for: what course the whole fleet ought to be on: what tune the conductor of the band wants to play.<sup>3</sup>

Lewis then asks if it is not true that the popular idea of Christianity is simply this:

that Jesus Christ was a great moral teacher and if only we took His advice we might be able to establish a better social order and avoid another war? Now, mind you, that is quite true. But it tells you much less about the whole truth of Christianity and it has no practical importance at all. . . . If Christianity means only one more bit of good advice, then Christianity is of no importance. There has been no lack of good advice for the past four thousand years. A bit more makes no difference. But as soon as you look at any real Christian writings, you find that they are talking about something quite different from the popular religion. . . . Christianity seems to be telling us about another world, about something behind the world that we can touch and see. . . . Now the whole point of Christianity which gives us the greatest shock is the statement that by attaching ourselves to Christ, we can become ‘sons of God.’”<sup>4</sup>

Lewis is emphasizing that the goal of Christianity is not just to make us nice people who are very nice to each other. Rather, we are called to become something or someone entirely new, entirely different. Lewis explains it this way:

“Niceness” – wholesome, integrated personality – is an excellent thing. We must try by every medical, educational, economic, and political means in our power to produce a world where as many people as possible grow up “nice”; just as we must try to produce a world where we all have plenty to eat. But we must not suppose that even if we succeeded in making everyone nice that we should have saved their souls. A world of nice people, content in their own niceness, looking no further, turned away from God, would be just as desperately in need of salvation as a miserable world – and might even be more difficult to save.

For mere improvement is not redemption, though redemption always improves people here and now and will, in the end, improve them to a degree that we cannot yet imagine. God became man to turn creatures into sons [and daughters]: not simply to produce better men of the old kind but to produce a new kind of man.<sup>5</sup>

This is what it means to be a disciple of Jesus Christ. When Jesus invited a rich young man to be His disciple, Jesus said to him, "If you wish to be perfect, go, sell what you have and give to [the] poor, and you will have treasure in heaven. Then come, follow me." (Matt. 19:21). That might initially sound attractive, but when we start to think about what we currently have and do not yet know what Christ's promise holds in store for us, it is not surprising that a common and natural reaction is resistance. In fact, the very next verse from Saint Matthew's Gospel says, "When the young man heard this statement, he went away sad, for he had many possessions" (Matt. 19:22). Lewis explains:

The natural life in us is something self-centered, something that wants to be petted and admired, to take advantage of other lives, to exploit the whole universe. And especially it wants to be left to itself: to be kept well away from anything better or stronger or higher than it, anything that might make it feel small. It is afraid of the light and air of the spiritual world, just as people who have been brought up dirty are afraid of a bath. And in a sense it is quite right. It knows

that if the spiritual life ever gets hold of it, all of its self-centeredness and self-will are going to be killed and it is ready to fight tooth and nail to avoid that.<sup>6</sup>

So the process of becoming a true disciple of Jesus Christ is a surrender of oneself to the higher power of God. Why should anyone do so? Because as Saint Paul wrote in his letter to the Romans, "If you confess with your mouth that Jesus is Lord and believe in your heart that God raised him from the dead, you will be saved" (Romans 10:9), and the essence of being saved is a life far better than we could ever imagine, and that new life will last forever. This is what Jesus meant when He said, "Amen, amen, I say to you, unless a grain of wheat falls to the ground and dies, it remains just a grain of wheat; but if it dies, it produces much fruit. Whoever loves his life loses it, and whoever hates his life in this world will preserve it for eternal life" (John 12:24-25). Lewis sums it up this way:

Give up your yourself, and you will find your real self. Lose your life, and you will save it. Submit to death, death of your ambitions and favorite wishes every day and death of your whole body in the end: submit with every fiber of your being, and you will find eternal life. Keep nothing back. Nothing that you have not given away will ever really be yours. Nothing in you that has not died will ever be raised from the dead. Look for yourself, and you will find in the long run only hatred, loneliness, despair, rage, ruin, and decay. But look

for Christ and you will find Him, and with Him everything thrown in.<sup>7</sup>

When we finally understand this true meaning of discipleship, we can see the connection between discipleship and what we call stewardship, that is, the discovery that we are mere stewards or custodians of God's creation. As Lewis says:

Every faculty you have, your power of thinking or moving your limbs from moment to moment, is given you by God. If you devoted every moment of your whole life exclusively to His service you could not give Him anything that was not in a sense His own already.<sup>8</sup>

Our discussion so far has connected the concepts of law, morality, discipleship and stewardship. That progression is crucial because it is essential to see that law in the Church is not just a question of following rules, but how the law guides our free moral choices between right and wrong as disciples of Jesus of Christ and stewards of God's creation. If we can see this connection between law, morality, discipleship and stewardship, we can begin to understand their relationship to justice and mercy, for Jesus in the Gospel of Saint Matthew stated in no uncertain terms that we would be judged on how we treat the least of our brothers

and sisters, for the way we treat them in fact is how we treat Christ (cf. Matthew 25:31-46). Those who did not in their lifetime care for the least of their brothers and sisters will go off to eternal punishment, but the righteous to eternal life. (Matthew 25:46). This is how Christians understand the justice of God's judgment as described by Jesus.

But Jesus did not speak only of the justice of God's judgment; He also spoke of God's mercy. Perhaps the passage of Sacred Scripture where God's mercy is described most poignantly was the parable of the Prodigal Son (cf. Luke 15:11-32). Although the traditional title of the parable refers to the son who demanded and squandered his inheritance in dissolute living, the real focus of the story is the father who shows great mercy in receiving his repentant son back into his loving arms. This, of course, points to God the Father, and the merciful embrace that he extends to all of his wayward children who turn back to Him.

So which is it: God the Just Judge or God the Merciful Father?

The Catholic answer to such a question, of course, is not either/or, but both. My main point with regard to the theme of mercy and justice is that these attributes of God are not contradictory, inconsistent or

incompatible. God is all merciful as well as all just. It may be difficult for us from our human perspective to understand how that can be, but God does not have to diminish one of His attributes in order to manifest another. Just as Jesus is true God and true man without either nature canceling or detracting from the other, God is always merciful and always just. Notice in the parable of the Prodigal Son that the father acts justly by giving the son his inheritance, but he also acts mercifully by welcoming his sinful and repentant son back into his loving embrace.

Pope Saint John Paul II wrote in his encyclical letter, *“Dives in Misericordia”* (“Rich in Mercy”) that “the Bible, Tradition, and the whole faith life of the People of God provide unique proof... that mercy is the greatest of the attributes and perfections of God.”<sup>9</sup> In saying this, the Pope was following the teaching of Saint Augustine and Saint Thomas Aquinas. In answer to the objection that God cannot be merciful because that would contradict his attribute of justice, Aquinas wrote:

God acts mercifully, not indeed by going against His justice, but by doing something more than justice; thus a man who pays another two hundred pieces of money, though owing him only one hundred, does nothing against justice, but acts liberally or mercifully. The case is the same with one who pardons an offence committed against him, for in remitting it

he may be said to bestow a gift. Hence the Apostle calls remission a forgiving: "Forgive one another, as Christ has forgiven you" (Ephesians 4:32). Hence it is clear that mercy does not destroy justice, but in a sense is the fullness thereof. And thus it is said: "Mercy exalteth itself above judgment" (James 2:13).<sup>10</sup>

To the objection that mercy and justice cannot be found in every work of God, Saint Thomas Aquinas responds by quoting Psalm 24:10: "All the ways of the Lord are mercy and truth." He continues:

I answer that, Mercy and truth are necessarily found in all God's works, if mercy be taken to mean the removal of any kind of defect. Not every defect, however, can properly be called a misery; but only defect in a rational nature whose lot is to be happy; for misery is opposed to happiness. For this necessity there is a reason, because since a debt paid according to the divine justice is one due either to God, or to some creature, neither the one nor the other can be lacking in any work of God: because God can do nothing that is not in accord with His wisdom and goodness; and it is in this sense, as we have said, that anything is due to God. Likewise, whatever is done by Him in created things, is done according to proper order and proportion wherein consists the idea of justice. Thus justice must exist in all God's works. Now the work of divine justice always presupposes the work of mercy; and is founded thereupon. For nothing is due to creatures, except for something pre-existing in them, or foreknown. Again, if this is due to a creature, it must be due on account of something that precedes. And since we cannot go on to infinity, we must come to something that depends only on the goodness of the divine will--which is the ultimate end. . . . So in every work of God,

viewed at its primary source, there appears mercy. . . . For this reason does God out of abundance of His goodness bestow upon creatures what is due to them more bountifully than is proportionate to their deserts: since less would suffice for preserving the order of justice than what the divine goodness confers; because between creatures and God's goodness there can be no proportion.<sup>11</sup>

All of this must be kept in mind, then, when looking at a practical application of this theme of mercy, law and justice, for example, in relation to the Post-Synodal Apostolic Exhortation of His Holiness Pope Francis on Love in the Family, *Amoris Laetitia*, which was released on April 8, 2016. Some praise it, some do not. Some find it helpful, others less so. Most everyone finds it to be very long, which unfortunately means they probably have not or will not read it, at least not in its entirety.

Some have questioned whether the Holy Father's Apostolic Exhortation, *Amoris Laetitia*, is an exercise in papal magisterium. Unlike Pope Benedict XVI's books which he specifically said were his personal reflections on the life of Jesus of Nazareth and were not intended as papal teaching, an apostolic exhortation is an official exercise of the papal magisterium by the Holy Father in carrying out his office of teaching. As an Apostolic Exhortation, this form of teaching exhorts the faithful to act

according to established doctrine and canon law. An apostolic exhortation clearly does not establish new doctrine or canon laws. An apostolic exhortation clearly does not overrule existing doctrine or canon laws, but urges people to follow existing doctrine and canon laws.

In my reading of the papal exhortation, I found plenty of solid material for thoughtful reflection and prayerful meditation. The Holy Father's great love of the family is foremost in his mind and heart as it is in mine. In particular, I share the Holy Father's pastoral empathy as a Shepherd of Souls for people in irregular marital arrangements. The Church does not seek to exclude anyone and wishes to welcome everyone honestly seeking God. The good intentions of people who want a change in the Church's eucharistic discipline and teachings are understandable, but the law is a yes, not a no. In other words, the law exists to positively sustain and protect the sacraments and the believing community, not to push anyone out. But it does need to reinforce and support the truth of both marriage and the Eucharist, and thus, current Church teaching and discipline continue to make good sense.

In this regard, in my statement released on the day the document was issued, I noted, "There are no changes to canon law or church doctrine introduced in this document." Having since then read the document again, patiently and carefully, as the Pope requested, I stand by my initial statement, despite claims to the contrary from some commentators.

As the basis for my statement that there are "no changes to canon law or church doctrine introduced in this document," I cited Pope Francis himself, as he stated in the document 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>12</sup> Nevertheless, some people are citing other passages of the document which they claim contradict this statement, notably footnote 351, in which Pope Francis says with reference to persons living in an objective situation of sin, "In certain cases, this can include the help of the sacraments." The Pope does not explicitly name the sacraments to which he is referring, but continues the footnote by saying, "Hence, I want to remind priests that the confessional must not be a torture chamber, but rather an encounter with the Lord's mercy. I would also point out that the Eucharist is not a prize for the

perfect, but a powerful medicine and nourishment for the weak.” By referring to “sacraments” in the plural and then mentioning the “confessional” and the “Eucharist,” he seems to be implying that these sacraments can be given to people in such irregular situations. But his use of phrases such as a “torture chamber” and “a prize for the perfect” are instances of using a rhetorical device known as hyperbole, which involves an exaggeration meant to emphasize his pastoral point about how the sacraments are to be administered, not to introduce a canonical or doctrinal innovation.

Adding to the discussion are the Pope’s comments on board a flight in response to a reporter who asked Pope Francis if there are “new concrete possibilities that did not exist before the publication of the Exhortation or not,” the Holy Father answered, “I can say yes. Period.” But these new “concrete possibilities” could be referring to a variety of pastoral initiatives to address irregular situations. Indeed, Pope Francis himself seemed annoyed with the focus on the question of Holy Communion for those in irregular situations, as he went on to say in answer to the next question, which asked specifically about footnote 351. He said:

One of the recent popes, speaking of the Council, said that there were two councils: the Second Vatican Council in the Basilica of St. Peter, and the other, the council of the media. When I convoked the first synod, the great concern of the majority of the media was communion for the divorced and remarried, and, since I am not a saint, this bothered me, and then made me sad. Because, thinking of those media who said, this, this and that, do you not realize that that is not the important problem? Don't you realize that instead the family throughout the world is in crisis? Don't we realize that the falling birth rate in Europe is enough to make one cry? And the family is the basis of society. Do you not realize that the youth don't want to marry? . . . Don't you realize that the lack of work or the little work (available) means that a mother has to get two jobs and the children grow up alone? These are the big problems. I don't remember the footnote, but for sure if it's something general in a footnote it's because I spoke about it, I think, in *Evangelii Gaudium*.<sup>13</sup>

So what is one to make of all this? The starting point for interpreting papal statements and ecclesiastical documents is to remember that they do not all carry the same authoritative weight. They bear different names because they carry varying levels of importance and authority. They are grouped, for example, on the Vatican website ([www.vatican.va](http://www.vatican.va)) under different categories with a variety of titles, including: apostolic constitutions, encyclicals, motu proprios, apostolic exhortations, apostolic letters, audiences, homilies, letters, messages, speeches, prayers and daily

meditations. At the top of this hierarchy in terms of importance and authority are apostolic constitutions, highest in significance because they constitute papal legislation defining laws and doctrines. Among the lowest levels of authority would be extemporaneous answers given in response to impromptu questions during an in-flight press conference on an airplane. Footnotes in an apostolic exhortation would also rank low in significance, particularly since apostolic exhortations themselves simply exhort, encourage and urge the faithful to follow existing church laws and teachings. Apostolic exhortations by their very nature are not vehicles for introducing or amending legislative texts or making dogmatic pronouncements.

Thus, it is important to note that the *Catechism of the Catholic Church* was promulgated on October 11, 1992, by Pope St. John Paul II by means of an Apostolic Constitution, *Fidei Depositum*, the highest level of papal authority. In that document, the sainted Holy Father wrote: “The *Catechism of the Catholic Church*, which I approved 25 June last and the publication of which I today order by virtue of my Apostolic Authority, is a statement of the Church’s faith and of Catholic doctrine, attested to or illumined by

Sacred Scripture, the Apostolic Tradition and the Church's Magisterium. I declare it to be a sure norm for teaching the faith and thus a valid and legitimate instrument for ecclesial communion."

With regard to the question of Holy Communion for the divorced and remarried, the *Catechism* says clearly in paragraph 1665, "The remarriage of persons divorced from a living, lawful spouse contravenes the plan and law of God as taught by Christ. They are not separated from the Church, but they cannot receive Eucharistic communion. They will lead Christian lives especially by educating their children in the faith." There is nothing in *Amoris Laetitia* that changes, amends or repeals this doctrine.

Moreover, the 1983 *Code of Canon Law*, which remains currently in force, was promulgated by Pope St. John Paul II on January 25, 1983, by means of an Apostolic Constitution, *Sacrae Disciplinae Leges*, with these words: "Trusting therefore in the help of divine grace, sustained by the authority of the holy Apostles Peter and Paul, with certain knowledge, and in response to the wishes of the bishops of the whole world who have collaborated with me in a collegial spirit; with the supreme authority with which I am vested, by means of this Constitution, to be valid forever in the

future, I promulgate the present Code as it has been set in order and revised. I command that for the future it is to have the force of law for the whole Latin Church, and I entrust it to the watchful care of all those concerned, in order that it may be observed.”

Canon 915 of the Code of Canon Law says that those “who obstinately persist in manifest grave sin are not to be admitted to Holy Communion.” There is nothing in *Amoris Laetitia* that changes, amends or repeals this canon. While we cannot judge people’s consciences, we can and must judge external situations to determine if they are manifestly gravely sinful and whether there is obstinate persistence from an objective perspective. This is relevant to the reception of Holy Communion, which is an external, public act as well. Canon 915 is a good example of how law protects freedom. Some might look at this canon as limiting one’s freedom to receive the sacraments. But in fact it safeguards the recipient’s freedom from the capricious and arbitrary exercise of authority by very circumspectly limiting the circumstances when Holy Communion may be denied. Since we are dealing with a right to the sacraments (cf. canon 213), each of these factors – obstinacy, persistence, manifest, grave and sinful –

must be interpreted strictly (cf. canon 18) before determining that someone may not be admitted to Holy Communion. Nevertheless, the question of the proper disposition of the soul while receiving Holy Communion is eminently pastoral. It has long standing in the Church going back to the early centuries.

The Bible clearly teaches about the proper disposition to receive Holy Communion in the *First Letter to the Corinthians*, where Saint Paul wrote, “Whoever eats the bread or drinks the cup of the Lord in an unworthy manner will be guilty of profaning the body and blood of the Lord. Let a man examine himself, and so eat of the bread and drink of the cup. For anyone who eats and drinks without discerning the body eats and drinks judgment upon himself (1 Cor 11:27-29).

This biblical teaching is reflected in canons 915-916 of the Catholic Church’s *Code of Canon Law*. As mentioned earlier, canon 915 addresses the situation where the minister of Holy Communion is not to admit individual persons to the Sacrament under the circumstances that are clearly defined in that canon. Canon 916, on the other hand, says that a “person who is conscious of grave sin is not to celebrate Mass or to receive

the Body of the Lord without prior sacramental confession unless a grave reason is present and there is no opportunity of confessing; in this case the person is to be mindful of the obligation to make an act of perfect contrition, including the intention of confessing as soon as possible." Thus, while canon 915 puts the burden of discernment on the minister of Holy Communion, canon 916 places the responsibility for self-discernment on the person who desires to receive the Sacrament. These principles for the proper disposition for receiving or being admitted to Holy Communion are in keeping with the maxim that "law follows theology," that is, the laws of the church are not created in a vacuum, but are practical applications of biblical and theological truths in actual situations.

The biblical basis for the Church's teaching on the indissolubility of marriage is found in the Gospel of Matthew 19:3-12 and the Gospel of Mark 10:2-12, where Jesus says, "Whoever divorces his wife and marries another commits adultery against her; and if she divorces her husband and marries another, she commits adultery." The whole question of the indissolubility of marriage and the grounds for invalidity of marriage in the Church are beyond the scope of this presentation, but suffice it to say that, based on

this biblical teaching of Jesus, the Church views divorce and remarriage without a declaration of nullity (popularly known as an “annulment”) from an ecclesiastical tribunal as an adulterous relationship and therefore manifestly gravely sinful, objectively speaking.

Since that is the case, how is it that Pope Francis can suggest, as he did in footnote 351 with reference to the pastoral care of persons living in an objective situation of sin, “In certain cases, this can include the help of the sacraments”? Are there some cases where divorced and civilly remarried persons can receive Holy Communion without getting an annulment? The answer is yes.

Now, before anyone rushes to the presses with the story that Bishop Paprocki says that divorced and civilly remarried persons can simply receive Holy Communion without getting an annulment, it is important to add the qualifier, as Pope Francis did, that this applies “in certain cases.” The qualifier, “in certain cases,” means that there is no indiscriminate, universal or blanket permission for the divorced and civilly remarried to receive Holy Communion. So what are some examples of these certain types of cases?

The first example that comes to mind from our Catholic tradition is what is known in the Church as the brother-sister solution, in which the couple lives together publicly as husband and wife but abstains from all sexual intercourse. In such cases, the couple who agree to live as brother and sister may receive Holy Communion with the approval of the bishop, provided there is no danger of scandal. Given the condition of there being no public scandal, some may question how scandal can be avoided if the couple presents themselves as husband and wife. The answer is that in some cases it may not be generally known that one of both of the parties were previously married, especially if that previous marriage was in another part of the country. Also, even if the previous marriage is known, the frequency of declarations of invalidity or annulments from diocesan tribunals may lead people to assume that the previous marriage had been declared invalid by the Church, thereby obviating scandal.

An example of this approach can be seen in the guidelines for the Archdiocese of Philadelphia issued by Archbishop Charles Chaput, which state,

*Every Catholic, not only the divorced and civilly-remarried, must sacramentally confess all serious sins of which he or she is*

aware, with a firm purpose to change, before receiving the Eucharist. . . . With divorced and civilly-remarried persons, Church teaching requires them to refrain from sexual intimacy. This applies even if they must (for the care of their children) continue to live under one roof. Undertaking to live as brother and sister is necessary for the divorced and civilly-remarried to receive reconciliation in the Sacrament of Penance, which could then open the way to the Eucharist.”<sup>14</sup>

Catholics in these circumstances thus have a free choice: if they persist in sexual activity outside of valid marriage, they must refrain from taking Holy Communion; if they wish to receive Holy Communion, they must refrain from sexual activity outside of valid marriage. The latter may seem impossible to those steeped in our sex-saturated culture, but “with God, all things are possible” (Matthew 19:26). God’s moral law does not make impossible demands that cannot be achieved with His grace.

This same reasoning applies to the Church’s discipline with regard to acting as a lector, an Extraordinary Minister of Holy Communion, a godparent, a catechist, or a teacher or administrator in a parish school.

Another possible case where a divorced and civilly remarried couple without an annulment may be admitted to Holy Communion involves what known as the internal forum solution. In contrast to the external

forum, where acts of ecclesiastical governance are public and verifiable with objective proofs, such as in a diocesan tribunal, the internal forum deals with matters of conscience, such as in confession or spiritual direction. Pope Francis makes reference to the internal forum in *Amoris Laetitia*, where he says,

What we are speaking of is a process of accompaniment and discernment which guides the faithful to an awareness of their situation before God. Conversation with the priest, in the internal forum, contributes to the formation of a correct judgment on what hinders the possibility of a fuller participation in the life of the Church and on what steps can foster it and make it grow.<sup>15</sup>

The use of the internal forum solution, however, is premised on the impossibility of obtaining an external forum solution. This may be the case when the grounds for invalidity cannot be proved through objective and verifiable evidence, but which may be known to a party with private information that cannot be shared or proven publicly. As in the case of the brother-sister solution, this approach requires a lack of danger of public scandal.

Another possible case would be an impoverished diocese with no canon lawyers and no functioning tribunal. The inaccessibility of the

parties to a competent ecclesiastical forum should not be the reason for denying them access to the sacraments if they otherwise have the verifiable proofs needed for a declaration of nullity. In this case, however, Pope Francis has made some rather significant changes to canon law to increase accessibility to an external forum solution. In all cases, an external forum solution is to be preferred not only for the sake of the parties but also for the common good of the Church and the well-being of the institution of marriage.

In 2015, Pope Francis did formally change canon law to expedite and simplify the procedures for handling cases petitioning for a declaration of nullity of marriage. He did this by means of a formal document known as a *Motu Proprio*, which we have fully implemented in our Diocesan Tribunal in Springfield, Illinois, as most dioceses have done. As a result, these irregular situations of divorced and remarried persons can often be regularized. Diocesan offices for marriage and family life and our parishes are committed to providing pro-active preparation for couples planning to get married to help them establish a strong marriage with the help of the sacramental graces received in the Sacrament of Matrimony.

The promulgation of the Motu proprio *Mitis Iudex Dominus Iesus*, issued by the Supreme Pontiff Francis on August 15, 2015, has put into place a major reform of the canonical process for the declaration of the nullity of marriage in the *Code of Canon Law* effective December 8, 2015.

The motivation for this reform is expressed by Pope Francis in his own words in the introductory paragraphs of the Motu proprio where he says, “The zeal to reform has been fueled by the enormous number of faithful who, while wishing to act according to their consciences, are too often separated from the legal structures of the Church due to physical or moral distance.”<sup>16</sup> Those who are “separated from the legal structures of the Church due to physical or moral distance” would seem to be referring more to dioceses without functioning tribunals, rather than to dioceses in North America and Europe, where we have fully functioning tribunals, adequately staffed with credentialed canonists. Nevertheless, while though the revision may have been motivated by concern for those parts of the world without functioning tribunals, it does appear that the new norms for the expedited process do indeed apply everywhere.

It also appears that this remains somewhat of a work in progress with many as of yet unanswered questions. As Cardinal Francesco Coccopalmerio, President of the Pontifical Council for Legislative Texts, said in his remarks at the press conference presenting the Motu proprio on the Reform of the Process for Declaring Nullity of a Marriage, published in *America Magazine*, “We should remember too that since the church is extended in all continents, the experiences of the different surroundings will bring better understanding and eventual normative precisions.”<sup>17</sup>

One of the key points of emphasis noted by Pope Francis in various parts of the document is the role of the diocesan bishop. Two of the six “fundamental criteria which have governed the work of reform” as mentioned in the introduction to the Motu proprio call for greater involvement of the diocesan bishop.

Pope Francis is frankly addressing the reality that in many dioceses (if not most) it has been the practice of the diocesan bishop to “leave the judicial function in matrimonial matters completely delegated to the offices of his curia.” The Holy Father is, in a sense, reminding bishops of their responsibility to exercise judicial power as well as legislative and executive

power of governance, as provided by canon 391. Even when this judicial power is exercised vicariously through his judicial vicar, the diocesan bishop should remain involved in some way, as he does with the vicarious exercise of his executive power of governance through his vicar general, episcopal vicars and delegates. Of course, this will depend to a great extent on the bishop's familiarity with canon law, and especially with the canons dealing with the nullity of marriage.

One of the key procedural changes that should expedite the process of marriage nullity cases is the elimination of the mandatory appeal. In most cases, this should take a few months off the handling of the case.

Pope Francis has also established an abbreviated approach that can be taken by a Diocesan Bishop in certain cases known as "The Briefer Matrimonial Process before the Bishop." Canon 1685 and article 15 provide that the Judicial Vicar is to identify cases for the Briefer Matrimonial Process and refer them to the diocesan bishop after he has appointed an assessor and instructor for the case. After the diocesan bishop has received the acts, consulted with the instructor and the assessor, and considered the observations of the defender of the bond and, if there are any, the defense

briefs of the parties, the diocesan bishop would then decide per canon 1687 whether to issue the sentence if he has reached moral certitude about the nullity of marriage or refer the case to the ordinary method if he has not reached the requisite moral certitude about nullity. It should be noted that the diocesan bishop does not render a negative decision if it appears to him that nullity cannot be established based on the evidence presented to him. In that case, he is to remand the case to the ordinary process for further investigation and full review of the case.

It must be said, however, with regard to the Briefer Matrimonial Process, that it is not altogether clear what circumstances “render the nullity manifest” as per canon 1683. The provisions of article 14 §1 of the procedural rules for dealing with causes of nullity of marriage do not establish new grounds for nullity, but only indicate “the circumstances of things and persons which can allow a case for nullity of marriage to be handled by means of the briefer process according to cann. 1683-1687.” Examples given for such circumstances of things and persons are: “the defect of faith which can generate simulation of consent or error that determines the will; a brief conjugal cohabitation; an abortion procured to

avoid procreation; an obstinate persistence in an extraconjugal relationship at the time of the wedding or immediately following it; the deceitful concealment of sterility, or grave contagious illness, or children from a previous relationship, or incarcerations; a cause of marriage completely extraneous to married life, or consisting of the unexpected pregnancy of the woman, physical violence inflicted to extort consent, the defect of the use of reason which is proved by medical documents, etc.”

There may be a temptation on the part of some to treat the whole question of judicial processes for the determining the nullity of marriage as being opposed to genuine pastoral care for those who find themselves in the unfortunate situation of a broken marriage. This is not a new misunderstanding. Following the Second Vatican Council, a debate over canon law ensued in which law and pastoral care were posed in opposition to each other. Pope John Paul II addressed this false dichotomy directly in his allocution to the Roman Rota on January 18, 1990, when he said “it is not true that to be more pastoral the law must make itself less juridical. The juridical dimension and the pastoral dimension are inseparably united in the pilgrim Church on this earth.”<sup>18</sup>

Pope Benedict XVI took up this topic with the judges of the Roman Rota in 2006, explaining that “that love of the truth links the institution of canonical causes of the nullity of marriage with the authentic pastoral sense that must motivate these processes.”<sup>19</sup> He returned to this theme in his address to the Rota in 2011, saying that he wanted “to consider the juridical dimension that is inherent in the pastoral activity of preparation and admission to marriage, to try to shed light on the connection between such activity and the judicial matrimonial processes.” The Holy Father noted that the relationship between the law and pastoral ministry

is often the object of misunderstandings to the detriment of law but also of pastoral care. Instead, it is necessary to encourage in all sectors, and in a particular way in the field of marriage and of the family, a positive dynamic, a sign of profound harmony between the pastoral and the juridical that will certainly prove fruitful in the service rendered to those who are approaching marriage.<sup>20</sup>

Pope Francis has also weighed in on the topic of the relationship between law and pastoral care in his address to the judges of the Roman Rota on January 24, 2014, saying:

The juridical dimension and the pastoral dimension of the Church’s ministry do not stand in opposition, for they both

contribute to realizing the Church's purpose and unity of action. In fact the judicial work of the Church, which represents a service to truth in justice, has a deeply pastoral connotation, because it aims both to pursue the good of the faithful and to build up the Christian community.<sup>21</sup>

Another approach suggested by some is to bypass ecclesiastical authority altogether – whether in the external or internal forum – and just “follow your conscience.” This approach, however, is usually based on a faulty notion of what conscience is and how it works. Cardinal Thomas Collins, Archbishop of Toronto, explains the matter this way:

It is sometimes suggested that our conscience is some kind of subjective oracle that on its own provides adequate direction in life. It is granted that we should take a good look at Church teaching, but the basic point is that we go with our conscience. Church teaching, or doctrine, presents us with the challenges of the Gospel call to discipleship. Those challenges are sometimes seen to be burdensome, not really capable of being lived in the real world, except perhaps by a heroic few. They are seen by some as forming a kind of abstract Christian ideal that we certainly honor, but meanwhile we have got to get along with the challenges of real life. There is a wall between doctrine and life. If we think of things that way, the role of conscience is to adapt the abstract Christian ideal to what is practicable in our current situation, particularly as it is shaped by contemporary secular culture. This approach disregards the reality of grace, and the simple fact that Jesus has not called us to a way of life that cannot, in fact, be lived. Plenty of people live Christian discipleship to the full; this is especially evident wherever Christianity is actually flourishing, but it is true everywhere.<sup>22</sup>

The word “conscience” comes from two Latin words, “co-” (which means “together” or “with”) and “science” (which means to have knowledge about something). Conscience means to share knowledge with someone else about what is right or wrong. Conscience does not act in isolation on some sort of personal or individual intuition disconnected from someone or something else. For a Catholic, a properly formed conscience means to share God’s knowledge and the Church’s teaching about right or wrong. So those who invoke “conscience” to justify their rejection of the natural moral law or divine law as taught by the Catholic Church are saying that they have chosen to follow the thinking, knowledge and values of someone or something other than the Pope or the Catholic Church.

Those who are in “irregular situations” should talk to a qualified spiritual director or a priest in the context of sacramental confession, but forming a good conscience means that they will recognize and repent of their sins, resolve to reform their lives in accord with Christ’s teachings and receive absolution in the Sacrament of Reconciliation before receiving Holy Communion. In contrast to a false notion of mercy that demands

acceptance of that which is morally unacceptable, true mercy extends forgiveness to those who are sorry for their sins and amend their behavior.

Archbishop Alexander Sample, the Archbishop of Portland in Oregon, in his Pastoral Letter on the Reading of *Amoris Laetitia* in Light of Church Teaching, entitled, "A True and Living Icon," offers a helpful reminder that there is always hope for redemption from a sinful situation, saying, "Because persons are free, conscience can develop and mature. No one is trapped within a permanently erroneous conscience, and by God's grace and moral education can cooperate in attaining a well-formed conscience."<sup>23</sup>

In the end, the Catholic Church respects freedom of conscience in that no one is coerced into believing or accepting what the Church teaches, but those who reject Church teaching should also have the integrity to respect the Church's responsibility to safeguard the integrity of its teachings and sacramental practices. One of the unfortunate distractions about the debate surrounding *Amoris Laetitia* is that it puts the focus on the question of who can receive Holy Communion. The real question is not access to Holy Communion, but getting to heaven. The sacraments are

means to that end. Indeed, receiving the sacraments unworthily only compounds the problem, since to do so is a sacrilege. That is why Saint Thomas Aquinas in his Prayer of Thanksgiving after Mass wrote, "I pray that this Holy Communion may not be for me an offense to be punished, but a saving plea for forgiveness." If one does not understand the notion of a sacrilegious communion, this prayer makes no sense. A proper disposition is necessary for the recipient of Holy Communion in order to receive any spiritual benefit from the sacrament.

I conclude by reaffirming my agreement with the Holy Father that the gravest problems of marriage and the family in the 21<sup>st</sup> century have to do with the harsh fact that these basic constitutions are in crisis. Where the Holy Father wants us to devote our attention is for everyone to "realize that . . . the family throughout the world is in crisis." The best way for us to help families and to show justice, mercy and love to all people is to speak the truth, and act accordingly.

May God give us this grace. Amen.

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- <sup>1</sup> C.S. Lewis, *Mere Christianity* (London: Geoffrey Bles, 1952), p. 4.
- <sup>2</sup> *Catechism of the Catholic Church*, n. 1954.
- <sup>3</sup> Lewis, *Mere Christianity*, p. 57.
- <sup>4</sup> Lewis, *Mere Christianity*, p. 123.
- <sup>5</sup> Lewis, *Mere Christianity*, pp. 169-170.
- <sup>6</sup> Lewis, *Mere Christianity*, p. 141.
- <sup>7</sup> Lewis, *Mere Christianity*, p. 177.
- <sup>8</sup> Lewis, *Mere Christianity*, p. 112-113.
- <sup>9</sup> Pope Saint John Paul II, encyclical letter, "*Dives in Misericordia*," n. 13.
- <sup>10</sup> St. Thomas Aquinas, *Summa Theologiae*, First Part, q. 21, a. 3.
- <sup>11</sup> St. Thomas Aquinas, *Summa Theologiae*, First Part, q. 21, a. 4.
- <sup>12</sup> Pope Francis, Post-Synodal Apostolic Exhortation on Love in the Family, *Amoris Laetitia*, April 8, 2016, n. 300.
- <sup>13</sup> "In-Flight Press Conference of His Holiness Pope Francis," April 16, 2016, English translation of the questions and transcript of the responses given by the Pope, at [https://w2.vatican.va/content/francesco/en/speeches/2016/april/documents/papa-francesco\\_20160416\\_lesvos-volo-ritorno.html](https://w2.vatican.va/content/francesco/en/speeches/2016/april/documents/papa-francesco_20160416_lesvos-volo-ritorno.html).
- <sup>14</sup> "Pastoral Guidelines for Implementing *Amoris Laetitia*," Archdiocese of Philadelphia, July 1, 2016, p. 4, at [http://archphila.org/wp-content/uploads/2016/06/AOP\\_AL-guidelines.pdf](http://archphila.org/wp-content/uploads/2016/06/AOP_AL-guidelines.pdf).
- <sup>15</sup> Pope Francis, *Amoris Laetitia*, n. 300.
- <sup>16</sup> Pope Francis, Motu proprio *Mitis Iudex Dominus Iesus*, August 15, 2015, at [https://w2.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio\\_20150815\\_mitis-iudex-dominus-iesus.html](https://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html).

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<sup>17</sup> See Gerald O'Connell, "Cardinal Coccopalmerio on the Reform of the Process for Declaring Nullity of a Marriage," September 8, 2015, <http://americamagazine.org/content/dispatches/cardinal-coccopalmerio-reform-process-declaring-nullity-marriage>.

<sup>18</sup> John Paul II, Address to the Tribunal of the Roman Rota, January 18, 1990: AAS 82 (1990) 874. English translation from [http://w2.vatican.va/content/john-paul-ii/en/speeches/2003/january/documents/hf\\_jp-ii\\_spe\\_20030130\\_roman-rot.html](http://w2.vatican.va/content/john-paul-ii/en/speeches/2003/january/documents/hf_jp-ii_spe_20030130_roman-rot.html), accessed November 3, 2015.

<sup>19</sup> Benedict XVI, Address to the Tribunal of the Roman Rota, January 28, 2006: AAS 98 (2006) 138. English translation from *Origins* 35/36 (February 23, 2006) 601.

<sup>20</sup> Benedict XVI, Address to the Tribunal of the Roman Rota, January 22, 2011: AAS 103 (2011) 113. English translation from from *Origins* 40/36 (February 17, 2011) 599.

<sup>21</sup> Francis, Address to the Officials of the Roman Rota for the Inauguration of the Judicial Year, January 24, 2014: AAS 106 (2014) 89. English translation from *Origins* 43/36 (February 13, 2014) 588.

<sup>22</sup> Cardinal Thomas Collins, "Letters from the Synod," (Number 19), October 21, 2015, at <https://www.firstthings.com/web-exclusives/2015/10/letter-number-nineteen>.

<sup>23</sup> Archbishop Alexander Sample, Pastoral Letter on the Reading of *Amoris Laetitia* in Light of Church Teaching, "A True and Living Icon," October 7, 2016, at <https://archdpx.org/documents/2016/10/PASTORAL%20LETTER%20A%20True%20and%20Living%20Icon%20FINAL%20-%20Updated%20101016-2.pdf>.