

Marriage as Sacrament: Baptism or the Practice of Faith of the Spouses?

There is a gamut of unresolved issues, some of them of a pastoral nature, others theological, which provoke theologians and canonists to re-examine the doctrine about the sacramentality of marriage. One of these unclear and complex problems is the issue of the lack of faith of a great number of baptised persons who approach the Church for sacramental marriage.

One may classify baptised persons under two categories: believers and nonbelievers. The basis of this theological distinction is the presence or absence of active personal faith. Nowadays, it is becoming more and more common that baptised non-believers opt for a Christian marriage not for religious reasons, but exclusively for motives that are social, familiar, of pure convenience, or because of the external glamour of the religious.¹ This situation is triggering off a host of intriguing questions: Is every marriage between baptised persons *ipso facto* a sacramental marriage? Could lack of faith impede the marriage? Does lack of faith affect the fruitfulness of the sacrament or its validity? These questions, which have troubled the Catholic Church for the past two centuries, present a daunting challenge to both theologians and canon lawyers!

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¹ Piero Pellegrino, "L'Esclusione della Sacramentalità del Matrimonio," in *Diritto Matrimoniale Canonico, Il Consenso*, eds. Piero Antonio Bonnet and Carlo Gullo (Vatican: Libreria Editrice Vaticana, 2003), 2:377.

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A corollary issue resulting from these thorny theological questions concerns the identity of contract with the sacrament for the baptised. Prior to the 1917 Code of Canon Law, this latter theological issue remained open. In 1563 the Council of Trent taught that marriage is one of the seven sacraments, but it left open the question of identity of contract and sacrament.² No ecclesiastical document, including the *Fontes*, had ever sought to close it. The Magisterium, on several occasions, has insisted upon the inseparability of contract-sacrament as a single entity. However, no solid theological argument has been elaborated in favour of this position and document after document takes for granted this issue and repeats it without any critical analysis.³

In *Amoris Laetitia* (*AL*) Pope Francis exhorts theologians to study further not only spiritual and pastoral questions on marriage, but also doctrinal and moral issues (*AL* no.2). Pope Francis is convinced that “[t]he thinking of pastors and theologians, if faithful to the Church, honest, realistic and creative, will help us to achieve greater clarity (*AL* no. 2). Beyond doubt, among the theological issues that require greater clarification is precisely the issue of what makes marriage a true sacrament and the relationship between baptism and personal living faith in sacramental marriage. Since “time is greater than space,” Pope Francis “makes it clear that not all discussions of doctrinal, moral or pastoral issues need to be settled by interventions of the magisterium. Unity of teaching and practice is certainly necessary in the Church, but this does not preclude various ways of interpreting some aspects of that teaching or drawing certain consequences from it” (*AL* no. 3). An open and transparent dialogue on the interface between theology and canon law is definitely a path in the right direction to bring the theology of marriage and matrimonial jurisprudence in harmony and cohesion with the Gospel of the family.

What are the doctrinal considerations, clarifications and innovations brought by *AL* on the doctrine of the sacrament of marriage that could assist canon law to reformulate its canons on marriage? The Catholic Church revised its laws about marriage in the twentieth century to bring its laws about marriage into line with its developing theology of marriage, moving beyond the perspective of marriage as an exclusively procreative institution to embrace a model of interpersonal

² For a detailed historic note on the question of identity between contract and sacrament see, Philip L. Reynolds, *How Marriage Became One of the Sacraments* (Cambridge: Cambridge University Press, 2018), 667-724.

³ Anthony Gouder, *Faith as a Condition for Sacramental Marriage* (MA Dissertation in Matrimonial Canon Law and Jurisprudence, University of Malta, Malta, 2018), 92.

union which includes the mutual love and communion of spouses.⁴ Is this development reflected in all canon laws on marriage? Does *AL*'s theology of marriage contribute to further development?

Faith as a Condition for Sacramental Marriage

In Canon Law it is stated that Christ raised the marriage of the baptised to the dignity of a sacrament and that there is no marriage of the baptised that is not a sacrament. The theological underpinnings of this canonical legislation rely on the relationship between baptism and marriage. By the fact of their baptism, two persons who enter into marriage also enter into marriage in Christ. A marriage of the baptised would always have a certain finality precisely because of the irrevocable relationship that exists between them and Christ by virtue of their baptism. This ontological argument is based on the theological assumption that one cannot back out the God-man relationship entered through baptism.

Questions concerning this theological position emerged primarily from pre-marriage pastoral ministry. As early as 1951, the French bishops referred to this theological issue in their pastoral directory for sacraments.⁵ Back in the nineteen-seventies, the Episcopal Conferences of France, Belgium and Italy have voiced their concerns about this pastoral and theological problem.⁶ This widespread pastoral concern impelled the International Theological Commission to issue, in December of 1977, a statement that proved to be a landmark document about the relationship between the validity of marriage and the faith of the spouses.⁷ The statement unequivocally concludes that, in addition to baptism, living (active) faith is essential. Christian marriage is not a simple juridical effect of baptism.

⁴ Michael Lawler, *Marriage and the Catholic Church: Disputed Questions* (Collegeville, Minnesota: Liturgical Press, 2002), 37. See also, Angela M. Robb, *The Relationship Between a Theological Understanding of Marital Commitment and a Juridical Articulation of Marital Consent in Sacramental Marriages in the United States* (Doctoral thesis – Duquesne University, 2015). <https://pqdtopen.proquest.com/doc/1682263316.html?FMT=ABS> [accessed 16 February 2022].

⁵ Bishops' Conference of France, *Directoire pour la pastorale des sacrements* (Paris: Editions Fleurus, Bonne Presse, 1951).

⁶ French Episcopal Conference, *Pastorale des fiancés: Directoire et commentaire* (Paris: Editions C.T.I.C., 1970); Belgian Episcopal Conference, "Note pastorale des Evêques de Belgique concernant le mariage de Catholiques non-pratiquants ou n'ayant pas la foi chrétienne," *La Documentation Catholique* 69 (November, 1972), 979-982; Italian Episcopal Conference, "Evangelizzazione e sacramento del matrimonio," *Documento pastorale dell'Episcopato Italiano* (Rome: A.V.E., 1975).

⁷ International Theological Commission, "Propositions on the Doctrine of Christian Marriage," 6 December 1977, http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_1977_sacramento-matrimonio_en.html [accessed 21 June 2019].

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The sacramentality of Christian marriage flows from the spouses' Christian identity, renewed by them on the level of the love that they vow to each other in Christ. A marriage "in the Church" is truly a marriage "in the Lord." The absence of personal living faith of baptised nonbelievers compromises the validity of the sacrament. A sacrament does not happen when a human subject submits to a physical rite, for a sacrament is not a naked physical rite but a symbolic interaction that presupposes faith.

The pastoral and theological concerns raised during the late nineteen-seventies and early nineteen-eighties during the process of the 1917 Code of Canon Law revision did not change the 1983 new Code of Canon Law concerning personal living faith as a necessary condition for the sacramentality of Christian marriage. Nor the corollary issue concerning the identity between marital contract and marital sacrament in *matrimonium inter baptizatos* was changed. Canon 1055 states that

The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament (§1).

Consequently, a valid marriage contract cannot exist between baptized persons without its being by that very fact a sacrament (§2).

The second sub-article of Canon 1055 is a theological affirmation, in contrast with the first sub-article, which in turn, is a dogmatic affirmation. The juridically-controlled theology underlying this canon does not reflect the Vatican II developments in sacramental theology which stresses the subjective dispositions necessary for the sacraments. Sacraments are no longer understood within the parameters of *ex opere operato*. Nominalist theologians exerted a great influence on the sacramental theology of the Council of Trent, which taught, as a basis for the objection of the Reformers, that the mere physical doing of the rite confers grace. Even though Scholastics developed the complementary concept of *opus operantis* to highlight the disposition of the participant, the two theological concepts remained separate. Such a dichotomy of *opus operatum* and *opus operantis* was foreign to the thinking of Thomas Aquinas who taught unequivocally that every sacrament is a sign and a proclamation of personal faith.⁸ Albert the Great stated very explicitly that the sacrament of marriage derives its

⁸ Lawler, *Marriage and the Catholic Church. Disputed Questions*, 47-48.

efficacy not only *ex opere operato* but also *ex opere operantis*.⁹ *Opus operantis* was regarded as “the personal aspect in the justifying process of any sacrament, that aspect by which a free and responsible person accepted God’s grace”¹⁰ offered in the efficacy of *opus operatum*.

Sacraments are not magic rites that produce their effects with no relationship to the person. The Second Vatican Council rejected the mechanical understanding of *opus operatum*. Sacraments are not a thing which believers receive, but a graced interaction in and through which they express both their acceptance of the gift of God and the gift of themselves in return through Christ in the Spirit to the Father. How can a baptised nonbelieving person with no reference to Christ and the Church celebrate a sacrament? This emphasis on the necessity of faith in sacramental activity has been emphasised strongly in the documents of the Second Vatican Council:

The purpose of the sacraments is to make people holy, to build up the body of Christ, and finally, to express a relationship of worship to God; because they are signs, they certainly also belong under the heading of teaching. They not only presuppose faith (*Fidem non solum supponunt*); they also nourish it (*alunt*), strengthen it (*roborant*) and express it (*exprimunt*), both through words and through objects. This is why they are called sacraments of faith (*quare fidei sacramenta dicuntur*). It is true that they confer grace; but, while they are being celebrated, they also are very powerful in opening people up to receive this same grace fruitfully, so that they can express properly their relationship to God, and enact divine love.¹¹

The proper disposition for the conferment of sacramental grace has also been emphasised by the Catechism of the Catholic Church.¹² Moreover, the *Ordo celebrandi matrimonium* (1969) states that “the sacrament of matrimony presupposes and demands faith.”¹³

The 1980 Synod of Bishops addressed this theological question. *Propositio 12* speaks of faith and the sacrament of marriage: 12 § 5 goes so far as to propose that there should be “a new canonical legislation due to these reasons which are

⁹ “Sunt et alia [sacramenta], quae quodam modo ab instinctu naturae sunt, ut matrimonium in quo est maris et feminae coniunctio ... partim etiam sunt a fide, scilicet quod illa coniunctio significet coniunctionem dei cum anima,” in *IV Sent. D. 26, a. 2 q. 1, conclusio*.

¹⁰ Piet Fransen, “Sacraments, Signs of faith,” *Readings in Sacramental Theology*, ed. C. Stephen Sullivan (Englewoog Cliffs, N.J.: Prentice Hall, 1964), 63

¹¹ Dogmatic Constitution, *Sacrasanctum Concilium*, no. 59.

¹² *Catechism of the Catholic Church*, no. 1123.

¹³ “Sacramentum enim Matrimonii fidem supponit atque expostulate,” *Sacra Congregazione dei Riti, Ordo Celebrandi Matrimonium* (1969) Praenotanda 7.

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contained in this proposition [12] regarding the necessity of faith.”¹⁴ However, *Familiaris Consortio* (FC) states that the intention to do what the Church intends is sufficient for the validity of the marriage.¹⁵ John Paul II points out that setting out additional criteria regarding the level of faith would impose grave risks and would contradict the Church’s tradition of recognising these as valid. According to FC, the only justified reason not to marry people is when there is explicit rejection of what the Church intends to do, and thus exclusion of the sacramentality.¹⁶

Evangelii Gaudium (EG) reflects Vatican II’s sacramental theology. In EG, Pope Francis refers to the Church as the house of the Heavenly Father whose doors are wide open to everyone.¹⁷ No one is excluded from the Father’s invitation to enter into his house through the “doors of the sacraments.”¹⁸ However, no one can ever step in the Father’s house, no matter how wide open its doors are, without a minimum of personal faith in the sacraments. The absence of a genuine disposition to accept the Father’s invitation to approach the doors of the Father’s house and a willingness to step inside reflects the lack of a right sacramental intention. Moreover, in his first encyclical *Lumen Fidei*, Pope Francis remarks that “the light of faith is unique, since it is capable of illuminating every aspect of human existence,”¹⁹ including those privileged moments, encounters with the Risen Christ, namely the sacraments. Faith is constitutive to the celebration of sacraments.

This theological perspective is in sharp contrast with the sense of “ceremonialism” and “automaticism” that seems to inspire Church law related to the sacrament of marriage.²⁰ Canon 1055 implies that the ceremony of baptism automatically achieves its effect and that the baptised automatically receives the sacrament of marriage! Indeed, the identity of the contract with the sacrament makes sense in the context of the living faith of the baptised. However, in the

¹⁴ “Nova legislatio canonica rationem habeat de iis quae in hoc propositione (12a). *Synodus Episcoporum* (1980), “Post disceptationem de muneribus christianae, 24 octobris 1980,” n. 12., EV7/718.

¹⁵ Pope John Paul II, Post-Synodal Apostolic Exhortation, *Familiaris Consortio*, (22 November 1981), no. 68.

¹⁶ Ibid.

¹⁷ Pope Francis, Apostolic Exhortation, *Evangelii Gaudium* (24 November 2013), no. 47.

¹⁸ Ibid.

¹⁹ Pope Francis, Encyclical Letter, *Lumen Fidei*, (5 July 2013), no. 47.

²⁰ Walter H. Cuenin, “The Marriage of Baptised Non-Believers: Questions of Faith, Sacrament, and Law,” in *Canon Law Society of America, Proceedings of the Fortieth Annual Convention* (St Louise, Missouri: 1978), 40.

case of baptised non-believing Christians, there seems to be an anomaly in this identification. It is for this reason that the Church must allow for the recognition of a civil marriage for those baptised persons who do not have sufficient faith.

Up to the Council of Trent, Catholic theologians affirmed unanimously that sacraments are efficacious “by” faith, “in” faith, “in proportion to” faith. After Trent, they insisted that “faith alone” did not justify, but faith in and through sacraments. This was not, however, to deny the necessity of faith but to deny only that faith alone was necessary. When the Second Vatican Council taught that sacraments “not only presuppose faith but by words and objects they also nourish, strengthen and express it,”²¹ it was merely summarising a long-standing Catholic tradition which is not reflected in Canon 1055.²²

Faith

The reality of faith is central in this discussion. Thomas Aquinas defines faith “as an act of the intellect assenting to divine truth at the command of the will moved by the grace of God, so that it is subject to free choice in relation of God.”²³ Faith is not an act of the intellect alone since the will is also involved, and accordingly faith is a free act. In line with the Thomistic perspective, the Second Vatican Council moved away from the intellectualist conception of faith, teaching that the obedience of faith is an act “by which man entrusts his whole self freely to God, offering ‘the full submission of intellect and will to God who reveals’, and freely assenting to the truth revealed by him.”²⁴ Thus, faith is not only intellectual but a personal experience of God in Jesus Christ.

The renowned twentieth-century theologian Juan Alfaro explains the essence of faith as follows:

Faith is not so much an act or a series of acts as a basic and total attitude of the person, giving life a new, definitive direction. It comes from the depths of human freedom, where man has received the interior invitation of grace to enter the intimacy of God; it embraces his whole being – intellect, will, all that he does [...]. By accepting doctrine, faith accepts the revealed reality itself, the person of Christ with its claim on total dedication in love and obedience. Faith is at once an assent of the intellect and a consent of the will, which finds its true fulfilment in action.²⁵

²¹ *Sacrosanctum Concilium*, no.59.

²² Lawler, *Marriage and the Catholic Church*, 50.

²³ ST II-II, q. 4, a. 3, c.

²⁴ Dogmatic Constitution, *Dei Verbum*, no. 59.

²⁵ Juan Alfaro, “Faith,” in *Sacramentum Mundi*, ed. Karl Rahner (London: Burns & Oates, 1968), 2:319.

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This quotation is crucial in our discussion. If we have to reflect on faith and the sacraments, in particular in relation to the faith of the spouses as they minister the sacrament to each other, we do have to admit that Christian marriage has to be an expression and celebration of the spouses' personal living faith in order to be considered as a valid sacrament. The sacrament is not something about, alongside or in marriage, but marriage itself, and as such it is a sacrament for those who live it in faith. The more the couple succeeds in living and shaping marriage out of faith, the more their marriage is a sacrament.²⁶

In this context, it is worth referring to an often-quoted statement by Pope Benedict XVI, made on 25 July 2005 in his encounter with priests at the parish church of the village of Introd in the region of Val d'Aosta:

When I was Prefect of the Congregation for the Doctrine of the Faith, I invited various Bishops' Conferences and experts to study this problem: a sacrament celebrated without faith. Whether, in fact, a moment of invalidity could be discovered here because the sacrament was found to be lacking a fundamental dimension, I do not dare to say. I personally thought so, but from the discussions we had I realised that it is a highly complex problem and ought to be studied further.²⁷

This statement reflects Cardinal Ratzinger's ideas reiterated in 1998 in an article in *L'Osservatore Romano*, namely, "that a minimum of personal faith should be considered a distinct requirement for the validity of the marital sacrament."²⁸ Moreover, in his final encounter with the Tribunal of the Roman *Rota*, Pope Benedict XVI, on 26 January 2013, referred to the 1977 document of International Theological Commission on the *Propositions on the Doctrine of Christian Marriage*. Since "faith is important in the realization of the good of the couple," Pope Benedict XVI called for further reflection to a theme that John Paul II seemed to close definitely both theologically and canonically. He pleaded that "[w]here there is no trace of faith, and no desire for grace or salvation is

²⁶ Christoph Rabl, *Die Ehe als Sakrament in der Katholischen Kirche. Von der historischen Entwicklung zu einer modernen Ehetheologie mit ihren aktuellen Herausforderungen* (Hamburg: Diplomatica Verlag, 2014), 63.

²⁷ Pope Benedict XVI, Address during meeting with Diocesan clergy of Aosta, 25 July 2005: http://w2.vatican.va/content/benedict-xvi/en/speeches/2005/july/documents/hf_ben-xvi_spe_20050725_diocesi-aosta.html [Accessed 25 May 2019].

²⁸ See <http://www.osservatoreromano.va/en/news/the-pastoral-approach-to-marriage-must-be-founded->. Cited in Editorial, "Faith and the Sacrament of Marriage. A Response to the Proposal of a New 'Minimum Fidei' Requirement," in *Communio*, English ed. 42 (Summer 2015): 317. The 1998 article by Ratzinger bore the title "The Pastoral Approach to Marriage Should Be Founded on Truth."

found, then a real doubt arises as to whether there is the above-mentioned and truly sacramental intention and whether in fact the contracted marriage is validly contracted or not.”²⁹

Evidently, the more difficult issue is what is meant by living faith. There is no simple dividing line between those of faith and those of no faith. It would be a serious mistake to equate non-practice with non-belief. Those who disagree with the position that faith is required for a valid reception of the sacrament of marriage put forward this practical issue: what level of faith is sufficient to have a valid sacrament and how can one measure such living faith that is far from mere religious knowledge? How is it possible to quantify the level of faith necessary for the validity of the sacrament of marriage? The Italian Episcopal Conference, as far back as 1975, acknowledged that faith is a profound internal aspect in the believer, but that “it is made evident through external expressions and manifestations.”³⁰ Maybe this is the way forward towards a possible solution. Obviously, this issue indicates that great pastoral sensitivity is needed in marriage preparation. Pastoral ministers must seek to find ways of discerning the faith of the young couples seeking marriage. One must admit that many persons of genuine faith have difficulty articulating their personal faith.

The Necessity of Faith-Informed Intention

Sacramental theology puts great stress on sacramental intention. What is the relationship between the intention traditionally required for a valid reception of a sacrament and personal Christian faith? Can a person have a real intention to participate in a sacrament without at least minimal personal faith?

Aquinas suggests an answer: “Faith directs intention, and without [faith] intention cannot be right” (*fides intentionem dirigit, et sine ea non potest esse*

²⁹ Pope Benedict XVI, *Address During the Inauguration of the Judicial Year of the Tribunal of the Roman Rota*, 26 January 2013, n.1: http://w2.vatican.va/content/benedict-xvi/en/speeches/2013/january/documents/hf_ben-xvi_spe_20130126_rotaromana.html [Accessed 25 May 2019]. See also, James Cleary, “The Question of Faith and Validity of Marriage: Understanding Benedict’s Thought in the Light of *Familiaris Consortio* 68,” https://www.academia.edu/36888711/The_Question_of_Faith_and_Validity_of_Marriage_Understanding_Benedict_s_thought_in_the_Light_of_Familiaris_Consortio_68 [Accessed 9 July 2019].

³⁰ Italian Episcopal Conference, *Evangelizzazione e Sacramento del Matrimonio*, 20 giugno 1975, par 92, <https://www.chiesacattolica.it/documenti-segreteria/evangelizzazione-e-sacramento-del-matrimonio-documento-pastorale-dellepiscopato-italiano/> [Accessed 9 July 2019].

...*intentio recta*).³¹ One might argue that there is a distinction between right intention and faith. The International Theological Commission offers an answer: though intention and personal faith are not to be confused, they are not to be totally separated either. “The real intention,” they teach, “is born from and feeds on living faith.”³² One cannot have a right sacramental intention without a minimum of personal faith. The canonical judgement is at variance with this theological conclusion since Can. 1055 claims that “a valid marriage contract cannot exist between two baptised persons without its being by that very fact a sacrament.”

The main issue is what qualifies as faith. Can baptism guarantee that someone is a believer? An explicit and conscious act of faith presupposes living personal faith. Baptism bestows the virtue of faith. For that virtue to become a personal act of faith, it must be activated freely, explicitly, however minimally.³³ In a mature person, Ladislav Orsy comments that “the infused virtue of faith must blossom out in a personal act.”³⁴ It is that personal faith, however minimal, and always under the grace of God, that transforms the human being from one who *can* be a believer into one who *is* a believer. It is in that act of faith and not just in the virtue of faith, that one cooperates with God-in-Christ and Christ-in-Church to transform secular realities, including marriage, into a Christian sacrament. The act of faith is required for the right sacramental intention.

If one does not intend personally to participate in a sacrament, then the mere physical submission to a physical rite does not submit an individual to a saving sacrament. Both *opus operatum* and *opus operantis* are required for a valid sacrament. God in Christ in the Church objectively offers a sacramental *opus operatum*. The sacrament offered still signifies the saving action of God in Christ in the Church. The subject’s *opus operantis* is required in order to transform the *opus operatum* into an efficacious sign of the action of God in Christ. In other words, it is required to transform the *opus operantis* into a valid sacrament. Personal faith, therefore, enters into the essence of valid sacramentality as the necessary personal complement in the signification and conferral of grace. A valid sacrament requires the conjunction of both the action of God and the faith of the participant, and only in such conjunction is there a free, and therefore

³¹ *In IV Sent.*, d. 6, q. 1 a. 3 and 5.

³² *Prepositions on the Doctrine of Christian Marriage*, par. 2.3

³³ Lawler, *Marriage and the Catholic Church*, 54.

³⁴ Ladislav Orsy, “Faith, Sacrament, Contract, and Christian Marriage: Disputed Questions,” *Theological Studies* 43 (1982): 383, n. 7.

valid and fruitful, interaction between them.³⁵ As Aquinas taught, the passion of Christ “achieves its effect in those to whom it is applied through faith and love and the sacraments of faith.”³⁶

According to Susan Wood, “[a] marriage entered into with an intention to indissolubility, fidelity, and openness to children comprises a sacramental marriage for the baptised person The religious marriage is valid when the prevailing will is to marry, even if the couple would wish to exclude the sacrament.”³⁷ Does this intention to indissolubility, fidelity, and openness to children implicitly refer to Karl Rahner’s theological concept of the “anonymous Christian”? Or is this interpretation false because the free commitment to faith is required? Wood’s contention is in sharp contrast to the 1980 Synod of Bishops’ argument in favour of the relationship between faith and the sacrament in marriage. In fact, bishops voted almost unanimously in support of faith requirement: “We have to take into account the engaged couple’s degree of faith maturity and their awareness of doing what the church does. The intention is required for sacramental validity. It is absent if there is not at least a minimal intention of believing with the church.”³⁸ For this reason, *FC* describes a “course of preparation for Christian marriage as a “pilgrimage of faith similar to the catechumenate.”³⁹ If the sacrament of marriage dedicates and pledges the couple to found a Christian family as a permanent sacrament and domestic church, this surely calls for a catechesis that will inspire living faith.⁴⁰

However, in *FC*, Pope John Paul II was reluctant to move beyond the principle which is basic to Catholic jurisprudence, namely, the principle that Christian marriage is invalid when one rejects the sacrament itself. He decreed

³⁵ In the case of infant baptism, faith is not required from the infant. Baptism is justified in the desire of parents that their children participate in sacramental grace, be incorporated into Christ and the Church, and become members of the community of God’s children. In the baptism of infants, it is the faith of the community which inserts the child in a process of growth and maturity in faith. The celebration confirms it solemnly after the profession of faith: “This is our faith; this is the faith of the Church that we are proud to profess.” As the *Catechism of the Catholic Church* states, faith must grow after baptism” (CCC, no. 1254). The baptism of children is justified from the responsibility of educating in the faith that the parents and godparents contract, parallel to the responsibility of educating them in the rest of the spheres of life.

³⁶ *ST III*, q. 49, a. 3 ad 1.

³⁷ Susan Wood, “The Marriage of Baptised Nonbelievers: Faith, Contract, and Sacrament,” *Theological Studies* 48 (1987): 300.

³⁸ Lawler, *Marriage and the Catholic Church.*, 51-52.

³⁹ *Familiaris Consortio*, no. 66.

⁴⁰ Denis F. O’Callaghan, “Faith and the Sacrament of Marriage,” *Irish Theological Quarterly* 52 (1986): 162.

that when “engaged couples show that they reject explicitly and formally what the Church intends to do when the marriage of baptised persons is celebrated,” they are not to be admitted to the sacrament.⁴¹ Pope John Paul II taught that permitting implicit exclusion of the sacramentality as a cause of nullity would lead to subjectivism and thus deny the objective reality of the sacrament. Only an explicit, positive, act of exclusion of the sacramentality would be a valid cause because it would affect the consent by restricting it, and there would be simulation of the sacrament.⁴²

The intention to participate in any sacrament is the intention to participate in the Christ-event. The intention for a sacrament can never be the request for a purely external ritual that has no connection with the mystery of salvation. The key that opens the door to a covenantal and sacramental meaning of marriage is not just the intention of the spouses to marry, their intention to fidelity, indissolubility and openness of children, but also their intention, informed by Christian faith, to be rooted in, to represent, and to experience their marriage through Christ and his Church. Consent may make marriage a secular institution, but it is only living Christian faith that makes it also a sacrament. As Cardinal Ratzinger put in: “Faith belongs to the essence of a sacrament. It remains to clarify the juridical question: what level of non-faith would mean that a sacrament has not been effected.”⁴³

Relationship Between Contract and Sacrament

If baptised nonbelievers cannot enter into a valid sacramental marriage, can they marry at all? Can they enter, at least, into a valid civil marriage? If the contract of marriage and the sacrament of marriage are not separate, as the Code claims, then baptised nonbelievers cannot enter into a valid sacrament of marriage, nor can they enter into a valid contract of marriage. In other words, they cannot marry validly at all. The International Theological Commission has remarked, in 1977, that the marriage of baptised non-believers raises “new questions to which satisfactory answers are not yet forthcoming.” Moreover, proposition 12 of the 1980 Synod of Bishops states: “We must investigate further if this statement applies to those who have lost the faith: ‘a valid marriage

⁴¹ *Familiaris Consortio*, no. 68.

⁴² Cleary, “The Quest of Faith and Validity of Marriage,” 9.

⁴³ Joseph Cardinal Ratzinger, “A propos de la pastorale des divorcé remarié,” *La Documentation Catholique* (April 4, 1999): 61-72.

between baptised persons is always a sacrament.' The statement has pastoral and juridical consequences."⁴⁴

The Code of Canon Law asserts: "Consequently, a valid marriage contract cannot exist between baptized persons without its being by that very fact a sacrament" (Can 1055 [§2]). Is every valid sacrament of two baptised persons *eo ipso* a sacrament? Did Christ establish specifically the contract of marriage into a sacrament? Is it theologically correct to claim without qualification that Christ raised the contract of marriage to the dignity of a sacrament? The particle *quare* takes for granted that nothing other than baptism is required for a sacramental marriage. There must be, however, other conditions for the validity of marriage! The Orthodox tradition differs from the Latin Church perspective since the Eastern tradition considers the priestly blessing and not the exchange of vows as the constitutive element of marriage.⁴⁵

Whereas Trent says that "If anyone says that marriage is not one of the seven sacraments ... let him be anathema," the Code of Canon Law states that marriage between two baptised persons is a sacrament. The two are vastly different assertions. To say "that the Council of Trent declared the inseparability of sacrament and contract seems to weigh the text with the burden they are incapable of bearing logically and historically."⁴⁶ Far from declaring, even implicitly, the inseparability of contract and sacrament, Trent deliberately chose to leave the question open.⁴⁷ Moreover, the Theological Commission for the First Vatican Council remarked that the inseparability of contract from sacrament was not a doctrine that could be defined because neither was it contained in the sources of revelation, nor did it flow from any truth that was in the sources.⁴⁸

The nineteenth-century references that assert the identity of contract, that is marriage, and sacrament among Christians, are to be interpreted hermeneutically as an assertion of the legitimate power of the Church over marriage among Christians rather than as an assertion of the identity of legal contract and sacrament.⁴⁹ Cardinal Pietro Gasparri himself judged, in 1891, that "marriage among Christians is a sign of a sacred thing in Christ and in the Church, and to it

⁴⁴ *Evangelii Gaudium*, no. 7/718.

⁴⁵ Kevin Schembri, *Oikonomia, Divorce and Remarriage in the Eastern Orthodox Tradition* (Rome: Pontificio Istituto Orientale, 2017), 55-56.

⁴⁶ James A. Nowak, "Inseparability of Sacrament and Contract in Marriages of the Baptised," *Studia Canonica* 12 (1978): 329.

⁴⁷ Lawler, *Marriage and the Catholic Church*, 56.

⁴⁸ Eugenio Corecco, "Il sacerdote ministro del matrimonio," *La Scuola Cattolica* 98 (1970): 450.

⁴⁹ Lawler, *Marriage and the Catholic Church*, 57-58.

grace is joined, but it is not proven that the force of producing grace is placed in the matrimonial contract itself.”⁵⁰ One wonders what caused Gasparri to change his mind between 1891 and 1917!

The juridical closure of the debate by the 1917 Code does not mean that the theological debate is closed. On the contrary, the discussion is still theologically open. Theologians do not doubt that sacrament and marriage among baptised faith-committed Christians are identical. The doubt focuses on marriage among baptised nonbelieving Christians. Is the marriage of baptised nonbelievers non-sacramental? Can this assertion be extended to believers who lost their faith in their marriage journey? If so, it can be dissolved according to the norms of Canon 1143. This conclusion needs further elaboration on the indissolubility of marriage among nonbelieving baptised Christians.

Concluding Reflections

Matrimonial jurisprudence may be uneasy with a theology that would move it from the position that locked the Christian sacrament to a firm anchor-point of baptism without any need to consider sacramental intention.⁵¹ The law’s attitude is understandable: it aims at clarity; it also tends to document what is clear. It is easy to find evidence for the fact of baptism; it is more challenging to demonstrate the presence or absence of faith in a human person.⁵²

Ladislas Örsy is correct in his remark: “To discover the theological values behind the legal texts and to assess how far the norms correspond to them, is an immense task that must go on always but cannot be completed ever.”⁵³ He rightly claims that canon law reflects the humanity of the Church and consequently is in need of continuous scrutiny in a spirit of faith. The fact that canon law can be reinterpreted and reformulated does not mean that they are not binding. The Church can never grow in wisdom and grace unless it has the authority to revise and improve whatever is of human origin in its organisation. In 1973, the Congregation for the Doctrine of Faith declared the obvious, that doctrinal formulae may sometimes bear the traces of “the changeable conceptions of a

⁵⁰ Petro Gaspari, *Tractatus Canonici de Matrimonio* (Paris: Institute Catholique, 1891): 1:130, no.2.

⁵¹ O’Callaghan, “Faith and the Sacrament of Marriage,” 178.

⁵² Ladislas Örsy, “Faith, Sacrament, Contract, and Christian Marriage: Disputed Questions,” *Theological Studies* 43 (1982): 387.

⁵³ Ladislas Örsy, *Marriage in Canon Law. Texts and Comments. Reflections and Questions* (Wilmington, Del.: Michael Glazier, 1988), 12.

given epoch.”⁵⁴ That is the inevitable result of historicity. With specific reference to the *de fide* doctrine of the Church, Karl Rahner remarked that anyone who takes seriously the historicity of human truth “must see that neither the abnouncement of a formula nor its preservation in a petrified form does justice to human understanding.”⁵⁵ History is not a beginning-*anew*; it is rather “a beginning-*new* which preserves the old, and preserves it all the more as old.”⁵⁶ Theology, therefore, must never cease the effort to release itself from a formula, “not so as to abandon it but to understand it.”⁵⁷ It is for this reason that Ladislav Örsy concluded in an essay in 1982 with this statement: “About the doctrine and the law of Christian marriage, we ought to think afresh.”⁵⁸ Moreover, Susan Wood, in an essay in 1987, invited “criticism and refinement of the theological principles involved.”⁵⁹ Perhaps the Easter Christian tradition and practice on the sacrament of marriage can be a source of inspiration and development for theological renewal.

Canon law must give expression to theology. However, the crux of the problem is which theological assumptions are adopted to understand and define marriage! Is it the *contractual model* or the *covenantal model* of marriage? Is it the juridical or the personalist perspective of marriage? Örsy is right in his comment: “Because the Church has now firmly placed the law into a theological context, the governing principles for the interpretation of the canon laws must be taken from appropriate theological sources. Within the new theological framework, however, many traditional legal elements have been kept.”⁶⁰ Let us hope that sincere dialogue and humility, inspired by *parrhesia* and the belief in *salus animarum suprema lex*, will lead canon lawyers and theologians to resolve the lack of harmony and cohesion between matrimonial canon law and contemporary matrimonial and sacramental theology!

⁵⁴ *Mysterium Ecclesiae*, AAS 65 (1973): 404.

⁵⁵ Karl Rahner, “Current Problems in Christology,” *Theological Investigations* (London: Longman and Todd, 1965), 1:150.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Örsy, “Faith, Sacrament, Contract, and the Christian Marriage: Disputed Questions,” 398.

⁵⁹ Wood, “The Marriage of Baptized Non-Believers: Faith, Contract and Sacrament,” 280.

⁶⁰ Örsy, *Marriage in Canon Law*, 47.

Appendix⁶¹

Table showing the two different viewpoints on faith
as a condition for sacramental marriage.

	FAITH NOT REQUIRED	FAITH REQUIRED
i. ¹³	Canon 1055 §2: A valid marriage contract cannot exist between baptized persons without its being by that very fact a sacrament.	<i>Sacrosanctum Concilium</i> , par. 59: [The sacraments] do not only presuppose faith, but by words and objects they nourish, strengthen and express it; that is why they are called “sacraments of faith.”
ii.	<i>Familiaris Consortio</i> , no. 68: By virtue of their Baptism, they are already really sharers in Christ’s marriage Covenant with the Church, and that, by their right intention, they have accepted God’s plan regarding marriage and therefore, at least implicitly, consent to what the Church intends to do when she celebrates marriage. <i>Amoris Laetitia</i> : quoted in full CIC/1983 canon 1055 §2.	<i>Familiaris Consortio</i> , no. 68: Engaged couples who demonstrate, that they reject explicitly and formally (<i>aperte et expresse</i>) what the Church intends to do when the marriage of baptized persons is celebrated, cannot be admitted to the celebration of marriage.
iii.		<i>Praenotanda Ordo Celebrandi Matrimonium</i> (1990), par. 16: The sacrament of matrimony presupposes and demands faith.

⁶¹ Gouder, *Faith as a Condition for Sacramental Marriage*, 95-97.

<p>iv.</p>		<p>1980 Synod of Bishops, Proposal 12: Proposed that the new code of Canon Law bears in mind the importance of faith in order to enter into a valid sacrament of matrimony and to examine whether a valid marriage between baptized persons needs always to be a sacrament.</p>
<p>v.</p>	<p>John Paul II – Allocution to the Roman Rota (2001) – spoke against attempts to require faith as a prerequisite for marriage and referred to these attempts as “foreign to tradition” (par. 8).</p> <hr/> <p>Benedict XVI – Allocution to the Roman Rota, (2013): The indissoluble pact between a man and a woman does not, for the purposes of the sacrament, require of those engaged to be married, their personal faith.</p> <hr/> <p>Pope Francis – Allocution to the Roman Rota (2016): The essential component of marital consent is not the quality of one’s faith ... even when faith has not been developed, and psychologically speaking, seems to be absent.</p>	<p>Benedict XVI’s – Address to the Diocesan Clergy of Valle d’Aosta, 25 July 2005: He confessed that personally, he thought that a moment of invalidity could be discovered, because the Sacrament was found to be lacking a fundamental dimension.</p> <hr/> <p>Benedict XVI – Allocution to the Roman Rota, (2013): Where there is no trace of faith, ... then a real doubt arises as to whether ... the contracted marriage is validly contracted or not.</p> <hr/> <p>Pope Francis – Allocution to the Roman Rota (2018): The sacramental intention is never the result of automatism, but always of a conscience illuminated by faith, as the result of a combination of the human and the divine.</p>

vi.		<p>Card. Ratzinger, as Prefect for the CDF, Document (1998), affirmed that faith belongs to the essence of the sacrament; “... what remains to be clarified is the juridical question of what evidence of the ‘absence of faith’ would have as a consequence that the sacrament does not come into being.”</p>
vii.	<p>International Theological Commission, par. 3.5: For the Church, no natural marriage, separated from the sacramental, exists for the baptized persons.</p>	<p>International Theological Commission, par. 2.3: Where there is no trace of faith ... and no desire for grace or salvation is found, then a real doubt arises as to whether ... the contracted marriage is validly contracted or not.</p>

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