

ON THE SACRAMENTALITY OF MARRIAGE:
THE DIVERGENCE OF CANON LAW AND THEOLOGY
AND THE
INABILITY TO MAINTAIN THE PRESUMPTION OF
FACERE QUOD FACIT ECCLESIA

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I declare that *On the Sacramentality of Marriage: The Divergence of Canon Law and Theology and the Inability to Maintain the Presumption of Facere Quod Facit Ecclesia* is my own work and that all sources I have used or quoted have been indicated by means of complete references.

Signed

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Abstract

The *CIC/83*, the living law (*ius vigens*) of the Latin Catholic Church, contains 110 canons on marriage in cc. 1055 – 1165. [The 1990 *Code of Canons of the Eastern Churches* contains a similar section, cc. 776 – 866]. The sacred canons, in general, are a compilation of theological statements that are presented in juridical terms. The canons on marriage, like those of the other sacraments, commence with a theological statement defining the essence of the sacrament. The first canon, c. 1055, states that (§1) the marriage covenant, for the baptized, has been raised to the dignity of a sacrament by Christ the Lord and that (§2) a valid marriage contract cannot exist between baptized persons without being a sacrament.

A requirement of c. 1099 is that one must not be in error (*error iuris*) concerning the unity, indissolubility, or the sacramental dignity of marriage. Additionally, c. 1101, §2 states that when by a positive act of the will one excludes marriage itself or an essential element or an essential property, that marriage is invalid. The expectation of cc. 1099 and 1101, therefore, is that *sacramentality* be included at the time of exchange of consent.

From the time of the scholastics, *contract* and *sacrament* have been identified as one for the baptized, hearkening to a time when civil legislation attempted to subvert the authority and oversight of the Church regarding (sacramental) marriage.

At the Second Vatican Council, the constitution *Gaudium et spes* re-interpreted marriage as a covenantal relationship between man and woman. A covenant and a contract are not identical terms. More importantly, marriage was again seen as a covenant, and as a covenant, for the baptized, it

is sacramental. *Sacrosanctum Concilium*, which set forth principles for the reform of the sacramental and liturgical life of the Latin Church, stated that *sacraments presuppose faith*. The International Theological Commission identified that there are members of the baptized faithful, Catholic or non-Catholic, who are unbelievers, who may have been baptized as children but have had no further faith elucidation, or, as members of non-Catholic ecclesial communities, do not believe in the seven sacraments of the Catholic Church, or, in particular, that marriage is a sacrament. Such persons would not, then, understand that sacramentality *must* be exchanged on the day of marriage. Rotal jurisprudence has reflected this change.

In addition to the presumption that sacraments require faith, another presumption exists when the Church expects that the baptized marry *according to the mind of the Church* (the *mens Ecclesiae*), that is, *facere quod facit Ecclesia*, ([by] *doing what the Church does*). But in a society that is weakened by divorce, secularism, and a lack of understanding of what the Catholic Church understands by the sacrament of marriage, this presumption needs to be re-examined.

Through research on the historical development of theological and canonical principles, and by means of independent studies of large groups of baptized Catholics and non-Catholics, it becomes increasingly clear that the *theologico-juridico* principles of c. 1055 and the sacramentality of marriage must be revisited.

Key Terms

Marriage, sacramentality, sacramental dignity, covenant, gradation, betrothal, paradigm shift, 1980 Synod of Bishops, Diocese of Autun (France), baptized non-believers, intention against sacramentality

Introduction

The sacramental rite of marriage was one of the first rituals to be studied and revised as the result of the Second Vatican Council. Indeed, it was the first ritual to be revised subsequent to the promulgation of the Constitution *Sacrosanctum Concilium*.¹ Accordingly, the marriage rite is to “more clearly signify the grace of the sacrament and will emphasize the spouses’ duties.”² The new ritual was promulgated March 19, 1969, the feast of Saint Joseph, Husband of the Virgin Mary.

The content of the revised ritual follows logically from the task that was assigned by the Council.³ In the *praenotanda*, the importance and dignity of the sacrament of marriage are recalled; differences in the ritual are derived from the baptismal status of the parties, and whether the marriage will be celebrated within or apart from Mass.⁴ What remains essential to the ritual is the exchange and reception of consent by the priest.

¹ Annibale Bugnini, *The Reform of the Liturgy 1948-1975* (Collegeville, MN: The Liturgical Press, 1990) 696.

² Vatican II, *Sacrosanctum Concilium*, December 4, 1963: AAS 56 (1964) 119: “quo clarius gratia Sacramenti significetur et munera coniugum inculcentur.”

³ *Ibid.*, n. 59, 116. “The purpose of the sacraments is to sanctify people, to build up the Body of Christ, and, finally, to give worship to God. ... They do indeed confer grace, but in addition, the very act of celebrating them most effectively disposes the faithful to receive this grace to their profit, to worship God duly, and to practice charity. ... It is, therefore, of the greatest importance that the faithful should easily understand the sacramental signs” [“Sacramenta ordinantur ad sanctificationem hominum, ad aedificationem Corporis Christi, ad cultum denique Deo reddendum; ... [g]ratiam quidem conferunt, sed eorum celebratio fideles optime etiam disponit ad eandem gratiam fructuose recipiendam, ad Deum rite colendum et ad caritatem exercendam. Maxime proinde interest ut fideles signa Sacramentorum facile intellegant et ea Sacramenta impensissime frequentent, quae ad vitam christianam alendam sunt instituta.”]

⁴ National Conference of Catholic Bishops, *Rite of Marriage* (New York, NY: Catholic Book Publishing Co., 1970) 7-9.

Apart from the text itself, those who were preparing the ritual were faced with a new consideration. The historical significance of the Second Vatican Council was its desire

that the sacred deposit of Christian doctrine should be guarded and taught more efficaciously. ... In order, however, that this doctrine may influence the numerous fields of human activity, with reference to individuals, to families, and to social life, it is necessary first of all that the Church should never depart from the sacred patrimony of truth received from the Fathers. But at the same time she must ever look to the present, to the new conditions and new forms of life introduced into the modern world, which have opened new avenues to the Catholic apostolate. ... Our duty is not only to guard this precious treasure, as if we were concerned only with antiquity, but to dedicate ourselves with an earnest will and without fear to that work which our era demands of us, pursuing thus the path which the Church has followed for twenty centuries.⁵

For Pope John XXIII, this entailed an *aggiornamento*, an urgency which shows forth in his biography when he notes that “[t]he Church cannot afford to delay. The present situation in the world makes it all the more urgent for Christianity, if it is not to perish, to proclaim its ancient principles with vigor.”⁶ Hence, the purpose of the Second Vatican Council was to ‘bring up-

⁵ Opening address of Pope John XXIII to the Fathers of the Second Vatican Council, *Gaudet Mater Ecclesia*, October 11, 1962: AAS 54 (1962) 790-791: “Quod Concilii Oecumenici maxime interest, hoc est, ut sacrum christianae doctrinae depositum efficaciore ratione custodiatur atque proponatur. ... Ut autem haec doctrina multiplices attingat humanae navitatis campos, qui ad singulos homines, ad domesticum convictum, ad socialem vitam pertinent, in primis necesse est, ne Ecclesia oculos a sacro veritatis patrimonio a maioribus accepto umquam avertat; at simul necesse habet, ut praesentia quoque aspiciat tempora, quae novas induxerunt rerum condiciones, novasque vivendi formas, atque nova catholico apostolatu patefecerunt itinera. ... Attamen nostrum non est pretiosum hunc thesaurum solum custodire, quasi uni antiquitati studeamus; sed alacres, sine timore, operi, quod nostra exigit aetas, nunc insistamus, iter pergentes, quod Ecclesia a viginti fere saeculis fecit.”

⁶ Leone Algisi, *John XXIII – A Biography*. Trans. by Peter Ryde (London, UK: Darton, Longman, and Todd, 1963) 269.

to-date' the Church with a spirit of openness, change, and modernization⁷ while remaining within traditional categories of theology, canon law, and sacramentality.

But from the renewed, serene, and tranquil adherence to all the teaching of the Church in its entirety and preciseness, as it still shines forth in the Acts of the Council of Trent and First Vatican Council, the Christian, Catholic, and apostolic spirit of the whole world expects a step forward toward a doctrinal penetration and a formation of consciousness in faithful and perfect conformity to the authentic doctrine, which, however, should be studied and expounded through the methods of research and through the literary forms of modern thought. The substance of the ancient doctrine of the deposit of faith is one thing, and the way in which it is presented is another. And it is the latter that must be taken into great consideration with patience if necessary, everything being measured in the forms and proportions of a Magisterium which is *predominantly pastoral in character*.⁸

⁷ Pope John Paul II continued with this legacy when he wrote, "It is not therefore a matter of inventing a 'new program'. The program already exists: it is the plan found in the Gospel and in the living Tradition, it is the same as ever. Ultimately, it has its centre in Christ himself, who is to be known, loved and imitated, so that in him we may live the life of the Trinity, and with him transform history until its fulfillment in the heavenly Jerusalem. This is a program which does not change with shifts of times and cultures, even though it takes account of time and culture for the sake of true dialogue and effective communication. This program for all times is our program for the Third Millennium" ["Non itaque agitur de hinc excogitando «novo consilio». Iam enim praesto est consilium seu «programma»: illud nempe quod de Evangelio derivatur semper vivaque Traditione. Tandem in Christo ipso deprehenditur istud, qui sane cognoscendus est, diligendus atque imitandus, ut vita in eo trinitaria ducatur et cum eo historia ipsa transfiguretur ad suam usque in Hierosolymis caelestibus consummationem. Institutum enim hoc, variantibus quidem temporibus ipsis atque culturae formis, non mutatur quamvis rationem quidem habeat temporis et culturae, ut verum instituat diverbium efficacemque communicationem. Constans vero institutum illud per tertium millennium pariter est nostrum."] See Pope John Paul II, Apostolic Letter *Novo Millennio Ineunte*, January 6, 2001, 29: AAS 93 (2001) 285-286. Effectively, John Paul II's theological approach was to wed *aggiornamento* and *ressourcement* (traditional sources) as equal contributions to theological discussion.

⁸ *Gaudet Mater Ecclesia*, 791: "Verumtamen in praesenti oportet ut universa doctrina christiana, nulla parte inde detracta, his temporibus nostris ab omnibus accipiatur novo studio, mentibus serenis atque pacatis, tradita accurata illa ratione verba concipiendi et in formam redigendi, quae ex actis Concilii Tridentini et Vaticani Primi praesertim elucet; oportet ut, quemadmodum cuncti sincere rei christianae, catholicae, apostolicae fautores

As a body concerned with the pastoral implications of theological musings, the Council approached a topic of significant influence within the context of the sacrament of marriage. The *Consilium*⁹ was the group of experts who incorporated the teachings of *Sacrosanctum Concilium* into revised rituals. Those charged with the revision of the ritual of marriage had to consider the role of faith in marriage, especially “whether or not faith is needed for a true and effective celebration of the sacrament.”¹⁰ A pastoral dimension can be seen in the reality that there are Catholics who were baptized as children but had no faith formation, and there are baptized non-Catholics who are not cognizant of what the Church teaches. The *Consilium* submitted a draft to be included in the *Introduction* to the new rite of marriage. Pastors

should first of all strengthen and nourish the faith of those about to be married, for the sacrament of marriage presupposes faith (see the liturgical *Constitution* 59) [sic]. But if it is clear that both spouses reject the faith, then, even if they clearly have a serious intention of contracting a marriage, it is not permitted to

vehementer exoptant, eadem doctrina amplius et altius cognoscatur eaque plenius animi imbuantur atque formentur; oportet ut haec doctrina certa et immutabilis, cui fidele obsequium est praestandum, ea ratione peruestigetur et exponatur, quam tempora postulant nostra. Est enim aliud ipsum depositum Fidei, seu veritates, quae veneranda doctrina nostra continentur, aliud modus, quo eadem enuntiantur, eodem tamen sensu eademque sententia. Huic quippe modo plurimum tribuendum erit et patienter, si opus fuerit, in eo elaborandum; scilicet eae inducendae erunt rationes res exponendi, quae cum magisterio, cuius indoles praesertim pastoralis est, magis congruant” (emphasis mine).

⁹ The *Consilium* was appointed by Pope Paul VI, on January 25, 1964, with (then) Father Annibale Bugnini as secretary of the commission that would implement the Constitution *Sacrosanctum Concilium*. From the outset, there were questions about marriage. For example, at the April 13, 1964 meeting, questions were raised about the motu proprio *Sacram Liturgiam* regarding the votive Mass of marriage and bestowal of the nuptial blessing during closed liturgical seasons (i.e., Lent). Also discussed was the instruction to be given at marriages outside of Mass. See Bugnini, 138-139.

¹⁰ Bugnini, 699.

celebrate their rite of the sacrament of matrimony.¹¹

Pope Paul VI appointed *periti* (experts) to examine and critique the documentation provided by *Consilium*. One expert was Bishop Carlo Colombo,¹² an auxiliary bishop and theologian from Milan, who wrote a note of explanation, identifying that when *both parties reject the faith* the

faithful are scandalized (especially now that the Liturgy is in the vernacular) to hear liturgical texts that express and presuppose faith being used even in the marriage of those who reject the faith. Non-Catholics ask whether the Church really regards its liturgy or even its faith as important. Priests are deeply disturbed at having to exercise their ministry in these conditions. It seems absolutely necessary, therefore, to use the revision of the rite of marriage as an opportunity for remedying this difficult situation. ...

If the priest is completely unsuccessful in reawakening the faith of the engaged couple or bringing them to faith for the first time, it is desirable that they not be obliged 'to observe the Catholic [sic] form of marriage' (CIC/17, c. 1099), since *this would be contrary to their conscience* (see the *Declaration on Religious Liberty*, 2), which rejects the faith expressed in the Liturgy of the sacrament.

It would seem wise in this case even to refuse the couple 'the Catholic form of marriage,' in order to avoid scandalizing the faithful and placing an obstacle to the evangelization of the non-baptized. Two baptized Catholics who marry while both reject the faith would be in the same position as two baptized non-Catholics who reject the sacramentality of marriage; that is, *when such a marriage verifies all the conditions required for being a true marriage, it is also a sacrament*, even if the spouses are ignorant of its precise meaning.¹³

¹¹ *Ibid.*, 700. The note that actually appears in the *praenotanda* of the *Rite of Marriage* is that "priests should first of all strengthen and nourish the faith of those about to be married, for the sacrament of matrimony presupposes and demands faith." See *Rite of Marriage*, 8.

¹² Bishop Colombo was also President of the "Giuseppe Toniolo" Institute, for higher studies in theological problems.

¹³ *Ibid.*, emphasis mine.

It was the recommendation to the Sacred Congregation for the Doctrine of the Faith to oppose the clarification of Bishop Colombo, which it did, apart from permitting the statement, reflected in the *Constitution*, that sacraments presuppose faith.¹⁴

¹⁴ Pope Paul VI appointed his official theologian, Father (later Cardinal) Luigi Ciappi, OP, to examine the schema.

Preliminary Considerations of the Canon Law of Marriage in Light of the Teachings of the Church

Laws are enacted to help structure society, helping to maintain fundamental principles on which that particular society evolves. Those who draft law look to these essential standards and apply them in a suitable way. When circumstances change, or unforeseen situations arise, these laws may need to be revisited.

The canonization of the theological principle of sacramentality in marriage may not have foreseen the reality of baptized non-believers as ministers and recipients of the sacrament of marriage. Many factors have necessitated a change in approach. The baptized but uncatechized, those who have left the Church by a formal act, or those who bear some deep-seated error are examples of situations that may not have been anticipated by those who enacted legislation in the Church. This paper attempts to address the issues surrounding the exclusion of sacramentality in marriage by those who are baptized non-believers with respect to the presumption that people marry according to the mind of the Church.

Canon 1055¹⁵ states a canonico-theological principle regarding the inherent sacramental nature of marriage for the baptized. It intends that baptism is the constitutive element for sacramentality in marriage. Yet, a contention exists because canon law *follows* theology, and, in responding to the Second Vatican Council, a renewal of community-based faith has been reintegrated into the Church's understanding of its sacramental life. Faith is central for the minister and recipient of the sacraments.

¹⁵ *Codex Iuris Canonici auctoritate Ioannis Paulii PP. II promulgatus* (Città del Vaticano: Libreria Editrice Vaticana, 1983), c. 1055.

Accordingly, a consequence is the unresolved debate over simulation in marriage. Sacramentality is considered by some to be the very essence of marriage, but by others to be an *essential property or element* of marriage. Once it is admitted that sacramentality could be a property or element of marriage, an array of issues becomes evident.

The traditional views on sacramentality in marriage clearly establish to inseparability of *contract* and *sacrament*. Historically, in any sacrament, including marriage, matter, form, and an intention *facere quod facit Ecclesia*¹⁶ were minimal requirements for sacrament to be effected *ex opere operato*.

Reforms in the liturgical life of the Church during the time of the Second Vatican Council responded to the necessity of faith as a prerequisite for the Church's sacramental life. Reflections on Conciliar documents prompted the International Theological Commission to address the issue of baptized non-believers in 1978, and the issue was addressed again by Pope John Paul II in 1981. With these developments, and since one can no longer presume that people marry as the Church intends, the Roman Rota has examined this special situation of baptized non-believer, or those with little faith, in several of its sentences.

The question presents itself as follows: As ministers and recipients of the sacrament of marriage, what is the role of faith in effecting sacramentality in marriage, and how does that effect the marriage of baptized non-believers? Can the presumption be maintained that people marry according to the mind of the Church? Is every marriage between the baptized necessarily sacramental? What options might be available?

¹⁶ "To do what the Church does."

This has a particular consequence for marriage nullity cases involving exclusion of sacramentality for the baptized non-believer or those with little faith. As always, one must prove this intention of exclusion. A determination of the role of faith is in good order.

The issues are complex, and there are many canonico-theological principles at work. The issue remains unresolved. As jurisprudence continues to develop, it is inevitable that a clearer expression of sacramentality and its exclusion will emerge.

Chapter 1

1. 1 Statement of the problem

There are many convergent dimensions to marriage in current thought. Some are pastoral, some are cultural, and others are more ancient or theoretical in nature.¹⁷ Christian families are often in grave crisis caused by a divorce mentality in a permissive society and/or

a lack of responsible conscience and enlightened *knowledge* about the authentic value of the *sacramental dignity* of Christian marriage, and the holiness and the essential properties of the natural institute of marriage.¹⁸

In light of the Church's current legislation, careful examination of a broken marriage must be conducted when two baptized people who, while neither believing nor having faith, have celebrated marriage within a religious context.

Canon 1055, §1¹⁹ states a canonical norm that reiterates the theological principle affirming the nature of Christian marriage. The second paragraph

¹⁷ Walter Cuenin, "The Marriage of Baptized Non-Believers: Questions of Faith, Sacrament, and Law," *CLSA Proceedings* 40 (1978) 38. See also Mario F. Pompedda, "Faith and the Sacrament of Marriage. Lack of Faith and Matrimonial Consent: Juridical Aspects," in *Marriage Studies IV*, ed. John A. Alesandro (Washington, DC: Canon Law Society of America, 1990) 33.

¹⁸ Daniel Faltin, "The Exclusion of the Sacramentality of Marriage with Particular Reference to the Marriage of Baptized Non-Believers," in *Marriage Studies IV*, 66. Emphasis in original.

¹⁹ Canon 1055, §1 - "Matrimoniale foedus, quo vir et mulier inter se totius vitae consortium constituunt, indole sua naturali ad bonum coniugum atque ad prolis generationem et educationem ordinatum, a Christo Domino ad sacramenti dignitatem inter baptizatos evectum est.

§2 - Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum."

declares the essential connection between covenant and sacramentality. Parties to a Christian marriage celebrate a human reality and “an event which of its very nature is sacral . . . [that] has been transformed through the saving activity of Christ.”²⁰

Several questions arise from this canonical/theological principle. Is simple (valid) baptism the constitutive element that is the foundation of the sacrament of marriage? Are the elements of contract and sacrament divisible, identical, or inseparable? What is the role of personal faith in the valid celebration of a sacramental marriage?

The problem of the exclusion of sacramentality in the marriages of baptized non-believers, evident in the Church today, is complex in its theological, juridical, and pastoral aspects. The problem is highlighted by developments in sacramental theology following the Second Vatican Council,²¹ where sacraments are no longer understood solely within the principle of *ex opere operato* efficacy; they are not mere rituals which give rise to a supernatural effect without reference to the person(s) involved.

Rather, the revision and renewal of the Liturgy reflect the role and necessity of faith for an individual’s fruitful reception of the sacrament.²² For instance, while, in former times, it was encouraged to baptize almost anyone, now, as a consequence of the teaching of the Second Vatican Council, baptism

²⁰ Raymond C. Finn, O.P., “Faith and the Sacrament of Marriage: General Conclusions from an Historical Study,” *Marriage Studies III*, ed. Thomas P. Doyle, O.P. (Washington, DC: Canon Law Society of America, 1990) 106.

²¹ *Sacrosanctum Concilium*, 116.

²² Sacra Congregatio pro Cultu Divino, *Ordo Initiationis Christianae Adultorum* (Città del Vaticana: Typis Polyglottis Vaticanis, 1972) *General Introduction*, 3: “veram et actuosam fidem.”

may be postponed if there is no promise of a life of faith.

With these revisions providing a new setting, the constitution that promulgated the *CIC/83* reminds us that

in a certain sense this new Code could be understood as a great effort to translate ... conciliar doctrine and ecclesiology into canonical language. If, however, it is impossible to translate perfectly into canonical language the conciliar image of the Church, nevertheless the Code must always be referred to this image as the primary pattern whose outline the Code ought to express insofar as it can by its very nature.²³

The renewal is related to all the sacraments, including marriage. As all sacraments are rooted in faith, none are automatic. Rather, in relation to the ministers of marriage, “the *ex opere operantis* aspect of the sacrament is not in opposition to the total gratuity and initiative of God, rather it is complimentary to it.”²⁴

1.2 Nature of sacramental dignity (c. 1055, §2)

The sacramental dignity of marriage²⁵ consists in the reality that a natural marriage covenant, extant between the baptized, has been transformed into a sign and source of grace. “Sacraments bear fruit in those

²³ John Paul II, *Sacrae disciplinae leges*, January 25, 1983: AAS 75 (1983) pars II, xi: “Quod si fieri nequit, ut imago Ecclesiae per doctrinam Consilii descripta perfecte in linguam ‘canonicam’ convertatur, nihilominus ad hanc ipsam imaginem semper Codex est referendus tamquam ad primum exemplum, cuius lineamenta in se, quantum fieri potest, suapte natura exprimere debet.”

²⁴ Finn, 109.

²⁵ See Walter Kasper, *Theology of Christian Marriage* (New York: Seabury Press, 1980) 11-19; Michael Lawler, “Faith, Contract and Sacrament in Christian Marriage: A Theological Approach,” *Theological Studies* 52 (1991) 712-731.

who celebrate and live them with the required disposition,"²⁶ and therefore are not mere magic signs. However,

the sacramental element which raises marriage in its own nature above nature giving it a new and high value is rooted in the transformation of that nature by Christ This reality is perceived and confessed by those who believe in his name.²⁷

The sacrament of marriage is celebrated by the Church and cannot be engaged by the baptized parties except through their willing *facere quod facit Ecclesia*.²⁸ This is rooted in the redemptive activity that is "the signing forth of God's rescuing act in Christ, which is the substance of the sacrament,"²⁹ necessitating that the sacramentality of marriage "cannot be discussed except in faith and cannot be embraced except by free commitment."³⁰

The inherent holiness found in Christian marriage, transformed from a natural union into a sacrament by Christ, is recognized by the faith community, and lived by the spouses themselves. They are intimately connected with the saving work of Christ, a reality which, in the case of the baptized, cannot be realized in the absence of faith.

²⁶ *Catechismus Catholicae Ecclesiae* (Città del Vaticana: Libreria Editrice Vaticana, 1994) 1131: "Fructum ferunt in illis qui ea cum requisitis recipiunt dispositionibus." English translation in *Catechism of the Catholic Church* (Collegeville, MN: The Liturgical Press, 1994) 1131.

²⁷ Finn, 105.

²⁸ Those entering Christian marriage "must be permeated with the knowledge of, the constantly renewed choice for, and the sublime acquiescence in the mystery that he and his partner effectively cause and signify, through Christ's power: the external union in love that the Savior manifests for the Church." See James Hertel, *When Marriage Fails* (New York, NY: Paulist Press, 1969) 23.

²⁹ Theodore Mackin, "Consummation: of Contract or of Covenant?" *The Jurist* 32 (1972) 221.

³⁰ Finn, 106.

The *CIC/83* highlights the interrelationship of covenant and sacramentality when it specifically mentions sacramental dignity in the same context as unity and indissolubility.³¹ Both are considered *essential properties*³² of marriage, given a special firmness in Christian marriage by virtue of the sacrament. It is here, too, that the exclusion of an essential element or property is linked to canon 1101, §2.³³

With new considerations, the issue of sacramentality in marriage is addressed, but with it, too, a consequence emerges: does mature faith contribute to the administering and reception of the sacrament of marriage?

1.3 Secular vs. the sacred: covenant/partnership

The underlying framework of matrimonial legislation in the *ius vigens* is different from that of the former law. The Second Vatican Council helped facilitate this change. The fundamental change is grounded in marriage as a *covenant* and not as a *contract*. A rethinking of the meaning of conjugal society (*matrimonium in facto esse*) is brought about when one realizes that the covenant of marriage (*foedus*) is more than a partnership (*contractus*), but that the two have attributes that are not necessarily dissimilar.

A *natural* union exists that is a valid marriage between the unbaptized, but it is non-sacramental.³⁴ Conversely, a marriage between the baptized is

³¹ Canon 1056 - "Essentiales matrimonii proprietates sunt unitas et indissolubilitas, quae in matrimonio christiano ratione sacramenti peculiarem obtinent firmitatem."

³² *Ibid.*

³³ Canon 1055.

³⁴ See Robert E. Rodes, Jr., "Natural Law and the Marriage of Christians," *The Jurist* 35 (1975) 409-430 for a detailed analysis.

both a natural *foedus* (because every person can benefit from the institution of marriage) and a sacramental covenant.³⁵

The Council Fathers never used the word *contract* when discussing Christian marriage. One can easily appreciate that *covenant* is more biblical term than contract. The term *covenant* is a transliteration of *conventio* or *conventus*, both derivations of the verb *convenire*, ‘to come together,’ and shape a *foedus* or *societas*. As with the Israelites, ancient peoples understood the binding and inviolable character of covenants as having a divine sanction attached to the covenant. The witnesses to a *contract* are persons, with civil society (or other) as the guarantor. Conversely, *covenants* have God or ‘the gods’ as the witness. God or the gods act as guarantors that the terms of the covenant will be carried out. In Roman society, this covenant could be seen in the commitment of a soldier to his emperor, by the taking of an oath (*iuramentum*) or vow (*sacramentum*). These are covenantal words. In Roman law, *foedus* was used

for agreements which transcended the ordinary categories of contract, e.g., treaties between nations or people, pacts with religious significance, promises among friends or the members of a family without creating strict right-and-duties situations.³⁶

Kasper notes that *foedus* relates to “a public and legal matter concerning the whole community of believers.”³⁷ Contract (*contrahere*) means to draw

³⁵ See William Marreeve, SCJ, “Is a Marriage ‘in the Church’ a Marriage ‘in the Lord?’” *Église et Théologie* 8 (1977) 91-109. He notes that the ceremonial/liturgical aspects of marriage have been equated with canonical requirements (i.e., marriage ‘in the Church’), whereas the sacramental marriage is associated with baptism, and a means of consciously belonging to each other because of their belonging to Christ (marriage ‘in the Lord’).

³⁶ Ladislaus Örsy, *Marriage in Canon Law* (Collegeville, MN: The Liturgical Press, 1990) 50.

³⁷ Walter Kasper, 41.

together or restrict. Contract is used in relation to things or property. When people are involved, it is not the person that is contracted, but the services to be rendered.³⁸ *Foedus* is a derivative of *fidus* or *fidere*, meaning ‘to trust’ or ‘to entrust oneself to another’.³⁹ A covenant is seen as a relationship of mutual trust and fidelity (*fides*). Fidelity is the essence of a covenant; contracts can be broken by mutual agreement, by a failure to live up to the terms of the contract, or by civil intervention. Covenants are not broken; they are *violated* when there is a contravention of faith by one or both parties.

Nonetheless, “covenant is the only secular institutionalization of marriage that allows for full Christian sacramentality of marriage. Or in other words, covenant rather than contract is the correlated human matrix for sacred sacramentality.”⁴⁰ The mystery of God’s love, fulfilled in Jesus Christ, is communicated to us through the imagery of human language.⁴¹ The prophets Hosea, Jeremiah, Ezekiel, and Isaiah⁴² used the analogy of the marriage covenant to explain the merciful love (*hesed*) of God toward unfaithful Israel. In the New Testament, the New Israel will experience the

³⁸ Edward Schillebeeckx notes the Duns Scotus refers to marriage as “a contract, and the object of this contract was furthermore limited to the *ius ad corpus* (the right to each other’s body) as a function of the foundation of the family (procreation and education).” See *Marriage: Human Reality and Saving Mystery* (New York, NY: Sheed and Ward, 1965) 302.

³⁹ *Communicationes* 15 (1983) 222: “Locutiones «contractus» et «foedus» uno eodemque sensu adhibitae sunt, consulto quidem, ut liquidius pateat foedus matrimoniale de quo in *Gaudium et Spes* nullo alio modo constituti posse pro baptizatis quam per contractum, etsi sui generis.”

⁴⁰ Mackin, *ibid.*, 217.

⁴¹ See Edward J. Kilmartin, “When is Marriage a Sacrament?” *Theological Studies* 34 (1973) 275-286. He states, profoundly, that (p. 286) “[o]rdination to a state of life is not, of itself, the same thing as participation in that state of life.”

⁴² *Hesed* (חסד) signifies lasting loyalty and faithfulness in relation to relatives, faithfulness, kindness, and grace in relationship to God and his people. See Mal 2, 14; Ez 16, 18; Hos 2, 18; Prov 2, 17.

covenant of Jesus Christ with his bride, sealed the life-giving shedding of this blood.⁴³

God's plan of *hesed* is reflected by his desire for an interpersonal commitment with himself. Exodus and the giving of the *Decalogue* at Mt. Sinai remind the people of Israel that they are to respond to his call.⁴⁴ Johannine literature also attests that God makes this same plan to the new Israel by the death of his Son.⁴⁵

God's covenants with Israel were confirmed by an oath. God guarantees that the covenant will never be broken (cf. Jer 31, 31-34) and his mercy shows forth as a forgiving and redemptive love (cf. Mal 2, 14). Unlike Israel, God remained faithful to his promises. Christ, too, promises the new Israel an irrevocable covenant (Mt 28, 20).

Mutual subjection in love is the first commandment of marriage. It is the mutual care which perfects each spouse. The purpose of mutual love is expressed by Christ in his self-sacrificing act towards the Church and in becoming 'one flesh.' Husbands and wives are called by God to grow into physical and moral dependence between themselves, for unity is essential to their mutual perfection.⁴⁶

Schillebeeckx writes,

⁴³ 1 Pet 2, 18-3, 4; 4,1; Eph 5, 21-6, 3.)

⁴⁴ Hos 11, 1ff.

⁴⁵ 1 Jn 4, 10.19. Yahweh gave the Law to Moses. Jesus gives the New Law to the New Israel by a new commandment: love one another as I have loved you (cf. Jn 13, 34).

⁴⁶ Cf. Eph 5, 26-31.

What has clearly emerged, however, is that any dogmatic study of marriage is bound to take two fundamental acts into account: first, that marriage is without qualification a secular reality, fully human, and consequently subject to development and evolution; and secondly that this reality has not been somehow 'added' to salvation, but has been included in its total and human dimension – and that this incorporation into God's salvation has not come about ... simply because the state of being a Christian has to be experienced within the purely worldly sphere, but also and above all because this secular reality, which has been taken up into salvation, has itself become sacramental in the technical sense.⁴⁷

These two dimensions of marriage are the basis of the Council Father's teaching on marriage in *Gaudium et spes*: marriage has been "established by the Creator and endowed by him with its own proper laws," and "authentic married love is caught up into divine love and is directed and enriched by the redemptive power of Christ and the salvific action of the Church."⁴⁸ These two dimensions are reflected in c. 1055, §1.⁴⁹ The development of c. 1055

⁴⁷ Schillebeeckx, 396-397.

⁴⁸ Vatican II, *Gaudium et spes*, December 7, 1965, n. 48: AAS 58 (1966) 1067: "Intima communitas vitae et amoris coniugalitatis, a Creatore condita suisque legibus instructa ... Germanus amor coniugalitatis in divinum amorem assumitur atque virtute redemptiva Christi et salvifica actione Ecclesiae regitur ac ditatur."

⁴⁹ The *CCEO/90* expresses these two dimensions with greater precision. In c. 776, §1, "[t]he matrimonial covenant, established by the Creator and ordered by His laws, by which a man and a woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the generation and education of children.

§2 From the institution of Christ, a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace."

[776, § 1. Matrimoniale foedus a Creatore conditum eiusque legibus instructum, quo vir et mulier irrevocabili consensu personali totius vitae consortium inter se constituunt, indole sua naturali ad bonum coniugum ac ad filiorum generationem et educationem ordinatur.

shows that the varying schemata that defined marriage in the past (i.e., the three *bona* of marriage: fidelity, progeny, and permanence [Saint Augustine]⁵⁰, *matrimonium in fieri/in facto esse* [as understood of conjugal society], the properties of marriage [unity and indissolubility]⁵¹ that obtain a distinctive ‘firmness’ by reason of the sacrament⁵², and the *CIC/17*’s ‘ends of marriage’⁵³) were insufficient. The Council Fathers avoids any reference to primary and secondary ends of marriage.

The conciliar teaching was developed further in the encyclical of Pope Paul VI, *Humanae Vitae*, where the covenant is described in highly personal terms, and married loved is

fully human, ... [a] very special form of personal friendship in which husband and wife generously share everything, allowing no unreasonable exceptions or thinking just of their own interests; [it is] faithful and exclusive of all other until death; [it is] creative of new life, for it is not exhausted by the loving interchange of husband and wife, but also contrives to go beyond this to bring new life into being.⁵⁴

§ 2. Ex Christi institutione matrimonium validum inter baptizatos eo ipso est sacramentum, quo coniuges ad imaginem indefectibilis unionis Christi cum Ecclesia a Deo uniuntur gratiaque sacramentali veluti consecrantur et roborantur.]

⁵⁰ See cc. 1055, §1; 1061, §1; 1134.

⁵¹ See c. 1056.

⁵² See c. 1056.

⁵³ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Pp. XV auctoritate promulgatus*. Romae: Typis Polyglottis Vaticanis, 1917. English translation in *1917 Pio-Benedictine Code of Canon Law*, c. 1013 *CIC/17*.

⁵⁴ Paul VI, encyclical *Humanae Vitae*, July 25, 1968, n. 9: *AAS* 60 (1968) 486-487: “plane humanus, ... [i]d est de peculiari illa personalis amicitiae forma, in qua coniuges omnia magno animo inter se partiuntur, neque iniustas exceptiones admittunt, vel suis dumtaxat commodis student. ... [a]d hoc, coniugalis amor et fidelis et exclusorius est, usque ad vitae extremum; ... [h]ic denique amor fecundus est, quippe qui non totus in coniugum communionem contineatur, sed eo etiam spectet ut pergat, novasque exsuscitet vitas.”

In John Paul II's *Familiaris Consortio* the personalist dimension can be gleaned. The human person is made in the Creator's image, and God, the author of all love, has woven into the fabric of each person "the vocation, and thus the capacity and responsibility, of love and communion,"⁵⁵ for each human is a temple of the spirit, called to love "in his unified totality".⁵⁶

The translation of Conciliar and Papal teaching into juridical categories was not achieved easily.⁵⁷ Those charged with revising marriage law reported in 1971 that certain changes would be required.

On the question of how the personal relationship of the spouses and the ordering of marriage to procreation should be expressed in the [revised] Can. 1013, §1 ... the majority of the committee members finally agreed to affirm the nature of marriage as an *intima totius vitae coniunctio* between man and woman which, of its very nature, is ordered to the procreation and education of offspring. Following *Gaudium et spes*, the committee decided that in this paragraph the idea of the primary end, that is, the propagation and education of offspring, and the secondary end, namely mutual aid and the remedy for concupiscence, should not longer be used.⁵⁸

⁵⁵ John Paul II, apostolic exhortation *Familiaris Consortio*, November 22, 1981, n. 11b: AAS 74 (1982) 91-92: "vocationem ac propterea potestatem et officium, cum conscientia coniunctum, amoris atque communionis."

⁵⁶ *Ibid.*, n. 11c, 92: "[homo ad amandum vocatur] in hac una sui summa."

⁵⁷ See John J. Coughlin, OFM, "Canon Law and the Human Person," *Journal of Law and Religion* 19 (2003-2004) 1-58.

⁵⁸ *Communicationes* 3 (1971) 70: "De quaestione, qua ratione relatio personalis coniugum, simul cum ordinatione matrimonii ad procreationem, prout in constitutione pastorali Concilii Vaticani II De Ecclesia in mundo huius temporis «Gaudium et spes» describitur, in can. 1013 para 1 exprimenda sit, maior pars coetus tandem convenit in affirmandam naturam matrimonii ut intimam totius vitae coniunctionem inter virum et mulierem, quae, indole sua naturali, ad procreationem et educationem ordinatur. Eandem constitutionem secutus, coetus in hac paragrapho notionem finis primarii, procreationis scilicet atque educationis probris, et finis secundarii, nimium mutui adiutorii et remedii concupiscentiae,

Additionally, the Committee members stated that

with respect to the object of consent ... [it is] an act of the will whereby a man and a woman mutually pledge to enter a *consortium vitae coniugalis* [a partnership of married life] [which is] perpetual and exclusive, [and] which of its very nature is ordered to the generation and education of offspring.⁵⁹

The teachings of the Council Fathers could now be presented as a manifestation of the covenant of Yahweh and the Chosen people and Christ and the Church: "Just as of old God encountered his people with a covenant of love and fidelity, so our Savior, the spouse of the Church, now encounters Christian spouses through the sacrament of marriage."⁶⁰

The marriage covenant made it easier to describe the Church's teaching on sacramentality in marriage. Few words have the intense theological meaning as *covenant*. Hosea uses the imagery of marriage covenant as a metaphor for the love of God for his people Israel.⁶¹ The covenant is seen as being irrevocable. In the New Testament, Jesus is presented as the mediator of the New Covenant⁶² that is guaranteed in the

iam adhibendam non esse censuit." See also D. E. Fellhauer, "The consortium omnis vitae as a juridical element of marriage," *Studia Canonica* 13 (1979), 117.

⁵⁹ *Ibid.*, 75: "cum quod ad consensus obiectum attinet ... actus voluntatis, quo vir et mulier foedere inter se constituunt consortium vitae coniugalis, perpetuum et exclusivum, indole sua naturali ad prolem generandam et educandam ordinatum."

⁶⁰ *Gaudium et Spes*, 48b, 1068: "Sicut enim Deus olim foedere dilectionis et fidelitatis populo suo occurrit, ita nunc hominum Salvator Ecclesiaeque Sponsus, per sacramentum matrimonii christifidelibus coniugibus obviam venit."

⁶¹ Hos 2, 2.

⁶² Heb 9, 15.

Blood of Christ.⁶³ As Saint Paul effectively presented to the Ephesians in his imagery, as careful reflection connotes,

From the very beginning the importance of the couple extended far beyond the sphere assigned it by the psychology and metaphysics of love, both of which are restricted by a natural order obscured and corrupted by sin. It was even then a parallel of the mystery in which the relationship between God and men is realized in all its fullness. ... The symbol is written into creation itself, although the archetype which underlies it is an event in time: the incarnation of the Son of God, in which human nature – and with it every creature – is involved by its Creator in an indissoluble union of love.⁶⁴

However, unlike other sacraments, the sacramental nature of marriage cannot be reduced to a mere moment. Marriage “is a sacrament because it is fundamentally related to the saving work of Jesus Christ.”⁶⁵

⁶³ 1 Cor 11, 25.

⁶⁴ Pierre Grelot, *Man and Wife in Scripture* (London, UK: Burns and Oates, 1980) 105.

⁶⁵ Kasper, 28.

Chapter 2

2. Sacramentality of marriage

2.1 Canonical considerations

2.1.1 Development of c. 1055

The *CIC/17*, two canons dealt with the issue of sacramentality in marriage. In the introductory canons regarding marriage, the *Code* stated that marriage between two baptized persons was automatically a sacrament in c. 1012. The implication is that a valid marriage between Christians cannot exist without it being *eo ipso* a sacrament. *Sacramentality* appears to be an essential component of marriage, and capable of exclusion. In c. 1013, the essential properties of marriage are *unity* and *indissolubility*, and c. 1086, §2, when addressing the exclusion of “some essential property of marriage” notes that their exclusion by a positive active of the will invalidates marriage. However, when addressing error of law in c. 1084, *sacramental dignity* is list together with *unity* and *indissolubility* as elements that would result in the invalidity of marriage if a person was in error about one of these elements.⁶⁶ Consent is vitiated when error that influences the will causes one of these essential elements to be excluded.⁶⁷

The differences in c. 1012 and c. 1086, §2 beg the question: Why did the *CIC/17* mention sacramentality (*sacramental dignity*) when addressing error

⁶⁶ The wording of the c. 1084 *CIC/17* is in the negative: “Simple error about the unity, indissolubility, or sacramental dignity of marriage, even if it is the cause of the contract, does not vitiate matrimonial consent” [“Simplex error circa matrimonii unitatem vel indissolubilitatem aut sacramentalem dignitatem, etsi det causam contractui, non vitiat consensum matrimonialem”].

⁶⁷ See Donald M. Campbell, “Canon 1099: The Emergence of a New Juridic Figure?” in *Quaderni Studio Rotale* 5. Rome: Libreria Leoniana, 1990. 35-72.

of law but omit its listing when addressing exclusion? Is there *really* an incongruity?

The evolution of c. 1012 of the *CIC/17* into c. 1055 of the *CIC/83* is indeed complex. Following the Second Vatican Council, which ended in 1965,⁶⁸ was the establishment of a *Commission for the Revision of the Code of Canon Law*.⁶⁹ There were many committees (individually known as a *coetus*), personalities, and schemata that were presented, and their debates were recorded in the collective tomes known as *Communicationes*. By tracing these endeavors, one can see the mind of the drafters of the canons on marriage.⁷⁰

⁶⁸ Frederick R. McManus, "The Second Vatican Council and the Canon Law," *The Jurist* 22 (1962) 259-286. He notes (p. 272), "The very usefulness of a Code blinds us to the fact that the sacred canons represent only the bare dispositive norms, only the end-products as it were, with the motives, reasons, circumstances, ends of the law hidden in the original enactment of decretal or constitution. This is a grave matter, both for the study of law and for the reverence in which we should hold the lawmaker and his statutes. The narrative and the background, the occasion and the motivation, the end to be obtained by the legislation can only enhance the law and foster its observance, if expressed and known. The omission of all but the bare disposition, necessary in a concise codex, leads to a failure to appreciate the law's reasonableness." Furthermore, he notes (p. 273) that "perhaps a principle may be laid down, that the law should not maintain or perpetuate complex institutes unless they are truly viable, truly capable of fostering the Church's life at the present time." On the issue of marriage law, he expressed (p. 282) that "we know how widespread and how firmly rooted is the conviction *contra bonum sacramenti*. At what point does this error become so strong as to make impossible the giving of valid consent?"

⁶⁹ The Commission was created on March 28, 1963, but chose to defer any discussions until the Second Vatican Council ended in order to incorporate documentation from the Council, which was one of two mandates of Pope Paul VI regarding revision, the other being the directive that any new codex not merely reword or recollect canons from the *CIC/17* but was rather to adapt to a new way of think (*novus habitus mentis*) and to the new demands of society. See Donald E. Heintschel, "... A New Way of Thinking," *The Jurist* 44 (1984) 43.

⁷⁰ A detailed analysis of the revision process can be found in two of Thomas J. Green's studies, "The Revision of the Code: the First Decade," *The Jurist* 36 (1976) 353-441 and "The Canon Law Society of America and the Revision of the Code: Historical Reflections and Continuing Concerns," *The Jurist* 53 (1993) 1-21; Joseph Fox, OP, "A General Synthesis of the Work of the Pontifical Commission for the Revision of the Code of Canon Law," *The Jurist* 48 (1988) 800-850; and especially related to sacraments, Thomas J. Green, "The Church's Sanctifying Office: Reflections on Selected Canons in the Revised Code," *The Jurist* 44 (1984) 357-411.

Between 1966 and 1973, there were seventeen sessions related to marriage, with the *coetus* on Marriage meeting for the first time in October 24-29, 1966.⁷¹ As a point of clarification, it was suggested by members of the *coetus* that the problem with the incongruity was not with c. 1086, §2 (on exclusion/simulation), but with c. 1084 (on error).⁷² They reasoned that term *sacramental dignity* should be removed from the canon.⁷³ In 1975, the first *Schema on the Sacraments* was presented⁷⁴ with no mention of sacramental dignity associated with the new formulation of c. 1084.⁷⁵

Between February 1977 and February 1978, the *coetus* on Marriage⁷⁶ met twenty-four times in five sessions to review comments and insights from the Roman Curia, worldwide conferences of bishops, and faculties of canon law, among others. In session 3, (May 16-21, 1977),⁷⁷ when matrimonial consent/error was again being discussed, it was recommended that the previous wording of the *CIC/17* be restored. A vote was taken, and ended in a tie; thus the traditional wording was *not* restored.⁷⁸ Discussion on norm

⁷¹ *Communications* 3 (1971) 69-81.

⁷² Lawrence G. Wrenn, "Sacramentality and the Invalidity of Marriage," *The Jurist* 60 (2000) 207.

⁷³ *Communications* 3 (1971) 76. Additionally, sessions 6 [November 11-16, 1968] and 7 [April 14-19, 1969] addressed issues of matrimonial consent with reference to cc. 1084 and 1086. See, again, Fox, 824.

⁷⁴ These were collectively known as the 1975 *Schema* cc. 242-361.

⁷⁵ *Schema* cc. 301 (c. 1084) and 303, §2 (c. 1086, §2).

⁷⁶ These consisted of the same members who had drafted the marriage norms for the 1975 *Schema on the Sacraments* and would also be the ones to rework it. See Thomas J. Green, "The Revised *Schema De Matrimonio*: Text and Reflections," *The Jurist* 40 (1980) 60.

⁷⁷ *Communicationes* 9 (1977) 357-378.

⁷⁸ *Ibid.*, 373-374.

302, §2 on simulation was also discussed, but nothing was changed. While some well known scholars would disagree with this decision⁷⁹ and argue in favor of including both error about sacramental dignity and exclusion of sacramentality in marriage, none were persuasive enough to alter the 1980 *Schema*.

In 1981, a *Relatio* was published,⁸⁰ which was an amalgamation of comments received. In the section of the *Relatio* on the error of law (c. 1053 of the *Relatio*), there is a reference to the Sacred Congregation for the Doctrine of the Faith and its insistence that the traditional wording be restored and that the same be done to the canon on simulation (c. 1055, §2 of the *Relatio*).⁸¹ However, at the *Plenary Session of the Commission for the Revision of the Code* (October 20-28, 1981), the phrase “or sacramental dignity” was again discussed, because of ecumenical sensitivities, particularly the lack of understanding of marriage as a sacrament by Protestants, and the publication of Pope John Paul’s Encyclical *Familiaris Consortio* in 1980.⁸² With an intervention from Cardinal Josef Ratzinger, who would become Prefect for the Doctrine of the Faith [and the future Pope Benedict XVI] within a month

⁷⁹ For example, see Zenon Grocholewski, “Crisis doctrinae et iurisprudentiae rotalis circa exclusionem dignitatis sacramentalis in contractu matrimoniali,” *Periodica* 67 (1978) 283-295.

⁸⁰ July 16, 1981. It was re-published in *Communicationes* in various volumes.

⁸¹ *Relatio*, 257. Letter is dated January 14, 1981. See *Communicationes* 15 (1983) 233.

⁸² Such personages as Cardinals Joseph Höffner of Cologne, and Pericle Felici, president of the Commission, together with Archbishops Castillo Lara, secretary of the Commission, and Luis Henriquez of Valencia [Venezuela] spoke with opposing opinions. Archbishop Lara supported the position of Zenon Grocholewski which was in favor of retaining the traditional wording in the canon on error (c. 1053 of the *Relatio*) and adding words to the canon on simulation (c. 1055, §2 of the *Relatio*). Cardinal Franjo Seper, then Prefect for the Congregation of the Doctrine of the Faith, asked the Commission to retain the traditional phraseology and amend c. 1055, §2.

of the plenary meeting, a compromise was reached⁸³ with a proposal that

the words 'or sacramental dignity' be inserted into the error of law canon, where the doctrine would be expressed but only indirectly (Error concerning the unity or indissolubility or sacramental dignity of marriage does *not* vitiate matrimonial consent *provided* that it does not determine the will) but that the words *not be* inserted into the simulation canon. In this way, said Ratzinger, the doctrine is stated and stated clearly (in the error canon) but not in an offensive way that would create difficulties. ... It was understood, in light of Ratzinger's intervention, that either the phrase 'marriage itself' or the phrase 'some essential element of marriage' or the phrase 'some essential property of marriage' included sacramental dignity in a marriage of two baptized people; and so the doctrine that would be stated explicitly but indirectly in the error canon would be stated only implicitly, and so inoffensively, in the simulation canon."⁸⁴

With this compromise, the *CIC/83* would maintain the traditional wording for both canons.

2.1.2 Historical – From *Decretales* of Gregory IX to through *CIC/17*⁸⁵

2.1.2.1 Inseparability of contract and sacrament for the baptized⁸⁶

From a historico-canonical perspective, from at least the Middle Ages,

⁸³ See Pontificium Consilium de Legum Textibus Interpretandis, *Congregatio Plenaria diebus 20-29 octobris 1981 habita* (Rome: Typis Polyglottis Vaticanis, 1991) *passim* 452-460.

⁸⁴ Lawrence Wrenn, "Sacramentality and the Invalidity of Marriage," *The Jurist* 60 (2000) 213-214.

⁸⁵ For a classification of canon law, see Danuta M. Gorecki and Arnold Wajenberg, "Canon Law: History, Sources, and a Proposed Classification Scheme," *Law Library Journal* 75 (1982) 75-402, esp. 390-394.

⁸⁶ For a detailed study of the doctrine, see James A. Nowak, "Inseparability of Sacrament and Contract in marriages of the Baptised [sic]," *Studia Canonica* 12 (1978) 315-363.

the Church identified contract and sacrament as one.⁸⁷ An investigation can help present the rationale for this doctrine.

The covenant of marriage (*matrimonium in facto esse*) has been raised (elevated⁸⁸) by Christ the Lord to the dignity of a sacrament when it is celebrated between the *baptized*⁸⁹. For this reason, canon 1055, §2 states that between the baptized there cannot be a valid matrimonial contract that is not at the same time a sacrament. There cannot be the secular reality without the saving mystery,⁹⁰ nor can there be an entity known as a merely “natural” marriage between the baptized, “for if the contract is by law invalid, there is no marriage but an ‘unlawful union.’”⁹¹ This Church’s discipline makes it impossible to do otherwise.

⁸⁷ This paragraph has a long history. See John Baptist Sequeira, *Tout mariage entre baptisés est-il nécessairement sacramental?* (Paris: Cerf, 1985); Pius IX, encyclical *Quanta Cura* (*The Syllabus of Errors*), December 8, 1864, nn. 73-74; Pii IX Pontificis Maximi *Acta I*, volume 3 (Città del Vaticana: Typographia Bonarum Artium, 1864) 687-717; Council of Trent, Session 24, November 11, 1563, “*Canones de sacramento matrimonii*,” cap. 1: *Decrees of the Ecumenical Councils*, ed. Norman Tanner (London, UK: Sheed and Ward, 1990) 754.

⁸⁸ Michael J. Himes, “The Intrinsic Sacramentality of Marriage: The Theological Ground for the Inseparability of Validity and Sacramentality in Marriage,” *The Jurist* 50 (1990) 198-220. Himes reflects on Denis Baudot’s *L’inséparabilité entre le contrat et le sacrement de mariage: La discussion après le Concile Vatican II*, noting that the term elevation is a vital component in understanding the traditional concept of inseparability (p. 199): “Such a definition presumes a purely arbitrary act of Christ which establishes this particular institution, marriage, as sacramental. There is no indication in this definition or in the treatment of marriage which follows it in the manual that Christ could not with equal reason have chosen any one of a number of other natural institutions to be ‘elevated to the dignity of a sacrament,’ e.g., parenthood. ... [Baudot] offers no reason intrinsic to marriage why that particular natural institution should have been elevated to the status of a sacrament of the New Covenant.”

⁸⁹ Canon 1055, §1; canon 1012, §1 (*CIC/17*); *Gaudium et spes*, 48, §1. See also Leo XIII, encyclical *Arcanum Divinae Sapientiae*, February 10, 1880, nn. 9, 12, 19-20, 24, 39-40: *Leonis XIII Acta 2* (1880-81) 10-40.

⁹⁰ Örsy, 56.

⁹¹ Ignatius Gramunt, et. al., *Canons and Commentaries on Marriage* (Collegeville, MN: The Liturgical Press, 1987) 4.

Therefore, in the faithful the matrimonial contract and the sacrament are really not to be distinguished at all. ... Thus, it happens that baptized spouses who have the intention to contract marriage receive *eo ipso* also the sacrament.⁹²

It is also an expression of what has traditionally been reflected in canon law. However, long before the explicit formulation of the sacramental doctrine of marriage, the Church believed that the constitutive element of Christian marriage was mutual consent exchanged between the partners.

The stand of the Church with reference to the marriage of Christians is absolutely logical, if one believes at all that Christ sanctified the marital union by attaching divine grace to it. If Christ did actually make marriage a sacrament, He had to make the contract — or mutual agreement of the parties to give themselves to each other as husband and wife for the purposes of marriage — the instrument by which to convey the sacramental grace, for by the contract the marital relation is created.⁹³

Using individual words of institution cannot prove the sacramental nature of marriage. It is more important to show that marriage is sacramental because it is fundamentally related to the saving work of Jesus Christ.⁹⁴ “Thus the marriage bond has been established by God himself.”⁹⁵ In Christian marriage, it is the human reality of marriage itself that has been raised by

⁹² *Coram* Pompedda, January 16, 1995: *RRD* 87:4: “Ergo in fidelibus contractus matrimonialis et sacramentum realiter haud distinguuntur Exinde efficitur ut nupturientes baptizati, qui intentionem habeant contractum matrimonialem ineundi, ei ipso et sacramentum recipiant.” English translation in Renken, 32.

⁹³ Stanislaus Woywod, O.F.M. and Callistus Smith, O.F.M., *A Practical Commentary of the Code of Canon Law* (New York: Joseph F. Wagner, Inc., 1948) 642.

⁹⁴ Kasper, 28.

⁹⁵ *Catechism*, 1640: “Vinculum matrimoniale propterea a Deo Ipso stabilitur.”

Christ to the dignity of a sacrament: *contract* and *sacrament* are inseparable.

As noted above, the language of canon 1055, §2 retains the term *contractus*, which might be understood in the same sense as *foedus* as is used in *Gaudium et spes*.⁹⁶ For the baptized, the matrimonial covenant can come about in no other way than through a contract, “*esti sui generis*,” for both *covenant* and *contract* pertain to the same reality.⁹⁷ Since marriage, as a natural institution, is a contract, the term itself cannot be suppressed.⁹⁸ *Sacramentality*, therefore, cannot be thought of as something added to the contract, but rather itself constitutes the sacrament.

To be noted, though, is that the term *inseparability* should not be misinterpreted as referring to the notion of two things that are united indissolubly; rather, it should be understood in the sense that for baptized persons marriage and sacrament are one and the same reality, the same thing: the contract (that is, marriage) and the sacrament are dimensions — one natural and the other supernatural — of the same reality.⁹⁹

Moreover, “as soon as two persons . . . join in a common undertaking, at once certain mutual obligations and rights arise between them.”¹⁰⁰ This can be understood as a *contract*. Since *covenant* is a species of *contract*, religious in nature, *covenant*¹⁰¹ more appropriately describes what is exchanged in

⁹⁶ *Gaudium et spes*, 48.

⁹⁷ *Communicationes* 15 (1983) 222: “Locutiones ‘contractus’ et ‘foedus’ uno eodemque sensu adhibitae sunt.”

⁹⁸ *Communicationes* 9 (1977) 121.

⁹⁹ Pompedda, “Faith and the Sacrament of Marriage. Lack of Faith and Matrimonial Consent: Juridical Aspects,” 38.

¹⁰⁰ Victor J. Pospishil, *Eastern Catholic Marriage Law* (Brooklyn, NY: Saint Maron Publications, 1991) 182.

¹⁰¹ Kasper, 27.

consent. However, as *contract* is used in this canon concerning marriage, it “reflects the fact that a natural marriage contract becomes, by reason of the baptism of the spouses, a sacramental covenant.”¹⁰² Therefore, “the marital pact is not a bare contract of buying and selling, but a bilateral, personal and consensual pact, *sui generis*.”¹⁰³

Reflecting on the *Fontes* of c. 1012 *CIC/17*, one notes that the information contained within those *fontes* finds its basis in the desire of the Church to defend its right to regulate the contract of marriage and the sacrament of marriage against the encroachment of the State. The dogmatic statements of Pius IX on marriage can be seen throughout Gasparri’s *fontes*, some of which can be found in the *Syllabus of Errors*.¹⁰⁴ When writing to King Victor Emmanuel of Italy [Piedmont-Sardinia (1849-1861)] about a civil law enacted on April 9, 1852, by Camillo Benso di Cavour (1810-1861), he carefully expresses that

[i]t is a dogma of Faith that matrimony has been raised to the dignity of a Sacrament by Our Lord Jesus Christ, and it is a doctrine of the Catholic Church that the Sacrament is not an accidental quality added to the contract, but is the very essence of matrimony so much so that the conjugal bond is not legitimate if there is not the Matrimony-Sacrament, but a mere concubinage. A civil law which supposes for Catholics [that] the sacrament can be separated from the matrimonial contract and pretends to regulate its validity contradicts the Church’s doctrine, invades her rights and practically puts concubinage on the same plane as the Sacrament of Matrimony, sanctioning as

¹⁰² Thomas P. Doyle, O.P., “The Fundamental Nature of Marriage,” in *The Code of Canon Law: A Text and Commentary*, ed. James A. Coriden et al. (Mahwah, NJ: Paulist Press, 1985) 741.

¹⁰³ Faltin, 69.

¹⁰⁴ In this regard, see Pius IX, *Quanta Cura (Syllabus of Errors)* nn. 65-74, especially nn. 65-67, 71, 73-74.

legitimate both the one and the other.¹⁰⁵

Furthermore, he notes that

[w]hile the Civil Power may legislate concerning the civil effects which derive from marriages, let it leave to the Church the question of its validity among Christians. Let the Civil Power base its action on the validity or the invalidity of Matrimony as shall have been determined by the Church and basing itself on these principles, the determination of which is outside its sphere, let it then establish the civil effects.¹⁰⁶

Pius IX placed his authority behind the doctrine of inseparability of contract and sacrament to counter the infringement of the State.¹⁰⁷ On August 22, 1851, Pius IX, in an apostolic letter, *Ad Apostolicæ*, condemned John Nuytz, a professor the University of Turin who advocated that civil and social life were regulated by the State. He denounced the notion that the sacrament was an accessory to the contract and, hence, separable, therefore depriving the Church of its proper power.¹⁰⁸ Additionally, on September 27, 1852, he writes an allocution *Acerbissimum* which condemned civil laws that were contrary to the Church in New Granada (Colombia). His statement on civil matrimony condemns

¹⁰⁵ Pius IX, "La Lettera", September 19, 1852, in Byrnes, 107.

¹⁰⁶ *Ibid.*, 108-109.

¹⁰⁷ It is interesting to note that certain countries have concluded concordats with the Holy See regarding marriage. For example, in 1993, a agreement was reached between the Republic of Malta that "harmoni[z]ed the civil and canonical dimensions of marriage celebrated before the Church. Although a Catholic marriage is primarily a profound spiritual experience within the ecclesial community, it still retains its secular and social substratum and as such falls within the competence of the State. The Agreement is a legal instrument aimed at fostering marriage and the family. It is the result of collaboration between Church and State, an expression of loyalty to their mission of service to man." Furthermore, "modern culture is overlooking the ontological nature of marriage." See *Forum* 11 (2000) 17, 25.

¹⁰⁸ Pius IX, *Ad Apostolicæ sedis fastigium*, August 22, 1851.

the other decree which – holding in no account the mystery, dignity and sanctity of the sacrament of Matrimony, ignoring its institution, radically altering its nature and completely scorning the Church’s power over this sacrament – was proposed in conformity with the already condemned errors of heretics and against the Catholic Church’s doctrines, that Matrimony was to be considered a civil contract. ... No Catholic is ignorant of, or can be ignorant of, the fact that Matrimony is truly and properly one of the seven Sacraments of the evangelical law, instituted by Jesus Christ our Lord. It necessarily follows that: 1) among the faithful (*fideles*) there cannot be a sacrament which is not at the same time a sacrament; every other union between Christians (*inter Christianos*) outside of the sacrament, made in virtue of any civil law, is none other than disgraceful and base concubinage, repeatedly condemned by the Church; 2) the sacrament can never be separated from the marriage contract (*coniugali foedere*), and only the Church has the power to regulate those matters which pertain to matrimony.¹⁰⁹

Both of Pius IX’s statements are exacting. In the former, the conjugal union between two Christians is not valid if it is not sacramental, and in the latter, there cannot exist between faithful that contract and sacrament are not one and the same, and that any other type of relationship where the contract is separated from the sacrament is concubinage. The inseparability of contract and sacrament is the belief of every Catholic, according to Pope’s statements.¹¹⁰ A significant development can be understood in the statements of Pius IX that the term *Christians* (*Christianos*) includes *non-Catholics* when it is related to the doctrinal inseparability of contract and sacrament.

Examining the *Schema de Matrimonio*, prepared in anticipation of the

¹⁰⁹ Pius IX, *Acerbissimum*, September 27, 1852, in Byrnes, 110.

¹¹⁰ In 1858, the Congregation for the Propagation of the Faith issued an instruction to the Greek-Romanian bishops, treating the marriages between Catholics and schismatics and between Catholics and heretics. The Congregation quoted from Pius IX’s *La Lettera*, and affirmed the same.

First Vatican Council (which never actually reached the stage of debate), Eugenio Corecco notes that Pius IX's theologian, Archbishop Camillus Santori, argued that

Trent had held for the inseparability of contract and sacrament and had committed the Church to this view. [Others argued] that while Trent established that the sacrament resided in the natural contract and not in some accessory form such as the priest's blessing, this did not mean that the natural contract between baptized persons was always a sacrament.¹¹¹

In his desire to protect the rights of the Church, Pius IX committed the Church to the inseparability of contract and sacrament. But dissent, even among his own ranks, is evident.

2.1.2.2 Roman Law Perspectives on Marriage

The inseparability of sacrament and contract in marriages of the baptized is a focal point for the study of the sacramentality in marriage from the two-fold perspective of canonical jurisprudence and theology. Although many studies have been undertaken on this issue, it bears significantly on the development of the distinctions that are drawn between the *legal/canonical* realm and the *theological* realm.

There are few relationships that are as fundamentally human as is human love, an "intimate communion of life and conjugal love."¹¹² It is, too, an obvious reality by which God chooses to convey grace. The creation of

¹¹¹ See "Il sacerdote ministro del matrimonio? Analisi del problema in relazione alla dottrina della inseparabilita tra contratto e sacramento, nei lavori preparatori del Concilio Vaticano 1," *La Scuola Cattolica* 98 (1970) §§342-372, 427-476, in Denis F. O'Callaghan, "Faith and the Sacrament of Marriage," *CLSGBI Newsletter* 70 (1987) 84.

¹¹² *Gaudium et spes*, 48. "Intima communitas vitae et amoris coniugalis"

humanity as complementary is a sign of this covenant.

Underlying this purveyor of grace is the historical development of Christian marriage from its roots in Roman contractual systems and laws, for Christian norms for marriage are “a reaction to the Roman mores.”¹¹³ Roman marriage is an institution which is radically different from modern forms of marriage. From a legal viewpoint, contemporary marriage provides a status, placing exigencies on both parties involved. Its establishment and termination are carefully regulated by law. Conversely, Roman marriage was very uncomplicated, “a social fact, about the creation and termination of which the law had very little to say, and which had almost no effect on the legal condition of the parties.”¹¹⁴ Roman sources present two definitions of marriage. In the first, Modestinus states:

Marriage is the union of a man and a woman, and a lifelong consortium, a sharing of sacred and human law.¹¹⁵

This definition focuses on the community of the whole of life (*consortium omnis vitae*) and the correlation between marriage as a secular reality and marriage as a sacred institution. The second definition focuses on the unity that necessarily exists between parties:

Marriage or matrimony is a joining together of a man and woman, carrying with it a mode of life in which they are

¹¹³ Joseph N. Perry, “The Canonical Concept of Marital Consent: Roman Law Influences.” *Catholic Lawyer* 25 (1979-1980) 228.

¹¹⁴ Barry Nichols, *An Introduction to Roman Law* (London: Oxford University Press, 1975) 80.

¹¹⁵ “Nuptiae sunt coniunctio maris et feminae, consortium omnis vitae, divini et humani iuris communicatio.” *Digest* 23, 2, 1.

undivided.¹¹⁶

Christianity in the West was heavily influenced by Rome. The judicial and legislative basis of ecclesiastical law is rooted, without question, in Roman law. It was usefully adapted by the Christian Church for its purposes.

In the classical period, the union between man and woman was free, and freely dissoluble as an equal partnership for life. The union is free, because the parties are free in their will and no longer within the will of their parents. A marriage could be dissolved either unilaterally or bilaterally, for

[a]lthough human desires encouraged marriage for life, Romans understood that circumstances in the human situation could change. Thus, the marriage could end as freely as it was made either by mutual agreement or announcement by one of the parties.¹¹⁷

Nonetheless, divorce was not common. While Roman law did not forbid it, it was against the sense of *gravitas*. Parties were fully equal, and the wife retained her own family name and the property with which she entered the marriage.

Marriage was concluded by an exchange of *consent*. However, Roman law did not view marriage as a *contract*. Consent gave rise to a matrimonial status but not to duties and obligations. Contracts gave rise to strict duties and obligations, but free consent did not. Although marriage is often

¹¹⁶ "Nuptiae autem sive matrimonium est viri et mulieris coniunctio, individuum consuetudinem vitae continens." Institutes 1, 9, 1. See *Decretum Gratiani*, C. 27, q. 2: "Sunt enim nuptiae sive matrimonium viri mulierisque coniunctio, individuum vitae consuetudinem"; *Decretalium Gregorii*, IX, II, 23, 11: "... quum matrimonium sit maris et feminae coniunctio, individuum vitae consuetudinem retinens ..."

¹¹⁷ Perry, 230.

surrounded by external ritual, juridically, it is formed by consent, expressly stated as an *affectio maritalis*, and the intention of living as husband and wife, and the procreation of legitimate children.¹¹⁸ Marriage was a purely social status, certainly not a *contractus*.¹¹⁹ Rather, it was part of the *connubium*,¹²⁰ a reality that was

purely humanistically free and freely dissoluble, yet socially understood for life. Roman marriage displayed the fundamental ‘stuff’ of human nature – to want human affection to last forever. Marriage for life was a deeply human sentiment before Christianity ever made it an imperative.¹²¹

Whatever the ceremony (if any) which accompanied marriage,¹²² the law recognized the existence of marriage when there existed *affectio maritalis*, and involved at least a general knowledge that a man exhibited a woman as his wife, or that a *deductio in domum mariti* had taken place.¹²³ *Affectio maritalis* is

¹¹⁸ Gauthier, Albert, OP. *Roman Law and its Contribution to the Development of Canon Law* (Ottawa, ON: University of Saint Paul Press, 1996) 37.

¹¹⁹ Perry, 229.

¹²⁰ *Connubium* was a legal determination verifying one’s capacity to marry, which was denied to slaves (who were allowed *contubernium*, a kind of legitimized concubinage).

¹²¹ Perry, 299.

¹²² The ancient religious meaning of marriage had been lost among all except the few patrician families which supplied priests for the temple sacrifices; these retained the ancient wedding liturgy of *confarreatio*, with an elaborate ritual including sacrifice to Jupiter and wheat cake that was broken and eaten by the couple.

¹²³ Most women in the Roman world were under the *manus*, or guardianship of her *paterfamilias* (male guardian, father, brother, etc.). From ancient times, marriage by *coemptio* (a fictitious purchase of the bride by the groom) was common. In this arrangement, the girl passed over from her *paterfamilias* to her husband’s family, which became a marriage in *manu*, i.e., from one hand to another. *Coemptio* was later replaced by *matrimonium liberum*, and, from the time of the Twelve Tables of the early codification of Roman law (451-450 BC) it was an option for women who at age twelve could declare herself *sui iuris*, ending anyone’s *patria potestas* over her. See Susan Treggian, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the time of Ulpian* (New York, NY: Oxford University Press [Claredon Paperbacks], 1993) *passim*.

not simply 'love', but the will to recognize one's spouse as a spouse, to live as a married couple.¹²⁴ *Connubium* was monogamous. With the passage of time, only *connubium*, *maritalis affectio*, and the manifestation of this desire and will to be married in some mutual and verifiable consent were requirements for marriage.¹²⁵

2.1.2.3 *Ex opere operato* (by the 'work worked') as sacramental 'automaticism'

Sacraments are effected by the positing of an act itself, and in this action, grace, independent of the sanctity and faith of the minister or recipient, is conferred. As the result of nominalism, the automatic or mechanistic interpretation was impressed upon post-Tridentine sacramental theology. This was principally a means of verifying that a sacramental act had been completed.

Primarily, the action *ex opere operato* (from *opus operatum* = the work worked, or the power of the completed rite) involves traditional categories of *matter* and *form*. *Matter* and *form* constitute the *sacramentum*, or the external sacrament; *res sacramenti* describes the ultimate effect of the sacrament — God's grace; and *res et sacramentum* bridges the two.¹²⁶

The *sacramentum* concerns the effective sign, and therefore is identified

¹²⁴ *Concubinatus* (concubinage) was also a recognized permanent and monogamous union between a man and woman, but differs from marriage by the absence of *affectio maritalis* and of the *honor matrimonii* (the social dignity of the wife who was legally married). See Gauthier, 37.

¹²⁵ The opposite is also true. By verifiably withdrawing the *maritalis affectio*, divorce would commence. For a marriage entered into by *confarreatio*, *diffarreatio* brought about the same result.

¹²⁶ Herbert Vorgrimler, *Sacramental Theology* (Collegeville, MN: The Liturgical Press, 1992) 54.

with the rite itself, an external manifestation of the sacrament to enable recognition by humanity. In marriage, it consists of the parties themselves and their gift to one another (matter) and the words that express the precise way in which this gift of self is brought about (form) in relation to God. Thus, it can be seen how “the ‘matter’ in the sacrament is not arbitrary but the very parties themselves, and the ‘form’ is not arbitrary but expresses the God-orientation of the act being done.”¹²⁷

The objective effectiveness of a sacrament, which is God acting through the person of the minister and the response of the recipient, can be expressed *ex opere operato*. The sacrament derives its validity and effectiveness from the power of God, and is efficacious because in them Christ himself is at work: “... he who acts in his sacraments in order to communicate the grace that each sacrament signifies.”¹²⁸ Thus,

[f]rom the moment that a sacrament is celebrated in accordance with the intention of the Church, the power of Christ and his Spirit acts in and through it, independently of the personal holiness of the minister.¹²⁹

Although this draws out a minimalist¹³⁰ attitude, whereby only the essential elements were concentrated on, these fundamental actions could constitute validity even in emergencies. It guaranteed that sacraments were valid, assuming the minister possessed the power to carry out the action, and had

¹²⁷ Michael Ashdowne, “A Study of the Sacramentality of Marriage: When is Marriage Really Present? Future Dimensions,” *Studia Canonica* 9 (1975) 297.

¹²⁸ *Catechism*, 1127: “ipse est qui in suis agit sacramentis ut gratiam communicet quam sacramentum significat.”

¹²⁹ *Ibid.*, 1128: “Eo ipso quod sacramentum secundum in eo et per id operatur independenter a sanctitate personali ministri.”

¹³⁰ See Vorgrimler, 83-86.

the existence of an intention to do what the Church does (*facere quod facit Ecclesia*). It can be seen “that ‘the sacrament is not wrought by the righteousness of either the celebrant or the recipient, but by the power of God.’”¹³¹

The same conditions apply in the case of marriage as requisites for the valid conferral of the other sacraments.

For valid matrimonial consent, faith is not necessary, but only consent. Therefore, as often as baptized spouses observe all legitimate forms, which by the law of nature are necessary, there comes about an indissoluble bond and the sacrament itself. This depends not on the faith of the contractants nor on their will, but on the will of Christ. For who wants to marry, wants that which has been established by God according to the design of the natural law. Thus, a spouse who wants a true marriage implicitly also wants all the essential elements, including sacramental dignity, and the properties of marriage.¹³²

The presumption is, clearly, that spouses marry according to the mind of the Church, including the elements of natural law and sacramentality. With sacramental automaticism, no possibility arises that a non-sacramental marriage is possible between the baptized, regardless of circumstances.

Post-Tridentine sacramental theology dealt with matter and form,

¹³¹ *Catechism*, 1128: “non . . . sacramentum perficitur per iustitiam hominis dantis vel susipientis, sed per virtutem Dei.”

¹³² *Coram* Boccafolo, February 15, 1988: *RRD* 80:89: “Ad validum contrahendum matrimonium fides necessaria non est, sed unus consensus. Quapropter, quoties sponsi baptizati omni, quae iure naturae necessaria sunt, ponunt legitima forma, vinculum indissolubile et ipsum sacramentum fit. Quod quidem non a fide contrahentium nec ab eorum voluntate, sed a voluntate Christi pendet. Nam, qui vult matrimonium, vult aliquid a Deo, ope legis naturae, institutum. Qua re, nubens qui verum matrimonium vult, implicite etiam omnia elementa essentialia, dignitatem sacramentalem inclusam, necnon proprietates matrimonii, vult.” English translation in Renken, 33.

issues of necessity for the positing of a valid juridical sacramental act. The *ius vigens*, too, focuses a great deal of attention on the validity of the sacrament, which is

more appropriately applied to a legal action and a legal institution than to a sacrament, since it is only from a legal action that legal effects result, while God alone knows whether a sacrament has been effective in bestowing grace. The preconditions for a valid marriage are a full competence for marriage, a faultless will to marry on the part of both partners, and a rite of marriage that is without defects.¹³³

The legality that enshrouds the sacrament presents the minimum that is required for validity, reflecting both the contractual and sacramental nature of marriage, and that by fulfilling these conditions, the sacrament, *ex opere operato*, is effected. Since the matter of contract and sacrament are indistinguishable, “anything that renders the contract invalid also renders the sacrament invalid.”¹³⁴ In view of inseparability, and since the “contract necessarily presupposes equal distribution of rights and duties upon either partner, sacramentality also has to exist for both.”¹³⁵

In revising the parallel canon in the *CIC/17*,¹³⁶ the proposals “started by opposing so-called ‘sacramental automatism,’” it being seen as “a mere euphemism for denying the principle of sacramental validity *ex opere*

¹³³ Finn, 305.

¹³⁴ John McAreevey, *The Canon Law of Marriage and the Family* (Dublin: Four Courts Press, 1997) 57.

¹³⁵ Pospishil, 177.

¹³⁶ Canon 1012, §2.

operato.”¹³⁷ Proposals were made that were meant to change the assertion¹³⁸ made in canon 1012, §2, but it was decided to maintain its current content, now reflected in canon 1055, §2, responding that “it was not its charge to settle the problem nor its duty to modify the canon.”¹³⁹

The automatic sacramentality of marriage for the baptized, which is evident in the scholastic framework of *ex opere operato*, begins to typify the problems that result from the inseparability of contract and sacrament. However, the automatic sacramentality of marriage is founded on the sacramental character of baptism, as baptism itself is the decisive moment of incorporation into the Body of Christ, and the prerequisite for the other sacraments.

Nevertheless, the juridic moment of incorporation must neither be distanced from, nor preclude, theological interpretation. In baptism, there is effected an ontological change, a configuring of one’s entire being to Christ. From here “it moves us ... to a level not of juridical effects, but of ontological realities.”¹⁴⁰ The human will must be considered. The ontological change

¹³⁷ Pompedda, “Faith and the Sacrament of Marriage: Lack of Faith and Matrimonial Consent: Juridical Aspects,” 39.

¹³⁸ *Communicationes* 9 (1977) 122.

¹³⁹ Pompedda, *ibid.*, 38.

¹⁴⁰ Cormac Burke, “La sacramentalidad del matrimonio: Reflexiones canónicas,” *Ius canonicum* 34 (1994) 171: “nos movemos . . . a nivel no de efectos jurídicos, sino de realidades ontológicas.” Although a minority opinion among Rotal judges, Burke does not actually admit that sacramentality is an element or property of marriage. He expresses that “[if] his predominate intention is to contract a true marriage, it is not possible to assert that he simulated. On the other hand, he effectively contracts a valid sacramental marriage and it includes the sacramental grace and dignity which he did not exclude. Sacramentality constitutes a good or benefit with necessarily adheres to Christian marriage. If the Christian has in mind to contract a true marriage, it is not within his power to exclude the sacramental aspect” *coram* Burke, June 23, 1987: *RRD* 79, 393-397. See also Cormac Burke, “The Sacramentality of Marriage: theological reflections,” *Annales Theologici* 7 (1993) 47-69.

does not diminish the will's freedom, but endows it with a supernatural efficacy, a gift that is freely bestowed.¹⁴¹ Thus, those who understand the sacramentality of marriage as an imposition (*ex opere operato*) have not, therefore, captured the true nature of the sacrament of marriage.

The seventh session of the Council of Trent¹⁴² defended the Church's continual teaching on the sacraments against the doctrines of the reformers.¹⁴³ One canon has continued to influence the sacramental structure of the Church: "If anyone says that the intention, at least of doing what the Church does, is not required in the ministers when they are performing and conferring the sacraments, *anathema sit*,"¹⁴⁴ or, conversely, an intention *facere quod facit Ecclesia* is required. Put forth in the teachings of the Council, the implicit intention in the minister is essential to the conferral of the sacraments, as is faith. This teaching is in opposition to the commonly held view of automatic sacramentality. If sacramentality is *imposed*, then the traditional view *ex opere operato* maintains its strength. However, if sacramentality is a *gift*, then an entirely new framework must be constructed regarding the nature of the sacraments: long held positions must be

¹⁴¹ Burke, 172.

¹⁴² See Jean Bernhard, "Le mariage sacrement au Concile de Trente," *Révue de droit canonique* 42 (1992) 269-285. The Council of Trent must be understood in the context and for the reasons it was held. The Council's primary objective was to provide a clear response to the teachings of the Protestant reformers, who had impugned the sacramental ordering of the Church. In addition, a neglectful attitude had developed among clergy regarding sacramental discipline. It was with these issues in mind that sacramental automaticism and view of sacramental efficacy *ex opere operato* find their origin.

¹⁴³ Josef Neuner, SJ, and Jacques Depuis, SJ, *The Christian Faith: Doctrinal Documents of the Catholic Church* (Staten Island, NY: Alba House, 1990) 414.

¹⁴⁴ "Si quis dixerit, in ministris, dum sacramenta conficiunt et conferunt, non requiri intentionem, saltem faciendi quod facit ecclesia: anathema sit." Council of Trent, "Canones de sacramento matrimonii," 685.

reworked, presumptions must be overcome, and the relationship between inseparability of contract and automatic sacramentality must be re-examined.

The faith of the Church “precedes the faith of the believer who is invited to adhere to it.”¹⁴⁵ Celebrated worthily in faith, “the sacraments confer the grace they signify.”¹⁴⁶ They are efficacious signs because Christ is at work, communicating grace in each sacrament. The effect of the sign becomes the placing of invisible grace. The efficacy of the sacraments, in accord with doctrine, comes about “*ex opere operato*.”¹⁴⁷ Grace is not produced by the faith of the recipient.¹⁴⁸

2.1.2.4 Expansion by Gasparri of Tridentine term ‘marriage’ to ‘marriages contracted between the baptized’

The codification of canon law, entrusted to Pietro Cardinal Gasparri, was the first *codex* of canon law. Subsequent to its publication in 1917, an additional nine tomes of background information (*fontes*) were printed from 1923-1939. Indeed, the *Fontes* for c. 1012, §2 (*CIC/17*) provide an insight into the mind of the codifier. By quoting the formal teachings of the Council of Trent on the matter and comparing them to the then *ius vigens*, one notices the anomaly that there is a difference between the Council of Trent’s assertions that *marriage* is a sacrament and *the marriage contract between baptized persons* is a sacrament. Although others realized that the Council of Trent left open the

¹⁴⁵ *Catechism*, 1124: “Ecclesiae fides fidem praecedat fidelis.”

¹⁴⁶ *Ibid.*, 1127: “Sacramenta . . . gratiam conferunt quam significant.”

¹⁴⁷ “Si quis dixerit, per ipsa novae legis sacramenta ex opere operato non conferri gratiam, sed solam fidem divinae promissionis ad gratiam consequendam: anathema sit.” Council of Trent, “Canones de sacramento matrimonii,” 685.

¹⁴⁸ *Ibid.*

theological considerations of the inseparability of contract and sacrament, it appears that Gasparri wished to provide a *definitive* canonical understanding, yet admitted in his earlier writings on the canonical status of marriage that although marriage may be a sacred reality, one cannot presume that the matrimonial contract is the source of grace for this sacrament.¹⁴⁹

Gasparri explained that

[s]ince [God] committed the care of [marriage] . . . to his Church, the Catholic Church claims jurisdiction over the marriages of the baptized. . . . It is in virtue of this Christ-given authority that the Catholic Church legislated with reference to the marriages of the baptized. Since only the baptized come directly under her jurisdiction, she does not legislate in regard to the marriages of the non-baptized, unless they contract marriage with baptized persons.¹⁵⁰

In the *CIC/17*, Title VII of Book Three relates to marriage, and is a result of the Gasparri's 1892 monumental work *Tractatus Canonikus de Matrimonio*. Several themes resulted from his thought, particularly because he identifies marriage as a contract, and that the formal object of the contract is the permanent and exclusive right of the spouses to each other's bodies, singularly for procreation.

Regarding marriage as a contract, c. 1012, §1, however, the theological accuracy of the statement is dubious.

Though the institution by Christ of *marriage* as a sacrament is retained today in Catholic theology, and explained

¹⁴⁹ Pietro Gasparri, *Tractatus Canonikus de Matrimonii*. Vatican City: Libreria Editrice Vaticana, 1932.

¹⁵⁰ Brendan F. Brown, 'The Canon Law of Marriage,' *Virginia Law Review*, Vol. 26 (1) (1939), 70-71.

sacramentally, no Catholic theologian argues that it was specifically the *contract* of marriage that he established as sacrament. Though the Latin church committed itself in the twelfth century to the conception of marriage as contract, the Orthodox church has never considered the canonical contract to be of the essence of marriage, preferring the liturgical and priestly blessing symbolized in the crowning of the bride and groom.¹⁵¹

If the accuracy of the canon is to be maintained, the *quare* of c. 1012, §2, too, is dubious. Indeed, the Council of Trent stated only that marriage is a sacrament.¹⁵² It is clear that the Council “wishes to affirm the existence in the New Law of a sacrament of marriage – but not that marriage in the New Law is always a sacrament.”¹⁵³ Rather, the Council “deliberately chose to leave the question open.”¹⁵⁴ From this perspective, it is “historically incorrect to link the later theory of the inseparability of contract and sacrament ... in any way with the Council of Trent.”¹⁵⁵

Furthermore, Gasparri acknowledged that marriage was never considered a contract in either Roman or European law. It was his understanding that marriage must be a contract because it is formed by two parties mutually consenting to the same thing. He notes,

¹⁵¹ Lawler, 725.

¹⁵² Denzinger-Schönmetzer. “Symbols and definitions of the Catholic Faith” (*Enchiridion symbolorum, definitionum et declarationum de rebus fidei et morum*). Session Twenty-Four, Canon 1, Council of Trent. Rome: Herder, 1997.

¹⁵³ Michael G. Lawler, *Marriage and the Catholic Church: Disputed Questions* (Collegeville, MN: The Liturgical Press, 2002) 56.

¹⁵⁴ Lawler, “Faith, Contract, and Sacrament in Christian Marriage: A Theological Approach,” 726.

¹⁵⁵ Schillebeeckx, 362-63.

From Saint Paul, in the place cited (Ephesians 5), it is indeed proved that marriage among Christians is a sign of a sacred thing (*signum rei sacrae*) in Christ and in the Church, and to it grace is joined, but it is not proved that the force of producing grace is placed in the matrimonial contract itself. In like manner, the argument from the Apostle for the actual nature (*pro veritate*) of the sacrament of matrimony is not complete, but must be completed from tradition.¹⁵⁶

As the Church exerted its jurisdiction over marriage, there was a consistent interchange of technical terms, i.e., *Catholic*, *the faithful*, and *Christian*, within the context of official letters of explanation. To the King of Italy, Pope Pius IX writes, “While the Civil Power may legislate concerning the civil effects which derive from marriage, let it leave the Church the question of its validity among Christians.”¹⁵⁷ Additionally, he holds in the *Syllabus of Errors* as false that “a true marriage can exist between Christians in virtue of a simple civil contract; and it false that the marriage contract between Christians is always a sacrament.”¹⁵⁸ Furthermore, the same Pope expressed that “it ... is contrary to Catholic doctrine if one considers ... a civil contract of marriage for the faithful separable from the sacrament of Matrimony.”¹⁵⁹ When writing regarding civil matrimony in New Granada, he notes that “among the faithful there cannot be a marriage which is not at the same time a sacrament”¹⁶⁰

Gasparri was affected by the statements of Pius IX and successive popes during the drafting of the *CIC/17*. Michael Lawler expresses this well,

¹⁵⁶ James Nowak, “Marriages of the Baptized,” *Studia Canonica* 12, 2 (1978) 355, quoting Gasparri.

¹⁵⁷ Byrnes, 109.

¹⁵⁸ *Ibid.*, 115.

¹⁵⁹ *Ibid.*, 117.

¹⁶⁰ *Ibid.*, 110.

noting that

[t]he care in formulation and the clarity of the assertions cannot be reduced to a mere matter of words. In Christian marriage, in marriage *inter Christifideles*, marriage and sacrament cannot be separated. No statement whatever is made about marriage *inter baptizatos*, and Gasparri's expansion of the papal terms in the *Code* cannot be considered as an authentic interpretation of their much more meaningful words. The *Code's* teaching in the matter of *matrimonium inter baptizatos* cannot, therefore, be claimed as traditional. It illegitimately closes the *theological* debate which was, and continues to be, open.

Theologians do not doubt, even today, that sacrament and marriage *inter Christifideles* are identical. Their doubt focuses on marriage *inter infidels*, including *infideles baptizatos*.¹⁶¹

The effect of Gasparri's contribution to the sacramentality of marriage is to bring closure to the issue when the Council of Trent made no such attempt. Although c. 1012, §§1-2 demonstrate that Gasparri's influence on the *CIC/17* was indeed profound, the issue remains open, at least from the discussions of the 1980 Synod of Bishops and its subsequent papal encyclical, *Familiaris consortio*.

2.1.2.5 *Ius Vigens* – *CIC/83*¹⁶²

Error of sacramental dignity (c. 1099) and *error pervadans*

Lack of faith may be expressed in terms of *error personam pervadens*.¹⁶³

¹⁶¹ Lawler, *ibid.*, 728.

¹⁶² For a study of marriage in view of the Second Vatican Council and a juridical analysis, see Augustine Mendonça, "The Theological and Juridical Aspects of Marriage," *Studia Canonica* 22 (1988) 265-304, especially p. 298-301 on sacramental dignity. Additionally, for a detailed philosophical approach to the principles of Christian marriage as foundational to a canonical approach, see Ignatius Gramunt, "The Essence of Marriage and the Code of Canon Law," *Studia Canonica* 25 (1991) 365-383.

This is equivalent to a person formulating their own doctrine on marriage in which an element or quality is excluded.¹⁶⁴

[I]f the first aspect — exclusion — is related to lack of faith insofar as the latter is (generally) or can be a cause of the former, the second aspect — error — is rather more strictly and directly connected with the lack of faith On the other hand, if the aspect of exclusion was the argument upon which the doctrine and jurisprudence were primarily (if not exactly exclusively) fixed in the past, it appears to me nonetheless that today attention must be given above all to the second aspect, namely that of error.¹⁶⁵

There are two aspects expressed: *exclusion* of an essential element of matrimony, and *error* determining the will (about sacramental dignity). For validity, the ministers of the sacrament do not have to make an expressed intention of forming the marriage as a sacrament; they must, however, have the *implicit* intent to contract a valid marriage.

In the past some held that error about the essential qualities of marriage, including sacramentality, was merely simple error, effecting only the intellect and not the will.¹⁶⁶ Today, it can be said that lack of faith can positively cause the exclusion of sacramentality of marriage.

On the other hand, *error as to the sacramental dignity* that is determinant through an act of the will does not take on the same role as the phenomenon of simulation. In the latter, there is a confusion between the internal and external structure of the

¹⁶³ Pompedda, 51.

¹⁶⁴ *Ibid.*, 51ff.

¹⁶⁵ *Ibid.*, 40. Emphasis in original.

¹⁶⁶ Kenneth Boccafola, "Error Concerning Sacramental Dignity: Limits of the Object and Proof," *Forum* 7 (1996) 305-325.

act and the combining of two wills; while in the instance of error determining the will there is one will directed to a declaration that, solely because of that particular error, fails to correspond to that individuated by name.¹⁶⁷

Three possibilities present themselves: error that does not determine the will, a positive refusal of sacramentality, and error that pervades the person.

Error can pervade the personality of the person so greatly that it goes beyond the error of canon 1099 and enters the area of incapacity, found in canon 1095, §2.¹⁶⁸ With those who show hostility or aversion toward the Church there is “a psychological(ly) irreversible obstacle,”¹⁶⁹ rendering these people incapable of assuming and fulfilling the essential rights and obligations of marriage life. This does not suggest a mental illness, but rather “an abnormal concept of marriage and a moral depravity, a deformity of the Christian concept of marriage.”¹⁷⁰

2.1.2.6 Non-inclusion vs. exclusion (c. 1101, §§1-2)

Although the words are not stated in the canon itself, established canonical jurisprudence surrounding c. 1101, §2 places an emphasis on *simulation* and *intention*. The traditional grounds of simulation have been used for centuries: an intention *contra bonum prolis*, *contra bonum sacramentum*, and *contra bonum fidei*. With the advent of the *CIC/83*, two more *bona* are developing: an intention *contra bonum coniugum*, and *contra bonum*

¹⁶⁷ *Ibid.*, 57.

¹⁶⁸ Faltin, 91.

¹⁶⁹ J.A. Dewhirst, “Intention Against the Sacramental Dignity of Marriage,” *CLSGBI Newsletter* 89 (1992), 74.

¹⁷⁰ Faltin, 102-103.

sacramentalitatis. Although discussion continues in determining the categorization¹⁷¹ of these two additions, nonetheless both are indeed essential to the marriage covenant.

2.1.2.7 Nature of Simulation

Simulation can be of two kinds: *total*, which involves the external expression of matrimonial consent together with the contrary internal exclusion of marriage itself, or *partial*, which involves exclusion of some essential element or property of marriage.

For most of this century, it was understood that an exclusion of sacramental dignity could be heard only on the ground of *total* simulation.¹⁷² In 1978, a new understanding emerged which provided impetus to this ground as partial simulation.

It is a contradiction to affirm that a valid marriage between baptized people cannot exist without it being a sacrament, and then at the same time to say that a positive exclusion of sacramentality does not vitiate consent Within the context of sacramental theology it is hard to admit that a person receives and administers a sacrament which, by a positive act of the will, he or she rejects.¹⁷³

Simulation must be perpetrated through a *positive act of the will*. Those who simulate totally may be aware that they have simulated, and therefore they

¹⁷¹ See Lawrence Wrenn, *The Invalid Marriage* (Washington, D.C.: Canon Law Society of America, 1998) 119: “[T]here is no consensus on how sacramental dignity should be categorized in law. Some are of the opinion that it is an essential element of marriage; some hold that it is an essential property of marriage; some regard it as a quasi property of marriage; and a few regard it as none of these but rather marriage itself.”

¹⁷² *Ibid.*, 148.

¹⁷³ Grocholewski, 293. English translation in Wrenn, *The Invalid Marriage*, 149.

know the marriage does not exist; partial simulators may believe they have entered a marriage, but a marriage from which certain qualities have been excluded.

In total simulation marriage itself is rejected and the defect of consent results in the nonexistence of the juridic act. In partial simulation, on the other hand, one does not reject marriage, which one wills, but the consent is vitiated by a positive exclusion of an essential property or element of marriage, which invalidates the marriage.¹⁷⁴

2.2 Theological Considerations

2.2.1 Biblical – Overview of Scriptural Traditions

The account of marriage found in the book of Genesis presents several essential reflections on the nature of marriage itself as a relationship that has personal divine attributes. As Christian concepts of marriage are derivatives of ancient Near East cultures, including Mesopotamian, Syrian, Egyptian, and Canaanite¹⁷⁵, it is inevitable that some common traits will be evident as outcroppings of Christianity's Hebrew roots.

In the first two chapters of Genesis, different writing periods reflect distinct theologies. Clearly, issues of syncretism¹⁷⁶ are evidenced from the

¹⁷⁴ *Coram* Bruno, February 26, 1988: RRD 80:167: "In simulatione totali ipsum matrimonium respuitur et defectus consensus in existentiam negotii iuridici provocat. In simulatione partiali e contra contrahens non respuit matrimonium, quod vult, sed consensus vitatur ob positivam essentialis proprietatis aut elementi coniugii exclusionem, quae matrimonium irritat." English translation in Lawrence G. Wrenn, *Law Sections* (Washington, DC: Canon Law Society of America, 1994) 69.

¹⁷⁵ Mesopotamia gave rise to Sumerian, Babylonian, and Assyrian cultural elements. See Cyrus H. Gordon and Gary A. Rendsburg, *The Bible and the ancient Near East*. 4th ed. (New York, NY: W.W. Norton and Company, 1997).

¹⁷⁶ Among various underlying thematic elements include sexuality, fertility, and marriage rituals that ancient Near East cultures attributed to mythological intervention of their pagan

surrounding cultures.¹⁷⁷ Such parallels from one culture to another are obvious when recalling that the promises given to Abraham included the establishment of a dynasty in a land that God had chosen for his people, as other cultures were displaced.¹⁷⁸

Marriage and sexuality are mysterious gifts from a creating God, where Yahweh blesses marriage in the very act of creation.¹⁷⁹ The Yahwist tradition in the second creation story demonstrates that divine blessing made the first marriage the prototype of all married life.¹⁸⁰ Marriage and sexuality are a good and holy undertaking, a *divine* institution¹⁸¹ from the time of creation. They prefigure the intimate relationship that God desires to have with humanity.¹⁸²

The biblical view of marriage, sexuality, and fertility demonstrate a marked departure from the polytheistic influence on marriage. The Genesis

deities. Fertility gods were associated with the harvest. Fertility cults, found within the religions of the ancient Near East, reenact prevalent myths in order to explicate the seasonal cycles. The common symbol for fertility among these cults is the goddess-mother with her male consort or son. Like flora or plant life, figuratively, it is this male companion that dies each season and then is reborn.

¹⁷⁷ In Mesopotamia, Ishtar and Tammuz (cf. Ez 8, 14); in Egypt, Isis and Osiris; in Canaan, Ashtarte and El (eventually replaced by their offspring Baal) who were of Assyrian extract (cf. 1 Kg 18, 17-40).

¹⁷⁸ Gn 12.

¹⁷⁹ Gn 2, 18; 1 Cor 11, 9.

¹⁸⁰ Gn 2, 24. Cf. Mt 19, 5; Mk 10, 7-8; 1 Cor 6, 16; Eph 5, 31.

¹⁸¹ The Triune God exists as an unfathomable mystery, and yet the Trinity is nonetheless a perfect relationship of love. Humanity strives for this relationship in marriage. Relationship and communion are essential to married life. Genesis as a whole is the basis for family, for the family is a social task.

¹⁸² See Michael L. Satlow, *Jewish Marriage in Antiquity* (Princeton, NJ: Princeton University Press, 2001).

perspective of marriage does not depict the god-goddess couple as in ancient Near East cultures. Rather, Yahweh creates *ex nihilo*, by efficacious word alone, breathing life into Adam, creating Eve from his rib. The second creation story equates the sexes as complementary: man and woman complete each other,¹⁸³ hence the basis for monogamous relationships.

That this helpmate is formed of flesh taken from his side (verses 21 and 22), unlike the animals formed from the earth and found unsuitable helpmates for him, tells that the woman has a substantial claim to equality with him. That she was taken from his own flesh while he was in a sleep brought on him by God hints that she will be in some degree a mystery to him and that he will not dominate her.¹⁸⁴

The first creation account is a much later account of priestly scholars which enjoins the parties to marriage to “be fruitful and multiply.”¹⁸⁵

Rabbinic commentaries regarded marriage not only as the normal state for humanity, but understood it as a divine ordinance.¹⁸⁶ The fundamental motive for marriage among Hebrews was not companionship or romance, but propagation of the species.¹⁸⁷ The understanding of marriage was

¹⁸³ Gn 2, 23. The name Adam [אָדָם] is not an exclusive designate of maleness, but is generic. “The doctrine that when God created the first man, he created the first man, he created him as both man and woman in one. ... A plausible solution was to maintain that the original Adam was a composite being.” See David Daube, *The New Testament and Rabbinic Judaism*, Part II, Legislative and Narrative Forms, N.Y., 1973. Chapter 3, “Precept and Example,” (Salem, NH: Ayer Company Publishers, Inc, 1992) 72.

¹⁸⁴ Mackin, *The Marital Sacrament: Marriage in the Catholic Church*, 27.

¹⁸⁵ Gn 1, 28. Cf. Gn 9, 1.7; Lv 26, 9; Ps 127, 3.5.

¹⁸⁶ Rabbi Hiyya ben Gamda said of the unmarried man, “He is not a whole man, for it is said, And he blessed them, and he called their name, ‘man.’” Cf. G.F. Moore, *Judaism in the First Centuries of the Christian Era*, Vol. II (New York: Schocken Books, 1971).

¹⁸⁷ Gn 22, 17.

subordinated to the propagation of offspring; nonetheless, procreation and offspring were the choice blessings of marriage.

Marriage, therefore, was regarded as obligatory. Refraining from marriage was not considered holy. For example,

The Jew that has no wife abideth without joy, without a blessing, and without any good. Without joy, as it is written (Dt 14, 26), "And thou shalt reject, thou and thy household;" without blessing, as it is written (Ez 44, 30), "That He may cause a blessing to rest on thy household;" without any good, for it is written (Gn 2, 8), "It is not good that man should be alone."¹⁸⁸

Or,

The Jew that has no wife is not a man; for it is written (Gen. 5, 2), "Male and female created He them and called their name man." To which Rabbi Eleazar adds, "So every one who has no landed property is no man; for it is written (Ps 115, 16), 'The heaven, even the heavens, are the Lord's, but the earth (the land, that is), hath He given to the children of man.'"¹⁸⁹

The principal rationale for marriage was to preserve the husband's family. An unmarried eighteen year old male could be ordered to marry by a rabbinical court.¹⁹⁰ Young girls could marry at twelve years, and young boys

¹⁸⁸ The Babylonian Talmud. III. *Yevamoth*, fol. 62, col. 2.

¹⁸⁹ The Babylonian Talmud. III. *Yevamoth*, fol. 63, col. 1.

¹⁹⁰ Cf. *Mishnah Pirkei Avot*, 5:21: "He used to say: At five years old one is fit for the Scripture, at ten years for the Mishnah, at thirteen for the fulfilling of the commandments, at fifteen for the Talmud, at eighteen for the marriage canopy, at twenty for pursuing, at thirty for authority, at forty for discernment, at fifty for counsel, at sixty to be an elder, at seventy for gray hairs, at eighty for special strength, at ninety for bowed back and at a hundred a man is as one who has already died and has passed from the world." See also Solomon Ganzfried, *Kitzur Shulchan Aruch*, Vol. 4: "A man is duty bound to take for himself a wife, in order to fulfill the mitzvah of propagation. This mitzvah becomes obligatory on a man when he reaches the age of eighteen; at any rate he should not reach the age of twenty without taking

at thirteen years, based on the puberty norm.¹⁹¹ Mortality rates caused a lowering of the age for marriage from contemporary standards.

Negotiations for the marriage were conducted between the two families. Arranged marriages were the dominant model, stemming from the action of Abraham sending his servant to Aram Naharaim to find a wife for Isaac from his own family.¹⁹² This is a recollection of the tradition that it was God who destined marriages to happen and that parents were merely facilitators to the match that God had already intended.¹⁹³

It is obvious, too, that in the biblical account of the creation of humans, woman is seen as being taken out of the side of man. The symbolism recounts an understanding that woman and man are considered part of the same entity, evolving into their own dominion, but essentially one essence. There is a necessary bond imprinted in the very fabric of their being.

God created man in his own image, in the image of God he created him; male and female he created them. [...] Be fruitful and increase in number; fill the earth and subdue it.¹⁹⁴

a wife. Only in the event that he is engaged in the study of Torah with great diligence and he has apprehension that marriage might interfere with his studies he may delay marrying.”

¹⁹¹ Cf. *Mishnah Niddah*, 5:6: “A girl eleven years and one day – her vows must be examined. If she is twelve years and one day her vows are valid. . . A boy twelve years old and one day – his vows must be examined. If he is thirteen years and one day old, his vows are valid... When they are younger than this, even though they say, ‘We know in whose name we have vowed it’... their vow is no vow. But when they are older than this, even though they say, ‘We know not in whose name we vowed it’... their vow is a valid one....”

¹⁹² Gn 24, 1-66. A different perspective is reflected in the marriage between Isaac’s son Jacob and Rachel.

¹⁹³ Cf. *Babylonian Talmud, Sotah*, 2a: “Forty days before the formation of a child, a voice proclaims in Heaven. The daughter of X is to marry the son of Y.”

¹⁹⁴ Gn 1, 27-28.

Man and woman are therefore essentially one, and belong together by their very nature. These two parts that compromise the fullness of humanity, independent though their appearance may seem, are destined to seek out each other in their desire for a return to their original state at the time of creation. In the *Zohar*, a book of Jewish mysticism, one can read that

[E]ach soul and spirit, prior to its entering into this world, consists of a male and female, united into one being. When it descends on this earth, the two parts separate and animate two different bodies. At the time of marriage, the Holy One, blessed be He, who knows all souls and spirits, united them again, as they were before, and they again constitute one body and one soul, forming as it were the right and left of one individual. ... This union is influenced by the deeds of man and by the ways in which he walks. If the man is pure and his conduct is pleasing in the sight of God, he is united with that female part of his soul, which was his component part prior to his birth.¹⁹⁵

Man and woman belong together as a divine union. It is a necessary part of the plan of God and finds blessing from God.

Additionally, Old Testament texts help frame a theology of sacramental marriage as covenantal by seeing the relationship between Yahweh and his Chosen People. Included here are references to the Deuteronomic law, for “[y]ou have declared this day concerning Yahweh that he is your God and Yahweh has declared this day concerning you that you are a people for his own possession” (Dt 26, 17-19). Together, they form “a community of grace, a community of salvation, a community ... of one body.”¹⁹⁶ It would be the prophet Hosea who joins the covenant model of

¹⁹⁵ *Zohar* 1:91b.

¹⁹⁶ Michael G. Lawler, “Marriage in the Bible” in Kieran Scott and Michael Warren, *Perspectives on Marriage: A Reader* (New York, NY: Oxford University Press, 2001) 10.

God's people to that of marriage, followed by Jeremiah, Ezekiel, Trito-Isaiah, and Malachi. Hosea's wife Gomer was a harlot, an adulterer, who represents unfaithful Israel. Hosea appropriates Yahweh as a husband and Israel as his (un)faithful bride, where restoration takes place after judgment, "an image in which to show his people the steadfastness of Yahweh's covenantal love for them, ... a representation [of] the covenant relationship between Yahweh and Israel."¹⁹⁷ Additionally, both Jeremiah and Ezekiel

present Yahweh as having two wives. Israel and Judah (Jer 3, 6-14). ... Samaria and ... Jerusalem (Ezek 23, 4). Faithless Israel is first 'sent away with a decree of divorce' (Jer 3, 8), but that does not deter an even more faithless Judah from 'committing adultery with stone and tree' (Jer 3, 9). Israel and Judah are as much the harlots as Gomer but Yahweh's faithfulness is as unending as Hosea's. He offers a declaration of undying love: 'I have loved you with an everlasting love; therefore, I have continued my faithfulness to you' (Jer 31, 3; cf. 16, 63; Is 54-7-8). The flow of meaning, as in Hosea, is not from human marriage to divine covenant, but from divine covenant to human marriage. The belief in and experience of covenant fidelity creates the belief in and the possible of fidelity in marriage, which then ... becomes a prophetic symbol of the covenant. Yahweh's covenant fidelity becomes a characteristic to be imitated, a challenge to be accepted, in every Jewish marriage. Malachi ... puts it in a nutshell: 'I hate divorce, says Yahweh ... so do not be faithless' (Mal 2, 16).¹⁹⁸

If examined more closely, "tenderness, intimacy, and tempestuous emotion that are part of a deeper understanding of marriage" can be seen in these texts among others.¹⁹⁹

¹⁹⁷ *Ibid.*, 11.

¹⁹⁸ *Ibid.*, 12.

¹⁹⁹ Vorgrimler, 287. See also Hos 1-3; Jer 2, 2; 3, 1; Ezek 16; 23; Mal 2, 14-16.

In the New Testament, the Gospels allude to sacramental imagery and its foundation, but Saint Paul is its champion.

Marriage, for pagans and Jews, had a religious meaning since both groups connected it with religious rites, calling it a *mystery*. Saint Paul comments on marriage as a mystery in the Letter to the Ephesians: “This mystery has many implications; but I am saying it applies to Christ and the Church.” (Eph 5, 22f). The mystery of marriage is a sacred ceremony with deep and hidden significance. In Hebrew thought, it represented the relationship between Yahweh and his people; for Hellenists, marriage symbolically re-presents the marriage between Zeus and Hera. For Christians, marriage has a significantly deeper meaning.

For Saint Paul, a parallel is drawn between human marriage as the union between husband and wife and the union between Christ and the Church. The two provide an interchange of images: Christ’s union with the Church is intimate, a perfect relationship that has been shown symbolically as a head being master of the body, where the union is supernatural and life-giving.²⁰⁰ Additionally, the image can be continued further, where the baptized are the members of the body that make up the Church – the Mystical Body of Christ. Through baptism, one is incorporated in this mystical body, and receives new life from God. This is sanctifying grace. As long as one is part of the body, the divine life received in baptism grows stronger, helping an individual to be “perfect as my heavenly Father is perfect” (Mt 5, 48). This is accomplished through Christ who saves the whole body. In his perfect love for the members of his body, Christ sacrificed himself to make the baptized holy, glorious, and faultless. By providing additional grace, he

²⁰⁰ See Ian McFarland, “A Canonical Reading of Ephesians 5:21-33: Theological Gleanings,” *Theology Today*, 57 (2000) 344-356.

nourishes his body in order to allow his living parts to grow.

In Christian marriage, two become joined to form one flesh, one body, with the husband as the head of the wife. Saint Paul's imagery must be understood as a self-sacrificing love, for the husband must treat the wife as Christ treats the Church. Christian marriage mysteriously signifies the union of Christ and his Church, which is a supernatural and life-giving reality; hence, Christian marriage, too, is supernatural and imparts grace, holiness, and is salvific. In both instances, grace is derived from God – one receives grace for the community of the Church, the other derives grace for the community of marriage. The bonds of grace, made present in the Church community, find a parallel in the bonds of grace that are made present in the mutual exchange of consent by a man and a woman. Grace is conferred not by 'adding' it in either context, but rather as an application by the parties involved: a community that loves God and neighbor, and a couple that dies to self and live for one another, wrought by the example of Christ on the cross.

2.2.2 Patristic

2.2.2.1 Ante-Nicene – Basil, Gregory of Nazianzen, John Chrysostom

Although the pre-Nicene period offers tremendous development in various aspects of theology, it is a period of sparse reference to the *sacramentality* of marriage.

2.2.2.2 Basil

Saint Basil provides a commentary on the nature of marriage as a religious event, including betrothal, citing the marriage of Mary and Joseph. Although he notes that it is natural to marry, nonetheless, it must be a yoke,

borne by two people under the Church.²⁰¹

2.2.2.3 Gregory of Nanzianen

Saint Gregory of Nanzianen(us) [the Theologian] notes that by being connected by the ties of marriage we substitute for the ‘bodies’ of each other. Marriage makes the weak strong, and the common cares of the spouses make their difficulties of life easier. By tying themselves in marriage, they are able to derive grace from the source of their home. Most importantly, however, he notes that being one flesh they have also *one soul* and through their mutual love they *equally* motivate each other.²⁰²

2.2.2.4 John Chrysostom

Saint John Chrysostom has a great appreciation for the love that should exist between husband and wife. Wives are “a second authority; she has authority and honor equal to the husband’s in many respects. But the husband has something more. His special concern is the well-being of the household.”²⁰³ As instructed by Ephesians 5, 25, the husband is responsible to lead in matters of love, because he is to love his wife as Christ loves the Church.

Chrysostom’s homilies on marriage and family life are illustrative for understanding the sacramental nature of Christian marriage. Marriage is an

²⁰¹ Saint Basil, *Hexameron*, “Homily VII,” §5 in *Nicene and Post Nicene Fathers*, Vol. 8 (Peabody, MA: Hendrickson Publishers, Inc., 1995) 93.

²⁰² Saint Gregory Nanzianen, “On the Death of his Father,” §7 in *Nicene and Post Nicene Church Fathers*, Vol. 7 (Peabody, MA: Hendrickson Publishers, Inc., 1995) 256.

²⁰³ David G. Hunter. *Marriage in the Early Church* (Minneapolis: Fortress Press, 1992) 87.

image (*icon*) or archetype (*typos*)²⁰⁴ of Christ, of Church, and of the Christ-Church relationship. This image is related to *mysterion* in Ephesians 5. Chrysostom explains the nature of Christian marriage by using marriage as a great mystery²⁰⁵ to be the point of embarkation for his comparison of the husband/wife relationship to the Christ-Church relationship.

Because the husband is responsible to care for the well-being of the household, Chrysostom believes that this applied to matter of love. Because marriage is a *typos* of Christ, the husband is to treat his wife as though he was entrusted with this sacred image. Such a household would be filled with the mutual submission of husband and wife, and would be a “marriage that is according to Christ”²⁰⁶ and “and entirely spiritual, when the soul is united to God in an ineffable union which He alone knows.”²⁰⁷

Through scripture, it is evident that the intention of the Creator is that marriage is a bond by which the parties to a marriage become one organism.²⁰⁸ This is a symbol of God himself. Through intercourse, the

²⁰⁴ John Chrysostom, “Homily 12: On Colossians 4:12, 13,” in *Nicene and Post Nicene Church Fathers*, Vol. 13 (Peabody, MA: Hendrickson Publishers, Inc., 1995) 318.

²⁰⁵ John Chrysostom, “Homily 20: On Ephesians 5, 22-24,” in *Nicene and Post Nicene Church Fathers*, Vol. 13 (Peabody, MA: Hendrickson Publishers, Inc., 1995) 146.

²⁰⁶ *Ibid.*, 147.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*, 146: “For this cause shall a man leave his father and mother, and shall cleave to his wife, and the twain shall become one flesh. Behold again a third ground of obligation; for he shows that a man leaving them that begat him, and from whom he was born, is knit to his wife; and that then the one flesh is, father, and mother, and the child, from the substance of the two commingled. For indeed by the commingling of their seeds is the child produced, so that the three are one flesh. Thus then are we in relation to Christ; we become one flesh by participation, and we much more than the child. And why and how so? Because so it has been from the beginning.”

parties to a marriage become one flesh, where 'two become one', with their progeny being one flesh with them, and the family itself is 'of one flesh'. Furthermore, from the Ephesians model Christ and the Church form one organism through 'spiritual intercourse', namely communion. It is Chrysostom's conclusion that the husband-wife relationship and the Christ-Church relationship are the *mysterion* and that the former is a *typos (icon)* of the latter.

A summary of Chrysostom's position is that marriage and family are a great mystery which manifest a greater mystery: Christ, Church, and the Christ-Church relationship. Both mysteries are ordained by God to be mysteries of God's love.

Chrysostom does offer an array of natural, spiritual, contractual, and social perspectives on marriage. He notes that marriage was created by God "to make us chaste, and to make us parents. Of these two, the reason of chastity takes precedence. When desire began, then marriage also began. It sets limits to desire by teaching us to keep one wife."²⁰⁹ By showing that divine grace is at work in marriage, Chrysostom shows that marriage performs a sanctifying function for Christians, and that

this, then, is what it means to marry in Christ: spiritual marriage is like spiritual birth, which is not of blood, nor of the will of the flesh ... just as the soul is joined to God in an ineffable union which He alone knows. ... How foolish are those who belittle marriage! If marriage were something to be condemned, Paul would never call Christ a bridegroom and the Church a bride.²¹⁰

²⁰⁹ John Chrysostom, *Sermon on Marriage*, in Catharine P. Roth and David Anderson *Chrysostom on Marriage and Family Life* (Crestwood, NJ: St. Vladimir's Press, 1986) 85.

²¹⁰ John Chrysostom, "Homily 20 on Ephesians 5, 22-24," in Catharine P. Roth and David Anderson, *Chrysostom on Marriage and Family*, 54-55. This newer translation highlights the importance of the marriage as sanctifying the parties.

While the imagery is spiritual, he gives harsh criticism to marriage as purely contractual. He advocated that marriage be formed by mutual agreements that went beyond the material aspects of civil contracts.

Who, when about to marry, inquires about the disposition and nurture of the damsel? No one; but straightaway about money, and possessions, and measures of property of various and different kinds: like as if he were about to buy something, or to settle some common contract. ... [This is] to offer insult to the gifts of God.²¹¹

To the point, he summarizes that “marriage is not a business venture, but a fellowship for life.”²¹² From this perspective flows the social nature of marriage, where

the love of husband and wife is the force that welds society together. Because when harmony prevails, the children are raised well, the household is kept in order, and neighbors and relatives praise the result. Great benefits, both for families and states, are thus produced.²¹³

2.2.3 Post-Nicene – Augustine and Ambrose

2.2.3.1 Ambrose of Milan (338-397)

Ambrose had an ardent desire to defend the institution of marriage

²¹¹ John Chrysostom, “Homily on Matthew, LXXIII”, in *Nicene and Post Nicene Fathers*, Vol. 10 (Hendrickson Publishers, Inc., 1995) 443, at 4,

²¹² John Chrysostom, “How to Choose a Wife,” in *Chrysostom on Marriage and Family Life*, 89-114, at n. 97.

²¹³ John Chrysostom, “Homily 20, 43, 44” in John Witte, *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition* (Louisville, KY: Westminster/John Knox Press, 1997) 21.

against its detractors. He insists that marriage is good because it was instituted by God who can cause only good. For God said, “*Let us make him a helper like himself* (Gen 2, 18). We understand that to mean a helper in the generation of the human family – a really good helper.”²¹⁴ Furthermore, Ambrose asserted that Adam’s rib being built into a woman is a consequence that the “one who is without a wife is regarded as being without a home ... because a household, comprising man and wife, seems to point toward a state of full perfection.”²¹⁵

Ambrose understands that marriages which lack the *sacramentum* are not really marriages at all. He reflects on the command of Christ that “the two shall become one flesh. So they are no longer two, but one flesh. Therefore, what God has joined together, no human being must separate.”²¹⁶ However, Ambrose notes,

Harmony is when the pipes of the organ, blended in a certain combination, keep the beauty of a true melody, or when an apt order preserves the concord of the lute strings. Marriage, therefore, does not have its harmony when a pagan wife, in violation of the law, is joined to a Christian husband.

Thus, where there is marriage, there is harmony. Where there is harmony, God has joined them.²¹⁷

In his letter to Pope Siricius, Ambrose states: “We also do not deny that

²¹⁴ Ambrose, *On Paradise*, “The Creation of Eve,” accessed from the Internet January 22, 2007 at www.trueorthodoxy.info/pat_stambrose_paradise.shtml#glossGen2:21,Gen2:22,Gen2:23.

²¹⁵ *Ibid.*

²¹⁶ Mark 10, 8.

²¹⁷ Ambrose, *Expositio Sancti Evangelii Secundum Lucam*, Book 8, no. 1470, quoted in Mackin, 194.

marriage was sanctified by Christ"²¹⁸; and to Bishop Vigilius of Trent, he explains that

seeing that the marriage ceremony itself ought to be sanctified by the priestly veil and benediction, how can that be called a marriage when there is not agreement in faith? Since their prayers ought to be in common, how can there be the love of a common wedlock between those whose religion it different?²¹⁹

This provides a window into marriage as 'a sacrament of faith' in light of the Second Vatican Council. Furthermore, in *De Abraham*, Ambrose states,

We know that God is the Head and Protector, who does not permit that another's marriage-bed be defiled; and further that one guilty of such a crime sins against God, whose command he contravenes and whose bond of grace he loosens. Therefore, since he has sinned against God, he now loses his participation in the heavenly sacrament.²²⁰

Hence, for Ambrose Christian marriage is a 'heavenly sacrament,' binding individuals with God through the creation of grace through marriage.

2.2.3.2 Augustine of Hippo (354-430)

No Christian writer has exerted greater influence on the development

²¹⁸ Ambrose, *Letter XLII*, The Council of Milan To Pope Siricius (AD 389), §3. A larger part of the paragraph deserves quotation: "They pretend that they are giving honor to marriage. But what praise can rightly be given to marriage if no distinction is paid to virginity? We do not deny that marriage was hallowed by Christ, for the Divine words say, 'And the twain shall be one flesh,' and one spirit, but our birth precedes our calling, and the mystery of the Divine operation is much more excellent than the remedy of human frailty. ... Marriage is good, for thereby the means of continuing the human race has been devised" (emphasis not in original). Accessed from the Internet at www.ccel.org/p/pearse/morefathers/ambrose_letters_05_letters41_50.htm#Letter_Siricius.

²¹⁹ Ambrose, *Letter XIX*, Letter to Virgilius (AD 385), §7. Accessed from the Internet at www.ccel.org/p/pearse/morefathers/ambrose_letters_02_letters11_20.htm#Letter19.

²²⁰ Ambrose, *De Abraham*, I, vii

of the Western theology of marriage than Augustine.²²¹ The symbolism of marriage can be divided into two subcategories. The *sacramentum*²²² is an indissoluble bond of sacred obligation and *sign* is understood as a sacred relationship that can be seen as the mystery of unity between Christ and his Church.²²³ The *quiddam coniugale*, a ‘certain bond’, is not ontological but makes the *iura matrimonii* permanent. It is an obligation even if infidelity is perpetrated by the party(ies). The *sacramentum* is a moral obligation, and its permanence is rooted in the sacral symbolism, a sign of profound realities, the mystery of Christ and his Church. Marriage, viewed as contract, implies rights and duties which were lifelong. Remarriage is not possible because of the *sacramentum*.

Partners/contractants in marriage had a lifelong obligation because of the contract which is more binding because of the *sign/sacramentum*. Separation of parties only disrupts conjugal life, but not the fundamental obligations that underlie it. Marriage is a sacrament because it is a moral obligation that is indissoluble, inviolable, and therefore holy. It is a natural *vinculum*, a ‘sacred bond of obligation’ that is holy, because it is based in Ephesians 5 as an explicit sign of the *mysterion*²²⁴ of Christ in his Church. The essence of marriage as a sign of the unity of Christ and his Church is the *sacramentum*. For Augustine, however, the *magnum sacramentum* of Ephesians 5, 32 was never a *human* marriage, but always the marriage of *Christ and the*

²²¹ David G. Hunter, “Augustine and the Making of Marriage in Roman North Africa,” *Journal of Early Christian Studies* 11:1 (2003) 63-85.

²²² Augustine has used a classical Roman term, *sacramentum*, for ‘religious commitment’ or ‘engagement’.

²²³ Schillebeeckx, 281-282.

²²⁴ Saint Paul’s term *mysterion* was translated as *sacramentum* in the *Vulgate*.

Church.²²⁵

Marriage is a visible sign of the invisible union between Christ and his mystical bride, the Church. The sign that Augustine refers to in *De bono coniugali* and *De coniugiis adulterinis* is not the sacrament *of* marriage, but the sacrament *in* marriage. But it was much more than just a sign. The technical term *sacramentum* can be used when describing a soldier's pledge of loyalty.²²⁶ The pledge is a sacred oath of fidelity. It is written on the very efforts of the soldier to carry out his mission faithfully. In this same sense, the grace received in baptism is similar. By being baptized into Christ's death, the soul is formed in the image of Christ's death and resurrection. When this is applied analogously to marriage, marriage forms the soul in the image of Christ's fidelity to the Church: I will be with you until the end of time.²²⁷ This forms a strong parallel to fidelity in marriage, for just as baptism can only be received *once* and the soul is radically configured to the image of Christ, so, too, spouses could not remarry and receive another image of fidelity. Hence, the *sacramentum* of marriage is both a description of a sacred bond between spouses and the image of fidelity between Christ and his Church.

This invisible *sacramentum* caused Christians to remain faithful at all times. As a contract of fidelity, marriage gives spouses equal power over the other's body, maintaining the right to each other exclusively so as to avoid

²²⁵ See David G. Hunter, *The Practice and Theory of Marriage in Roman North Africa* (200-400 CE). Accessed from the Internet at people.vanderbilt.edu/~james.p.burns/chroma/marriage/huntermar.html.

²²⁶ See Augustine, *Contra Epistolam Parmeniani Libri Tres*, Chapter 13, n. 28 in Mackin, 228, note 19.

²²⁷ Matt 28, 20.

adultery.²²⁸ In *De nuptiis et concupiscentia*, he refers to exclusivity as a “certain sacramental bond,”²²⁹ noting further that “once marriage is entered upon in the City of our God where also from the first union of the two human beings marriage bears a kind of sacred bond, it can be dissolved in no way except by the death of one of the parties.”²³⁰

For Augustine, marriage is good because it makes possible the propagation of the human race in which the good of friendship/partnership is realized. Marriage is a human relationship. Before the fall in the Garden, its primary purpose was to produce children, and it enabled parents and children to identify one another in kinship. Augustine responded to various questions regarding the rationale for marriage in a world where preternatural gifts abounded and death had not yet entered the world as a consequence of sin. Had no one ever died, the population would grow to a divinely predetermined number and then transformed into pure spirits.²³¹ Consequent to the fall, Augustine reasoned that God knew human nature, and that humanity would be in need of a redeemer, explaining that marriage during the patriarchal cycle in the Book of Genesis (and throughout salvation history) played a role in the birth of the Messiah.

Augustine insisted that certain rituals prevalent among Christians contributed to the theology marriage. These included baptism and ordination, and marriage, too, for they cause to be present in the souls of their

²²⁸ Augustine, *De bono coniugali*, 6, in *Nicene and Post Nicene Fathers*, Vol. 3 (Peabody, MA: Hendrickson Publishers, Inc., 1995) 401-402.

²²⁹ See Augustine, *De nuptiis et concupiscentia*, 11 and 19, in *Nicene and Post Nicene Fathers*, Vol. 5 (Peabody, MA: Hendrickson Publishers, Inc., 1995) 268 and 271.

²³⁰ Augustine, *De bono coniugali*, 405-406.

²³¹ See Augustine, *Opus imperfectum contra Iulianum*, Book 6, Chapter 30, in Mackin 203-204.

recipients an effect that is distinct from grace. This is the *sacramentum*.

To understand Saint Augustine's views on the sacramentality of marriage as an effect distinct from grace requires reflection on Augustine's view of baptism seen together with significant heterodoxies of his time. One prevalent heresy was *Donatism*, a system of thought that relegates the efficacy (validity) of the sacraments to the moral rectitude of the person who is the minister of the sacrament. Hence, for a priest/deacon who has become schismatic or an apostate (and has not repented), he should not and cannot baptize because the sacrament would have no efficacy. Another important heresy was *Manichaeism*, of which Augustine had himself been a member (with the position of *auditor*) before his conversion under Ambrose. The Manicheans believed that there are two eternal first principles, God and Satan, holding dominion over the worlds of light and darkness, and that Adam and Eve had diabolical powers and were under the control of Satan. They did not believe in the account of *Genesis*, and portrayed humanity as having a soul from God and a body from Satan. They were to renounce the flesh and preserve their virginity. They believed in sexual relations with concubines as a means of exploitation rather than monogamous marriage.²³² Marriage is condemned as 'of the flesh' by the Manicheans.

Augustine reasoned, against the donatists, that it is the ritual of baptism and not the minister that gives efficacy to the sacrament, because it is not a human power at work, but a divine power that cannot be corrupted by

²³² Augustine wrote *De bono Coniugale* to confront the Manicheans, because they were harsh critics of Old Testament theology, especially in the context of the book of Genesis. They saw God as being fearful, envious, and angry as he presided over creation. In opposition to their claims that the Patriarchs were weak because of their sexual proclivities, Augustine saw them and their wives as models of sexual restraint, contracting marriage in order to bear the children who would ensure the coming of Christ and the birth of the Church, which Augustine with his belief in the inerrancy of the Scriptures clearly held.

human influence.²³³ Augustine explains that the power to baptize is conferred at ordination and is a sacrament and that both sacraments produce a lasting effect in the recipient.²³⁴ This can be seen in relation to *ex opera operato*.

Augustine defined the *sacramentum* in various ways. From even the most cursory examination of his writings, it is clear that he attributes to marriage a religious character (*sacramentum*); however, he does not limit its use to Christian circles. For example, the marriage of Adam and Eve was considered a *sacramentum*, for he implies that their marriage foreshadowed Christian marriage in relation to sacramentality.²³⁵ Even polygamous practice

²³³ See Augustine, *De Baptismo Contra Donatistas Librem Septem* to further develop this theme. Augustine's thought here also is a precursor to the relationship between the traditional axioms of *ex opere operantis*, which represents the donatist position as efficacy of sacraments dependent on the personal quality of the minister ("on account of the work of the one who works") and *ex opere operato*, which represents the position of Augustine as the efficacy of the sacrament depending on Christ ("on account of the work which is worked"). See *Nicene and Post Nicene Fathers*, Vol. 4 (Peabody, MA: Hendrickson Publishers, Inc., 1995) 411-514, especially 411-424.

²³⁴ Donatists believed that "the Church, and especially its priests, should be morally blameless. Since this was not the case with the Catholic Church – some members of which had been known to reject Christ rather than suffer death for his sake – they separated from it, forming their own Church. ... The Donatists argued that Catholic sacraments, including baptism and ordination, were powerless because they were performed by morally lax priests." By contrast, Augustine "argued that the worth of a sacrament has nothing to do with the morality of the priest who administers it. This is because the sacrament is actually performed by Christ; the priest is simply his instrument. ... As Augustine put it, 'When Peter baptizes, it is Christ who baptizes. When Paul baptizes, it is Christ who baptizes.'" Hence, divine power is at work that cannot be corrupted by human sinfulness. Augustine notes that the baptism of Christ, consecrated by the words of the Gospel, is holy even though administered by adulterers to adulterers, even though they be unclean and unchaste; and the divine power accompanies its sacramentum either for the salvation of those who receive it worthily or for the ruin of those who receive it unworthily. See Jonathan Hill, *The History of Christian Thought* (Downers Grove, IL: Intervarsity Press, 2003) 85-86; Augustine, *De Baptismo Contra Donatistas Librem Septem*, Book 3, Chapter 10, 439-440.

²³⁵ Seamus P. Heaney, *The Development of the Sacramentality of Marriage from Anselm to Laon to Thomas Aquinas* [Studies in Sacred Theology, n. 134] (Washington, DC: The Catholic University of America Press, 1963) xii.

by the Israelites *resembled* the union between Christ and the Church.²³⁶ In the Old Testament the need for children justified polygamy if the first wife consented; that situation no longer applies. Though *polygamy* was permitted for the purpose of more procreation in the Old Testament, *polyandry*, being opposed to the fertility ordained by nature, was not.²³⁷ Since marriage by Christians is indissoluble, the term *sacramentum* is more appropriately applied to marriage in the Church, and it was by assisting at the wedding-feast of Cana that the Savior unveiled this symbolism.²³⁸

In most instances, Augustine uses the term is used in connection with the indissolubility of the bond of marriage, and even refers to the marriage between Mary and Joseph in this context.²³⁹ Furthermore, it is clear that Augustine's understanding of *sacramentum* directly relates to the *vinculum coniugale*, a force that exceeds the natural condition. It is the cause of the absolute indissolubility of the bond of marriage.²⁴⁰

Understood in this light, one can say that the *sacramentum* is not the *vinculum*, but is added onto, and adheres to the *vinculum*. Moreover, since the *sacramentum* remains despite any desire to effect its dissolution, it is evidently not just a simple sign or symbol. It is the *sacramentum* of a higher thing, adhering and united to the *vinculum coniugale* to strengthen and confirms it.²⁴¹

²³⁶ Saint Augustine, *De bono coniugali*, 407.

²³⁷ *Ibid*, 15, 405-407.

²³⁸ Pierre Pourrat, *Theology of the Sacraments: A Study in Positive Theology* (Saint Louis, MO: B. Herder, 1910) 323; Augustine, *In Ioannis Evangelium*, ix, 2; Augustine, *De bono coniugali*, 18.

²³⁹ Augustine, *De nuptiis et concupiscentia*, 1, 13: "The entire good, therefore, of the nuptial institution was effected in the case of these parents of Christ: there was offspring, there was faithfulness, there was the bond." See *Nicene and Post Nicene Fathers*, Vol. 3 (Peabody, MA: Hendrickson Publishers, Inc., 1995) 269.

²⁴⁰ Heaney, xiv.

²⁴¹ *Ibid*.

Augustine, then, identifies the product (*res*) of the *sacramentum* as the marital covenant, with the *sacramentum* as the external sign. It is a quality or trait of the marital bond that prevents its dissolution; as such it is found in all marriages. For Augustine, it is analogous to the mark effected on the soul of the *ordinati*, or that of the *baptismati*, and remains on the souls of the separated Christian spouses until one of them dies. It remains on the souls of spouses because they represent the covenant relationship between Christ and his Church.

2.3 Scholastic

2.3.1 Aquinas' *officium communitatis*

Although Saint Thomas Aquinas died before the supplemental was finished, he nonetheless left an imprint on its pages of his considerations of marriage as an office of nature, as a sacrament, an *officium communitatis*.²⁴² Matrimony was instituted as a sacrament of the New Law in so far as it represents the mystery of Christ's union with the Church. The civil and sacramental realms cooperate in the relationship. Friendship and mutual services belong to civil law. *Matrimony*, as a sacrament, applied to fulfilling *both* offices of nature and of society.

Matrimony is a cause of grace, for it is a sacrament, and provides what is necessary to fulfill the requirements of matrimony. He explains that the union of body and soul within the context of marriage symbolizes both the unbreakable union between Christ and the Church *and* confers sanctifying grace upon the couple, their children, and the community. Aquinas writes,

²⁴² Thomas Aquinas, *Aquinas Ethicus*, II-II, Q. C. Art. II, §6.

[the] sacrament is in every way the most important of the three marriage goods, since it belongs to marriage considered as a sacrament of grace; while the other two belong to it as an office of nature; and a perfection of grace is more excellent than a perfection of nature.²⁴³

Moreover,

since matrimony is a sacrament, it is a cause of grace. Matrimony contracted in the faith of Christ is able to confer the grace which enables those works required for matrimony. Whenever God gives the faculty to do a thing, He gives help to make becoming [sic] use of the faculty. The outward acts and words that express consent effect a tie which is the sacrament of matrimony. This tie by divine institution works to the infusion of grace. Since sacraments effect what they signify, the sacrament of matrimony confers on the spouses whereby they are included in the union of Christ and the Church, that they may propose not to be disunited from Christ and the Church in fleshly and earthly things. It is also necessary that matrimony as a sacrament is a union of one man to one woman to be held indivisibly since the union of Christ and the Church is a union of one to one to be held forever.²⁴⁴

Aquinas notes that the marriage between baptized Christians is a *sacrament of grace*. He

explains that the temporal union of body, soul, and mind within the marital estate at once symbolizes the eternal union between Christ and the Church and confers sanctifying grace upon the couple, their children, and the community.²⁴⁵

²⁴³ Thomas Aquinas, *Sent IV.31.2*; Aquinas, *ST Supp.*, q. 49, art. 3.

²⁴⁴ Paul Flaman, *Premarital Sex and Love: In the Light of Human Experience and Following Jesus* (Edmonton, Alberta: Saint Joseph College, 1999) 58.

²⁴⁵ John Witte, Jr. *God's Joust, God's Justice: Law and Religion in the Western Tradition* (Grand Rapids: Eerdmans Publishing Company, 2006) 338.

John Witte, Jr., summarizes this by noting that

a sacramental marriage, once properly contracted between Christians in accordance with the laws of nature and of the Church, is an indissoluble union, Aquinas insisted, and a permanently open channel of grace. For marriage partakes of the quality that it symbolizes, namely, the indissoluble bond between Christ and the Church.

Since the sacraments effect what they figure, it is to be believed that grace is conferred through this sacrament on the spouses, whereby they might belong to the union of Christ and the Church. And this is very necessary to them so that as they concern themselves with carnal and earthly matters, they do not become detached from Christ and the Church. Now since the union of husband and wife designates the union of Christ and the Church, the figure must correspond with that which it signifies. Now the union of Christ and the Church is a union of one to another, and it is to last in perpetuity. For there is only one Church . . . and Christ will never be separated from his Church. As he himself says in the last chapter of Matthew, 'Behold I am with you even unto the end of the world.' . . . It follows necessarily then that a marriage, in so far as it is a sacrament of the Church, must be one holding to another indivisibly.²⁴⁶

As a sacrament, marriage was ordered to the good of the Church, regulated by divine laws that governed the reception of grace and growth in spiritual direction. Effectively the matter of the sacrament might be described as a human reality, as a natural social institution with the form of exchange of consent signifying the enduring fidelity of the couple, as a parallel of the relationship between Christ and the Church.

²⁴⁶ Witte, *Ibid.*

2.3.2 Tridentine theology as explanation of Church policy and not of marriage itself

The Fathers of the Council of Trent began their debates on the sacrament of marriage in July of 1563, during their 24th session. Of primary concern was their desire to affirm that marriage is a sacrament of the New Law, something opposed by the Reformers. Of secondary concern was the troubling growth of clandestine marriage.

However, the debaters recognized that their considerations may not alter the essential requirement for marriage, namely the central manifestation of free consent.²⁴⁷ After much consideration, the Council Fathers decided to impose a *form* of marriage for the valid celebrating of marriage. This did not violate the essential manifestation of free consent (*consensus solus*), but it did espouse a “legal device of constituting as *inhabiles ad contrahendum* those spouses exchanging consent outside the determined format.”²⁴⁸ In *Tametsi*, it was required that the parish priest be present with at least two witnesses, a response that would remove the problem of clandestine marriages by creating a reference to the *public* nature of marriage. The decree affirmed the intrinsic validity of clandestine marriages, but required a public structure (form) to be employed.²⁴⁹ One notable problem with the decree was that it

²⁴⁷ See Irven M. Resnick, “Marriage in Medieval Culture: Consent Theory and the Case of Joseph and Mary,” *Church History* 69 (2000) 350-371.

²⁴⁸ William J. La Due, “The Sacramentality of Marriage,” *Canon Law Society of America Proceedings* 36 (1974), 31.

²⁴⁹ See *Decretum de Reformatione Matrimonii*, Sess. XXIV, c. 1, *Tametsi*, in *Canones et Decreta Sacrosancti Oecumenici Concilii Tridentini sub Paulo III, Iulio III, et Pio IV, ex officina Berhardi Tauchnitz* (Rome, Urban College for the Propagation of the Faith, 1834) 147: “Although there can be no doubt that clandestine marriages, concluded on the basis of the contractors’ free consent, are valid and true marriages, insofar as the church has not obstructed them, so that those are by law to be damned and subject to *anathema* by this Holy Synod, who negate that they are valid and true, and instead affirm what is false, namely, that marriages, which are

was binding and enforceable only in those areas where it had been promulgated, and thus it had a weakened universality.

There were political repercussions from the Council's canons. Much consideration was given to inheritance rights.

After centuries of defining marriage in direct opposition to the 'world,' the Tridentine church surrendered its couple-oriented notion of marriage to secular demands for greater public authority by abolishing clandestine marriage and by promoting dowry exchange as an indirect form of parental control. While deemphasizing spiritual friendship in favor of social stability, the church also relaxed its traditionally strong commitment to exogamy as a means of pacifying society.²⁵⁰

Additionally,

Endogamy was the order of the day, then, with non-dotal marriages among kin replacing dowry exchange among unrelated social equals. Post-Tridentine papal administrators promoted – perhaps even initiated? – this trend by granting marital dispensations at exponentially increased rates to couples who planned to marry within the previously forbidden fourth degree of kinship, . . . so long as they conformed to the new Tridentine requirements of publicity and in-church celebration. . . . Church politics in matters of matrimony thus shifted significantly after Trent, as indicated by a greater tolerance of 'cousin marriages' and the recognition of dowry exchange. In the Middle Ages, the promotion of marriages by consent alone had served to undermine aristocratic clan building, i.e., reproductive strategies including 'incest,' polygamy, and

contracted by children without their parents' consent, can be annulled, and that it is parents who can ratify or annul marriages: nonetheless the Holy Church of God has for very just reasons always detested and prohibited [such marriages]."

²⁵⁰ Jutta Sperling, "Marriage at the Time of the Council of Trent (1560-70): Clandestine Marriages, Kinship Prohibitions, and Dowry Exchange in European Comparison," *Journal of Early Modern History*, 8, 1-2 (2004) 68.

divorce.²⁵¹

Furthermore,

Dowry exchange in its early, expansive, phase thrived on kinship prohibitions because it tended to broaden and diversify in-law relations among men, an aim fully in line with the Church's policy of pacifying society through exogamous reproduction. But by insisting that only the couple's spontaneous sacrifice of their bodies and souls to each other conferred grace, the Church opposed any secular policy which saw marriage at the center of property relations and political considerations. With marriage declared to be 'free', rural laborers, for example, could reject serfdom by opposing their lords' reproductive strategies for them; all self-declared couples were empowered to resist their parents' choice of spouse and plans for a more legitimate and status-conscious wedding.²⁵²

The decision of the Council was disciplinary. Within the debates, any distinction between contract and sacrament was successfully argued.²⁵³ It can be easily seen that with the issues of exogamy, endogamy, and dowry exchange, the Council statements on marriage were within the *political* arena. There remained the issue that if contract and sacrament could be separated, the secular powers could determine the civil effects of marriage, something that the Church had reserved to itself. The Council's positions on the issue of sacrament/contract is minimal, and it is evident that no statement is made that explicitly identifies that there is an inseparability between sacrament and contract. The Council Fathers merely affirmed that the sacrament of marriage is one of the sacraments instituted by Christ, and not necessarily that Christ

²⁵¹ *Ibid.*, 74.

²⁵² *Ibid.*, 75.

²⁵³ See Adhémar Esmein and Robert Genestal, *Le mariage en droit canonique*, 2nd ed., Vol 1 (Paris: Recueil Sirey. 1929) 86.

instituted the matrimonial contract as a sacrament.²⁵⁴

2.3.3 Developments in pre-Conciliar Papal and Rotal Jurisprudence

In his allocution to the Roman Rota, October 3, 1941, Pope Pius XII expressed that two extremes must be avoided: the primary end of marriage must not be so greatly stressed that one be led to disregard the secondary end; and, at the same time, the primary end must not be thought about as subordinated to the secondary end.²⁵⁵ Of greater consequence, however, is

²⁵⁴ Although he was reflecting on the canonical form of marriage, John C. Barry notes that when the landmark decree of *Tametsi* was issued at the Council of Trent, the form of marriage was made mandatory. However, “[t]he Council, fearful lest the immediate universal application of the law might do more harm than good by multiplying invalid marriages, particularly in Protestant localities, decreed that its provision should not come into force in each parish until thirty days after it had been promulgated in that parish. The result was that it remained inoperative for whole tracts of Europe, ... while elsewhere there were some parishes in which nobody was bound by it, other where everybody was bound, while in yet others only the Catholics came under its obligations.” Hence, previous civil legislation was still operative in some jurisdictions, while ecclesiastical law was operative in others. It is clear that marriages contracted in either civil or ecclesiastical jurisdictions could be considered, for at least 30 days, as being sacramental even when contracted by civil authorities. See “The Tridentine Form of Marriage: Is the Law Unreasonable?” *The Jurist* 20 (1960) 159-178, at 163. More can be gleaned from William F. Cahill, “Historical Notes on the Canon Law on Solemnized Marriages,” *Catholic Lawyer* 2 (1956) 108-119, where, again, the form of marriage is necessary for the Church to maintain jurisdiction over marriage. Additionally, for a study of marriage from the Council of Trent to the Second Vatican Council, see William Roberts, “Christian Marriage,” in Raymond F. Bulman and Frederick J. Parrella (eds.), *From Trent to Vatican II: Historical and Theological Investigations* (New York, NY: Oxford University Press, 2006) 208-226.

²⁵⁵ Pope Pius XII, *Allocution to the Rota*, October 3, 1941, AAS 33 (1941) 425: “Nella quale delicata altrettanto che difficile questione due tendenze sono da evitarsi: quella che nell'esaminare gli elementi costitutivi dell'atto della generazione dà peso unicamente al fine primario del matrimonio, come se il fine secondario non esistesse o almeno non fosse *finis operis* stabilito dall'Ordinatore stesso della natura; e quella che considera il fine secondario come ugualmente principale, sincolandolo dalla essenziale sua subordinazione al fine primario, il che per logica necessità condurrebbe a funeste conseguenze” [“In this matter, which is both delicate and difficult, there are two tendencies to be avoided: first the one which, in examining the constituent elements of the act of generation, considers only the primary end of marriage, as though the secondary end did not exist, or were not the *finis operis* established by the Creator of nature himself; and secondly the one which gives the secondary end a place of equal principality, detaching it from its essential subordination to the primary end, a view which would lead by logical necessity to deplorable consequences.”]

that this is the first time that a Bishop of Rome taught that there is a subordination of the secondary end of marriage to the primary end of marriage: procreation remains the primary end – although the Pope had noted that *both ends* are important, but only the primary end, the *finis operis*, is essential.

In a famous Rotal decision, *coram Wynen*²⁵⁶ in 1944, the decision discusses at length the primary and secondary ends of marriage. In summary, Wynen notes that marriage is objectively ordered to the procreation and education of children, and to this primary end are essentially subordinated both marriage and the conjugal act. However, the importance of his decision is that the *secondary* end of marriage is a *true* end of marriage, equally a *finis operis*, and not just a *finis operantis*. The secondary end takes its origin from the primary end: it exists so that the primary end can be realized.

Both Pope Pius XII and *coram Wynen* help establish the means to revert the definition of marriage from a purely *institutional/contractual* relationship to a *covenantal* relationship.

2.3.4 Second Vatican Council and the Personalist Dimension

According to the teaching of the Second Vatican Council, matrimony is to be understood not only as a means of propagating the human race, but as a means of helping to perfect the communal dimension of life.²⁵⁷ Created male

Translation in William H. Woestman, OMI, ed., *Papal Allocutions to the Roman Rota: 1939-1994* (Ottawa, ON: Saint Paul University Press, 1994) 13.

²⁵⁶ *Coram Wynen*, January 22, 1944: *SRRD* 36 (1944) 55-79; also published in *AAS* 36 (1944) 179-200.

²⁵⁷ Faltin, 73.

and female,²⁵⁸ spouses are complimentary, growing together in faith as a support to one another, forming the “domestic Church.”²⁵⁹

Concerning the necessary presence of faith for the celebration of the sacraments, *Sacrosanctum Concilium* clearly teaches that the sacraments “not only presuppose faith, but by words and objects they also nourish, strengthen, and express it. That is why they are called ‘sacraments of faith.’”²⁶⁰ The sacramental structure of the Church necessitates choosing the object of that faith. Faith rests always and exclusively in God, but faith is also given to what God reveals as God’s will: “faith is not only an attitude of unshakable trust . . . it also has a content.”²⁶¹ A connection between faith and sacrament is evident, where the outward sign of a sacrament is seen as the perceptible fulfillment of interior motive or profession of that faith.²⁶² This visibly present expression strengthens the inner attitude of the believer, extrapolating on the propositions of *Sacrosanctum Concilium*. The covenant arises out of the relationship between a man and a woman, and that covenant has been given sacramental dignity that is ordered to progeny *and* the good of the spouses, exhibiting an interpersonal self-giving.

Appreciation for the personalist dimension was not an invention,

²⁵⁸ Genesis 1, 27.

²⁵⁹ Vatican II, dogmatic constitution *Lumen gentium*, December 7, 1965, 11: AAS 57 (1965) 16.

²⁶⁰ *Sacrosanctum Concilium* 59: “Fidem non solum supponunt, sed verbis et rebus etiam alunt, roborant, exprimunt; quare fidei sacramenta dicuntur.” See also *Sacra Congregatio Rituum, Ordo Celebrandi Matrimonium* (Città del Vaticana: Typis Polyglottis Vaticanis, 1972) 7; 1980 Synod of Bishops, in Faltin, 74; *Catechism*, 1127.

²⁶¹ Vorgrimler, 82.

²⁶² See Rom 6, 1-11; Gal 3, 26-27; Acts 8, 35ff among others.

however, of the Second Vatican Council.²⁶³ Canonists had already begun to examine the secondary end of marriage, the good of the spouses themselves (cf. c. 1013, §1 [*CIC/17*]: mutual assistance and the remedy of concupiscence). Those whose thesis went counter to the *CIC/17* faced condemnation by the Holy Office:²⁶⁴

They did not counter-claim, as the Church's Congregation of the Holy Office protested when condemning their thesis in 1944, that procreation and nurture are not the primary ends of marriage, but its secondary or even lesser end. Indeed, they accepted the traditional hierarchy of ends in marriage. What they did claim was that marriage is not to be understood *primarily* according to its ends, that its ends are not its first intelligible element. Marriage is not an instrumental reality, they insisted. It is not for anyone or anything outside of itself.

They insisted rather that marriage is primarily understandable in its meaning. This meaning is the becoming-one, the being one and the growing in oneness of the two sexually complimentary human beings. Therefore, too, their sexuality is not instrumental. It is not meant to realize some goal outside itself. Rather it is the territory, the conduct, in

²⁶³ The first two to openly challenge the 'primary and secondary ends of marriage' as found in the *CIC/17* were Herbert [Heribert] Doms and Dietrich von Hildebrand. In his monumental work *Vom Sinn und Zweck de Ehe*, he maintains that the first purpose or end of marriage is the realization of what marriage itself is: a community of life of man and woman, which is the meaning of marriage, and that the two traditional ends of marriage were a natural part of this reality. See Herbert Doms, *The Meaning of Marriage* (New York, NY: Sheed and Ward) 1939. See also Cormac Burke, "Marriage: A Personalist or an Institutional Understanding?" *Communio* 19 (1992) 278-304. Furthermore, his explanation is that love is the primary motive inspiring marriage, and that spousal love implies a mutual and particular donation of one partner to another; conjugal love is, among all earthly realities, the most meaningful 'I-Thou' relationships in which it belongs to the greatness of this community that a child be born of it. Effectively, the meaning of marriage is not the same as its purposes. John Ford, SJ, notes that "[The personalists] felt that the true Catholic teaching would be more clearly presented if less emphasis were placed on what has hitherto been commonly called the primary ends of marriage, and more emphasis on the personal elements of conjugal love and the conjugal community of life." See "Marriage: It's Meaning and Purpose," *Theological Studies* 3 (1942) 333.

²⁶⁴ T. Lincoln Bouscaren and Adam C. Ellis. *Canon Law: A Text and Commentary* (Milwaukee, WI: The Bruce Publishing Company, 1957) 448. Original condemnations published in *AAS* 36 (1944) 103 and *AAS* 43 (1951) 835.

which specifically and most richly, the man and woman create their oneness and grow in it. As married persons, they come to their chosen fullness of personhood mainly in their sexual lovemaking.²⁶⁵

Pius XI's encyclical *Casti Connubii*²⁶⁶ attaches high value to the mutual formation of the spouses, and he qualifies this formation by noting that

the sacred partnership of genuine wedlock is therefore established both by the will of God and by the will of man. From God comes the institution of marriage, its ends, laws and blessings; human beings, by the generous and lifelong surrender which they make of their person to each other, become, through God's gift and help, the authors of each particular marriage, with the duties and blessings which the Creator annexed to it.²⁶⁷

Moreover,

this mutual interior formation of husband and wife, this persevering endeavor to bring each other to the state of perfection, may in a true sense be called, as the *Roman Catechism* calls it, the primary cause and reason of matrimony, so long as marriage is considered not in its stricter sense, as the institution destined for the procreation and education of children, but in the wider sense as a complete and intimate life-partnership and association.²⁶⁸

This kind of interpersonal thought would influence the teachings of the Council. God

²⁶⁵ Mackin, 598. Emphasis not in original.

²⁶⁶ Pius XI, *Casti Connubii*, December 31, 1930: AAS 22 (1930) 562-592, in Byrnes, 219-291.

²⁶⁷ *Ibid.*, 223-224.

²⁶⁸ *Ibid.*, 231-232.

is the author of marriage and has endowed it with various values and purposes: all of these have a very important bearing on the continuation of the human race, on the personal development and eternal destiny of every member of the family, on the dignity, stability, peace, and prosperity of the family and of the whole human race.²⁶⁹

Consequently, the terminology employed by the constitution *Gaudium et spes* is a description of marriage as being a personal union of man and woman. Marriage is called a “community of conjugal love”, an “intimate community of conjugal life and love”, and a “sacred bond”. Whenever the constitution describes the reality of marriage, it is seen in the *personalist* dimension, not as an institution with hierarchical ends.

2.3.5 Post-Second Vatican Council: *International Theological Commission* and *Familiaris Consortio*

Because of the need for faith, the phenomenon of baptized non-believers raises new questions.²⁷⁰ While *Sacrosanctum Concilium* presupposes faith for the celebration of the sacraments, the intention of carrying out what Christ and the Church desire is seen as the minimum requisite before marital consent is considered a “real human act” on the sacramental plane.²⁷¹ However, the problem of the intention and that of the personal faith of the contracting parties must not be confused, but they must not be totally separated either. Saint Thomas Aquinas explains “that faith is a habit of the mind . . . making the intellect assent to what is not apparent . . . [for as it has]

²⁶⁹ *Gaudium et spes*, 48.

²⁷⁰ International Theological Commission, “Propositions on the Doctrine of Christian Marriage,” *Origins* 8 (1978) 235-239.

²⁷¹ *Ibid.*, 2.3.

one same thing for object and end, its object and end must, of necessity, be in proportion to one another [insofar as] faith pertains to the intellect as commanded by the will."²⁷² He then reiterates what Saint Augustine presented: "One who takes faith for the act of faith, is that which is described as depending on the believer's will, insofar as his intellect assents to matters of faith at the command of the will."²⁷³ Saint Thomas "in a marvelous manner intertwines faith, the act of the intellect and that of the will and their mutual relationship insofar [as] the intellect assents to the credibility under the command of the will."²⁷⁴

In revisiting this issue, the International Theological Commission notes:

the real intention is born from and feeds on living faith. Where there is no trace of faith (in the sense of 'belief' — being disposed to believe), and no desire for grace or salvation is found, then a real doubt arises as to whether there is the above-mentioned general and truly sacramental intention and whether the contracted marriage is validly contracted or not. As was noted, the personal faith of the contracting parties does not constitute the sacramentality of matrimony, but the absence of personal faith compromises the validity of the sacrament.²⁷⁵

²⁷² Saint Thomas Aquinas, *Summa Theologica*, II-IIae (Ottawa, ON: Typis Catholicis Panamericanis, 1942), q. 4, a. 1 ad 2; in *Summa Theologica* II-IIae (New York, NY: Benzinger Brothers, Inc., 1947) 1190-1192: "quod fides est habitus mentis . . . faciens intellectum assentire non apparentibus . . . habet idem pro obiecto et fine, necesse est quod obiectum fidei et finis proportionaliter sibi respondeant . . . fides pertineat intellectum secundum quod imperatur a voluntate."

²⁷³ Saint Thomas Aquinas, II-IIae, q. 4, a. 2 ad 1; in *Summa Theologica* II-IIae, 1191-1192: "Dicendum quod Augustinus fidem accipit pro act fidei, qui dicitur consistere in credentium voluntate in quantum ex imperio voluntatis intellectus credibilis assensit."

²⁷⁴ Faltin, 82.

²⁷⁵ International Theological Commission, 2.3.

The Commission indicated that one is required, therefore, to have the minimum of faith in order for the consent to become a *true human act*,²⁷⁶ in the realm of sacramentality. A couple is unable to contract a valid marriage because they lack faith and the intention of doing what the Church wishes; they also, however, have a natural right to contract marriage, if they intend to contract an irrevocable commitment. Nevertheless, even as the natural right to marriage resembles, externally, a sacramental marriage, the Church cannot recognize any natural marriage between the baptized that is, of itself, non-sacramental.²⁷⁷

The principles contained in the text of the Commission open a venue for exploration, not a solution to the problems that arise. Apart from any theological qualifications, they do contain elements to be reflected upon as jurisprudence continues to refine the precise role of faith in the marriage contract.

Conciliar texts, together with Pope John Paul II's apostolic exhortation *Familiaris consortio*, recall the Church's tradition regarding marriage, while investigating nuances in understanding as they form a basis for a new understanding of marriage law. Marriage, understood as a contract, forms a legal relationship of married life. This contract comes through an act of the will mutually expressed by each spouse. The *CIC/83* continues the use of the Second Vatican Council's term *covenant* to show that "in this irrevocable covenant the partners mutually give themselves to one another and accept one another. Together they thereby found a common destiny for the whole of

²⁷⁶ See *coram* Serrano, June 1, 1990: *RRD* 82:431-445.

²⁷⁷ International Theological Commission, 3.5.

life."²⁷⁸

However, Pope John Paul II qualifies this to show the special nature of the marital covenant. He holds that pastors are not to admit to the sacrament of marriage those who explicitly reject what the Church intends to do when the baptized marry.

[T]he faith of the person asking the Church for marriage can exist in different degrees, and it is the primary duty of pastors to bring about the rediscovery of this faith and to nourish it and bring it to maturity.²⁷⁹

He points out that an evangelical discernment²⁸⁰ on the sacrament of marriage should be practiced in relation to the sense of faith of all the faithful. Nevertheless, it is difficult to place faith into juridic categories.²⁸¹

As for wishing to lay down further criteria for admission to the ecclesial celebration of marriage, criteria that would concern the level of faith of those to be married, this would above all involve grave risks. In the first place, the risk of making unfounded and discriminatory judgments; second, the risk of causing doubts about the validity of marriages already celebrated, with grave harm to Christian communities and new

²⁷⁸ Vorgrimler, 305.

²⁷⁹ *Familiaris constortio* 68: "Etenim fides eius qui ab Ecclesia petit ut matrimonium possit contrahere, varios habere potest gradus, atque praecipuum est munus pastorum efficere ut ea iterum reperiat, alatur, ad maturitatem adducatur." English translation in *Origins* 11/28-29 (December 24, 1981) 459-460.

²⁸⁰ *Ibid.*, 5: "iudicium evangelicum."

²⁸¹ Particular reference can be made to the content of proposition 12, reflecting on *Sacrosanctum Concilium* 59, of the 1980 Synod of Bishops, quoted in Faltin, 74: "that exactly for this reason it is necessary to investigate in what way faith of those who are contracting marriage, in so far as it is in fact expressed as it is actually perceived as a personal vocation, is required for the validity of this sacrament . . . stronger signs of a personal faith on the part of the parties are necessary."

and unjustified anxieties to the consciences of married couples; one would fall into the danger of calling into question the sacramental nature of many marriages of brethren separated from full communion with the Catholic Church, thus contradicting ecclesial tradition.

However, when in spite of all efforts engaged couples show that they reject explicitly and formally what the Church intends to do when the marriage of baptized persons is celebrated, the pastor of souls cannot admit them to the celebration of marriage. In spite of his reluctance to do so, he has the duty to take note of the situation and to make it clear to those concerned that in these circumstances it is not the Church that is placing an obstacle in the way of the celebration that they are asking for, but themselves.²⁸²

In this text, the term used is not “to do what the Church does” but rather “to do what the Church intends.” This could help differentiate the degrees of faith identified in *Familiaris consortio*:

While the Church does not ‘make’ anything in this sacrament, She, — in the measure that it is present or knows that a marriage is being celebrated — without a doubt, proposes something: that two Christians marry.²⁸³

²⁸² *Familiaris consortio* 68: “Praeterea, si aliae rationes circa admissionem ad celebrationem ecclesiam matrimonii statuuntur, quae gradum fidei nuptias facere volentium respiciant, gravia pericula possunt afferri: imprimis periculum faciendi iudicia fundamento carentia et discriminantia; deinde periculum ingerendi dubia de validitate matrimoniorum iam celebratorum, magno cum detrimento christianarum communitatum cumque novis, non probandis angoribus conscientiae coniugum; periculum impugnandi vel in dubium vocandi indolem sacramentalem multorum matrimoniorum fratrum a plena communione cum Ecclesia catholica seiunctorum, quod ab ecclesiali discrepat traditione.

Cum, contra, omni conatu ad irritum redacto, nuptias facturi aperte et expresse id quod Ecclesia intendit, cum matrimonium baptizatorum celebratur, se respuere fatentur, animarum pastori non licet eos ad celebrationemmittere. Quamvis id aegre ferat, debet id ipsum agnoscere atque iis, quorum interest, persuadere non Ecclesiam in tali rerum status sed eos pios celebrationem, quam quidem petant, impedire.” English translation in *Origins* 11/28-29 (December 24, 1981) 459-460.

²⁸³ Burke, 174. “Mientras que la Iglesia no ‘hace’ nada en este sacramento, Ella — en la medida en que está presente o sabe que un matrimonio se está celebrando — sin duda propone algo: que dos cristianos se casen.”

John Paul II asserts that a couple's request to be married in a liturgical rite may be for motives "which are social rather than genuinely religious."²⁸⁴ These motives "even if, humanly speaking, they are understandable; they are not sufficient as the only motives."²⁸⁵ With respect to intention, the couple must see themselves as "at least implicitly consent[ing] to what the Church intends to do when she celebrates marriage."²⁸⁶

In this exhortation, there is clear evidence that a careful balance is maintained, ensuring that sacramentality continues to exist in those communions separated from the Catholic Church.²⁸⁷ Still,

it would be a mistake to think that [John Paul II] intended to say that baptized non-believers can be admitted to the celebration of their marriage within a religious rite, even when, notwithstanding every attempt, they do not show that they have the intention of doing that which the Church does when it celebrates the marriage of the baptized, because he precisely notes that in the case of *an explicit and formal rejection of the faith*, the spouses are not able to be allowed to celebrate marriage in the Church.²⁸⁸

The question remains unanswered as to *precisely* the situations being addressed. At some point lack of faith and rejection of the faith are tangential. But that exact point remains enigmatic.

²⁸⁴ *Familiaris consortio* 68: "Patet ergo sociales causas concurrere cum privatis in petitione matrimonium in ecclesia contrahendi." English translation in *Origins* 11/28-29 (December 24, 1981) 459-460.

²⁸⁵ Faltin, 75.

²⁸⁶ *Familiaris consortio* 68: "nuptias facturi aperte et expresse id quod Ecclesia intendit cum matrimonium baptizatorum celebratur."

²⁸⁷ *Ibid.*

²⁸⁸ Faltin, 75. Emphasis in original.

While *Familiaris consortio* has the weight of an exhortation, it is not meant to be definitive, nor is it a doctrinal statement. It does, however, open a way to reflection on, and deeper study of, both theological and juridical categories.

Faith does have relevance in the valid celebration of the sacrament of marriage.

[I]t must be admitted that a right and prevailing intention of accepting the conjugal covenant instituted by the Creator, that is to say, of consenting to a true marriage, undoubtedly requires a minimum of personal disposition in order to contract validly, even in the nonbelieving spouse, and requires as well at least a vestige of faith, because the idea of binding oneself through irrevocable consent to a life of indissoluble love and unconditional fidelity 'really involves, even if not in a fully conscious way, an attitude of profound obedience to the will of God, and attitude which cannot exist without God's grace.'²⁸⁹

Both the International Theological Commission and *Familiaris consortio* affirm that those who "lack even a vestige or trace of faith, to the point where they

²⁸⁹ *Coram Stankiewicz*, May 19, 1988, *RRD* 80:325: "Quae cum ita sint, pro certo habendum est rectam intentionem acceptandi matrimonium secundum Deo consilium, videlicet 'sacramentum rei, quae iam in creationis dispositione inest,' quatenus 'est idem foedus coniugale a Creatore institutum 'in principio'' (Familiaris consortio, n. 68), minimum illud dispositionis personalis ad valide contrahendum nupturienti etiam incredulo haud dubie praestare.

In primis sane dicendum est rectam intentionem consentiendi in verum matrimonium quoddam fidei vestigio inniti, quia 'propositum matrimonium contrahendi secundum hoc Dei consilium, id est secundum propositam vitam, per ipsorum coniugalem et irrevocabilem consensum, amore indissolubili atque fidelitate sine condicionibus astringendi, revera requirit, etiamsi modo non omnino sonscio, animum affatim oboediendi Dei voluntati, qui sine eius gratia non potest haberi' (Familiaris consortio, n. 68)." English translation in Augustine Mendonça, "Exclusion of the Sacramentality of Marriage: Recent Trends in Rotal Jurisprudence," *Studia canonica* 31 (1997) 23.

clearly do not intend to do what the Church does"²⁹⁰ in the celebration of marriage, should not be admitted to marriage. Where intention is born from and feeds on the living faith of an individual, "a trace of faith is necessary, not only for a fruitful reception of the sacrament, but also for the validity of such reception."²⁹¹

²⁹⁰ Wrenn, *The Invalid Marriage*, 154.

²⁹¹ Pompedda, 60.

Chapter 3

3. Developments

3.1 Definition of *sacrament* constricts

Both c. 1055, §2 (CIC/83) and c. 1012, §2 (CIC/17) require reflection on the designation of marriage defined at the Council of Trent as “*a*” sacrament of the New Testament, but not that the marriage in the New Testament is “*always*” a sacrament. To help prepare for the First Vatican Council, the Theological Commission expressed that the inseparability of marriage contract and marital sacrament could not be defined. Subsequent notions are related to issues of *inter Christifideles*, and the teachings of subsequent popes. The problem that arises is precisely this: the term *sacrament* constricts because the debates are theological, and until the *theological* debates are settled, the understanding of the *canonical* will remain in flux.

3.2 Paradigm shifts

3.2.1 The (un)changing nature of divine law and historical/literal critical methods

The doctrine of indissolubility was historically derived from biblical exegesis of Gen 2, 24, and Mark 10, 2-12, where two become one flesh and no one should separate what God has joined. As the receivers of this teaching were not Christians (at least not yet), the doctrine was accepted as universally binding, minimally by those of Hebrew faith. Furthermore, the misreading of *mysterion* was interpreted from the smaller to the greater: the mystery of marriage is analogous to the relationship between Christ and the Church, rather than the mystery of Christ and the Church is analogous to the relationship between husband and wife. The official theology of marriage

develops as an apologetic to papal decrees, particularly in reference to legislation on the reality of marriage: the theology of marriage was and still is an apologetic for the Church's policies regarding marriage rather than an understanding of the covenant itself.

An additional consideration involves the nature of unconsummated sacramental marriages: the sacramental nature of marriage is understood as making the natural bond of marriage even more indissoluble; an apparent contradiction exists, therefore, beginning in the twelfth century, as *unconsummated* sacramental marriages have been dissolved.²⁹²

Paradigm shifts occur when foundational material and assumptions are discarded and replaced with new assumptions and principles.²⁹³ Traditionally,

the law comes from Scripture, Tradition, the customs of church people, and finally, the particular laws or positive enactments of such legislative bodies as synods, provincials, plenary or ecumenical councils. These enactments or 'canons' all bear the mark of the Church's self-understanding at a point in her history. Often they borrow or incorporate into their institutes the prevailing customs and legal constraints of an historical period.²⁹⁴

Unlike civil law and purely positive Church law, there is an immutable reality to some marriage legislation. In other areas of civil and canon law,

²⁹² Ratum et non-consummatum marriages are addressed in the *CIC/83*, cc. 1141-1142.

²⁹³ Thomas Doyle, OP, notes that there are different trends present in marriage today including 'welcomed civil marriage,' discussed below, 'inculturation and marriage,' and 'pre-ceremonial Christian couples' among others. See "Theology of Marriage: Where We are Today," *Studia Canonica*, 19 (1985) 81-98, at 83.

²⁹⁴ Heintschel, 42.

law defines reality: it is structural theology. In canonical science, law gives a juridical structure to theology. When “the law defines something, that is its definition – until the law is changed.”²⁹⁵ The history of canon law “reveals a long record of attempts to accommodate the gospel to the world in which it is lived and proclaimed.”²⁹⁶

Overall, what does theology say about the purpose of law and canonical science in the Church? Theology provides the community with a definition of Christian values, and canon law provides norms of action for the appropriation of those values which are meant to serve the common good.²⁹⁷ However,

as the practice of Roman Catholics ... departs from the canonical and doctrinal definitions of marital reality, those definitions become increasingly implausible, and even incredible. The Church’s law seems to be out of touch with reality and, to the extent that the law claims to be based on the theological nature of marriage, Catholic theology seems to be out of touch with reality.²⁹⁸

²⁹⁵ Joseph Martos, “Paradigm Shifts in the Theology of Marriage,” *CLSA Proceedings* 60 (1998) 125.

²⁹⁶ Heintschel, *Ibid.*

²⁹⁷ Ladislav Örsy, “Integrated Interpretation; or, The Role of Theology in the Interpretation of Canon Law,” *Studia canonica* 22 (1988) 246. Additionally, Cormac Burke states that it “has become trite to say that the Church must be capable of reading the signs of the times, that is, of recognizing and analyzing new aspects of the life and outlook of our contemporaries, so as to see whether or how they can facilitate – or make more difficult – her task of evangelizing the world. One such phenomenon today is that young people claim their rights, and are allowed to use them, earlier. By the age of 18, they are generally considered to be of age ... (also in church law; cf. c. 97, §1). There is another sign of the times which few people would dispute: the great diffidence characterizing contemporary western people toward any type of permanent personal commitment. ... [T]he practical result is to make simulation – a conscious reserve about some fundamental aspect of the marital commitment – more likely. This seems to me a legitimate and necessary reading of the times.” See Cormac Burke, “Simulation of Consent,” *Forum* 91 (1998[2]) 65-66.

²⁹⁸ Martos, *Ibid.*

To understand the current reality of marriage theology,²⁹⁹

one must place that reality in an historical and social-cultural context, because the development of marriage theology has always been intimately and even causally tied both to the social understanding and legal customs about marriage in each successive century.³⁰⁰

From the time of the early Christian communities, the understanding of marriage has superseded social and cultural models. Values discovered by faith became the objects of legal norms. These values played a life-giving role in the community long before any laws related to them were enacted.³⁰¹ But because laws “were perceived not so much as instruments for appropriating values identified by faith and reason as [rather] the expression of the sovereign will of the Legislator,”³⁰² the “theology of marriage was (and still is) an explanation of church policy rather than an understanding of marriage itself.”³⁰³ The Magisterial theology of marriage, i.e., the Church’s teaching, develops as an apologetic to the decrees of the Legislator (i.e., the Popes and/or ecumenical councils), particularly in reference to legislation on the reality of marriage.

²⁹⁹ Ralph Brown, “Non-Inclusion: A Form of Simulation?” *CLSA Proceedings of the Forty-First Annual Convention*, 1979. He notes, “These presumptions tend to derive from the social and ethical milieu in which we live; and also they vary according to the changes in that milieu. It seems to me that the overall presumption which may have been drawn 25 or so years ago about the intentions of persons entering ‘marriage’ now differ very largely, especially outside the Church. It seems to me, therefore that the apparatus of the law should also be varied to accommodate to this kind of situation with which the law and jurisprudence must deal.”

³⁰⁰ Doyle, 81.

³⁰¹ Örsy, 247.

³⁰² Örsy, *Ibid.*

³⁰³ Martos, 127.

It has been held that knowledge increases through acquisition of new ideas. But

there is another element which plays a capital role in our acquisition of knowledge and in our ways of understanding ourselves, and all objects around us. This other element is the mental horizon within which a person lives and operates. Aristotle did not quite advert to it, and Aquinas gave no consideration to it. Yet, they worked within it. So do we. So does every interpreter. ... I turn to epistemology. ... Our capacity to know and to understand does not depend only on ideas and principles but also on the space in which our mind operates. This 'space' is a figurative word for the mental horizon of the person. ... Through Vatican Council II, we have achieved a broader understanding of the Church. ... Legal institutions cannot remain in their old places and play their roles; they do not fit any more. They must be redesigned and rearranged to be in harmony with our new horizon.³⁰⁴

Within the context of broadening horizons, it is obvious, too, that the codices of canon law are composed of *doctrinal statements, pronouncement of morality, exhortations, metaphysical content, scientific statements, rights and duties*, together with *pure legalism and codes of conduct*.³⁰⁵ It seems obvious that each of the above have an *appropriate* interpretation within its respective field. For example, *doctrinal statements* depart from a legal methodological approach, and require interpretations within a theological framework; in reality, they are not laws at all, for

once the interpreter has entered into the field of critical theology, he might find that some doctrinal statements in the

³⁰⁴ Ladislav Örsy, "The Interpretation of Laws: New Variations on an Old Theme," *CLSGBI Newsletter (Silver Jubilee Conference)*, 1982, 84-85.

³⁰⁵ See Lisa Sowle Cahill, "Notes on Moral Theology: Marriage: Developments in Catholic Theology and Ethics," *Theological Studies* 64 (2003) 78-105.

form of canons are not articles of faith, but historically conditioned opinions of a given school. As such they have no right to demand universal assent.³⁰⁶

Each sacrament has juridical elements imposed by canon law. The opening canon on sacraments (cf. c. 840) expresses very succinctly a doctrinal statement that sacraments were instituted by Christ and that they are actions of Christ and the Church.³⁰⁷ The introductory canon (cf. c. 1055) on marriage is no different in its theological affirmation that Christ instituted marriage as a sacrament. However, there is an inclination “to treat the sacraments as discrete events essentially unrelated to one another ... convey[ing] ... a theological perspective in which sacraments are things rather than events, means rather than signs.”³⁰⁸

In the context of marriage, and specifically the relationship between sacrament and contract,

the centuries-old-debate on the inseparability of contract and sacrament in Christian marriage ... is a classic study in the history of theology in that it shows how disciplinary and political factors can predominate in endorsing a viewpoint as Catholic doctrine and in proposing it even as definable

³⁰⁶ Örsy, *Ibid.*, 80.

³⁰⁷ Cf. c. 840: “The sacraments of the New Testament were instituted by Christ the Lord and entrusted to the Church. As actions of Christ and the Church, they are signs and means by which faith is expressed and strengthened, worship is offered to God and our sanctification is brought about.” [“Sacramenta Novi Testamenti, a Christo Domino instituta et Ecclesiae concredita, utpote actiones Christi et Ecclesiae, signa exstant ac media quibus fides exprimitur et roboratur, cultus Deo redditur et hominum sanctificatio efficitur.”].

³⁰⁸ Michael J. Himes, “The Current State of Sacramental Theology as a Background to the New Code,” *CLSA Proceedings of the Forty-Second Annual Convention* [October 20-23, 1980], 74-75. This was a striking reality of the *CIC/17*, where there were only two real divisions within the *Code*: of the 2414 canons, apart from general norms, processes, and delicts (cc. 1-86, 1552-2414), the codex was divided between people (cc. 87-726) and things (cc. 727-1551). Sacraments were part of *de rebus*, ‘of things’.

dogma.³⁰⁹

It is clear that c. 1012 *CIC/17* (and the subsequent legislation of c. 1055 *CIC/83*) is a positive reflection of the Church's desire to maintain regulation of marriage for Christians at a time when the State was attempting to usurp ecclesiastical law, where such would divide contract and sacrament between the State and the Church. It is an obvious reality that the official theology of marriage, throughout its historical development, is a *justification* for what was the reality that marriage had become: the theology of marriage explains a time conditioned description of marriage in canonical terms rather than as the relationship between Christ and the Church, between man and woman.³¹⁰

3.2.2 Aristotelian philosophy as once valid frame of reference for scholastic philosophy and theology

The *CIC/17* equated a *baptized person* with a *Christian person*.³¹¹ Hence,

³⁰⁹ O'Callaghan, 84.

³¹⁰ Without endeavoring to pursue this inquiry, an example of the change can be seen in the nature of unconsummated sacramental marriages: the sacramental nature of marriage is understood as making the natural bond of marriage even more indissoluble; an apparent contradiction exists, therefore, beginning in the twelfth century, as unconsummated sacramental marriages have been dissolved.

³¹¹ In the *CIC/17*, c. 12 expressed that “[l]egibus mere ecclesiasticis non tenentur qui baptismum non receperunt, nec baptizati qui sufficienti rationis usu non gaudent, nec qui, licet rationis usum assecuti, septimum aetatis annum nondum expleverunt, nisi aliud iure expresse caveatur” [“Those who have not received baptism are not bound by merely ecclesiastical laws, nor are those baptized who do not enjoy sufficient use of reason, nor are those who, although they have attained the use of reason, have not yet completed seven years of age, unless the law expressly provides otherwise.”] The canon is presented in a negative perspective. Conversely, the *CIC/83* clarifies this position and places it in the positive in c. 11: “Merely ecclesiastical laws bind those who were baptized in the Catholic Church or received into it, and have a sufficient use of reason and, unless the law expressly provides otherwise, who have completed their seventh year of age” [“Legibus mere ecclesiasticis tenentur baptizati in Ecclesia catholica vel in eandem recepti, quique sufficienti rationis usu gaudent et, nisi aliud iure expresse caveatur, septimum aetatis annum expleverunt.”] From the *CIC/17*, it is clear that Catholic ecclesiastical law bind *all the baptized*.

everyone who was baptized was considered to be capable of receiving the sacrament of marriage. Baptism is an externally verifiable act³¹² that can be easily comprehended. By using a *minimalist* approach, the *CIC/17* did not have to come to address issues of faith. If two baptized people marry, it is understood that that the sacrament is there.

Identifying the baptized as a Christian was appropriate in the Middle Ages when scholastic categories associated with marriage were being developed. In the world of Aquinas, there would have been few baptized unbelievers.³¹³

As long as the Church was in a position to define the reality of marriage for all Christians, as it was through the Middle Ages, or even as long as it was in a position to define the reality of marriage for all Roman Catholics, as it was through the middle of the twentieth century, the Church's claim to judge civil law and individual practice against the reality of divine law was quite credible, at least for Catholics. During the last few decades, however, as the practice of Roman Catholics (and, one might add, practicing Catholics) departs from the canonical and doctrinal definitions of marital reality, those definitions become increasingly implausible, and even incredible. The Church's law seems to be out of touch with reality and, to the extent that the law claims to be based on the theological nature of marriage, Catholic theology seems to be out of touch with reality.³¹⁴

The origin of such thought is rooted in the Church's position that the reality

³¹² An understanding of this can be in c. 875 (*CIC/83*), where "at least one witness who can prove the baptism was conferred" ["Ut . . . habeatur saltem testis quo collatio baptismi probari posit"] is expected. When it comes to issues of doubt, "it is sufficient to have either one unexceptionable witness or, if the baptism was conferred upon an adult, the sworn testimony of the baptized person" ["sufficit declaratio unius testis omni exceptione maioris, aut ipsius baptizati iusiurandum, si ipse in aetate adulta baptismum receperit"] (c. 876).

³¹³ Ladislav Örsy, SJ. "Faith, Sacrament, Contract, and Christian Marriage: Disputed Questions," *Theological Studies* 43, no. 3 (1982), 384.

³¹⁴ Martos, 125.

of marriage exists independently of positive law. Hence, positive law (civil law) produces merely a civil effect in marriage, and nothing more.

The framework of intellectual inquiry certainly predates the Middle Ages. Aristotelian ethics and metaphysics attempted to explain the visible and invisible universe. Medieval scholastic philosophy, based in Aristotelian categories, provides the basis for scholastic theology. European medievalists made effective use of Greek thought, which survives today in classical categories of *matter and form*.

Medieval Europe inherited Greek traditions, allowing this framework to flourish. While it is true that one can move laterally (i.e., encounter new cultures) and or longitudinally (i.e., on a timeline), if one moves to a different culture, or to a different time, one may see the conceptual framework change.

With time, the Aristotelian categories would give way to observation and experiment that was based in science, a consequence of the ages of Enlightenment and Renaissance. The frame of reference changed. What is true in one frame of reference may not be necessarily true in another frame of reference. *Truth* is based within a frame of reference.

The *CIC/83* reflects the scholastic categories of marriage.

Is the traditional Catholic theology of marriage correct? It is, on two conditions: that one be thinking within an Aristotelian-scholastic frame of reference, and that one be thinking about marriage as it existed in the Middle Ages. What today we call marriage may actually have little in common with what in medieval times was called *matrimonia*.³¹⁵

³¹⁵ *Ibid.*, 130.

To move beyond this, horizons need to be broadened.

To make progress in the theology of marriage, we need to expand our horizons and categories to handle newly discovered realities. In our times, too many new problems have arisen which cannot be solved with the help of the conceptual tools elaborated in earlier ages.³¹⁶

Additionally, the very core of the *CIC/83* is that the root of marriage is theological. Canon law gives structure to theology. It does not define theology; rather, it *follows* theology. Nonetheless, the framework of common sense has in itself no claim to truth, but the previous and present canonical/theological concepts may be valid only *in the scholastic or canonical framework*.

Saint Vincent of Lérins, a fifth century theologian, is better noted for his affirmation of patristic writings with his first rule in his *Vincentian Canon* or *Committerium*: “quod ubique, quod semper, quod ab omnibus” (antiquity, ubiquity, and universality). His second rule is equally as important. He notes in the *Committerium*,

But some one will say, perhaps, Shall there, then, be no progress in Christ’s Church? Certainly; all possible progress. For what being is there, so envious of men, so full of hatred to God, who would seek to forbid it? Yet on condition that it be real progress, not alteration of the faith. For progress requires that the subject be enlarged in itself, alteration, that it be transformed into something else. The intelligence, then, the knowledge, the wisdom, as well of individuals as of all, as well of one man as of the whole Church, ought, in the course of ages and centuries, to increase and make much and vigorous progress; but yet only in its own kind; that is to say, in the same doctrine, in the same

³¹⁶ Örsy, *ibid.*, 397-398.

sense, and in the same meaning.³¹⁷

It is his assertion that while there is development in Church teaching, the progression must always be understood *in eodem sensu eademque sententia*, a statement used later by Lonergan.³¹⁸ This growth is organic, like the imagery used by Saint Vincent to describe the growth of religion.³¹⁹

This imagery was not lost on the Fathers of the Second Vatican Council. Pope Paul VI used the phrase *novus habitus mentis* repeatedly. For example,

The germane force and significance of the revised canon law which, in accord with the new attitude of mind introduced by the said Vatican Council, contributes very much to the pastoral care and new needs of the people of God.³²⁰

As equally important, Saint Vincent's thoughts were not absent from the Second Vatican Council. Pope John XXIII's opening address is a demonstration of *aggiornare*, an 'updating' and renewal. He states,

The deposit of faith (*depositum Fidei*) or the truths in which our venerated doctrine is contained is one thing, the manner in which these truths are formulated is another, *eodem tamen sensu*

³¹⁷ Saint Vincent of Lérins, "The Commonitory of Vincent: For the Antiquity and Universality of the Catholic Faith Against the Profane Novelties of All Heresies" in *Nicene and Post-Nicene Fathers*, Vol. 11 (Peabody, MA: Hendrickson Publishers, 1995) 131-156, especially §§54-59.

³¹⁸ Bernard Lonergan, *Method in Theology* (Toronto, Ontario: University of Toronto Press, 1971) 329.

³¹⁹ John Henry Newman, too, understood this, and made frequent use of Saint Vincent of Lérins.

³²⁰ James I. O'Connor, SJ, *Canon Law Digest: Officially Published Documents Affecting the Code of Canon Law 1973-1977*, Vol. 8 (Mundelein, IL: Chicago Province SJ/St. Mary of the Lake Seminary, 1978) 100-101.

*eademque sententia.*³²¹

Indicative of this understanding is Henri de Lubac's statement that

tradition, according to the fathers of the Church, is in fact just the opposite of a burden of the past; it is a vital energy, a propulsive as much as a protective force, acting within an entire community as at the heart of each of the faithful because it is none other than the very Word of God both perpetuating and renewing itself under the action of the Spirit of God.³²²

These phrases are reminiscent of Saint Vincent's phrases in the *Commonitorium*. Both

understanding and wisdom grow in a single person as well as in the whole Church (*Crescat ... tam singulorum quam omnium, tam unius hominis quam totius ecclesiae* [23.7-9]). ... [D]yadic linking of "protective and propulsive" and "perpetuating and renewing" also reflect Vincent's twin goals of identity and creative development. Tradition conserves the achievements of the past, while always allowing them to grow to full flower over

³²¹ "Est enim aliud ipsum depositum Fidei, seu veritates, quae veneranda doctrina nostra continentur, aliud modus, quo eadem enuntiantur, eodem tamen sensu eademque sententia." Pope John XXIII, *Gaudet Mater Ecclesia*, 792. The Congregation for the Doctrine of the Faith clarified this statement, noting that "[s]ince the Successor of Peter is here speaking about certain and unchangeable Christian doctrine, about the deposit of faith which is the same as the truths contained in that doctrine and about the truths which have to be preserved with the same meaning, it is clear that he admits that we can know the true and unchanging meaning of dogmas. What is new and what he recommends in view of the needs of the times pertains only to the modes of studying, expounding and presenting that doctrine while keeping its permanent meaning" [Cum Successor Petri hic loquatur de doctrina christiana certa et immutabili, de deposito fidei quod idem sit ac veritates in hac doctrina contentae, de his veritatibus denique eodem sensu servandis, liquet eum agnoscere sensum dogmatum nobis dignoscibilem, verum et immutabilem. Novitas autem quam ipse, pro temporum nostrorum necessitate, commendat, pertinet tantum ad modos pervestigandi, exponendi et enuntiandi illam doctrinam cum eius permanenti sensu."] See *Mysterium ecclesiae*, AAS 65 (1973) 396-408, § 5.

³²² Henri de Lubac, *The Motherhood of the Church*, trans. Sr. Sergia Englund, OCD (San Francisco, CA: Ignatius Press, 1982) 91.

the course of time.³²³

Within the Constitution on the Church, *Lumen Gentium*, can be found new impetus for these ideas. The Council Fathers

made new discoveries – not in the sense that illegitimate innovations were added to the deposit of the revelation but in the sense that the fathers reached new insights into those sacred realities that the church possessed from its origin. We can be in possession of a truth and progress in its understanding. The council did indeed move from limited perceptions to deeper comprehensions.³²⁴

These changes reinforced such notions as the Church as *communio* rather than being modeled solely on ancient Roman social systems where centralization of power was in the *paterfamilias* and visualized within the Church as being a *societas perfecta*, both in a teleological sense of achievement of goals, but as a ‘perfect society’ established on foundation of Peter. Both the Councils of Trent and Vatican I reaffirmed this – Trent, in reaction to the Reformation, and Vatican I in confirmation of the Pius IX *Syllabus of Errors* (*Syllabus errorum*) and issues associated with modernism.

Since the Middle Ages, the universe was envisioned as a static and unchanging reality, fully immutable when seen within Aristotelian categories. With the new discoveries realized with the advancement of science, the Council Fathers recognized that the universe, indeed, is not static, and they must look at familiar concepts from a higher point of view, a new

³²³ Thomas G. Guarino, “Tradition and Doctrinal Development: Can Vincent of Lérins Still Teach the Church?” *Theological Studies* 67 (2006) 47.

³²⁴ Ladislav Örsy, *Theology and Canon Law: New Horizons for Legislation and Interpretation* (Collegeville, MN: The Liturgical Press, 1992) 12.

horizon.³²⁵ The effect of this change upon the body of canon law can be seen in c. 1055, where a scriptural and covenantal understanding of marriage provides the new basis for the canon.³²⁶ Pope John Paul II identifies new models in his Apostolic Constitution *Sacrae disciplinae leges*, where he notes the importance of translating conciliar teaching into canonical and juridic categories.³²⁷

One can see a progression of concepts associated with marriage. While the Church had jurisdiction over marriage throughout the Middle Ages, theologians began to develop theories about the essence of marriage. Roman law saw marriage as determinant of status of persons within a society, not simply as a contract. Rather,

the law of marriage was part of the law of persons because for the Romans marriage was a fact that determined the status of a person in their society. If a man and a woman were living together with marital affection, *affectu maritali*, and if they were legally capable of being married, they were married in the eyes of the law. The Romans did not think of marriage as a contract since the marital state did not generate legally actionable obligations. This is not to say that there were no legal effects to marriage; there were, but not by way of obligations, which arose from contracts and delict only. For a long time, Christians, too, had the same understanding of marriage: it was a state of life. They did not think of it as a contract.

Classical Roman law admitted different types of contract.

³²⁵ See David Tracy, *The Achievement of Bernard Lonergan* (New York: Herder and Herder, 1970), and Lonergan himself as references.

³²⁶ Recall that c. 1055, §1 is, for the greater part, a direct quote from *Gaudium et Spes*, 48, in a reflection on marriage as covenant.

³²⁷ *Sacra disciplinae leges*: “novus hic Codex concipi potest veluti magnus nisus transferendi in sermonem canonisticum hanc ipsam doctrinam, ecclesiologiam scilicet conciliarem. ... Quod si fieri nequit, ut imago Ecclesiae per doctrinam Concilii descripta perfecte in linguam canonisticam convertatur, nihilominus ad hanc ipsam imaginem semper Codex est referendus.” This constitution promulgated the *CIC/83*.

The one that was chosen as the model on which the marital agreement could be patterned was the consensual type. They came into existence by consent alone, without any prescribed formality. So did marriage. But they had a well determined internal structure of rights and duties. So had marriage. Thus, the model was eminently suitable to handle marriage cases.

There was a new expansion of horizon, now with the help of law. The institution of marriage was seen as a contract, surrounded by all kinds of legal relations and explainable in juridical categories.³²⁸

The early Middle Ages focused attention on *quid facit matrimonium*. Several theories were proposed, including Hincmar of Rheims' understanding from Germanic categories that it was both solemnization and consummation that played a role in perfecting marriage, and that after consummation it was not to be dissolved.³²⁹ Indissolubility was linked to consummation. Pope Nicholas I invoked Saint John Chrysostom by noting that it is consent and not intercourse that brings a marriage into existence.³³⁰

In the early twelfth century, a debate existed between the school of Paris and the school of Bologna. Proponents, such as Peter Lombard³³¹ of the Parisian school, were *theologians* who ascribed to the principle of Roman law that *nuptias non concubitus, sed consensus facit*, whereas the new school of *jurists*, such as Gratian,³³² held the principle of Germanic law that the efficient cause of marriage was the *traditio rei*. Following debates, Pope Alexander III, a canonist of the Parisian school, resolved that only a marriage *ratum et*

³²⁸ Örsy, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, 27.

³²⁹ Mackin, 259.

³³⁰ *Ibid.*, 277.

³³¹ Peter Lombard, *Sententiarum Quatuor Libri* (IV Sent.), d. 28, c. 2.

³³² Gratian, *Decretum*, c. 27, q. 2.

consummatum is totally indissoluble.

With the revival of Roman law in the twelfth century, the system of contracts was at the forefront of marriage legalism. Since Roman law admitted 'consensual contracts' that were agreements created without any specific formality, all that was required for the contract was evidence of the agreement. Additionally, the Romans

had no notion whatsoever of marriage being a contract between parties. Marriage contract within Catholicism, however, freely consented to, now involved duties and obligations never imagined by the Romans.³³³

Throughout the medieval world, Aristotle's thought had an impact on the mind of Christian theologians with a broader vision of the universe by explaining its workings, both things created and uncreated. Natural philosophy changed status from "an enterprise of marginal significance into one that formed the principal point of entry into the understanding of the world and our place in it."³³⁴ But Aristotle had been lost to the West. After Justinian ordered the closing of philosophical schools in 529, many philosophers fled to the Middle East where they continued to translate and comment on the writings of the great philosophers, including Aristotle. Only his works of logic survived and were studied, since Byzantium obviously favored the Neoplatonic world view.

With the Islamic empire in the Middle East, and with varying conquests, including southern Spain, Aristotelian schools prospered. Muslim

³³³ Perry, 234.

³³⁴ Stephen Gaukroger, *The Emergence of a Scientific Culture* (New York: Oxford University Press, Inc., 2006) 47.

philosophical traditions incorporated Aristotle's ideas into their theology, effectively paralleling the Platonic Christianity that pervaded the Church Fathers. Through such Spanish Muslims as Ibn Rushd, known to the West as Averröes, the Christian West rediscovered Aristotle with Latin translations made from Greek and Arabic versions preserved by the Muslims and Byzantine scholars who visited the West.³³⁵ While Averröes was a rationalist and thought of philosophy as a means to acquire the truth, the notion of scientific investigation had disappeared in the West because the Church possessed all the answers about the world and its inhabitants. The works of Aristotle proved chaotic for medieval Christianity, since philosophy was simply a tool for understanding what the Fathers and great saints had written. Aristotle identifies an alternate approach without reference to the divine, for

from the Patristic era and, above all, from Augustine onwards, there is a conception of the unity of philosophy and theology in which metaphysics is effectively a science of God. Christian theology is conceived as an indispensable ingredient in any viable metaphysics, and it is this that marks out Christian metaphysics from the metaphysical systems of pagan philosophers, which are, nevertheless, unknowingly engaged in the same project, while lacking the key to the problems that Christianity provides. ... Although the classical and Hellenistic sources of Christian philosophy ... had always been concerned with the structure of the world, natural philosophy figures in this conception only in a rather marginal way, and is effectively subsumed under metaphysics. Moreover, it must be remembered, in the context of natural philosophy, that there was a Christian tradition of rejection of natural philosophy as an appropriate topic of study for Christians. ... Ambrose of Milan explained the absence of discussion of scientific matters in the Scriptures on the grounds that 'there is no place in the words of the Holy Scripture for the vanity of perishable knowledge which deceives and deludes us in our attempt to explain the unexplainable,' and Augustine himself took a similar approach:

³³⁵ Hill, 150-153.

When it is asked what we ought to believe in matters of religion, the answer is not to be sought in the exploration of the nature of things, after the manner of those whom the Greeks called 'physicists' ... For the Christian, it is enough to believe that the cause of all created things ... is nothing other than the goodness of the Creator. ...

This complacency about areas of philosophy outside theology, not least natural philosophy, is undermined with the introduction of Aristotelianism into centres [sic] such as Paris in the thirteenth century, as Western Christendom transformed itself from an intellectual backwater into something that was to surpass Islamic and Byzantine cultures.³³⁶

But the reacquaintance with Aristotle's philosophical systems needed to be translated into systematic theology and into the institution itself, and, more directly, to marriage. The twelfth and thirteenth centuries used Aristotelian categories to describe the Christian faith, with a new understanding of the composition of a human person as being a duality of matter and form, that is, of body and soul. The rediscovered Aristotelian categories gave theologians an expanded view of the universe, helping to explain that which is created and that which is uncreated. He had set out as foundational a unique understanding of all that is physical and metaphysical in the universe as being good. There was an order to the universe and all of creation mirrored the image of God and participated in that perfection. Although the preternatural gifts were lost through Adam's sin, human nature could be seen as good, although wounded: body and soul formed a cohesive unity. Even sexuality could be considered good, since it was part of the human person. Where Platonic ideas caused Christian theologians to look away from the particular and dwell on the universal, Aristotle was interested in the material world.

³³⁶ Gaukroger, 58-59.

For Aquinas,³³⁷ consent could be explained in terms of Aristotle's metaphysics. Roman law, as applied to marriage, needed modification as it was an inadequate means to identify the relationship that marriage creates. Consent was understood as an internal act of one of the spiritual faculties of the soul, namely the intelligence, which was able to perceive the truth, and the other, that of the will, able to pursue the good. Neither was autonomous, as they worked to reinforce the other, for the soul operated through its distinct faculties, and since marriage belonged to the good, consent was understood as an act of the will.

However,

There were difficulties in Scholastic theology in applying the concepts of 'matter' and 'form' to marriage. ... Theologians denied that the sacrament of marriage had a material element. Even for Thomas Aquinas, the words have primary importance: consent through words spoken directly to one another (*verba de praesenti*) constitute the efficient cause and *forma* of the sacrament of marriage. Thereby the bond of marriage comes into being and a disposition is created that enables the partners to receive divine grace, thanks to the divine institution of the sacrament.³³⁸

To understand the canon law of marriage today, one must understand the

³³⁷ Many consider that Aquinas held that theology is incompatible with doctrinal development. However, there is no exhaustive understanding of revelation, and therefore Aquinas foreshadows aspects of the logical and historical approaches to the development of doctrine that would be seen in post-Aquinian theologians. See Christopher Kaczor, "Thomas Aquinas on the Development of Doctrine," *Theological Studies* 62 (2001) 283-302. One paragraph from his conclusions is of particular interest: "Although the substance of faith remains the same, the number of articles, the faith's explicit formulation and articulation, develops over time. Though it would be exaggerated to suggest that Aquinas handled the time with the same sophistication or historical awareness as later authors such as Newman or Rahner, it would also be exaggerated to suggest St. Thomas had no sense whatsoever of the development of doctrine" (p. 302).

³³⁸ Vorgrimler, 295.

world in which it was written, a frame of reference that may not be suitable in a contemporary setting.

3.2.3 Radical Sanation (*Sanatio in radice*)

Although not really a 'new development', radical sanation demonstrates that the Church *formally sanctions the separability of contract and sacrament*. Radical sanation is the healing (*sanatio; sanation*) of an invalid marriage *ex tunc* (from the moment of the first celebration), sacramental or otherwise. It "achieves its end in respect to an invalid marriage by first removing the legal obstacles which had rendered this naturally sufficient consent juridically ineffective, and then accepting the marital consent which was given at the beginning of the marriage."³³⁹ Sanation, known as *fictio iuris* (a *fiction of law*), "takes place at the moment the favor is granted; the retroaction is understood to reach back to the moment of the marriage."³⁴⁰ There is "a dispensation from the renewal of the consent" and "a removal of [an] impediment" and "retroaction as regards canonical effects."³⁴¹ According to c. 1139, §1 (*CIC/17*), "any marriage contracted in spite of an impediment of ecclesiastical law, or for lack of the legal form, may be revalidated *in radice*, provided a naturally sufficient, though juridically ineffective consent was given and continues."³⁴² Additionally, this favor may

³³⁹ Robert J. Harrigan, *The Radical Sanation of Invalid Marriages: An Historical Synopsis and Commentary* (Washington, DC: The Catholic University of America, 1938) 44.

³⁴⁰ Charles Augustine, *A Commentary on the New Code of Canon Law* (Saint Louis, MO: B. Herder Company, 1918) 389. *Sanatio in radice* is an example of *oeconomia*, where an act of episcopal power revalidates a null marriage with retroactive effects, including sacramentality. See George A. Maloney, SJ, "Oeconomia: A Corrective to Law," *Catholic Lawyer* 17 (1971) 90-109 and John H. Erickson, "Sacramental 'Economy' in Recent Roman Catholic Thought," *The Jurist* 48 (1988) 653-667.

³⁴¹ *Ibid.*

³⁴² *Ibid.*, 392.

be granted to individual(s) who do not wish to state their vows publicly according to the canonical form of marriage, provided that the original consent perdures.

Of particular consequence to this study of sacramentality are the *retroactive canonical effects*. In a marriage where consent is exchanged according to the canonical form, two baptized Catholics, or in a marriage between two baptized non-Catholics, providing no diriment impediments exist, the marriage is considered sacramental in accord with c. 1055, §2 (CIC/83). This canonical effect is automatic, and, as demonstrates by the canon, “a valid matrimonial contract cannot exist without its being by that very fact a sacrament.”³⁴³ In the case of a marriage revalidated through radical sanation, contract and sacrament are distinct: if the juridically ineffective exchange of consent perdures, upon validation through radical sanation, the marriage between two baptized Catholics (or a baptized Catholic and a baptized non-Catholic) becomes sacramental, retroactively, at the moment the favor is granted.³⁴⁴ A sanation “would obtain for [the parties] sacramental grace of which they would otherwise be deprived.”³⁴⁵ In this sense,

consent seems to be naturally sufficient if manifested by carnal intercourse with marital affection, that is, not with the intent of committing fornication. The marital intent however must be

³⁴³ Cf. c. 1055, §2.

³⁴⁴ Sanation may take place even if one (or both parties) is unaware that it is being granted. Additionally, if mutual consent did not exist *ab initio* (or was never supplied), the favor may only be granted from the moment that consent is actually given, and the canonical effects are only retroactive from that later date.

³⁴⁵ Bernard J. Ganter, “Problems of Simple Convalidation and Sanatio in Radice,” *The Jurist* 21 (1961) 67.

demonstrated by some external declaration.³⁴⁶

As noted above, a sanation always grants a dispensation from the canonical form of marriage. A dispensation is also given from the renewal of consent. The principle consequence of retroactive validation in the *CIC/17* was to legitimize children. However, radical sanation “would obtain for them sacramental grace of which they would otherwise be deprived,”³⁴⁷ and there must be *species vel figura matrimonii*, but no canonically valid marriage. Therefore, the form established by *Tametsi* and the exchange of consent are dispensed as being merely ecclesiastical. Consent perdures from the civil ceremony. Sacramentality is ‘added’ to that perduring consent.

3.3 Gradation/progression of sacramental marriage

3.3.1 1980 Synod of Bishops

Following the Second Vatican Council, a concerted effort was undertaken to implement the reforms of the Council. Since 1965, the Roman Pontiffs reestablished the consultative practice of synods of bishops, usually assembled every three years. The fifth general assembly of the Synod of Bishops met in Rome from September 26 to October 25, 1980,³⁴⁸ the first synod in the pontificate of Pope John Paul II. Its topic was the role of the Christian family in the modern world, and the Church’s responsibility toward family and family life.³⁴⁹ The 1980 Synod showed that

³⁴⁶ *Ibid.*, 68.

³⁴⁷ Wernz-Vidal, *Ius Canonikum*, Vol. V, *Ius Matrimoniale*, 3rd ed. (Rome: Typis Pont. Univ. Gregorianae, 1946) n. 657.

³⁴⁸ For an extensive documentation and analysis, see Jan Grootaers and Joseph A. Selling, *The 1980 Synod of Bishops “On the Role of the Family”: An Exposition of the Event and an Analysis of the Texts* (Leuven [Louvain], Belgium: Uitgeverij Peeters, 1983).

the fifteen years after *Gaudium et Spes* and the twelve years after *Humanae Vitae* had not produced agreement among the world's bishops on the crisis of family life in the modern world, or on the Church's marital ethic.³⁵⁰

Although the technical theme was "The Role of the Christian Family in the Modern World", much time was devoted to the divorced and remarried persons. The 1980 Synod of Bishops expressed that "for the baptized, a valid matrimonial contract is always and necessarily a sacrament. All the baptized who validly enter marriage receive the sacrament of matrimony whether they intend to or not. If they exclude the sacrament as a condition, the marriage is invalid."³⁵¹ Additionally, the Bishops state that "sad is the situation of those Catholics who scarcely believe or practice their faith, but are obliged by the canonical form."³⁵² The Synodal Fathers propose a solution and expressed that "the preparation for marriage be made more valuable, like the itinerary of faith, by way of a catechumenate, which may take different forms in different cultures."³⁵³ Their suggestions reflect the teachings of the Second Vatican Council in *Sacrosanctum Concilium* relating to liturgical adaptation.³⁵⁴

A representative segment 216 Catholic bishops from around the world met for one month.

³⁴⁹ George Weigel, *Witness to Hope: The Biography of Pope John Paul II* (New York, NY: Harper Collins, Inc, 1999) 382.

³⁵⁰ Weigel, 384.

³⁵¹ Synod '80, "Marriage Questions Addressed," *Origins* 10 (1980) 315. For a detailed analysis of the interventions, votes taken, and personalities involved, see Cardinal Pericles Felici's "Report to the Synod of Bishops" addressed to Pope John Paul II, in *CLSGBI Newsletter* 49 (1981) 15-30.

³⁵² *Ibid.*, 316.

³⁵³ *Ibid.*

³⁵⁴ Cf. *Sacrosanctum Concilium*, 37-40.

The concerns of the bishops can be divided into two categories:³⁵⁵

- bishops from *emergent countries* raised issues regarding family endurance within oppressive political and economic states, the responsibility of the polity in the determination of family size, and the survival of the Christian family where Christianity may be in the minority of the populace;
- bishops from *first world and industrialized countries* focused on internal family matters, including marital intimacy and pastoral care to the divorced and/or remarried.

As is common before all synods, the *instrumentum laboris* was forwarded to the interested bishops. The difficulty faced by the institution of marriage can be easily seen in the working document:

A more fundamental problem today consists in the fact that many Christians lack a clear concept of the sacrality [sic] – resulting from the Creator’s intention – and the sacramentality of marriage, in that marriage is a sign both of God’s covenant with his people and of the faithfulness of Christ and the Church.

Many Catholics lack such a clear concept of the sacrament of marriage. Accordingly some simply choose a civil or traditional marriage. Others go and have their marriage celebrated in the Church, but only because of the insistence of their parents or the beauty of the ceremony. ...

Catechesis on marriage, both general and that given in pre-marriage instruction, does not always show sufficiently the importance of the Christian faith required for the self-giving of

³⁵⁵ See Lisa Sowle Cahill, “Commentary on Familiaris consortio (Apostolic Exhortation on the Family)” in Kenneth R. Himes, ed. *Modern Catholic Social Teaching: Commentaries and Interpretations* (Washington, DC: Georgetown University Press, 2005) 363-388.

Christian marriage.³⁵⁶

The French Episcopal Conference, having begun to address the severity of the problem in the pastoral context, provided a significant number of interventions at the Synod. Of particular importance are the *baptisés malcroissants*. For them, it was self-evident that theology and law have not considered the problem adequately. Conciliar teaching and post-conciliar implementation were addressed, noting that

[t]he Synod should aid the faithful and pastors in their attempt to realize the teaching of Vatican II on Christian marriage and to support them in this mission. ... [T]he consciousness of priests has become more sensitive to the importance of faith in marriage. At the same time, engaged couples who request marriage are becoming more indifferent to this faith, sometimes denying it, and apparently often acting because of family or social fittingness.³⁵⁷

Furthermore,

pastors ... have ... the impression that a sacrament of faith is not what engaged couples are asking of them. ... Too many engaged couples only request of the priests and of the Church a religious gesture. ... Engaged couples fake faith in order simply to obtain an exterior celebration. ... The very message of the Church is falsified.³⁵⁸

Additionally, interventions were levied because of the position in

³⁵⁶ James A. Schmeiser, "Welcomed Civil Marriage and the 1980 Synod of Bishops," *Studia Canonica* 17:1 (1983) 185-186.

³⁵⁷ The interventions of the French Episcopal Conference during the 1980 Synod of Bishops were numerous. For their original documentation, see Mgr Gilbert Duchene, "Le mariage des baptisés mal-croyants," *Pastorale et Famille*, 76 (1980), 35-38. Translations are provided in James A. Schmeiser, *ibid.*, 186-188.

³⁵⁸ Schmeiser, 187.

which the priest finds himself. Two possibilities exists:

[the priest] refuses the sacrament because he judges that faith is not present to the degree that the engaged couples are able to have the intention to do that which the Church does. ... He knows that he is removing from these young people even the possibility to marry validly.³⁵⁹

or

the pastor welcomes the couple with minimal faith and presides at the marriage because he thinks that they have the right to ask for it, in connection with the faith of the church, even though it be poorly expressed by them.³⁶⁰

In the first example, the decision to preclude a sacramental marriage causes the couple to live in concubinage, and because of the total lack of canonical form, should the civil relationship fails, the parties will easily be able to enter a new marriage, maybe even sacramentally. In the second example, should the Church marriage fail, the parties are reminded of the *bona* of marriage, including, for the baptized, sacramentality. A careful study of the marriage would be required and a decision of the Tribunal be rendered if the party to the marriage chooses to remarry.

The *instrumentum laboris* for the 1980 Synod of Bishops distinguishes between the *validity* of sacraments and the *fruitfulness* of sacraments, just as the *International Theological Commission* had later done. They added, however, that there were differences between the *minister* of the sacrament and the

³⁵⁹ *Ibid.*

³⁶⁰ *Ibid.*

subject of the sacrament.³⁶¹ It is important to note that the Synod of Bishop was asked to consider four statements, namely,

Vote n. 12: The sacrament of marriage, like all the other sacraments, not only presupposes faith, but nourishes, strengthens and expresses it. Wherefore for the validity of this sacrament it is required that the faith of the contracting parties be an expression of the Covenant and a conscious and personal actualizing of their baptismal calling.

Vote n. 13: It is understood that faith is not present if it is formally rejected. However, the request for marriage is a sufficient sign of this faith if it is based on genuinely religious motives. Nevertheless, since the celebration of the sacrament is in some places considered a social convention rather than a religious event, stronger signs of personal faith on the part of those marrying seem necessary.

Vote n. 14: the degree of maturity of faith and the consciousness of the spouses of doing what the Church does should be carefully weighed. It does not seem that this intention, which is necessary for the validity of the sacrament, can be present unless there is at least a minimum intention of also believing with the Church, with its baptismal faith. Both rigorism and laxism should be avoided, weak faith should as far as possible be strengthened.

A dynamic catechesis and adequate preparation for marriage should be given to foster a progressive maturity of faith of the spouses and a fruitful reception of the sacrament.

Vote n. 15: There should be a profound investigation of the statement that for the baptized who have lost the faith the contract of marriage is totally identifiable with the sacrament of marriage. After this the juridical and pastoral consequences should be noted.³⁶²

³⁶¹ Synodus Episcoporum, *De Muneribus Familiae Christianae in Mundo Hodierno, Instrumentum Laboris ad usum sodalium quinti coetus generalis* (Rome: Libreria Editrice Vaticana, 1980) n. 34, pp. 32-33.

³⁶² Geoffrey Robinson, "Unresolved Questions in Theology of Marriage," *The Jurist* 43 (1983), 99-100.

These four propositions were approved by the participants.³⁶³ Changes were suggested and related to the drafting of Pope John Paul's Encyclical on the Family, *Familiaris Consortio* and any new canonical legislation. However, in neither case did the suggestions of the Synod of Bishops drastically affect the encyclical or the revision of canon law.³⁶⁴

The Synodal Fathers in their *Relatio*, however, demonstrated the importance of canon law as structural theology, giving juridical shape to the theology,³⁶⁵ and respecting that the law must be based on theological presuppositions and may not modify Catholic doctrine unless there is first an explicit declaration of the authentic Magisterium of the Church. Nevertheless, the Synodal Fathers did not forget that "the Second Vatican Council speaks of liturgical adaptations"³⁶⁶ They note in that "new forms should arise organically from already existing forms."³⁶⁷

³⁶³ Of the 216 participants of the V Ordinary General Assembly, the votes taken were "n. 12: placet 171, non placet 15, iuxta modum 11; n. 13: placet 171, non-placet 18, iuxta modum 8; n. 14: placet 177, non placet 12, iuxta modum 6; n. 15: placet 169, non placet 15, iuxta modum 11." See Robinson, 100, n. 48.

³⁶⁴ James H. Provost, "Intolerable Marriage Situations: A Second Decade," *The Jurist* 50 (1990) 574-587. As in his previous study in 1980, Provost is reflecting on divorce and remarriage. However, he has had ten years to reflect on the 1980 Synod of Bishops and Pope John Paul II's *Familiaris consortio*. [The 1980 study was a follow-up to Ladislaus Örsy's study of intolerable marriage situations in which he addressed plight of those prevented from regularizing their marriage because of an inability to prove the invalidity of a previous marriage in the external forum.]

³⁶⁵ *Relatio complectens synthesim animadversionum ab Em. Mis atque Exec. Mis Patribus Commissionis ad novissimum schema Codicis Iuris Canonici exhibitorum, cum responsionibus a secretaria et consultoribus datis* (Rome: Typis Polyglottis Vaticanis, 1981)

³⁶⁶ Synod '80, 316. Cf. *Sacrosanctum Concilium*, 37-40; also, among others, *Sacram Liturgiam; Inter Oecumenici, Tres abhic annos; Liturgicae instaurationes; Varietates legitimatae*.

³⁶⁷ *Sacrosanctum Concilium*, 23.

3.3.2 Gradation in Diocese of Autun, France

In 1975, the Diocese of Autun, France,³⁶⁸ published an eight-page brochure called *À ceux qui envisagent le mariage*³⁶⁹ wherein “three forms of marriage are presented so that the couple may more honestly situate themselves in terms of their own true desires for their marriage.”³⁷⁰ A significant underlying motive for its writing, identified in *Dignitatis Humanae*,³⁷¹ concerns “a Church which permits each person to say who he or she is, in order that he or she may develop to his or her full human potential.”³⁷²

The brochure presents three possibilities for couples who wish to enter marriage. Requests were being made to a Church that was not capable of accepting people in their actual situation; canonically, the Church could offer *only* sacramental marriage for marriages between the baptized. Facing a large percentage of the population that was baptized but not active in the church (*malcroyants*), Bishop François M. Le Bourgeois, C.I.M., established these options for marriage for Christians. Each form respects the decision of the parties themselves: civil marriage, welcomed civil marriage (*mariage avec*

³⁶⁸ The Diocese of Autun was erected in the third century. In the 1801, three additional dioceses, at that time suppressed, were incorporated into it. In 1962, the territorial Abbey of Cluny was united, forming what is now known as the Diocese of Autun (-Châlon-sur-Saône-Mâcon-Cluny).

³⁶⁹ This brochure was authorized by Bishop Armand François M. Le Bourgeois, C.I.M. (d. 2005) and authored by a team of priests from the pastoral district of Lugny – la Roche Vineuse for the exclusive use of the district.

³⁷⁰ James A. Schmeiser, “Welcomed civil marriage: canonical statements.” *Studia Canonica* 14 (1980) 49.

³⁷¹ Second Vatican Council, decree *Dignitatis humanae*, December 7, 1965: AAS 58 (1966) 929-930.

³⁷² Schmeiser, *ibid.*, 51.

accueil), and sacramental marriage.³⁷³

Although these options were experimental and are *contra legem*, it was conducted in consultation with Rome and was adopted by a number of other dioceses. Permission was later rescinded, but the attempt is a reminder that people approach marriage with very different degrees of faith.³⁷⁴

- *Civil marriage*: This form of marriage is recognition by the Church of the “value of human commitment,”³⁷⁵ conducted at city hall but recognized by the church as valid but not sacramental.
- *Marriage with welcome (mariage avec accueil)*: Following a civil marriage, the couple celebrates a religious ritual of readings and prayers with friends and relatives and the priest, in Church or at home. Couples are Christian by baptism, believe in God, but see little value in the sacrament of marriage. These individuals, however, “desire to indicate in a religious manner their commitment to each other,”³⁷⁶ and to family and friends. For its part, the Church, with open arms, helps the couple to grow in their faith. There is a declaration of intention, rings may be exchanged, and prayers are offered. Nonetheless, it is clearly understood that this is not sacramental marriage.

³⁷³ James H. Provost, “Intolerable Marriage Situations Revisited,” *The Jurist* 40 (1980) 170-172. Although it is a study associated with divorce and remarriage, his section on marriage with ‘welcome’ provides a pastoral reflection.

³⁷⁴ Lawrence E. Mick, *Understanding the Sacraments Today*, 2nd rev. ed. (Collegeville, MN: The Liturgical Press, 2006) 107.

³⁷⁵ Schmeiser, 49.

³⁷⁶ *Ibid.*, 49.

- *Sacramental marriage*: For those who have a deeper faith and Christian commitment, a sacramental marriage is celebrated in the midst of the Church community. Sacramental marriage is a reflection of the covenantal relationship between Christ and the Church. This marriage is a celebration of the sacrament of marriage in the canonical and juridical sense.

These options corresponded to different levels of faith: those with little or no faith celebrated marriage as a civil matter; those with some faith in God but with no real relationship to the Church celebrated a civil marriage followed by a religious service; those who were committed to Christ and the Church celebrated marriage as a sacrament. Those in the first two groups could come to deeper faith later in life and celebrate marriage as a sacrament at that time. These options are examples of the catechumenate suggest by the 1980 Synod of Bishops.

3.4 *Betrothal* as a precursor to sacramental marriage and moving beyond 'living together'

3.4.1 Betrothal – Engagement

In the history of the ecclesiastical matrimonial law, *consensus de futuro* (or *sponsalia*) played an important role. Betrothal is the handing over of one's promise or *troth*. It is a deliberate, free, mutual, and true promise that is stated in the external forum. The constituent element of betrothal is

mutual consent to a future marriage. In the sponsalial contract ... this consent ought to be internal, free, outwardly expressed, absolute, simultaneous and legitimate ... a matter of individual and personal consent, since it promises that which is within the

disposal of the contracting parties alone.³⁷⁷

The entrance into betrothal requires deliberation proportionate to the obligation to which the parties intend.

In ecclesiastical law until the *CIC/17*, there was a legal tradition associated with the promise of marriage.³⁷⁸ The betrothal was bilateral.

Betrothment, called in Latin *Sponsalia de futuro*, may be defined as a mutual promise of future marriage, or a contract by which a man and a woman engage themselves to marry.

Betrothment is a real contract, i.e., an agreement between a man and a woman, by which they mutually give and mutually accept a binding promise to enter into matrimony at a future date.

Hence it is not sufficient that there should be a mere proposal, or a promise on the part of one, even though that promise be accepted by the other. Both the promise and the counter-promise are requisite, so that the contract may be strictly bilateral and perfectly synallagmatic, binding in justice both parties to a future marriage.

If one party alone promises, and the other party accepts that promise, but gives no counter-promise, an obligation, sometimes even binding in justice, may indeed arise, but it is not of a sponsalial nature, and the proper effects of betrothment must be denied to such a promise.

The object of the contract is the future marriage, to be entered into at a fitting time, that is to say, at a time expressly determined in accordance with the wishes of the parties, or at a time to be reckoned according to the circumstances of the case and local customs.

In consequence of the nature of the object with which the contract is concerned, the contracting parties must be a man and a woman, and indeed a determinate man and a determinate

³⁷⁷ Canon de Smet, *Betrothment and Marriage (De Sponsalibus et Matrimonio): A Canonical and Theological Treatise with Notices on History and Civil Law*, Vol. 1. Trans. by W. Dobell (Saint Louis, MI: B. Herder, 1912) 6.

³⁷⁸ See Gasparri, nn. 43-121.

woman.³⁷⁹

Three canonical effects stem from betrothal.³⁸⁰ Each clearly shows the serious nature of the mutual consent to a future marriage. The first is a *diriment impediment of public decency* which invalidates marriage with the blood relatives of each party to the first degree;³⁸¹ the second is an *impedient impediment that prohibits marriage to any other person* as long as a valid betrothal exists;³⁸² and a *threefold obligation* that includes *justice to marry* at the proper time, *keeping the sponsalial faith*, i.e., remaining faithful without suggestive advances, and *refraining from rendering themselves unfit* for marriage.³⁸³

3.4.2 Betrothal in the CIC/83

The *CIC/83* states that “a promise of marriage . . . called an engagement . . . does not give rise to an action to seek the celebration of marriage; an action for reparation of damages, however, does arise if it is warranted” (c. 1062, §§1-2).³⁸⁴ The canon also makes reference to the episcopal conferences

³⁷⁹ de Smet, 4-5.

³⁸⁰ *Ibid.*, 20-21.

³⁸¹ Each *codex* retains canons to this effect, i.e., c. 1093 *CIC/83*; c. 810 *CCEO/90*; c. 1078 *CIC/17*. An important consideration of the canon itself is that the impediment “arises from an invalid marriage after common life has been established.” This indicates a progression in the relationship even before marriage. See also A. Keogh, “The Codification of the Canon Law,” *Journal of Comparative Legislation and International Law*, 3rd Ser., Vol. 10, No. 1 (1928), 27-28; *The Canons and Decrees of the Sacred and Ecumenical Council of Trent*, ed. and trans. J. Waterworth (London: Dolman, 1848), 200.

³⁸² Impedient impediments do not render a marriage invalid. Rather, such impediments are related to liceity, i.e., its lawfulness, and are disciplinary in nature. See John P. Beal *et al.*, *New Commentary on the Code of Canon Law* (Mahwah, NJ: Paulist Press, 2000) 1272.

³⁸³ Because the betrothal is to a future marriage, neither side must place obstacles in the way of fulfillment of the promise of marriage.

³⁸⁴ “Matrimonii promissio . . . quam sponsalia vocant, . . . non datur actio ad petendam matrimonii celebrationem; datur tamen ad reparationem damnorum, si qua debeatur.”

regulating the promise to marry. Notwithstanding such complementary guidelines,³⁸⁵

natural law and custom must rule both the moral and legal effect of such contractual promise. Canon law recognizes no legal action to compel the celebration of marriage, but only legal action for reparation of damages resulting from breach of promise. This action can be brought before an ecclesiastical court or a civil court. In any case, the suit for damages has no legal force to stop the marriage of the defendant with a third party.³⁸⁶

The canon reflects Roman law, demonstrating that “canon law will not compel anyone to marry a person even if there have been promises to that effect.”³⁸⁷

3.4.3 Current trends in Betrothal

Although *CIC/83* did not reproduce the canons of the former *CIC/17*, there is significant interest in recuperating betrothal as ‘cohabitation that is destined for marriage.’ This would reflect, at least generally, the recommendations of a catechumenate proposed by the 1980 Synod of Bishops and the gradation employed in the Diocese of Autun that progressively sacramentalize marriage by a series of recognized steps.

³⁸⁵ The complementary norm for the United States was promulgated by the then President of the Conference, Bishop Joseph Fiorenza, and was effective December 1, 1999. In part, it decrees that “the National Conference of Catholic Bishops intends to issue no norms regarding the promise of marriage as mentioned in canon 1062, §1, without prejudice, however, to the prescriptions of canon 1062, §2 regarding an action for reparation of damages.” It was given *recognitio* by the Holy See in accord with article 82 of the apostolic constitution *Pastor Bonus*.

³⁸⁶ Gramunt, 7-8.

³⁸⁷ Örsy, *Marriage in Canon Law*, 70.

Among others, there is a desire for “the reintroduction of the ancient ritual of betrothal linked to intensive marriage education for cohabiting couples already committed to marriage, perhaps even engaged to be married.”³⁸⁸ Effectively,

those already committed to one another and planning to marry look and act like already-married couples in most ways. For committed cohabiting couples, living together is a step on the path to marriage; for couples who are not committed, cohabitation is a social arrangement inferior to marriage.³⁸⁹

Progressive sacramentalization of marriage might be achieved by betrothal. Just as catechumens journeying through the catechumenate program are in the bonds of the Church although not yet fully Christian,³⁹⁰ so, too, a catechumenate approach might provide a means of gradation to the sacramentality of marriage.

We might recall the *processive* or *processual* nature of marriage marked by spousals and by nuptials. The relevant contrast here lies between event and process. Bankers, lawyer and tax officers may need to know exactly when a couple is legally married. But the elevation of an event within a process to become the all-determining factor within the process is not

³⁸⁸ Michael G. Lawler, “Quaestio Disputata, Cohabitation: Past and Present Reality,” *Theological Studies* 65 (2004), 625.

³⁸⁹ Michael G. Lawler and Gail S. Risch, “A betrothal proposal,” *US Catholic*, June 1, 2007.

³⁹⁰ For example, can. 206, §1 expresses that “catechumens are linked with the Church in a special way ... [and] are joined to the Church which already cherishes them as its own.” The Church “already accords them various prerogatives which are proper to Christians” (§2) [“Speciali ratione cum Ecclesia conectuntur catechumeni, [et] coniunguntur cum Ecclesia, quae eos iam ut suos fovet. § 2. Catechumenorum specialem curam habet Ecclesia quae, ... eisdem varias iam largitur praeogativas, quae christianorum sunt propriae”]. Even in death, catechumens are in the fold of the Church, as ecclesiastical funeral rites are to be afforded to them (c. 1183, §1).

required by theology or faith. Catholic sacramental theory has connived with this static, essentially momentary, conception of the constitution of marriage: the exchange of consent immediately followed by priestly blessing became the defining moment at which sacramental grace was conferred and received. But marriage does not begin with the nuptial ceremony. The nuptial ceremony is the point within the process of marriage when the promises made become irrevocable (*matrimonium ratum*), when a new phase in the still-growing relationship is liturgically and performatively initiated. Inattention to the prenuptial phase of the marriage is perhaps the greatest mistake of pastoral theology in the modern period.³⁹¹

Both Catholic and Protestant reformers moved away from betrothal because of the concerns relating to clandestine marriages which the Council of Trent had addressed. *Engagement* is substituted for *betrothal*. Modern engagements do not have the same religious or legal consequences as the betrothals of the past. Such an institution is even less than a formality. However, a catechumenate model would allow betrothal to be a publicly attested and blessed period with its own graces and tasks, although still awaiting the solemnization of the union. The parties would discover and develop skills that marriage itself would require. Moreover, because sexual intercourse is an integral part of marriage, a couple would not remain ignorant of this practice. The subsequent solemnization ritual would make permanent the graces already operative in the life of the parties that they had already promised and practiced in their betrothal. Effectively, the *ratum* of marriage, as consent

³⁹¹ Adrian Thatcher, *Living Together and Christian Ethics* (New York, NY: Cambridge University Press, 2002) 216. The author of this book attempts to bring together both contemporary life and past tradition by reflecting on the large number of couples who are sexually active while living together outside any formal, ritualized commitment. He does this by interweaving biblical, historical, and contemporary theological material that addresses marriage as a *continuum* that begins in the exclusivity of dating/courtship, positing an act of the will to a future solemnization (the betrothal), and then finds its solidification in the ritual ceremony on the wedding day. Marriage, in this context, cannot, therefore, be understood as a one day canonical or legal event.

exchanged, is no longer relegated to the day of solemnization, i.e., a singular juridic act, nor is the *consummatum* only associated with the bridal chamber following the marriage ritual.

Restoration of betrothal would allow pastors, among others, an opportunity for serious marriage preparation.³⁹² It would allow acknowledgement that the time of courtship preceding the marriage solemnization also participates in the graces of the marital covenant.

3.5 Ministers and Recipients

In the Latin Church, the spouses administer the sacrament to each other when they exchange consent.³⁹³ The baptismal dignity of the faithful is affirmed, as they participate in the priestly ministry of Christ. The understanding of the Church is that “the spouses, as ministers of Christ’s grace, mutually confer upon each other the sacrament of matrimony by

³⁹² Required by c. 1063 is an obligation of pastors “to take care that their ecclesiastical community offers the Christian faithful the assistance by which the matrimonial state is preserved in a Christian spirit and advances in perfection ... especially by: 1° preaching, catechesis adapted to minors, youth, and adults, ... by which the Christian faithful are instructed about the meaning of Christian marriage and about the function of Christian spouses and parents; 2° personal preparation to enter marriage, which disposes the spouses to the holiness and duties of their new state” [“Pastores animarum obligatione tenentur curandi ut propria ecclesiastica communitas christifidelibus assistentiam praebeat, qua status matrimonialis in spiritu christiano servetur et in perfectione progrediatur: 1° praedicatione, catechesi minoribus, iuvenibus et adultis aptata, ... quibus christifideles de significatione matrimonii christiani deque munere coniugum ac parentum christianorum instituantur;

2° praeparatione personali ad matrimonium ineundum, qua sponsi ad novi sui status sanctitatem et officia disponantur”].

³⁹³ For a detailed analysis, see Frederick R. McManus, “The Ministers of the Sacrament of Marriage in Western Tradition,” *Studia Canonica* 20 (1986) 85-104. For a Byzantine perspective, see John Meyendorff, “Christian Marriage in Byzantium: The Canonical and Liturgical Tradition,” *Dumbarton Oaks Papers* 44 (1990) 99-107.

expressing their consent before the Church.”³⁹⁴ In the same way,

each spouse is a recipient of the sacrament of marriage. As recipients of the sacrament it is only required, provided that they do not expressly exclude sacramentality, that they give marital consent; for, by the very fact that they intend the matrimonial contract, they also implicitly intend the sacrament.³⁹⁵

With matter, form, and the intention *facere quod facit Ecclesia* as minimal requirement³⁹⁶ set out by the Council of Trent for valid administration of the sacraments, it follows that when the baptized marry they must intend *facere quod facit Ecclesia*. This presence of this intention has been questioned in Rotal jurisprudence.

In each of the other sacraments, the principle of intention *facere quod facit Ecclesia* is active. Canon 1055, §2 reflects this as “a direct consequence of the dogma of the sacramentality of Christian marriage,”³⁹⁷ in which case there appears to be sufficient evidence to overturn this presumption.

3.5.1 Intention Receives Significance in Light of Faith

In the same way as the minister of the sacraments acts in the name of Christ and in the name of the Church, so the baptized act in bringing about

³⁹⁴ *Catechism*, 1623: “sponsi, tamquam ministri gratiae Christi, sibi mutuo matrimonii conferunt sacramentum, suum consensum coram Ecclesia significantes.”

³⁹⁵ Wrenn, *The Invalid Marriage*, 150.

³⁹⁶ The Eastern tradition holds that a priestly blessing (“crowning”) is necessary for marriage in Christ. See John Meyendorff, *Marriage: An Orthodox Perspective* (New York: Saint Vladimir Seminary Press, 1970). For more on Orthodox theologians and sacramentality in marriage, see Finn, 108.

³⁹⁷ Faltin, 76.

marriage.³⁹⁸ It follows that the same criteria elaborated at the Council of Trent should apply to the ministers of marriage, namely the contractants.

When they manifest their consent they are bringing about the matrimonial contract. They, above all, in the manifestation of their will, necessarily ought to have the intention of 'doing that which Christ and the Church do.' In other words, without the intention of willing that which Christ has instituted and that which the Church does, the contractants are not able to act in the name of Christ, but only in their own name and, indeed, they place an external act without content, that is, without the significance that was attributed to it 'by the institution of Christ' and, therefore, one is not able to say that their nuptial contract was concluded 'with faith in Christ' since 'no one gives what he does not have.'³⁹⁹

Validity of both the consent and the sacrament flows from the intention, for the intention requires a correct "disposition and mutual cooperation in the contractants."⁴⁰⁰ The distinction between a valid and fruitful sacrament is captured, as is the relationship between principal (intention) and instrumental (giving of consent) cause.⁴⁰¹

In giving consent, the rites found in liturgical books approved by the Church or received by legitimate custom are to be observed.⁴⁰² However, these rites

³⁹⁸ See Joann Heaney-Hunter, "'Active Faith' in Christian Marriage: The Challenge of Family Systems," *Pastoral Psychology* 45 (1997) 261-275.

³⁹⁹ Faltin, 78.

⁴⁰⁰ *Ibid.*

⁴⁰¹ Vorgrimler, 84; Pompedda, 44-48.

⁴⁰² Canon 1119: "Extra casum necessitas, in matrimonii celebratione servantur ritus in libris liturgicis, ab Ecclesia probatis, praescripti aut legitimis consuetudinibus recepti."

obtain, in the celebration of the sacrament, their religious significance in virtue of the will, that is, in the intention of the spouses to “do what the Church intends.” In a contrary case they would be deprived of the significance and efficacy which the Church has given them. In other words, the “signs” receive their significance and their efficacy *in the light of faith*, in so far as the intention “supposes and requires faith.”⁴⁰³

Although “it is undeniable that Rotal jurisprudence has often said that for a valid marriage, faith is not necessary, but consent alone,”⁴⁰⁴ the present status of doctrine and jurisprudence has not resolved the issue.

3.5.2 A Human Act

A person is the author of an act only when it is a human act: “It is human only when its substance is ‘attended and adhered’ to with sufficient awareness and deliberation.”⁴⁰⁵ The marriage contract cannot be construed as merely an *actio hominis*. “It is repugnant . . . for a marriage contract, which is so serious and human, to be constituted through an *actio hominis* and not through a personal act.”⁴⁰⁶

However, this same human act must will the substance of marriage, clearly showing that the person wants it by a certain intention as established by Christ and the Church. Should marriage in its completeness be

⁴⁰³ Faltin, 80. Emphasis in original.

⁴⁰⁴ *Coram* Stankiewicz, April 29, 1982 RRD 74:247: “Infitiandum non est quin iurisprudentii Nostri Fori haud semel enuntiaverit ad validum contrahendum matrimonium fidem necessariam non esse, sed unum consensum.” English translation in Mendonça, 7.

⁴⁰⁵ International Theological Commission, 2.3.

⁴⁰⁶ *Coram* Serrano, 433-434: “Repugnat itaque ut quid essenziale negotii gravis et humanitate pleni quale matrimonium est per actionem hominis nec per actum humanum, imo personalem, perficiatur.” English translation in Mendonça, 10.

unintended, there would be no mutual exchange of the substance, because of a positive act of the will to exclude it.

Unlike the sacraments of initiation, the sacrament of marriage presupposes psychological maturity.⁴⁰⁷ Because of this,

a more conscious and deliberate personal intervention of both baptized persons is indispensable in the celebration of the sacrament of which they themselves are subjects and ministers . . . [M]arriage as a sacrament between two baptized persons cannot come into being if there is conscious rejection of it, as it has been rightly said of the baptism of adults: "One who rejects the sacrament considering it to be an empty ritual, is incapable of willing the sacrament."⁴⁰⁸

If considered empty ritual, the validity of marriage is placed in jeopardy.

With traditional jurisprudence, emphasis has been placed on the contractual aspects of marriage, and on the premise of *ex opere operato*, which is proper to all sacraments. There are serious implications to this automaticism, for

the sacramental matter and form must be presented by the subjects-ministers via a *personal* and *interpersonal* act . . . by consenting in a human manner to a conscious sacred rite even before Christ can bring about with their cooperation the Christian mystery in the order of salvation.⁴⁰⁹

⁴⁰⁷ McAreavey, 25.

⁴⁰⁸ Mendonça, 11-12.

⁴⁰⁹ *Ibid.*, 15. Emphasis in the original.

3.5.3 Concerns Regarding the Role of Faith

Several issues surface in determining the role of faith in the sacrament of marriage. The statement of the problem is this:

In places where the principles of secularism invade the minds even of the Christian faithful, it sometimes happens that people who have been baptized but whose faith is quite weak or perhaps nonexistent, ask to have their marriage celebrated in the Church not so much for religious reasons as for social reasons.⁴¹⁰

A response to the issue of secularism has been that no special degree of personal faith is required “in those who have rejected the Catholic faith.”⁴¹¹ There is required only a correct intention,⁴¹² plus matter and form. This reflects the view that “the faith of the minister is never required for the valid conferral of sacraments . . . nothing more is required . . . beyond an habitual intention.”⁴¹³ From this perspective it is the *intention* and not the *personal faith* of the contracting parties that is constitutive of the sacrament of marriage, for

when two baptized people who have no real faith, not even an

⁴¹⁰ *Coram Stankiewicz*, April 25, 1991, *RRD* 83:281: “In regionibus ubi principia laicismi, qui dicitur, etiam mentes christifidelium invadunt, haud raro accidit quod sponsi baptizati, sed fide personali admodum debili praediti vel prorsus non credentes, propter causas magis sociales quam religiosas matrimonium in facie Ecclesiae celebrandum petunt.” English translation in Mendonça, 21.

⁴¹¹ Canon 1071 §1, 4^o: “Excepto casu necessitatis, sine licentia Ordinarii loci ne quis assistat: 4^o matrimonio eius qui notorie catholicam fidem abiecerit.”; §2: “Ordinarius loci licentiam assistendi matrimonio eius qui notorie catholicam fidem abiecerit ne concedat, nisi servatis normis de quibus in can. 1125, congrua congruis referendo.”

⁴¹² Canon 1125, 3^o - “ambae partes edoceantur de finibus et proprietatibus essentialibus matrimonii, a neutro contrahente excludendis.” Both canons 1125 and 1071 have long and debated histories that are outside of the scope of this paper.

⁴¹³ *Coram Stankiewicz*, 281: “fides nequaquam requiritur ad validam collationem sacramentorum in ministris . . . nihil aliud requirebat . . . praeter voluntatem habituaalem.” English translation in Mendonça, 22.

initial faith, enter marriage with a truly conjugal intention, that union will have the objectivity of a sacrament, and it will be materially a sacrament but perhaps only radically; in order that it become formally a sacrament and truly causative of grace for each party according to the measure of faith and of personal disposition for enjoying sacramental grace, some faith in the contractants would be required Christian apostates who intend to enter a true, permanent, conjugal covenant, receive the whole, constitutive and virtual reality of the sacrament of matrimony, even though it may formally begin to function only after faith has been recovered.⁴¹⁴

However, grace is at work, and the personal faith of the person cannot be extrinsic to the celebration of marriage. The human act, with its content of personal faith, should be predominating at the time of consent, namely, to do what the Church intends, which cannot happen without a vestige of faith.

3.5.4 The Object of Consent

The issue of personal faith is raised in relation to the object of consent: one who simulates totally does not wish to contract any type of marriage, whereas, one who excludes one of the properties or elements of marriage desires marriage but only as personal preference may dictate.

Accordingly, a person who intends to enter into a true contract intends *ipso facto* to celebrate the sacrament of marriage; conversely, a person who has a predominate intention not to do so “cannot be a valid minister of the sacrament, and consequently, would not enter into a true contract.”⁴¹⁵ This is the crux of the argument. It places intention together with a vestige of faith, creating the necessity of faith before intention.

⁴¹⁴ *Ibid.*, 282.

⁴¹⁵ Mendonça, 40.

In *Familiaris consortio* it is reiterated that those who are *imperfectly* disposed be admitted to the celebration of marriage in the Church.⁴¹⁶ However, “when . . . couples show that they reject explicitly and formally what the Church intends to do . . . pastors cannot admit them to the celebration of marriage.”⁴¹⁷ *Imperfect disposition* and *rejection* are not the same thing.

Faith can . . . be regarded as a constitutive element of the sacramentality of marriage. In fact, those who advocate separability between marriage sacrament affirm that faith is a requirement so essential that, without it, it is impossible for a sacrament to take place In this view, the baptized (if they lack faith) could bring about a true marriage insofar as it is an *institutum naturae*.⁴¹⁸

If, then, faith is lacking, the intention of receiving the sacrament is also weakened. “Lack of faith has a relation to, often brings about, and sometimes necessarily causes lack of intention or at least a vitiated intention.”⁴¹⁹

Distinguishing . . . in the spouses their functions as ministers and as recipients of the sacrament, one affirms that, by celebrating the ecclesiastical rite, the baptized who have lost faith intend to do what the Church does; as recipients, then, insofar as faith is not the joint cause of grace but only a disposition for fruitfulness, lack of faith in the sacramental character of marriage for the baptized is equivalent to ignorance of the spouses about its nature.⁴²⁰

⁴¹⁶ *Familiaris consortio*, 68.

⁴¹⁷ *Ibid.*: “animarum pastori non licet eos ad celebrationemmittere.”

⁴¹⁸ Pompedda, 39.

⁴¹⁹ *Ibid.*

⁴²⁰ *Ibid.*, 46.

However, one, cannot make sacramentality rest on the strength of the faith. One may hold, though, that personal faith is not necessary for sacramental efficacy because grace is conferred *ex opere operato*. But one may also hold that “without personal faith, with the denial of the sacrament as an efficacious sign of grace a person is incapable of willing the sacrament and therefore does not contract marriage.”⁴²¹

The influence of the modern secular society as it effects those who have been baptized in infancy and become “baptized pagans” has given rise to this paradoxical issue: it must therefore be asked what makes up the intention of such a person for marriage, and what role does faith, even minimal faith, play in this regard.⁴²²

The traditional presumption that couples intend *facere quod facit Ecclesia* can yield to contrary proof. Jurisprudence has alluded to the secularization of marriage and family. The question of exclusion of sacramentality being total or partial simulation has permitted the door to be opened even wider.

As ministers and recipients of the sacrament, the intention *facere quod facit Ecclesia*, matter, and form are the minimal conditions for reception of the

⁴²¹ Dewhirst, 70.

⁴²² See Richard G. Cunningham, “Marriage and the Nescient Catholic: Questions of Faith and Sacrament,” *Studia Canonica* 15 (1981) 263-283. He notes (p. 277) that “it is unreasonable to say that surely each Catholic is not obliged to know and believe all revealed truth in an explicit manner. But it is not unreasonable to expect some explicit belief. It would seem that at least some of the truths normative to the faith must be believed.” He continues (p. 278), “It has been argued that the faith required for marriage must be ‘living faith’. Generally that means a faith that is formed by charity, a practical faith. ... (p. 279) Sadly enough ... one can live among Christians and among Catholics and not have the message of salvation preached existentially or authentically.”

sacrament of marriage, which then receive purpose and efficacy in the light of faith.

3.6 Identification of the baptized unbelievers

“‘Not to have faith’ has a range of meaning that embraces subjective and psychological situations of a most varied nature”⁴²³ creating difficulty in identifying baptized non-believers. By *baptized non-believers* can be understood those who never came to any act of faith⁴²⁴ in virtue of their baptism, or those who have explicitly abandoned all belief in the Christian mystery. They lack or reject the faith,⁴²⁵ and thus do not exhibit the minimum conditions required *facere quod facit Ecclesia*. They act “with little or no faith,”⁴²⁶ at times marrying “for motives purely social, familial, or of convenience.”⁴²⁷

The impossibility of a definition is evident.

[Baptized unbeliever] does not have a univocal meaning, but refers to a datum of fact that is by its nature markedly complex: that is, behind the expression ‘baptized non-believer’ there are situations that run the gamut from the ignorant baptized person to the non-practicing baptized person; from the baptized person who has not the faith but who holds on to a basic religiosity, to the baptized person who has lost the faith altogether; from the

⁴²³ Pompedda, 36.

⁴²⁴ Örsy, p. 57.

⁴²⁵ International Theological Commission, 2.3. Also, 1980 Synod of Bishops, in Faltin, 74: “one is not able to speak of faith if it has been formally rejected.”

⁴²⁶ *Coram* Stankiewicz, April 25, 1991: *RRD* 83:280-290: “fide penitus amissa vel maxime imminuta.”

⁴²⁷ Faltin, 96.

baptized person who does not accept the Christian plan of marriage in some of its aspects to the baptized person who contests the sacramentality, and any religious institutionalization, of marriage.⁴²⁸

There may even be a common misconception that a person who does not practice his or her faith through external expression is somehow evidencing an absence of faith.⁴²⁹

It cannot be forgotten that sacraments are “signs and means by which the faith is expressed and strengthened”⁴³⁰ which “proceeds from faith and is based on it.”⁴³¹ *Familiaris consortio* proposes that when baptized couples marry, they *implicitly* show their “right intention,” having accepted God’s plan for marriage.⁴³² Although it is not in the realm of canon law to determine theological issues, *theologians* are reluctant to presume that couples implicitly consent *facere quod facit Ecclesia*.

Today, the faith-situation of baptized persons is anything but clear, and the Church and its theologians acknowledge two kinds of baptized, believers and non-believers. The two are distinguished theologically on the basis of the presence or absence of active personal faith. They ought never, therefore, to be equated in law as easily as the Code equates them.⁴³³

⁴²⁸ Pompedda, 56. Faltin focuses on confrontation: “to the baptized who obstinately and radically rejects the sacrality and religious institutionalization of matrimony such as the person puts himself in a state of rebellion not only with the Church and its institutions, but also places himself in confrontation with the very divine authority of Christ, even though he may believe in a God who cannot be more clearly identified than one’s own personal God.” See Faltin, 94.

⁴²⁹ McAreavey, 35.

⁴³⁰ Canon 840 - “signa exstant ac media quibus fides exprimitur et roboratur.”

⁴³¹ Canon 836 - “a fide procesit et eadem innititur.”

⁴³² *Familiaris consortio*, 68.

⁴³³ Lawler, “Quaestio Disputata, Cohabitation: Past and Present Reality,” 720-721.

3.7 Praxis of the Roman Rota

The Roman Rota has debated over whether this ground is of total or partial simulation.⁴³⁴ Some Rotal judges hold that the intention to exclude sacramentality is total simulation. By intending to exclude sacramentality, one precludes marriage itself. By virtue of a willful act, there is discord between the internal consent and external action of the baptized non-believer.

For the baptized *sacramental dignity* is so intimately and profoundly, even if in a mysterious way, linked to matrimonial consent itself, and fills and elevates it, that the two aspects constitute one and the same reality which is, as we read in c. 1055, one and the same “matrimonial covenant ... raised by Christ the Lord to the dignity of a sacrament.” If it is true, therefore, that “a matrimonial covenant cannot validly exist between baptized persons unless it is also a sacrament by that fact (*eo ipso*) (c. 1055, §2),” then it necessarily follows that if a baptized person excludes the sacrament by that fact (*eo ipso*) he or she rejects the contract itself. And this is to totally simulate marriage which is, for the baptized, ontologically constituted by the *contract-sacrament*, that is to say, the *sacrament-contract*.

Intentionally new terminology is used in the 1983 code, where the matrimonial contract is likened to a covenant, which is a sacramental covenant for the baptized. Therefore, for the baptized to exclude the sacramental dignity of marriage is to exclude the very covenant or contract.

Therefore, the basis for the conformity of sentences on *total simulation* and *exclusion of sacramental dignity* is not only juridical-natural, but also theological-supernatural, that is, it touches upon the very mystical union of Christ himself and the Church.⁴³⁵

⁴³⁴ See Faltin, 90.

⁴³⁵ *Coram Colagiovanni*, April 7, 1992: *Monitor Ecclesiasticus* 117 (1992) 510: “Etenim pro baptizatis, sacramenti dignitas ita intime, profunde, etsi mysterioso modo, cum eodem contractu matrimoniali connectitur illudque perfundit et elevat, ut duae formalitates constituent unam eandemque realitatem, in qua, uti legitur in canone 1055, unum idemque ‘matrimoniale foedus...a Christi Domino ad sacramenti dignitatem...evectum est’. Ita ut, si verum est quod ‘inter baptizatos matrimonialis contractus validus nequit consistere, quin sit

As it touches on the very nature of the contract and the sacrament, the plane on which it exists is both juridic in nature, and theological. The theological/ontological nature precludes this separation through a mutually exclusive relationship, and has raised the natural institution of marriage to the dignity of a sacrament. Although it is a minority opinion, some Rotal judges still espouse this view.⁴³⁶ It favors the inseparability of sacrament and contract.

Conversely, as canon 1101 has changed the object of consent from its predecessor in the *CIC/17*,⁴³⁷ it is possible to view sacramentality in marriage in the same way as perpetuity or fidelity are viewed in marriage. If it is excluded, marriage itself is not excluded, but an integral aspect of it is.⁴³⁸

eo ipso sit sacramentum' (ca. 1055 §2), sequantur necesse est ut, si baptizatus excludat ipsum sacramentum, eo ipso recuset ipsum contractum. Et hoc est totaliter simulare matrimonium, quod ontologice, pro baptizatis, constituitur ex contractu-sacramento seu ex sacramento-contractu.

Intentionaliter nova terminologia adhibetur in codice anni 1983, ubi contractus matrimonialis assimilatur foederi, quod est foedus sacramentale pro baptizatis. Ideo pro baptizatis excludere sacramentalem dignitatem [sic] matrimonii est excludere [sic] ipsum foedus seu contractum.

Fundamentum ideo conformitatis sententiarum simulationis totalis et exclusionis dignitatis sacramenti non est tantummodo iudicum-naturale, sed theologicum-supernaturale, seu tangit ipsam mysticam unionem ipsius Christi et Ecclesiae." English translation in John A. Renken's unpublished handout to the jurists of the Province of Cincinnati, *The Simulation of Marriage Consent: Contemporary Trends in Jurisprudence*, 1999. Emphasis in original.

⁴³⁶ See Cormac Burke, "The Sacramentality of Marriage: Canonical Reflections," *Monitor Ecclesiasticus* 119 (1994) 545-565.

⁴³⁷ Canon 1086, §1 - "Internus animi consensus semper praesumitur conformis verbis vel signis in celebrando matrimonio adhibitis.

§2 - At si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum, aut omne ius ad coniugalem actum, vel essentialem aliquam matrimonii proprietatem, invalide contrahit."

⁴³⁸ See Wrenn, *The Invalid Marriage*, 148-149; Grochowski, 283-295.

If therefore one intends to reject only the sacramental dignity, while assuming all the essential properties as well as the end of marriage as a natural institute, one does not thereby exclude marriage itself, which one truly wishes, but only as an essential element added to the marriage of baptized people, namely sacramentality. Furthermore the marriage of that person is invalid not by reason of total simulation, that is to say by a defect of consent, but only by reason of partial simulation, i.e., because of an essential element excluded from the marriage of baptized people. Total simulation is verified only in a case in which a person, in excluding sacramental dignity, intends to refuse and reject marriage itself.⁴³⁹

Accordingly, in partial simulation sacramentality is understood to be an essential element of marriage, and thus is not equated with the marriage itself. The necessary correlation between contract and sacrament can be removed.

When the argument concerns *the exclusion of sacramentality in the act of manifesting matrimonial consent*, the same ground of nullity is put forth as indicated in can. 1101, §2, which says that “one or both parties contracts invalidly” who “by a positive act of the will excludes some essential element of marriage.” Therefore *through a positive act of the will*, the entire matrimonial *negotium* has no effect, in the same way that the exclusion of the *bonum fidei, prolis* and *indissolubilitatis* destroys the entire marriage.⁴⁴⁰

⁴³⁹ *Coram Bruno*, 167-168: “Si quis ideo solam dignitatem sacramentalem respuere intendit, assumere proponens omnes essentielles proprietates et finem matrimonii, uti naturalis instituti, per se non excludit ipsum matrimonium, quod revera vult, sed tantum elementum essenziale baptizatorum matrimonio adiectum, scilicet sacramentalitatem. Propterea eius coniugium irritum evadit non ob totalem simulationem seu ob defectum consensus, sed tantum ob simulationem partialem, i.e., ob exclusum elementum essenziale e baptizatorum matrimonio.

Simulatio totalis verificatur tantummodo in casu quo nubens in excludenda dignitate sacramentali, ipsum quoque matrimonium detrectare ac respuere intendit.” English translation in Wrenn, *Law Sections*, 69.

⁴⁴⁰ *Coram Ragni*, May 30, 1996: *Monitor Ecclesiasticus* 122 (1997) 396: “Cum argumentum fit de exclusa sacramentalitate in actu manifestationis matrimonialis consensus, idem ponitur caput nullitatis quod innuitur in §2 can. 1101, qui statuit ‘invalide contrahit alterutra vel utraque parts,’ quae ‘positivo voluntatis actu excludit matrimonii essenziale aliquod elementum.’...Quapropter...per positivum voluntatis actum, est eo ipso respuere seu una

The separation of contract and sacrament enables the concept of sacramental automaticism to be revisited, suggesting that, for the baptized non-believer, a new approach is needed.

The sacrament of marriage incorporates the totality of marriage into the sacramental sphere. In the sacrament the various dimensions of marriage are not denied but rather are elevated and unified into so great a sacrament. However, the reverse equation is less certain. While a true sacrament permeates and includes the marriage contract, it does not seem a necessary consequence that every valid, natural marriage contract need be a sacrament.⁴⁴¹

It remains that “[b]aptism is not an efficient cause of marriage but a necessary prerequisite so that the contract may become a sacrament.”⁴⁴² Faith is not a motive, but rather an element specifying the object of consent, and, consequently, may determine the will. Marriage is a personal and interpersonal act. If in the past sacrament and contract were synonymous, there are increasing arguments to separate them, based on an inability to maintain the presumption of canon 1055, §2.⁴⁴³

The ongoing discussion permits two frames of reference, each, however, focusing on sacramentality as essential, in some way, to the validity of Christian marriage. The dialogue draws on *theological* and *canonical* tradition as it attempts to uphold the sanctity of Christian marriage.

simul excludere matrimonium et sacramentum, quia ille actus nullum reddit consensum matrimoniale, atque nullum efficit totum coniugii negotium eodemque modo quo totum matrimonium destruit exclusio bonorum fidei, prolis, indissolubilitas.” English translation in Renken, 35. Emphasis in original.

⁴⁴¹ Finn, 109.

⁴⁴² Faltin, 92.

⁴⁴³ See also Giuseppe Versaldi, “Exclusio sacramentalitatis matrimonii ex parte baptizatorum non credentium: error vel potius simulatio?” *Periodica* 79 (1990) 421-440; Antoni Stankiewicz, “Errore circa le proprietà e la dignità del matrimonio,” *Appolinaris* 57 (1984) 547-565.

Chapter 4

4.1 Inability to maintain the presumption *facere quod facit Ecclesia*

A *presumption* “is a probable conjecture about an uncertain matter.”⁴⁴⁴ The legal presumption in marriage regarding intention and words is found in canon 1101, §1. This presumption yields to contrary proof, but the burden rests on the one who claims there is a discrepancy between words and intentions which were expressed in consent.

Canon 1101 presumes agreement between words and intention. It is, however, sufficient that a marriage is willed implicitly within the framework proposed by the Church.⁴⁴⁵ As observed in *Familiaris consortio*, however, some engaged couples ask to be married in church for motives other than religious.

A genuine lack of the intention of at least implicitly giving consent ‘to what the church intends to do’ in celebrating marriage undoubtedly must be recognized in the person who, steadfastly rejecting all faith, does not intend by means of the religious celebration of marriage the essential business of marriage. For such a person not only shows no trace of faith and of desire for grace, but even, at least implicitly, rejects and spurns the permanent society between man and woman ordered toward the procreation of children.⁴⁴⁶

⁴⁴⁴ Canon 1584 - “Praesumptio est rei incertae probabilis coniectura.”

⁴⁴⁵ Pospishil, 348.

⁴⁴⁶ *Coram* Stankiewicz, April 29, 1982: *RRD* 74:248: “Hic vero rectae intentionis defectus saltem implicite consentiendi ei quod Ecclesia facere intendat in celebratione nuptiarum, procul dubio agnoscendus est in eo, qui, omnem fidem pertinaciter respuens, nec identitatem negotii matrimonialis per religiosam celebrationem matrimonii assequi intendat. Is enim non solum nullum fidei vestigium ac gratiae desiderium praestat, sed etiam, saltem implicite, societatem permanentem inter virum et mulierem ad filios procreandos ordinatam (can. 1082, §1) reicit eamque aspernatur.” English translation in Renken, 34.

This challenge to the traditional approach, propelled by the Second Vatican Council, arises from changing views in a modern world. It is becoming apparent that, in the contemporary historical situation, certain things cannot be taken for granted as they once were.⁴⁴⁷

At one time it was reasonable to hold (presume) that Christians, living in a relatively homogenous society, possessed a minimal disposition to believe, and indeed would have the minimum intention to contract marriage doing what the Church intends to do; but today this assumption does not seem to be valid any more; therefore it would not be possible to easily suppose a consequent intention *in which faith is a fundamental presupposition*.⁴⁴⁸

The consistent and rapid growth of a secular approach to marriage indeed becomes problematic to the issue of sacramentality. Traditional jurisprudence has maintained baptism as the foundation for sacramental marriage, as it has for sacrament and contract being inseparable, which also has implications for sacramentality being the essence or an essential property of marriage. Several of these traditional approaches have been challenged.

There is an inability to maintain the presumption that people intend *facere quod facit Ecclesia*. The increasing disinterest in the Catholic faith among young people who have been brought up as Catholics, or even educated in Catholic schools, is tending toward confusion about the religious aspect of marriage in an increasingly secular world. In light of baptized non-believers, the issue is exacerbated, for the issue has theological and juridical implications, not to ignore implications in the pastoral realm.

⁴⁴⁷ Ashdowne, 302.

⁴⁴⁸ Pompedda, 53-54. Emphasis in original.

A person who wants to contract marriage must will its substance Even rejection by omission of that which should have been exchanged through a human act constitutes a positive act of the will, that is to say, exclusion by omission, known as implicit or virtual exclusion.⁴⁴⁹

But just as baptism does not prevent a person from proceeding with a conscious human act opposed to the faith, neither does it “impede a baptized person from deliberately choosing a covenant which is not a sacrament and, consequently, not marriage itself.”⁴⁵⁰

With cultural changes in the world, people are conscious of human dignity and “are demanding that they should exercise fully their own judgment and responsible freedom”⁴⁵¹ as it concerns the practice of religion,⁴⁵² and their human right to marriage.⁴⁵³ Such people at times “clearly understand when they choose marriage and reject the sacrament.”⁴⁵⁴ Because of a cultural milieu and a pervading dependence on the secular nature of marriage, a person “divests the institution [of marriage] of its sacred and divine link . . . through a personal decision” and “does not admit anything . . . [except] the human aspect of the contract.”⁴⁵⁵ Those who lack

⁴⁴⁹ *Coram Serrano*, 435: “Quicumque contractum vult, necesse est ut eiusdem substantiam velit Actus positivus tunc in eo esset ut ‘humana voluntate’ detraheretur ex omissione id quod ‘humana agendi ratione’ praestandum erat.” English translation in Mendonça, 10.

⁴⁵⁰ Mendonça, 12.

⁴⁵¹ *Ibid.*, 14.

⁴⁵² *Dignitatis humanae*, 929-930.

⁴⁵³ *Gaudium et spes*, 87.

⁴⁵⁴ Mendonça, 12.

⁴⁵⁵ *Ibid.*, 16.

formative grounding in faith easily confuse the secular institution with the sacred.

For a person who firmly . . . rejects any dependence on God, it is difficult to form . . . the intention of entering a true marriage with at least the implicit intention of doing what the Church does If an adherent of systematic atheism, because of social reasons or pressures . . . from family members or from the other spouse, celebrates a religious marriage, even if only *pro forma*, the question arises whether the consent . . . has been sufficient to establish a valid marriage.⁴⁵⁶

The cause of simulation may be found “in the hatred firmly rooted in the minds of the parties toward religious marriage itself, whose sacramentality and essential properties are despised and rejected.”⁴⁵⁷ A deep-seated hatred exerts its influence “on the conscious mind, leading to explicit rejection of marriage as understood according to the teaching of the Church.”⁴⁵⁸

Valid baptism is a requirement for marriage to be sacramental. On a practical level, there is an issue of the role of grace in a baptized person without faith, or without a sacramental intention. This situation has been addressed by asserting that a person with a lack or absence of faith may

⁴⁵⁶ *Coram* Stankiewicz, April 25, 1991, 282-283: “At qui ob firmam adhaesionem atheismo systematico qualemcumque a Deo dependentiam respuit, difficulter potest rectam efformare intentionem, verum scilicet matrimonium ineundi cum implicita saltem intentione faciendi quod facit Ecclesia, quoniam, praeter repudiationem dignitatis sacramentalis, etiam contra viculum indissolubile, libertatem personalem astringens, potissimum repugnabit.

Quodsi assecla atheismi huiusmodi propter causas sociales, aut ob instantias familiarium vel compartis, fideo catholicae forte adhaerentium, matrimonium religiosum etsi pro forma tantum celebraverit, post coniugii naufragium quaeri solet, utrum consensus sub influxu placitorum erroris efformatus sufficiens fuerit ad validum constituendum matrimonium necne.” English Translation in Mendonça, 24.

⁴⁵⁷ *Coram* Bruno, 171: “in odio firmiter in partium animo radicato adversus ipsum matrimonium religiosum, cuius sacramentalitas et essentialia proprietates spernuntur ac reiciuntur.” English translation in Mendonça, 24.

⁴⁵⁸ Mendonça, 35.

either explicitly or implicitly exclude the sacramental aspect of marriage, causing its invalidity. It is an intention against sacramentality and not the faith of the person that has caused the invalidity. In other cases, the lack of, absence of, or hatred toward the faith may cause a deep-seated error which determines the will, and, in turn, leads to the exclusion of sacramentality as an essential element or property of marriage.

All these illustrations present the complex nature of the issue of faith and the exclusion of sacramentality in marriage. The Roman Rota has provided an opportunity to challenge the presumption that non-believers intend *facere quod facit Ecclesia*, although the present practice is not necessarily consistent among judges. With traditional foundations giving way, the issue continues to develop.

4.2 Proving the Intention against Sacramentality

4.2.1 The Framework of Traditional Proofs

It cannot be forgotten that “the intention and the faith of a person are distinct realities, but at the same time tightly joined; and the intention derives from the faith.”⁴⁵⁹ When the minister or recipient of the sacrament of marriage intends to exclude sacramentality in marriage, traditional proofs⁴⁶⁰ are engaged that must clearly overturn the presumption of canon 1101.⁴⁶¹

⁴⁵⁹ Pompedda, 57.

⁴⁶⁰ *Simulation* is proven by the confession of the simulator, the simulator’s motive, and the circumstances. See *coram* Burke, December 15, 1994: *RRD* 86: 722; *coram* Faltin, April 16, 1997: *Monitor Ecclesiasticus* 123 (1998) 255; Versaldi, 438-439.

⁴⁶¹ The Roman Rota has consistently seen the properties referred to in c. 1099 about which people may be error as also being capable of being excluded. For example, see *coram* Fiori, July 17, 1973: *RRD* 65: 592-593; *coram* De Jorio, April 23, 1975: *RRD* 67: 353-355; *coram* Caberletti, November 27, 1998: *RDD* 90: 811-816.

Simulation requires that an external expression be contrary to an internal intention.

Nowhere is it prescribed that, for the validity of the marriage, the contracting party ought to expressly accept the properties, the elements, or the goods of marriage, but for simulation to exist it is required by the law that the act should be knowingly posited. Since marriage is constituted by consent, for its external manifestation to be overturned, simulation must be proven with a human act contrary to the external expression.⁴⁶²

However, by its very nature, “the proof of simulation is difficult – first because it concerns the internal act, known directly only by God . . . and second because the presumption . . . must be overcome.”⁴⁶³ The confession, motive, and circumstances must demonstrate incongruity between expression and intention.

A disparity between the external act and the internal act is not therefore to be presumed but must be proved. Proof of discordance may be admitted either for the sake of the public good or at the request of the parties. When it is not proved, an effective intention indubitably prevails.⁴⁶⁴

⁴⁶² *Coram* Giannecchini, December 18, 1996: *Monitor Ecclesiasticus* 123 (1998) 565: “Ad validitatem coniugii ut contrahens proprietates, elementa aut bona matrimonii expresse acceptet nullibi praescribitur; e contra, ut habeatur simulatio a lege praetenditur actus scienter positus. Si enim consensu matrimonium constituitur et simulatio constare debet actu humano et externe dictis contrario, ut destruat extrinseca manifestatio.” English translation in Renken, 4.

⁴⁶³ *Coram* Giannecchini, January 23, 1996: *Monitor Ecclesiasticus* 123 (1998) 421: “Probatio simulationis natura sua difficilis exstat, primo quia agitur de actu interno praetensi simulans, directe soli Deo noto, secundo quia superanda est praesumptio.” English translation in Renken, 5.

⁴⁶⁴ *Coram* Faltin, January 18, 1988: *RRD* 80:5: “Disformitas, igitur, iter actum externum et actum internum non praesumitur, sed probari debet. Discordantiae probatio admittitur ob bonum publicum vel ad instantiam partium. Qua invicte probata, indubitanter praevallet intentio effectiva habita.” English translation in Wrenn, *Law Sections*, 52.

The judge could advance in two ways. If the case appears to be an *exclusion of an essential element*, then the situation of canon 1101, §2 may be applied. If, however, the case appears to be a *defect of intention to receive the sacrament*, then canons 1099 and 1055, §2 may prove more suitable. Either possibility has an effect on sacramentality. When faith is rejected, the intention of the person, viewed in relation to matrimonial consent, is compromised, and the declaration of nullity proceeds.

4.2.2 Proving Positive Exclusion in the Baptized Non-Believer

To overturn the presumption of canon 1101, certain factors must be considered.

[I]n the case of the nullity of a marriage accused on account of positively and knowingly excluding sacramental dignity, the validity or invalidity of matrimonial consent is determined by the same principles and proofs as for the simulation of consent or the exclusion of an essential element of matrimony.⁴⁶⁵

Proof of the positive exclusion of the sacramentality of marriage encompasses

the judicial and extrajudicial confessions of the simulator(s), confirmed by circumstances antecedent, concomitant and subsequent to the celebration, *validated by witnesses worthy of trust and from a non-suspect time, and based on proportionate reasons to simulate.*⁴⁶⁶

⁴⁶⁵ *Coram* Boccafolo, 89: “In casu, igitur, nullitatis matrimonii accusati ob dignitatem sacramentalem positive et scierer exclusam, validitas, vel minus, consensus matrimonialis determinatur eisdem principiis atque probationibus ac de simulatione consensus seu de elemento essentiali matrimonii excuso.” English translation in Renken, 36.

⁴⁶⁶ *Coram* Ragni, 396: “Confessiones iudiciales et extraiudiciales simulantis, confirmatas antecedentibus concomitantibus subsequentibus celebrationem circumstantiis, validitas

The religious background and influences must be examined, particularly in the case of the baptized non-believer where there may or may not be an actual absence of faith. Careful consideration of the reasons for this deficiency should be noted, especially if the person had previously practiced religion and then ceased, or if intense animosity against the Church or religion is present.

Therefore, since we are dealing here with the intention in giving consent, it is most certain that “in this investigation the external behavior of the one entering marriage is carrying out the rite properly . . . and with all the respect due to it is not a proof of his/her right intention. One cannot even make reference to the baptism received a long time before as proof of his/her right intention when judging about the consent of the person being married, because baptism is not the ‘efficient cause’ of marriage, but [only] a necessary prerequisite for the contract to become a sacrament.”

From these principles quoted above, we can logically deduce the doctrine and jurisprudence of this apostolic tribunal that, if on the one hand it is true that two baptized persons cannot enter a valid contract without making it a sacrament at the same time, then there follows: any baptized person who excludes the sacrament, or better still, the sacramental dignity of marriage, through a positive act of the will, by the same token excludes the contract as such and therefore marriage itself. Concerning this point, K. Lehman, member of the International Theological Commission, points out that in dealing with cases of this nature, “. . . the object to be evaluated and studied . . . is the very causes that induced him/her to rebel against divine authority itself and, as a consequence, to refuse the objective truth in manifesting his/her consent and in acting according to his/her own deep-rooted subjective convictions This must be verified ‘in each single case.’”⁴⁶⁷

testimoniis fide dignis atque de tempore non suspecto necnon fundatas super proportionata causa simulandi.” English translation in Renken, 36. Emphasis in original.

⁴⁶⁷ *Coram Faltin*, April 16, 1997: *Monitor Ecclesiasticus* 123 (1998) 257-259: “Cum, igitur, est quaestio intentionis in eliciendo consensu, certo certius ‘in questa indagine conoscitiva il comportamento esterno del nubente nel compiere il rito correttamente . . . e con tutto il

Subjective convictions can be those elements of religious formation, or lack thereof. If the religious background is ill formed, deficient, or in error, these should be entered into the evidentiary process, in each case.

To prove the simulation of consent in single cases . . . one must examine and judge the character of the person contracting the marriage, his customs, his religious education, and the characterological features of his personality in such a way that the consideration of the circumstances are not overlooked . . . Consequently, simulation does injury to the justice, truth, and holiness of marriage and detracts from the dignity of the sacrament.⁴⁶⁸

The overall character of a person who is a baptized non-believer may help ascertain the mental processes that shaped the consideration that person has given to marriage. This background may also provide a basis for an error about sacramentality of Christian marriage and whether this error was so

rispetto dovuto ad esso, non è una prova della rettitudine della sua intenzione. E neppure il battesimo, ricevuto tanto tempo fa, nella valutazione del consenso del nubente, può essere invocato come prova della sua retta intenzione, perché il battesimo non è la 'causa efficiens' del matrimonio ma un prerequisite necessario affinché il contratto possa divenire sacramento.'

Ex supra allatis principiis, doctrinae atque H.A.T. iurisprudentiae logice deduci posse videtur, quod si verum est, non posse inter baptizatos validum contractum consistere, quin sit eo ipso sacramentum (can. 1055 §2), sequitur: Qui, inter baptizatos, positivo voluntatis actu, excludit sacramentum, seu melius sacramentalem matrimonii dignitatem, eo ipso excludit contractum, ideoque matrimonium ipsum. Ad rem K. Lehman, membrum Commissionis Theologicae Internationalis, adnotat quod in huiusmodi causis pertractandis: ' . . . l'oggetto de valutazione e di indagine . . . sono le vere cause che (nubente) hanno indotto a ribellarsi alla stessa autorità divina e, quindi, a rifiutare la verità oggettiva nel manifestare il consenso e nell'agire secondo le proprie radicate convinzioni soggettive.' . . . Quod videndum est 'in singulis casibus.'" English translation in Renken, 36.

⁴⁶⁸ *Coram Faltin*, April 9, 1997: *Monitor Ecclesiasticus* 123 (1998) 461: "Ad probandam consensus simulationem in singulis casibus, praeter praesumptiones aliaque indicia et adminicula, una cum contrahentis indole, institutione atque religiosa educatione eiusve personalitatis connotationibus characteralibus, et ita porro, non praetermissa . . . circumstantiarum consideratione...[C]onsequenter, laedit iustitiam et veritatem atque sacramenti matrimonii sanctitatem eiusve sacramentalem dignitatem detractat." English translation in Renken, 7.

deeply rooted that it influenced the will. Especially in the case of the baptized non-believer, the question of marriage remains if it was known that the marriage would be necessarily sacramental.

There, too, must be a reason for simulation. Many go through the external ritual because of parental influence, societal pressures, or simply because that is what people in a particular region do. Such personal issues as denying the existence of God because of some tragedy, adherence to divorce because of secular society, or non-Christian beliefs are single case problems and must be examined individually to glean how they influence the will, and thus the marriage itself,⁴⁶⁹ because in those cases the object of consent is not sacramental marriage.

When it is a matter of partial simulation, that is, on account of the exclusion of some essential element or property, matrimonial will is present in some way, and is directed at least at some object, but the object is not canonical marriage, and, therefore, the act of the will is of itself rendered void (cfr. c. 1057, §2, 1101, § 2). For this reason it is of the utmost importance to determine the object of the will.⁴⁷⁰

The object of consent is not canonical marriage, for the baptized non-believer has no concept of what that is. Another way to probe this aspect of object is to say that

one who totally simulates has no intention of contracting

⁴⁶⁹ *Coram* Stankiewicz, 282-283.

⁴⁷⁰ *Coram* Giannecchini, January 23, 1996, 417: "Cum agitur de simulatione partiali, ob exclusionem nempe alicuius elementi vel proprietatis essentialis, voluntas aliquo modo matrimonialis adest, quae tamen dumtaxat in aliquod obiectum dirigitur, quod non est matrimonium canonicum, et ideo per se ipsam exinanitur (cfr. can. 1057, §2 coll. can. 1101, §2). Hunc in finem multum praestat obiectum voluntatis determinare." English translation in Renken, 5.

marriage; however, one who excludes some *bonum*, to the contrary, wishes to contract marriage but intends it according to his/her own conception — that is, the object is something other than the object to which, by its nature, matrimonial consent is offered.⁴⁷¹

Intention is focused in light of faith. Sacramental marriage is not chosen; consent is offered to an object that does not involve sacramentality.

4.3 Surveys

Two surveys were employed to demonstrate the inability to maintain the presumption that people intend *facere quod facit Ecclesia* when they marry.

- The *CARA Survey* was commissioned by the United States Conference of Catholic Bishops (USCCB) in April 2007, asking the Center for Applied Research in Apostolate (CARA) at Georgetown University to carry out a general survey of the adult population of US Catholics (n = 1,008) on issues regarding the sacrament of marriage.⁴⁷²
- The second survey, *The Sacramentality of Marriage*, was carried out locally and employed questions overlapping with the *CARA Survey* with specific questions on *sacramentality* as a divergent point (n =

⁴⁷¹ *Coram Palestro*, May 27, 1992: RRD 84: 281: “Qui totaliter simulat nullam habet intentionem contrahendi matrimonium, qui vero aliquod excludit bonum vult, e contra, matrimonium contrahere, sed idem intendit utpote a se conceptum, nempe eius obiectum est aliquid aliud ab obiecto in quod, natura sua, matrimonialis consensus fertur.” English translation in Renken, 5.

⁴⁷² Mark M. Gray, Paul M. Perl, and Tricia C. Bruce, *Marriage in the Catholic Church: A Survey of U.S. Catholics* (Washington, DC: Center for Applied Research in the Apostolate [CARA – Georgetown University], October 2007, downloaded May 15, 2008, from <http://cara.georgetown.edu/MarriageReport.pdf>, hereafter *CARA Survey*. The *CARA Survey* was carried out in June 2007 with 1367 adult self-identified Catholics by internet poll. The *CARA Survey* has a margin of sampling error of $\pm 3.1\%$ of adult Catholics over 18 years of age in the United States.

157).⁴⁷³

4.3.1 The *CARA Survey*

4.3.1.1 Principle areas of interest

Not all areas covered by the *CARA Survey* are useful in the study of sacramentality. Specifically, however, statistics about the Church's teachings on marriage (including its sacramentality) and views about marriage (including family of origin, faith formation, and the Catholic Church's understanding of marriage as different from marital concepts in civil law or in other religions) are essential in drawing conclusion.

4.3.1.2 Analysis of *CARA Survey* data

4.3.1.2.1 *Familiarity with Catholic Teaching on Marriage*

About 34% of respondents described themselves as 'very familiar' with the Catholic Church's teaching on marriage, with an additional 37% saying they are at least somewhat familiar. When examined by generation, 40% of pre-Vatican II respondents expressing that they are 'very familiar' with the Catholic Church's teaching on marriage, with numbers being lesser for those who are Vatican II (30%), post-Vatican II (35%), and Millennial (31%). When compared by educational background, for those with a four-year college degree, 48% said they were 'very familiar', compared with only 29% who had lesser education.⁴⁷⁴ With this background, the following specific points of the

⁴⁷³ Father Glen J. Pothier, Survey – *The Sacramentality of Marriage*, conducted January 2008-April 2008, hereafter *Sacramentality Survey*.

⁴⁷⁴ The generational divisions used in the *CARA Survey* are related to the age of respondents at the time of the collection of data, June 2007: *Pre-Vatican II generation* – 65 and older; *Vatican*

teaching of marriage can be examined.⁴⁷⁵

4.3.1.2.2 *Marriage between two baptized persons is a sacrament*

Almost 30% of respondents had not heard this teaching of the Catholic Church. This is a significant number, given that it means that nearly one-third of respondents is unaware of this basic teaching.⁴⁷⁶ 85% of those attending Mass weekly have heard of this teaching of the Catholic Church. Only 61% of those who rarely or never attend Mass have heard of this teaching.⁴⁷⁷

4.3.1.2.3 *Marriage between a Catholic and a non-Christian is a sacrament*

30% of respondents had understood that this was a teaching of the Catholic Church. Furthermore, when asked for the *veracity* of this statement (that marriage between a Catholic and a non-Christian is a sacrament), a substantial 82% affirmed that this is an *accurate* statement.⁴⁷⁸

A more considerable amount is present in the group that says that they are 'very familiar' with the teachings of Catholic Church. Of the members of this group, 39% say that the statement marriage between a

II generation – 47-64; Post-Vatican II generation – 26-46; and Millennial generation – 18-25. A broader description and explanation can be found in CARA Survey, p. 14.

⁴⁷⁵ *CARA Survey*, p. 34.

⁴⁷⁶ *Ibid.*, 136.

⁴⁷⁷ *Ibid.*, 42.

⁴⁷⁸ *Ibid.*, 137-138.

Catholic and a non-Christian is a sacrament is accurate.⁴⁷⁹

4.3.1.2.4 *Influences on One's View of Marriage*

When asked about the influences that formed a view of marriage, 37% stated that their family background⁴⁸⁰ most strongly influenced their view of marriage, while 29% stated that their Catholic faith 'very much' influenced their view. Other significant influences were legal requirements in the United States (9%), popular culture (7%), and non-Catholic faith traditions (6%). Effectively, respondents expressed that after family background/experience, their faith was the strongest influence.⁴⁸¹

4.3.1.2.5 *Distinctiveness of Marriage in the Catholic Church*

The *CARA Survey* asked the question "How is marriage in the Catholic Church distinctive or different from the concepts of marriage in civil law, secularly society, or other faith traditions?" and provided space for a *written* response.⁴⁸² Of the total number of respondents, 79% participated in this section. Of that number (n = 798), 14% stated that they did not know how marriage according to the mind of the Catholic Church was distinct from other concepts of marriage.

⁴⁷⁹ *Ibid.*, 43.

⁴⁸⁰ See Robert T. Michael and Nancy Brandon Tuma, "Entry Into Marriage and Parenthood by Young Men and Women: The Influence of Family Background," in *Demography*, Vol 22 (1985) 515-544.

⁴⁸¹ *Cara Survey.*, 67.

⁴⁸² *Ibid.*, 112.

The written responses were varied, but poignant. Note the following:

4.3.1.2.5.1 *Sacramental nature of marriage in the Catholic Church:*
“Sacrament brings with it additional blessings and supports based on our faith.” “Marriage is a sacrament that was instituted by Jesus.” “A sacramental marriage is eternal. As a Sacrament, it presents a distinct and special value to the life of two who become ‘one’. ... Civil law unions are valid but absent of the Sacrament and blessing from God in the Catholic ceremony.”⁴⁸³

4.3.1.2.5.2 *The presence of God at the wedding and in the marriage:*
“Marriage is a partnership between God and one man and one woman. ... I believe that marriage in the Catholic Church is a petition for God’s blessing on the marriage. ... Feels more official, real and sacred.” “It is similar to marrying in other churches – it seems to mean more than a civil ceremony.” “It’s more meaningful and spiritual. Marriage in the Church has more meaning. It is beyond just two people.” “With the Catholic Church, marriage means more. Civil law doesn’t account for the spiritual aspects of the relationship.”⁴⁸⁴

4.3.1.2.5.3 *A stronger, long-lasting commitment between spouses:* “I think we take our vows more seriously being married in the Church.” “It shows a deeper commitment than if you were to

⁴⁸³ *Ibid.*, 113.

⁴⁸⁴ *Ibid.*, 114.

get a civil marriage only.” “There is a great dedication to the lifelong commitment.” “Catholic couples commitment to a covenant when they get married.”⁴⁸⁵

4.3.1.2.5.4 *Limitations on divorce and remarriage:* “I don’t know if there is a difference except that the Catholic Church does not believe in divorce.”⁴⁸⁶

4.3.1.2.5.5 *More rules and regulations:* “Catholic expectations for marriage are too strict and not relevant to today’s society.” “It’s very different, by the civil law there seemed to be more freedom.” “Marriage in the Catholic Church is much more strict and not very open. It is very outdated.” “Seems like Catholicism puts a lot of rules and restrictions on marriage.” “The Catholic Church has too many rules.” “The Catholic Church makes you jump through too many hoops in order to get married in their Church.” “They’ve stood their ground on marriage, but I don’t agree with some of their rules.” “Catholic marriage rules are very conservative compared to most societal and civil concepts.” “The Catholic Church sets rules for marriage that aren’t necessary for a happy committed marriage. ... It is defined more by rules and requirements than other marital institutions.” “I feel that marriage within the Catholic Church places too much responsibility on people.”⁴⁸⁷

⁴⁸⁵ *Ibid.*, 115.

⁴⁸⁶ *Ibid.*, 116.

⁴⁸⁷ *Ibid.*, 117-118.

4.3.1.2.5.6 *There are no distinguishing characteristics:* “About the same. I don’t see the difference distinctive concepts in the churches, because the people do the same thing.” “No real difference – It’s people who are shallow or strong that matter.” “Not at all different. I thought it was different, but eventually it is just a contract that can be voided. In this day, it is basically the same.” “Married couples do not take marriage seriously. It all boils down to being the same thing.” “No longer distinctive. All the same since divorce is granted for whatever reason.”⁴⁸⁸

4.3.1.2.5.7 *Less common theses among other responses:* “Outdated notions of marriage (1950’s ideals of marriage, not with the times, not open to new ideas).”⁴⁸⁹

4.3.1.2.6 *Marriage is whatever two people want it to be*

Effectively, 56% ‘agree strongly’ or ‘agreed somewhat’ that marriage is whatever a couple wishes it to be. By generation, 69% of Millennial respondents ‘agree strongly’ or ‘agree somewhat’ that marriage is whatever a couple wants it to be, compared with 54% of pre-Vatican II respondents, 57% of Vatican II respondents, and 53% of post-Vatican II respondents.⁴⁹⁰

⁴⁸⁸ *Ibid.*, 118-119.

⁴⁸⁹ *Ibid.*, 119.

⁴⁹⁰ *Ibid.*, 65; 140.

4.3.1.2.7 *Marriage is an outdated institution*

Interestingly, only 10% of respondents felt that marriage in the Catholic Church is an outdated institution. However, the statistical data yields an additional perspective. Although 50% strongly disagree that it is outdated, that also suggest that 50% feel that there are inadequacies present.⁴⁹¹ When viewed by marital status, 41% of married persons feel that it is outdated, while 59% of divorced and remarried people feel that Catholic marriage is an outdated institution.⁴⁹²

4.3.1.3 Influence and Use of Data

The statistical analysis of the *CARA Survey* is useful in showing trends among Catholics and baptized-Christians. For example, those who nurture their faith by attending Mass every week are six times more likely than those who rarely or never attend Mass to report that their views of marriage were shaped by their faith.⁴⁹³ 70% of Catholics describe themselves as being at least somewhat familiar with Catholic teaching on marriage. 71% of Catholics admit to having heard that marriage between two baptized persons is a sacrament; yet, 30% have also heard that marriage between a Catholic and a non-Christian is also a sacrament, with 82% considering this statement to be accurate. If 29% of the respondents have not heard that marriage between the baptized is a sacrament, then the presumption that people marry according to

⁴⁹¹ *Ibid.*, 82; 140.

⁴⁹² *Ibid.*, 120. In the *CARA Survey*, this is expressed negatively.

⁴⁹³ *Ibid.*, 2.

the mind of the Church needs to be revisited.⁴⁹⁴ This is even more significant when one compares the 29% of respondents to the 25% who hold that marriage of Catholic with a non-Christian is also a sacrament.⁴⁹⁵

Family background, popular culture, the media and ‘learned’ attitudes have an effect on individual belief structures. Such strong influences can cause an error in a person’s understanding of marriage, and as such, upon marriage, that person chooses a reality different than what the Church understands marriage to be.⁴⁹⁶ The *CARA Survey* clearly shows that if a person’s family of origin was dysfunctional, non-traditional, or lacked religious upbringing, there could be a significant negative influence on that person’s view of marriage.

With regard to indifferentism, the *CARA Survey* reveals a pervasive undermining of the Church’s understanding of marriage. 14% were unsure how marriage in the Catholic Church was distinctive from other religious traditions. Some of the written responses show that there is an understanding that marriage retains an element of the sacred, and thus differentiates it from civil marriage, and that God blesses a Catholic marriage. There is a perception that the Catholic Church’s teachings on marriage are too strict for society today, and that marriage in the Church is focused too much on rules.

⁴⁹⁴ *Ibid.*, 138. The *CARA Survey* data shows that of the total (n=1008), 710 had heard that marriage between the baptized is a sacrament. Of that number (n=710), 60 people or 9% (or 6% of ALL respondents) felt that the statement was *inaccurate*.

⁴⁹⁵ *Ibid.*, 138. The *CARA Survey* data shows that of the total (n=1008), 304 had heard that marriage between a Catholic and a non-Christian is a sacrament. Of that number (n=304), 248 people, or 25% of ALL respondents, believed that this was *accurate*.

⁴⁹⁶ Here one needs only refer to c. 1099 on error of unity, indissolubility, and sacramental dignity.

4.4 Marriage according to the Mind of the Church (*mens Ecclesiae*)

Marriage according to the mind of the Church has many contributing aspects. To understand the relevance of statistical data, one must know the mind of the Church and what it expects of his adherents. The presumption of the *CIC/83* is that Catholics, and by extension those who are affected by the teachings and ecclesiastical discipline of the Catholic Church,⁴⁹⁷ have been catechized in theology and instructed, albeit cursorily, in canon law.⁴⁹⁸

Preceding the marriage, sufficient preparation must be sought. This cannot be merely a set of requisites that the intended partners must embrace as a purely legal requirement, but rather a framework of belief regarding the nature of the sacrament.⁴⁹⁹ The *CIC/83* addresses preparation in several

⁴⁹⁷ For purposes of marriage law, non-Catholics, baptized or non-baptized, are affected by canon law with respect to impediments (cc. 1083-1094), the canonical form of marriage (cc. 1108-1123), and marriages between Catholics and other baptized persons [mixed marriages] (cc. 1124-1129), among others. Those who have left communion with the Catholic Church by a formal act are not bound to the canonical form of marriage (c. 1117), mixed marriage (c. 1124), or the impediment of disparity of cult (c. 1086, §1).

⁴⁹⁸ The *CIC/83* summarizes this in c. 748, §1: “All persons are bound to seek the truth in those things which regard God and his Church [,] and by virtue of divine law are bound by the obligation and possess the right of embracing and observing the truth which they have come to know” [“Omnes homines veritatem in iis, quae Deum eiusque Ecclesiam respiciunt, quaerere tenentur eamque cognitam amplectendi ac servandi obligatione vi legis divinae adstringuntur et iure gaudent.”] The *CIC/17* states that since “[t]he Church has the right and duty, independent of any civil power, of teaching all peoples evangelical doctrine, ... by divine law all are bound to embrace the Church of God and rightly to heed her truth” [“Ecclesiae, independente a qualibet civili potestate, ius est et officium gentes omnes evangelicam doctrinam docendi: hanc vero rite ediscere veramque Dei Ecclesiam amplecti omnes divina lege tenentur.”] Since the sacred canons seek to state Church teaching in a legal form, the consequence for members of the Catholic Church is that they are convicted in their faith.

⁴⁹⁹ In the Middle Ages, “legislation on marriage was often difficult to observe and [the Church recognized] that a careful balance must be maintained between the ideal and the possible. ... The tension between Christian ideals and day-to-day workability is most apparent among the laity themselves, who displayed a wide variety of responses to the Catholic ideal. On one extreme, it has been noted, many domestic arrangements among the poor were informal. The laity did not always agree with the Church’s definition of sexual

canons, but most importantly it stresses that such preparation is to have occurred not merely proximately to the marriage, but rather beginning with parents and progressing through to the wedding ceremony and beyond.⁵⁰⁰ The obligation for catechesis is incumbent upon the pastors of the Church and parents as a general right of the faithful,⁵⁰¹ and is a right for the laity:⁵⁰²

§1 Lay persons are bound by the obligation and possess the right to acquire knowledge of Christian doctrine appropriate to the capacity and condition of each in order for them to be able to live according to this doctrine, announce it themselves, defend it if necessary, and take their part in exercising the apostolate.

§2 They also possess the right to acquire that fuller knowledge of the sacred sciences which are taught in ecclesiastical universities and faculties or in institutes of religious sciences, by attending classes there and pursuing academic degrees.

Persons, therefore, are required to marry according to the mind of the Church, *facere quod facit Ecclesia*. Pastors of souls⁵⁰³ are to instruct the

morality. ... Many marriages continued to be formed with no intention of being solemnized." See Norman Tanner and Sethina Watson, "Least of the laity: the minimum requirement for a medieval Christian," *Journal of Medieval History* 32 (2006) 411-412.

⁵⁰⁰ Cf. c. 1063, 1^o-4^o. The *CIC/17* stated this more succinctly, but directly mentioned the sacrament of marriage itself in c. 1033: "A pastor shall not omit, according to the varying conditions of persons, to instruct spouses on the sanctity of the sacrament of marriage and on the mutual obligations of spouses and of parents toward children" ["Ne omittat parochus, secundum diversam personarum conditionem, sponso docere sanctitatem sacramenti matrimonii, mutuas coniugum obligationes et obligationes parentum erga prolem."]

⁵⁰¹ Cf. cc. 213, 217 ([217]"the Christian faithful have right to a Christian education by which they are to be instructed properly to strive for the maturity of the human person and at the same time to know and live the mystery of salvation" ["Christifideles ... ius habent ad educationem christianam, qua ad maturitatem humanae personae prosequendam atque simul ad mysterium salutis cognoscendum et vivendum rite instruuntur."])

⁵⁰² See c. 229, §§1-2.

⁵⁰³ Although the pastors of souls have immediate contact with the parties, "the conference of bishops is to establish norms about the examination of spouses" (c. 1067). See National

Christian faithful “about the meaning of Christian marriage and about the function of Christian spouses and parents,”⁵⁰⁴ and to prepare couples “to enter marriage, which disposes the spouses to the holiness and duties of their new state.”⁵⁰⁵ This preparation culminates in the celebration of the union at the altar, which shows “that the spouses signify and share in the mystery of the unity and fruitful love between Christ and the Church.”⁵⁰⁶

The meaning of Christian marriage is a combination of essential properties and elements that are the subject of the traditional categories of intellect and will. At the moment of the exchange of consent, these should be known in the intellect: permanence, consortium, heterosexuality, procreation, sexual cooperation,⁵⁰⁷ the right to conjugal acts,⁵⁰⁸ perpetuity and exclusivity,⁵⁰⁹ unity, indissolubility, and sacramental dignity.⁵¹⁰ Each of these essential properties and elements should be intended and exchanged by words and/or actions at the time of consent.⁵¹¹

Marriage preparation acts as a means to an end. “So that that the ‘I Do’ of the spouses may be a free and responsible act and so that the marriage

Conference of Catholic Bishops, *Implementation of the 1983 Code of Canon Law: Complimentary Norms* (Washington, DC: United States Catholic Conference, 1991) 14.

⁵⁰⁴ c. 1063, 1°.

⁵⁰⁵ c. 1063, 2°.

⁵⁰⁶ c. 1063, 3°.

⁵⁰⁷ These five find their basis in c. 1096.

⁵⁰⁸ c. 1096.

⁵⁰⁹ c. 1134.

⁵¹⁰ c. 1099.

⁵¹¹ Cf. c. 1101, §§1-2.

covenant may have solid and lasting human and Christian foundations, preparation for marriage is of prime importance.”⁵¹² By comparing what the Church teaches and what the participants understand, it becomes increasingly clear that the presumption that people marriage according to the *mens Ecclesiae* cannot be maintained.

4.5 *Sacramentality Survey*

4.5.1 Principle areas of interest

Just as the *CARA Survey* did, the *Sacramentality Survey* addressed several principal areas of interest:

- faith and sacraments
- intention of the parties who are to enter into marriage
- societal influence on marriage
- positive/negative influences on faith and faith development because of familial issues/examples
- traditional concepts of sacraments

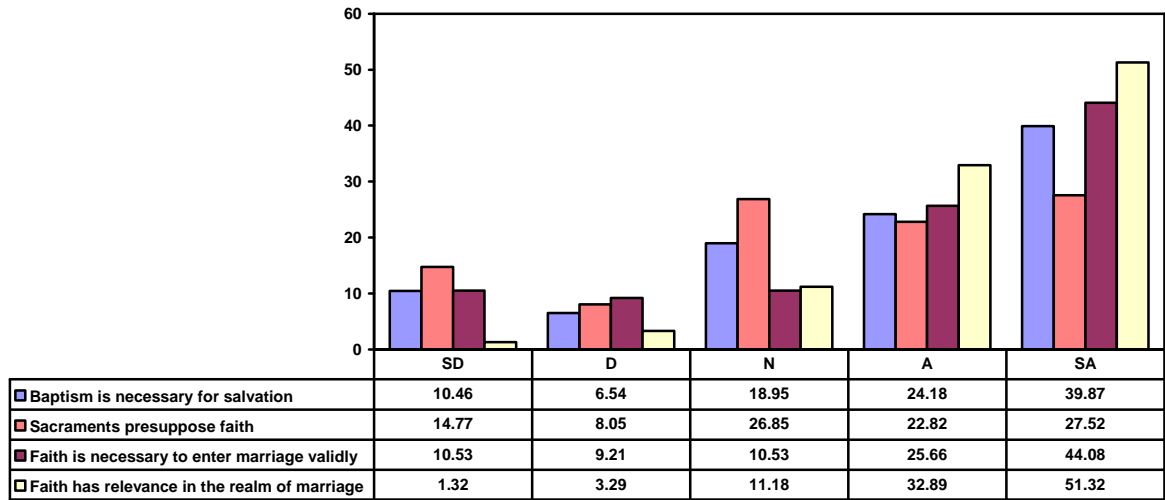
Each of these will be examined to determine what trends may be found in the statistical analyses of each of these areas.

4.5.1.2 *Faith and Sacraments*

As a total sample of responses to qq. 14, 15, 17, and 18, *Chart A* provides a description:

⁵¹² *Catechism of the Catholic Church*, n. 1632.

Chart A



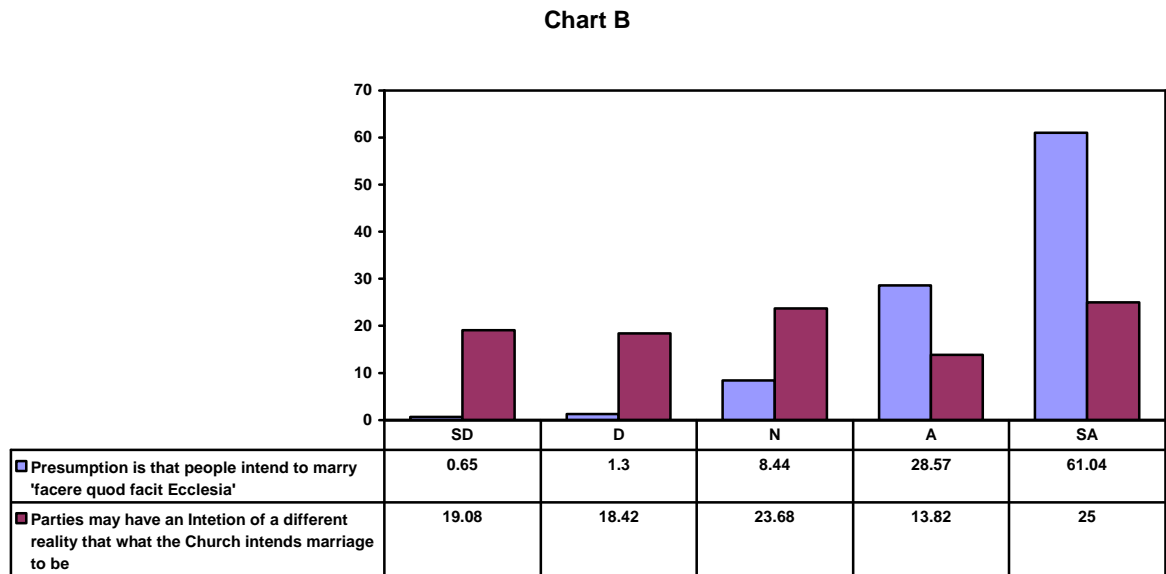
The Constitution *Sacrosanctum Concilium*⁵¹³ established that sacraments presuppose faith. This presupposition is at the center of the debate related to sacramentality in marriage. From the *Sacramentality Survey*, there is substantial agreement that faith is a criterion in the context of a sacramental marriage. Of the respondents (n = 149), 77% responded that they ‘strongly agree’, ‘agree’, or are ‘neutral’ with respect to this presupposition.⁵¹⁴ The general trend perceived from *Chart A* is that 80% (n=152) stated that faith is necessary to enter marriage validly, and a substantial amount, 95% (n=152), truly felt that faith has relevance in the realm of marriage. Such positive affirmations cast doubt on those Catholics who, with minimal faith, or were baptized as children/babies but not reared in the faith, choose to enter a sacramental marriage. They are baptized non-believers. Those of other Christian denominations who were baptized as children or had no faith elucidation also belong to this category.

⁵¹³ *Sacrosanctum Concilium*, 59.

⁵¹⁴ These three categories will be taken as a group for percentage purposes throughout this discussion.

4.5.1.3 *Intention in Marriage*

As a total sample of responses to qq. 20 and 22, *Chart B* provides a description:



The *CIC/83* states that the internal consent of the mind is presumed to conform to the words or the signs used in the celebration of a marriage. The parties are questioned during the exchange of consent in the marriage ceremony. To marry according to the *mens Ecclesiae* requires that the parties to a marriage *include* in that marriage the essential elements and properties of marriage.⁵¹⁵ Additionally, one may be in *error iuris*. When, according to c. 1099, such error *determines the will*, the matrimonial covenant is vitiated. In this case, a person knows no better and marries according to a view of marriage different than that of the Church. The data collected reflects this, as does the *CARA Survey* question (“*Marriage is whatever two people want it to be.*”) The presumption continues to exist in canon law and is verified in *Chart B*.

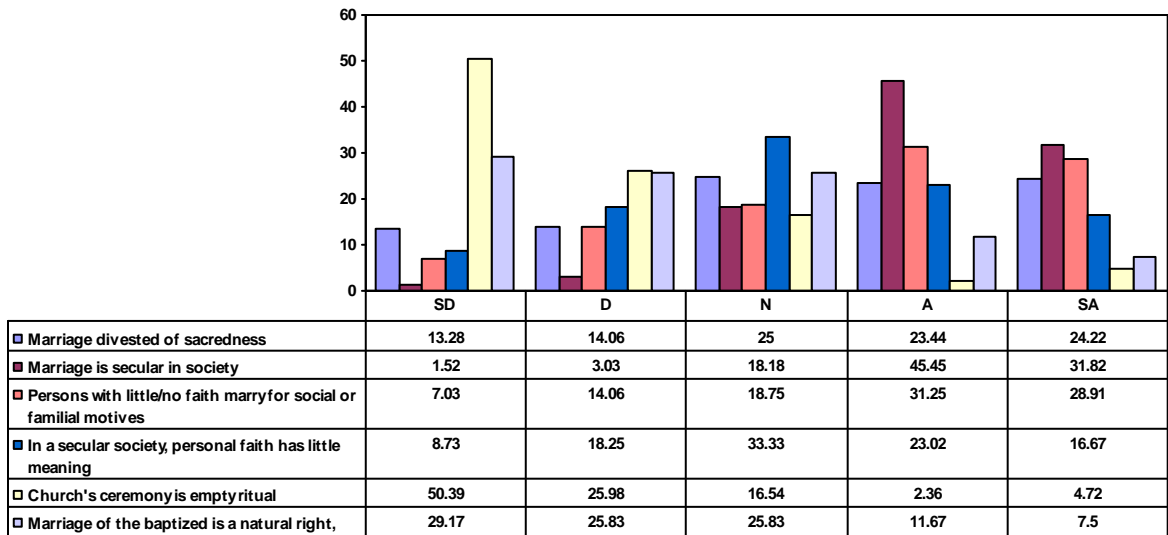
⁵¹⁵ See c. 1101, §§1-2. This includes those elements/properties mentioned in cc. 1061, §1; 1096; 1134; and 1099, together with c. 1055, §§1-2.

98% (n=154) hold this presumption to be true. However, seemingly more important is the significant response by 63% (n=152) that people can *intend* a different reality than the Church understands for marriage.

4.5.1.4 *Faith and Society*

As a total sample of responses to qq. 23, 24, 25, 26, 27, and 28, *Chart C* provides a description:

Chart C

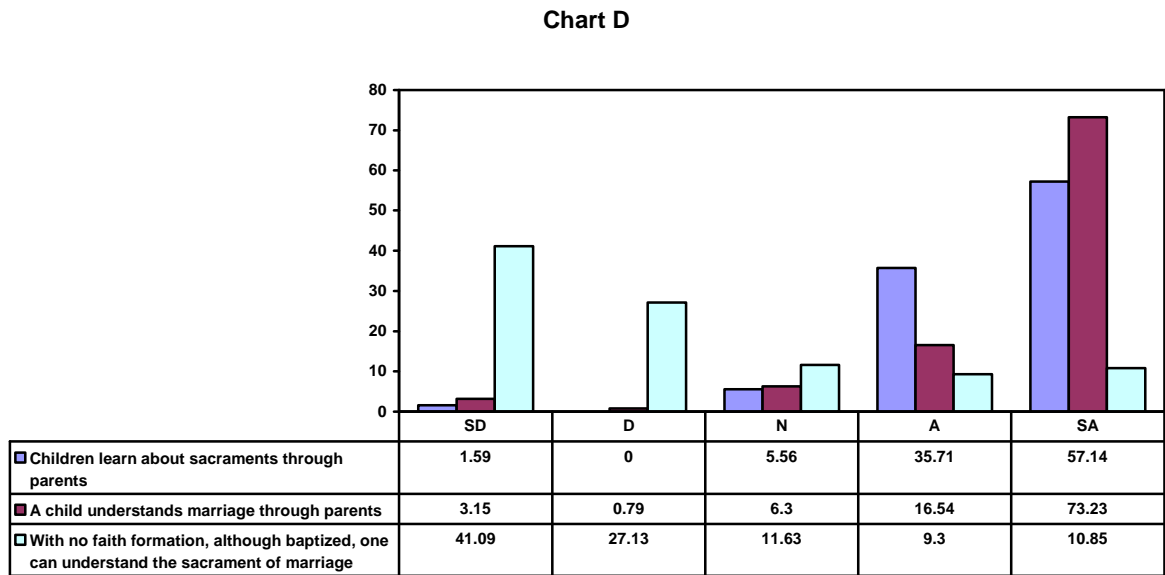


As can be noted in *Familiaris Consortio* and in the writings of the 1980 Synod of Bishops, marriage has seen the encroachment of the secular realm. While the data of *Chart C* clearly reflects this (73% [n=128] responded that the sacredness of marriage has been divested; 95% [n=132] responded that society generally approaches marriage as a secular reality rather than as a religious ceremony; 73% [n=126] expressed that personal faith has no meaning where the principles of secular society has become pervasive), it evident, too, that people marry for motives other than religious. 79% (n=128) responded that people could marry for motives that are purely social, familial, or of convenience. This, too, was a significant conclusion of the 1980 Synod of

Bishops on the Family, and motivated Pope John Paul II to address the issue.

4.5.1.5 Faith as learned behavior in marriage

As a total sample of responses to qq. 33, 34, 35, and 40, *Chart D* provides a description:

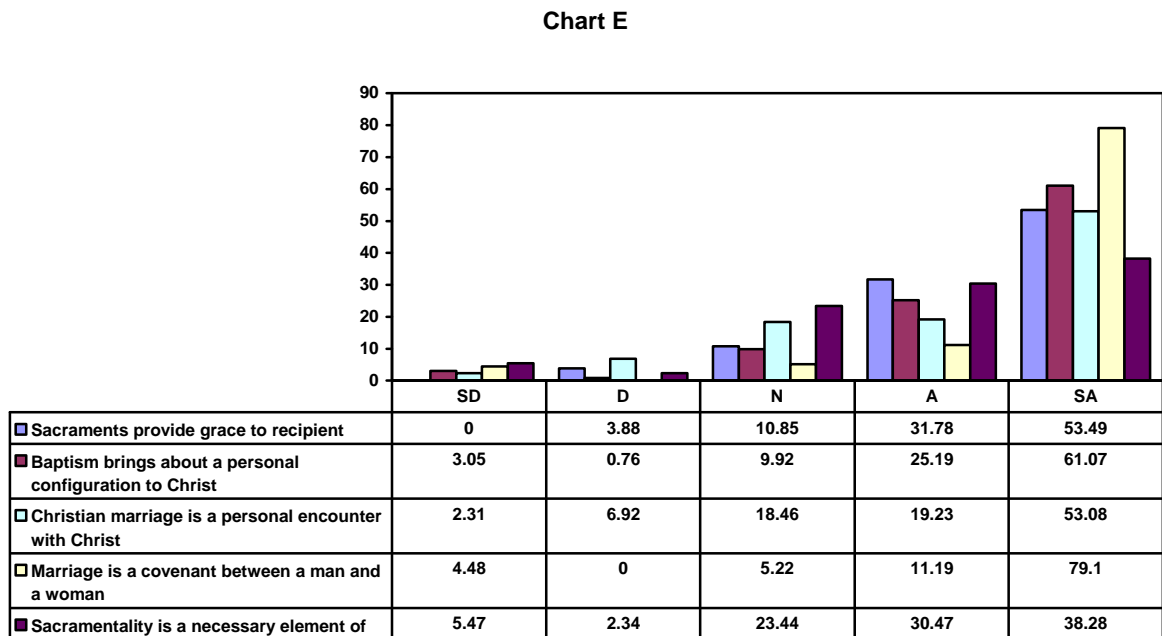


Culture, family, societal, and religious roots shape young minds. Although each person is responsible for individual actions, faith is learned behavior. The importance of the connection between a child’s formative years and its influence on the understanding of marriage was also addressed in the *Influences on One’s View of Marriage* in the *CARA Survey*. Here it is directly related to sacramentality in marriage. 98% (n=126) see *learned behavior* as significant to a child’s future understanding of marriage, and that a child learns what marriage is through its parents (96% [n=127] responded positively). In support of the importance of faith formation, only 31% (n=129) responded that one who has little or no faith formation but was baptized as a child can understand what a sacrament is (according to the *mens Ecclesiae*)

without additional education in the Church’s teachings.

4.5.1.6 *Nature of Sacraments*

As a total sample of responses to qq. 7, 9, 10, and 11, *Chart E* provides a description:



The *Catechism of the Catholic Church* and the *Code of Canon Law* both have summary statements about the nature of sacraments.⁵¹⁶ The data in *Chart E* shows that the respondents have *strongly* maintained a traditional understanding of the sacraments, and verify that baptism causes an ontological change and radical configuration to Christ (96% [n=129] responded that grace is imparted through the sacraments and that 96% [n=131] also responded also that baptism causes a personal configuration to Christ). There is also strong showing of the covenantal relationship between the parties to a marriage, again with 96% (n=134) responding affirmatively. Whereas the respondents had been strong on other theological issues related

⁵¹⁶ *Catechism of the Catholic Church*, 1210-1211; *CIC/83*, c. 840.

to baptism and marriage, they were less willing to admit that sacramentality is a necessary element of marriage. When taken as a whole, 92% (n=128) responded positively. Nonetheless, when examined in finer detail, only 38% 'strongly agreed', and 31% 'agreed'. The conviction is not so readily present.

Although the data is taken as a composite, there are several key questions which were identified as indicative of what was once a static or an evolving understanding of sacramentality in marriage. The questions were chosen because of their relationship to sacramentality in marriage and include the following:

- Other religions have the same understanding of sacraments as the Catholic Church (q.13).
- In contemporary society, people hold the same values regarding marriage as previous generations maintained (q. 32)
- A child's understanding of marriage is affected by the example of their parents (q. 34).
- Marriage between the baptized was raised by Christ to the dignity of a sacrament. *Sacramentality* is an essential element added to the natural institute of marriage as a sign of God's grace. If a person does not understand what the Catholic Church means when it says that marriage is a sacrament, that person cannot include *sacramentality* in their marriage (36).
- If a person does not believe in any of the sacraments of the Catholic Church, that person cannot include *sacramentality* in their marriage (q. 37).

By evaluating each of these questions by age group, baptismal status, religious affiliation, education, and marital status, the long-established and

assumed lived reality may be significantly altered (at least since the Second Vatican Council), and that the ‘faithful’ have been gravely effected because of trends within society. Because the period in history where individuals are formed in faith, societal values, or general notions associated with marriage as an institution remains a consistent factor, the values of a particular historical period will have significant implications on what may be considered permissive and non-committal values of society.

Each statement proposed in the survey has an objective correct response that the Church maintains as worthy of truth. The first statement (q. 13) provides a basis to compare varying ecclesial denominations’ understanding of sacraments. The basis for inquiry can be a reflection of the Council of Trent’s statement that marriage is one of the seven sacraments of the Catholic Church⁵¹⁷ and that the *CIC/83* maintains that the marriage covenant has been raised by Christ the Lord to the dignity of a sacrament.⁵¹⁸ Included among those with differing views on sacraments are those who count only the sacraments of Baptism and Eucharist as being instituted by Christ;⁵¹⁹ if marriage is not counted as a sacrament instituted by Christ, there

⁵¹⁷ *Denzinger-Schönmetzer*, 1801. Session Twenty-Four, Canon 1, Council of Trent.

⁵¹⁸ c. 1055, §1.

⁵¹⁹ For Anglicans/Episcopalians, the *Thirty-nine Articles* states that “[t]here are two Sacraments ordained of Christ our Lord in the Gospel, that is to say, Baptism, and the Supper of the Lord. Those five commonly called Sacraments, that is to say, Confirmation, Penance, Orders, Matrimony, and Extreme Unction, are not to be counted for Sacraments of the Gospel, being such as have grown partly of the corrupt following of the Apostles, partly are states of life allowed in the Scriptures; but yet have not like nature of Sacraments with Baptism, and the Lord’s Supper, for that they have not any visible sign or ceremony ordained of God.” See Daniel Berkeley Updike, “Articles of Religion as established by the Bishops, the Clergy, and the Laity of the Protestant Episcopal Church in the United States of America, in Convention, on the twelfth day of September, in the Year of our Lord, 1801”, *The Book of Common Prayer and Administration of the Sacraments and Other Rites and Ceremonies of the Church*, 1930, XXV, “Of the Sacraments.” For Lutherans, see Articles IX and X of the Triglott Concordia, *The Symbolical Books of the Evangelical Lutheran Church*, German-Latin-English, 1917, where only Baptism and the Lord’s Supper are mentioned as sacraments.

is *necessarily* a difference in understanding of the sacraments.

The second statement (q. 32) implies that the concept of marriage has been transformed. Marriage had as its primary end the procreation and education of children in the *CIC/17*, yet in the *CIC/83* there is no hierarchy of ends and that marriage is no longer a contract but a covenant.⁵²⁰ This is an obvious demonstration that marriage *has* indeed changed – a significant development from one generation to another. The Pontifical Council for the Family issued an *Instruction* in 1996 on marriage preparation, dealing especially with the material contained in c. 1063. In this magisterial document, the following trend is understood, that

[i]n the past, this preparation could count on the support of society which recognized the values and benefits of marriage. Without any difficulties or doubts, the Church protected the sanctity of marriage with the awareness that this sacrament represented an ecclesial guarantee as the living cell of the People of God. At least in the communities that were truly evangelized, the Church's support was solid, unitary and compact. In general, separations and marriage failures were rare, and divorce was considered a social “plague” (cf. *GS*, 47).

Today, on the contrary, in many cases, we are witnessing an accentuated deterioration of the family and a certain corrosion of the values of marriage. In many nations, especially economically developed ones, the number of marriages has decreased. Marriage is usually contracted at a later age and the number of divorces and separations is increasing, even during the first years of married life. All this inevitably leads to a pastoral concern that comes up repeatedly: Are the persons contracting marriage really prepared for it? The problem of preparation for the Sacrament of Marriage and the life that follows emerges as a great pastoral need, first for the sake of the spouses, for the whole Christian community and for society.

[Traditionally, Lutheranism held that confession, too, was a sacrament. The divide that exists between various Synods has decreased this number.]

⁵²⁰ Compare, again, cc. 1012-1013 *CIC/17* to c. 1055, §1 *CIC/83*.

Therefore, interest in, and initiatives for providing adequate and timely answers to preparation for the sacrament of Marriage are growing everywhere.⁵²¹

The prior consideration that the Church was the guarantor that safeguarded the sanctity of marriage as the living organism of the People of God may no longer be viable.

The third statement (q. 34) provides an insight into the formation of an adult and the understanding of marriage as being influenced by parental example. The family forms the basic societal unit from which cultures and societies develop. The family “constitutes a specific revelation of and realization of ecclesial communion, and for this reason it can and should be called a *domestic church*.”⁵²² The Christian family is an intimate community of persons where parents hold a privileged role and responsibility in family life.⁵²³ Parents present their children for baptism and the gift of faith and life. In the ritual for baptism, parents are asked directly to accept the responsibility for raising children in the faith.⁵²⁴ Through this sacrament, parents express their personal faith and commitment to God, to the

⁵²¹ Pontifical Council for the Family, “Preparation for the Sacrament of Marriage,” *Origins* 26 (1996) 98-109, not available in Latin.

⁵²² *Familiaris consortio*, 21; *Lumen gentium*, 11; *Catechism of the Catholic Church*, 2204: “Communio ecclesialis ostensionem et effectum christianam familiam exhibet, quae hac quoque de causa ‘Ecclesia domestica’ appellari [...] debet ». Ipsa est communitas fidei, spei et caritatis; momentum in Ecclesia induit singulare, sicut in Novo Testamento apparet.”

⁵²³ *Catechism of the Catholic Church*, 2221-2230.

⁵²⁴ The celebrant of baptism asks the parents, “What do you ask of God’s Church for your children?” and the parents respond with “Baptism.” Then the celebrant addresses them concretely: “You have asked to have your children baptized. In doing so you are accepting the responsibility of training them in the practice of the faith. It will be your duty to bring them up to keep God’s commandments as Christ taught us, by loving God and our neighbor. Do you clearly understand what you are undertaking?” National Conference of Catholic Bishops, *Rite of Baptism for Children* (New York, NY: Catholic Book Publishing Co., 1970), nn. 38-39.

community of faith, and to the child[ren] to be baptized. This can only be a response to faith, the living tradition of the 'domestic church,' where

children thus perceive and joyously live the closeness of God and of Jesus made manifest by their parents in such a way that this first Christian experience frequently leaves decisive traces which last throughout life. This childhood religious awakening which takes place in the family is irreplaceable. ... It is deepened all the more when parents comment on the more methodical catechesis which their children later receive in the Christian community and help them to appropriate it. Indeed, "family catechesis precedes ... accompanies and enriches all forms of catechesis".⁵²⁵

Faith is cultivated in the family.⁵²⁶ If faith is not passed on by parents, or if appropriate catechesis at home or at the parochial/diocesan is lacking, the presumption of marriage according to the mind of the Church is weakened.

The fourth statement (q. 36) resembles the first question (q. 13) in that other religious denominations also have *some* sacramental theology. However, the statement identifies *sacramentality* as an element *added* to the natural institution of marriage that provides grace. Marriage between the baptized was raised by Christ to the dignity of a sacrament. If one does not know what the Catholic Church understands by the term *sacrament*, that person cannot include *sacramentality* in their marriage.⁵²⁷ The contemporary

⁵²⁵ Congregation for the Clergy, *General Directory for Catechesis*, August 11, 1997, 226. Not available in Latin.

⁵²⁶ Various models of faith formation have been offered. Two prevalent models continue to be James W. Fowler's seven stages of faith formation in *Stages of Faith: The Psychology of Human Development and the Quest for Meaning* (New York, NY: Harper Collins, 1981) and Sharon Daloz Parks, *The Critical Years: Young Adults and the Search for Meaning, Faith, and Commitment* (New York: HarperCollins Publishers, 1991). Additionally, from a Catholic perspective, see Thomas H. Groome, *Christian Religious Education: Sharing our Story and Vision* (New York, NY: Harper Collins, 1980).

⁵²⁷ No attempt is made to draw a distinction that the sacramentality of marriage equals marriage, i.e., the sacrament and the 'contract' are the same (hence simulation of

situation does affect the convictions of people, and may affect their consent:

In our judgment, it is not a legitimate conclusion from c. 1084 [CIC/17] to say there exists a presumption in favor of marriage for those people who, perhaps largely because of their religious beliefs or secular education, are laboring under a misunderstanding of the essential properties of marriage. This is especially true since such a presumption is arrived at only by graciously conjecturing to a second presumption, namely, that it never occurs to such people, when they enter marriage, to apply their intellectual error to their intention. It would seem, therefore, as regards both Catholics and others, that the principle should be retained that, the more deeply and radically an error is ingrained and endorsed, the easier it is to establish a presumption in favor of an essential property of marriage being excluded. The will, which is a kind of blind faculty of the soul, generally goes along with whatever is presented to it by the intellect. Therefore the deeper, more vehement and more conscious is the fixation and attraction of the intellect to its object, the more difficult it is (although not impossible because of the influence of the passions) for the will to be turned away from the object presented to it by the intellect. Indeed it sometimes happens that a person holds an opinion (rightly or wrongly) with such intense conviction that the opinion becomes, as it were, part of his or her personality and when that happens, the will follows along almost irresistibly.⁵²⁸

Such an error is not lost on the sacramentality of marriage.

“As had often been affirmed by the jurisprudence of our apostolic forum, the exclusion of the *bonum sacramentalitas* sometimes has been considered as a perverse or at least erroneous inclination or doctrine which pervaded and shaped the entire person as to either thinking or acting.⁵²⁹

sacramentality is the same as simulation of marriage itself) or that sacramentality is an essential element of marriage and can be excluded in the manner that children or fidelity or permanence is excluded.

⁵²⁸ *Coram Pompedda*, January 23, 1971: *RRDec* 63:54.

⁵²⁹ *Coram Huot*, November 10, 1987: *RRDec* 79, 627.

If one who is baptized is in error about the sacramentality of marriage, the presumption of marriage according to the mind of the Church is, again, weakened.

The final statement (q. 37) identifies whether those without faith or belief in the sacraments of the Catholic Church are able to include *sacramentality* in their marriage. For example,

[i]n our day it is not possible to presume that with a general and prevalent intention the parties will have willed to contract marriage according to divine institution while they obstinately persevere in their errors. ... [N]or can it be expected that a spouse wishing to remain in a state of rebellion against the same divine authority, can undertake true matrimonial consent for a religious motive.⁵³⁰

It can be seen that if a person's views are quite adamant that marriage for the baptized is not a sacrament; this may lead to a deep-seated error which may influence the will.⁵³¹ Although c. 1099 is written negatively, the canon explains the seriousness of this error: matrimonial consent *is* vitiated when error concerning sacramental dignity determines the will.

Each of the five statements reflects some aspect of the Church's theological or canonical teachings on sacramentality. Collectively, the

⁵³⁰ *Coram* Pinto, November 6, 1972: *RRDec* 64: 673.

⁵³¹ Although related to error regarding indissolubility, another example can be found in the statements of *coram* Stankiewicz: "When however baptized spouses with little or no faith are so imbued with errors about the indissolubility of the bond that, based on the dictates of their erroneous conscience, they cannot act other than in accord with what their mind is telling them to do, then they are truly functioning out of an invincible error that presents to the will only a dissoluble marriage, and in this case, it can be said that the error is truly leading the will to consent to a dissoluble marriage and is determining the will to choose only that kind of marriage" 280-290, at 7.

responses to the statements as summarized in the statistical analyses might better be viewed in the context of Pope John Paul II's address to the Roman Rota, January 28, 1991:

3. Precisely because it is a reality that is deeply rooted in human nature itself, marriage is affected by the cultural and historical conditions of every people. ... The Church, therefore, cannot prescind from the cultural milieu.

5. Contemporary culture ... presents some aspects which cause concern. ... in particular, in the affluent and consumeristic western world, [the] positive aspects tend to be distorted by an immanentistic and hedonistic vision that undermines the real meaning of marital love. ... "This immanentism is a reduction of the integral vision of the person, a reduction which leads not to true liberation but to a new idolatry, to the slavery of ideologies, to life in constraining and often oppressive structure of this world" (1985 Extraordinary Synod of Bishops, *Final Report*, II, A, 1). From such a mentality the misconception of the holiness of the institution of marriage often follows, not to speak of the rejection of the institution of marriage itself, which opens the way for the spread of free love.

Even when it is accepted, the institution is often deformed both in its essential elements and in its properties. This happens, for example, when marital love is experienced in egoistic self-centeredness, as a form of evasion, which tends to justify itself and be consumed in itself.⁵³²

The effect of such a rejection of the institution of marriage may render a marriage invalid when one is in error of sacramentality:

The canonical efficacy of this error invalidating matrimonial consent does not, however, properly consist in the fact that the error itself, as an act of the intellect, becomes the object of the will, but rather in the fact that the error, under the appearance of truth, determines the object of the internal will in such a way

⁵³² John Paul II, address to the Roman Rota, January 28, 1991, in *Papal Allocutions to the Roman Rota 1939-1994*, ed. William H. Woestman (Ottawa, Ontario: Saint Paul University, 1994) 214-218.

that this will, under the appearance of good, accepts the object.⁵³³

Deeply seated error (*error pervicax*) can determine the will, and may cause people to choose a reality of marriage different from that of the Church. The presumption that people marry with an intention *facere quod facit Ecclesia*, is weakened.

4.5.2 Analysis of *Sacramentality Survey* data and specific questions

The population sample is as diverse as possible: Catholics (governed by both the *CIC/83* and the *CCEO/90*), non-Catholics (baptized and non-baptized), practicing or non-practicing (i.e., groups who are church goers or not), among others.

The surveys were given randomly to 157 respondents at offices where it was known there were both Catholic and non-Catholic employees, in parishes where there was evidence of young and old, in a Catholic High School, and at several marriage preparation courses where there were interfaith and Catholic participants. Apart from one of the parochial distributions, surveys were administered by other individuals. In all cases the surveys were returned by mail. *Figures 1 – 24* are contained in *Appendix I*; raw data is contained in *Appendix II*; the *Sacramentality Survey* itself is contained in *Appendix III*.

The sample group ranges from 15-90 years of age. The data is divided into eight categories based upon age. *Figure 1* demonstrates age diversification, with 63.6% being post-Vatican II, 10.6% being of the Vatican II

⁵³³ *Coram Stankiewicz*, April 25, 1991: *RRDec* 83: 283, at 7.

generation, and 26% being pre-Vatican II.⁵³⁴ More than double the respondents were matriculated with new teachings on marriage.

The ratio between those who attended Catholic/parochial schools vs. those who went to public schools or who attended both Catholic/parochial and public schools is represented in the *Figure 2*. The respondents were equally divided between public (40.7%) and parochial (32.7%). The remainder attended both public and parochial schools (26.6%)

Figure 3 relates respondent education. While 42% completed high school or professional school, 58% were college graduates, with 13.5% completing graduate school or beyond.

The marital status of the participants can be seen in *Figure 4*. It is balanced at approximately 50% married and single. In the married category, 34% were currently married or in a civil union, and 15% were divorced or widowed.

Respondents in each category (*Figures 1 – 4* in *Appendix I*) were cross-tabulated with principally selected questions from the survey to determine trends. The following is an interpretation of that data.

Question 13:
Other religions have the same understanding of sacraments as the Catholic Church

Analysis by Age Group (Figure 5)

An analysis shows that 53% of persons answered that they ‘strongly disagree’

⁵³⁴ These groups can be identified by age: 51-90 = pre-Vatican II; 41-50 = Vatican II; 15-40 = post-Vatican II.

or 'disagree' with the statement. The large spike in the 21-30 age group shows that 57% of those surveyed (n = 147) in that age group are neutral or indifferent toward the statement, while only 12% 'agree' or 'strongly agree'. By generation, it is clear that pre-Vatican II respondents, who make up 25% of all respondents, stated that they 'strongly disagree', 'disagree', or were 'neutral' in 23% of cases, while only 7% of Vatican II respondents felt that way. However, 57% of post-Vatican II respondents felt that the differences were significant.

Analysis by Public vs. Catholic Schooling (Figure 10)

The analysis of this category provides a mix of beliefs. Of those who responded (n = 146), 47% responded 'strongly agree', 'agree', or 'neutral' that other religions have the same understanding of sacraments as does the Catholic Church. This is almost half of the respondents who are at least in agreement with the statement.

Analysis by Education (Figure 15)

There is little surprise in these results. Of those who responded (n = 150), 86% 'strongly disagree', 'disagree', or were 'neutral'. Of the 88 with a college degree, did post-graduate work, or obtained a post-graduate education, 83% responded between 'strongly disagree' and 'neutral'.

Analysis by Marital Status (Figure 20)

Of those who responded (n = 149), 87% 'strongly disagree', 'disagree', or were 'neutral'. The largest division in the marital status category is 'single', at over 50%. Of the 75 single respondents, 88% answered 'strongly disagree' to 'neutral'. The second largest division in the marital status category is 'married', at 28%. Of the 42 married respondents, 81% answered 'strongly disagree' to 'neutral'. The third largest division in the marital status category

is 'divorced', at 14%. Of the 21 divorced respondents, 90% answered 'strongly disagree' to 'neutral'.

Question 32:

In contemporary society, people hold the same values regarding marriage as previous generations maintained

Analysis by Age Group(Figure 6)

This is similar to the question in the *CARA Survey*. There is a strong disagreement with the question posed. Of those who responded (n = 130), only 15% answered 'strongly agree' or 'agree', with 85% responding 'strongly disagree', 'disagree', or 'neutral'. By generation, it is more striking. For the Vatican II generation, of the 13 respondents, 77% were 'neutral' or less, and 92% of the 37 pre-Vatican II respondents felt that marriage values were not maintained, compared with 84% of the 67 post-Vatican II respondents.

Analysis by Public vs. Catholic Schooling (Figure 11)

The analysis of this category shows a distinct trend in the re-defining of marriage belief. Of those who responded (n = 130), 84% responded 'strongly disagree', 'disagree', or 'neutral' when answering if the current generation holds the same values of marriage from previous generations. There is little variance between those respondents educated in public or in parochial schools.

Analysis by Education (Figure 16)

Of those who responded (n = 134), 84% 'strongly disagree', 'disagree', or were 'neutral'. Of the 74 respondents with a college degree, did post-graduate work, or obtained a post-graduate education, 90% responded between 'strongly disagree' and 'neutral'.

Analysis by Marital Status (Figure 21)

For those who responded (n = 133), 84% 'strongly disagree', 'disagree', or were 'neutral'. The largest division in the marital status category is 'single', at over 49%. Of the 66 single respondents, 86% answered 'strongly disagree' to 'neutral'. The second largest division in the marital status category is 'married', at 31%. Of the 41 married respondents, 87% answered 'strongly disagree' to 'neutral'. The third largest division in the marital status category is 'divorced', at 12%. Of the 21 divorced respondents, 75% answered 'strongly disagree' to 'neutral'.

Question 34:

A child's understanding of marriage is affected by the example of their parents

Analysis by Age Group (Figure 7)

There is strong agreement with the number of respondents (n = 142) regarding the statement. 73% of all respondents responded with 'strongly agree' or 'agree'. By generation, there is little variation: in the post-Vatican II generation, 88% of the 88 respondents 'strongly agree' or 'agree' with the statement, and 100% of the Vatican II generation were in agreement. In the pre-Vatican II generation, of the 39 respondents, 95% were in agreement.

Analysis by Public vs. Catholic Schooling (Figure 12)

The analysis of this category reveals is consistent with the *CARA Survey* regarding influences. Of those who responded (n = 141), 96% responded 'strongly agree', 'agree', or 'neutral' that familial and parental values shape a child's understanding of marriage.

Analysis by Education (Figure 17)

These results are similar to the previous question. Of those who responded

(n = 146), 96% 'strongly disagree', 'disagree', or were 'neutral'. Of the 83 respondents with a college degree, did post-graduate work, or obtained a post-graduate education, almost 100% responded between 'strongly disagree' and 'neutral'.

Analysis by Marital Status (Figure 22)

These results are unanimous. Of those who responded (n = 144), 87% 'strongly agree', 'agree', or were 'neutral'. The largest division in the marital status category is 'single', at 50%. Of the 72 single respondents, 94% answered 'strongly agree' to 'neutral'. The second largest division in the marital status category is 'married', at 29%. All of the 42 married respondents answered 'strongly agree' to 'neutral'. The third largest division in the marital status category is 'divorced', at 13%. Of the 21 divorced respondents, 95% answered 'strongly agree' to 'neutral'.

Question 36:

Marriage between the baptized was raised by Christ to the dignity of a sacrament. Sacramentality is an essential element added to the natural institute of marriage as a sign of God's grace. If a person does not understand what the Catholic Church means when it says that marriage is a sacrament, that person cannot include sacramentality in their marriage

Analysis by Age Group (Figure 8)

The analysis of the data reveals some interesting insights. Of those who responded (n = 141), 77% answered 'strongly agree', 'agree', or 'neutral' to question. The largest number of responses came from the 21-31 group, with 86% in agreement, as can be see by the spikes. By generation, 79% of the 89 post-Vatican II respondents were in agreement. Vatican II respondents were in agreement with the 21-31 age group with 86%, and 71% of the 38 post-Vatican II respondents were in agreement.

Analysis by Public vs. Catholic Schooling (Figure 13)

The analysis of this category reveals results consistent with the previous question. Of those who responded (n = 142), 77% of respondents expressed that they 'strongly agree', 'agree', or are 'neutral'. This is significant, because to marry according to *the mind of the Church* requires that one understand what the Church believes about sacraments, and what marriage as a sacrament truly is.

Analysis by Education (Figure 18)

These results are similar to the previous question. Of those who responded (n = 145), 77% 'strongly agree', 'agree', or were 'neutral'. Of the 85 respondents with a college degree, did post-graduate work, or obtained a post-graduate education, almost 80% responded between 'strongly disagree' and 'neutral'.

Analysis by Marital Status (Figure 23)

These results are unanimous. Of those who responded (n = 145), 77% 'strongly agree', 'agree', or were 'neutral'. The largest division in the marital status category is 'single', at 51%. Of the 74 single respondents, 78% answered 'strongly agree' to 'neutral'. The second largest division in the marital status category is 'married', at 29%. Of the 42 married respondents, 74% answered 'strongly disagree' to 'neutral'. The third largest division in the marital status category is 'divorced', at 12%. Of the 18 divorced respondents, 72% answered 'strongly agree' to 'neutral'.

Question 37:

If a person does not believe in any of the sacraments of the Catholic Church, that person cannot include sacramentality in their marriage

Analysis by Age Group (Figure 9)

The analysis of this category reveals results consistent with the previous question. Of those who responded (n = 142), 74% responded 'strongly agree', 'agree', or 'neutral'. Again, of the respondents in age group 21-30, 81% answered 'strongly agree', 'agree', or 'neutral'. According to generation, 82% of the respondents in the post-Vatican II era answered affirmatively, while 80% of the pre-Vatican II respondents felt the same. Nearly 100% of those respondents in the Vatican II era felt the same.

Analysis by Public vs. Catholic Schooling (Figure 14)

The analysis of this category reveals a consistent result with the previous question. Of those who responded (n = 142), 82% responded 'strongly agree', 'agree', or 'neutral'. This is a positive demonstration that persons with a non-Catholic understanding of the sacraments cannot include sacramentality in their marriage.

Analysis by Education (Figure 19)

These results are similar to the previous question. Of those who responded (n = 145), 82% 'strongly agree', 'agree', or were 'neutral'. Of the 86 respondents with a college degree, did post-graduate work, or obtained a post-graduate education, almost 81% responded between 'strongly disagree' and 'neutral'.

Analysis by Marital Status (Figure 24)

These results are unanimous. Of those who responded (n = 145), 82% 'strongly agree', 'agree', or were 'neutral'. The largest division in the marital

status category is 'single', at 51%. Of the 74 single respondents, 81% answered 'strongly agree' to 'neutral'. The second largest division in the marital status category is 'married', at 28%. Of the 41 married respondents, 85% answered 'strongly disagree' to 'neutral'. The third largest division in the marital status category is 'divorced', at 13%. Of the 19 divorced respondents, 79% answered 'strongly agree' to 'neutral'.

4.6 An overturning of the presumption in light of data

The legal presumption in marriage regarding intention and words is found in c. 1101, §1. This presumption yields to contrary proof, but the burden rests on the one who claims there is a discrepancy between words and intentions which were expressed in consent.

Given the data and its analysis for both the *CARA Survey* and the *Sacramentality Survey*, the intention *facere quod facit Ecclesia* cannot be maintained. The presumption of c. 1101, §1 must be revisited.

Chapter 5

5. Practical Consideration

5.1 Statement of intention

The teaching of the Magisterium and theologians requires a proper intentionality on the part of the minister of a sacrament, not only matter and form.

While we ascribe an objective efficaciousness to sacramental reality it is foreign to Catholic thought to propose an automaticness to any sacrament without implicitly affirming the freedom of man to accept or reject — to sacramentalize or not — the graciousness of God manifested in sacramental being.⁵³⁵

The intention *facere quod facit Ecclesia* is, at best, a *minimal* condition required for consent to become, at the level of sacramental reality, a truly human act.

If by a human act the faculties of both the intellect and the will are intended, it should be concluded that the baptized person, because of the negation of faith and the lack of the intention of doing what Christ and the Church do, is not capable of contracting a valid sacramental marriage.⁵³⁶

Lack of faith can be used as a motivating factor that helps to determine if intending and willing a sacramental act was prevented. But to say that one must intend to do what the Church does separate the effectiveness of the sacrament from the faith of the community lived in its ecclesial dimension.

A statement of intention cannot be made in the case of the baptized

⁵³⁵ Finn, 109.

⁵³⁶ Faltin, 99.

non-believer, because faith, which should have come to action and formed that intention, is not present. Consequently, there might be an attempt to help form and guide a person to freely embrace the faith, or, precluding a return to or growth in faith, determine the nature of the disposition of the person, and ask if there is some undisclosed motive that needs to be addressed. Every avenue must be taken into consideration. Any opportunity for conversion must be exercised.⁵³⁷

5.2 Statement of necessity of faith at time of consent

As pastors are responsible for the preparation of couples for marriage, they may find it useful to explain thoroughly the necessity of a lived faith, showing living faith as a condition *sine qua non* for the marriage of Christians.⁵³⁸ Such an explanation would affirm the statement of the International Theological Commission regarding the presence of living faith in a sacramental marriage. Lived faith would also reflect the theological principle that sacraments presupposed faith.

It may also be helpful for a couple to sign a statement of faith. This statement should reflect the ecclesial dimension of lived faith, desiring to

⁵³⁷ See the study of Susan Wood, "The Marriage of Baptized Nonbelievers: Faith, Contract, and Sacrament," *Theological Studies* 48 (1987) 279-301. In her study, she outlines solutions that imply the separation of contract and sacrament, issues of religious freedom, and automatic sacramentality within an ecclesial dimension of marriage. She balances her argument with reasons why contract and sacrament can be separated. Her conclusion (p. 300), however, is that the solution "lies, in the final analysis, in the intention to marry. If the intention to marry includes what the Church intends by the sacrament of matrimony, the baptized person receives the sacrament unless there is an explicit, direct intention against the sacrament. ... It is null if the prevailing will is to exclude the sacrament.... It is also null when the nonbelieving person simulates the desire to have the canonical status of a married person."

⁵³⁸ See John M. Huels, OSM, "Preparation for the Sacraments: Faith, Rights, Law," *Studia Canonica* 28 (1994) 33-58, especially 53-57.

respond with an intention formed by that faith.

The faith required for a religious marriage involves an adherence to Jesus Christ. He is the source of all supernatural life and acts today in the church, the living and organic community which celebrates and dispenses the sacraments. If such a faith were radically lacking, the behavior of the engaged couples would be devoid of all meaning, even from a simple human point of view.⁵³⁹

The salvific actions of the Church are effective and authentic because of the Church's relationship to Christ. The special firmness of the sacrament becomes real when it is accepted, and when posited in a human act. Sacramentality in marriage is the work of the Church, demanding a free embrace by the parties themselves.

Although essential to Christian marriage, "baptism permits one to exercise the sacrament of matrimony, [but] baptism in and of itself does not effect the sacrament of matrimony."⁵⁴⁰ The couple intending to enter marriage would have to express what their vision (or lack) of faith is, and its implications in their relationship as a covenant.⁵⁴¹

⁵³⁹ Belgian Episcopal Conference, "Note pastorale des Évêques de Belgique concernant le mariage de Catholiques non-pratiquants ou n'ayant pas la foi chrétienne," *La Documentation Catholique* 69 (November, 1972) 980: "La foi requise pour le mariage religieux comporte une adhésion à Jésus-Christ. Celui-ci, source de toute vie surnaturelle, agit aujourd'hui dans l'Eglise, communauté vivante et organique qui célèbre et dispense les sacrements. Si une telle foi faisait radicalement défaut, la démarche des fiancés serait dépourvue de sens, même au simple point de vue humain (démarche inauthentique)." English translation in Cuenin, 10.

⁵⁴⁰ Frank DeSiano, "On the Sacramental Reality of Christian Marriage," *American Benedictine Review* 24 (1973) 500.

⁵⁴¹ John Paul II, "Natural Marriage already has sacred dimension: Address to the Tribunal of the Roman Rota, January 30, 2003," *Forum* 13-14 (2002-2003) 20-25.

5.3 Need for pastoral preparation

One cannot equate practice with belief, for there are many expressions of faith. Some may have difficulty articulating that faith. Care must be taken to ensure that contact with a couple is both as an effective teaching instrument and an opportunity to augment that faith. True pastoral sensitivity demands some standards. Otherwise, the entire sacramental system is placed in jeopardy.

The initial contact of the couple with the person instructing the marriage is an occasion of joy, and their request for marriage should be welcomed. Yet, their request must lead to an understanding of motivation, and how their present life situation has called them to discern their desire for marriage in the Church. “The difficulty arises with those couples who seem unable to discern a faith-motive in their request for marriage.”⁵⁴²

In cases when a non-believer is requesting marriage, it may be possible for the one instructing the marriage to ascertain the willingness of the non-believer to participate in some type of catechetical instruction. Alternatively, an indifference in allowing the faith to be passed on to children, or at very least an understanding of Christian values, should be taken into consideration. If the motivation is not sincere, a pastoral approach would not be mere external conformity to a rigid set of statements, but rather it would be based in an ecclesial setting and faith dimension.⁵⁴³

⁵⁴² Cuenin, 43.

⁵⁴³ Although now somewhat dated, Lawrence Wrenn addresses this issue in light of the Second Vatican Council, before the *CIC/83*. In updating the law on marriage, he states, “There is an evident malaise on the part of many regarding inadequate and sometimes positively detrimental preparation afforded engaged couple today. ... The Church has always kept the basic physical and psychological requirements for marriage at a bare

5.4 Effect on possible grounds

Jurisprudentially, a case involving exclusion of sacramentality in marriage may proceed in several possible ways: an exclusion of an essential element/property of marriage, error determining the will about an essential element/property of marriage,⁵⁴⁴ error of quality, deceit, condition, or even incapacity of fulfillment of marital obligations.⁵⁴⁵ All consider sacramentality to be an integral constituent of marriage, and its exclusion, through lack of intention on the part of the minister or recipient, to preclude the forming of a valid marital covenant.

A judge would need to assess the expediency of one ground to the exclusion of another, given the circumstances involved. Depending on the choice, the judge must prove the nullity of the marriage by examining the explicit or implicit exclusion, by one or both spouses, of sacramentality:

- in cases of total or partial simulation, the exclusion of an essential element or property is rooted in a lack of faith;
- in error determining the will, deep-rooted error results in the exclusion of an essential element or property.

minimum on the grounds that marriage was never intended to be an exclusive state attainable by only a few. ... Due consideration, furthermore, has always been given to the fact that for some people marriage might even be necessary for the salvation of their souls." See Lawrence Wrenn, "Updating the Law on Marriage: the Nature of Marriage and Marital Consent," *The Jurist* 27 (1967) 267-282, especially 269-273.

⁵⁴⁴ Faltin, 102.

⁵⁴⁵ *Ibid.*, 103.

5.5 Status of the Question Today

Canon 1055 §1 clearly asserts that marriage has sacramental dignity. This has been the praxis of the Church, exhibiting a belief in the sanctity of marriage, and reaffirming that Christ raised marriage to the sacramental level. The second paragraph of the same canon identifies contract and sacrament as being inseparable because of the action of Christ. Magisterial documents provide support for canon 1055, affirming this assertion for all Christians.

In baptism, one is ordered to the sacramental state. However, ordination to a state of life is not the same thing as participation in that state of life. Moreover, this participation is rooted in an ecclesial dimension. Thus, to theorize about the sacrament of marriage without considering the faith of the church and allowance of that faith in her individual members would do grave injustice.

As all sacraments presuppose faith, marriage cannot fall outside this dimension. Marriage, too, is securely rooted in “a participation in the love between Christ and his Church,”⁵⁴⁶ that simply cannot be legislated if the spouses in faith have first appropriated it. Baptism does not equal faith.

A common element in modern societal ethos is erosion of the sacramental dignity of the married state. There is an evisceration of the meaning of marriage as a sacrament and of it being a sign of God’s salvific love, experienced in a community of faith. From the fact that sacraments

⁵⁴⁶ *Gaudium et spes*, 48: “quod est imago et participatio foederis dilectionis Christi et Ecclesiae.”

express God's saving power, the sacramental celebration is an invitation to respond in faith to his power, and enter into an interpersonal sacrament with the Church and God.

The sacraments are rooted in the activity of the Church.

Sacramental action is not independent of the Church which stands as the historical sign by which God wishes to sanctify man. The salvific actions of the Church are efficacious and real because of the Church's relationship to Christ.⁵⁴⁷

This ecclesial dimension is not new in the Church's understanding of the sacramental action of Christ, but has had a renewed interest as it flows from the theology of the Second Vatican Council.

The preceding investigation urges further discussion on cc. 1055, 1099, and 1101. Unresolved pastoral, theological, and canonical perspectives pervade the investigation, converging as essential issues in a larger plane in which faith, contract, and sacrament can be addressed more adequately. While there is an objective effectiveness in a sacramental system, automaticism in any sacrament, without considering the freedom to accept (or reject) the grace bestowed in the sacrament, does an injustice.

The consequence of automaticism is the reduction of marriage to something merely material, which was the pre-Vatican II understanding of the contract of marriage was. Marriage as a sacrament must involve not only mutual self-giving, but also an orientation and focus on God.

⁵⁴⁷ Finn, 103.

5.6 Ecumenical Considerations⁵⁴⁸

The present disposition of canon 1055, §2 imposes sacramentality upon all baptized persons. It assumes a relationship between baptism and faith. In other Christian communions, marriage may be considered as a merely natural bond, or a “human conjugal covenant.”⁵⁴⁹ Sacramentality in such situations is extrinsic, and therefore any intention to contract a sacramental marriage is necessarily unreasonable to presume.

Marriage is the only sacrament that has a parallel in secular society, among any group of people, baptized or not, believer or non-believer. However, a belief system that does not include sacramentality in marriage may preclude an individual adherent from having the proper intention to sacramentalize his or her marriage. The only provision for such persons is found in the current law. Legislating a sacrament devoid of faith is contrary to the Church’s mind. Accordingly, consideration could be afforded to marriage as a natural institution, a solution that might relieve the issue of sacramentality in such marriages.

5.7 Conformity of Grounds

Within Tribunal procedure handling such cases, and having proved the simulation, a further consideration is one of substantial conformity of grounds. If sacramentality is identified with contract, then, for example, total simulation and exclusion of sacramental dignity may be equated, for they are

⁵⁴⁸ See Jean Rigal, “Sacramentality as an ecumenical question,” *Theology Digest* 50 (2003) 129-139, especially 137.

⁵⁴⁹ Finn, 110.

not solely juridico-natural, but theologico-supranatural, that is to say, [they] touch the very mystical union of Christ himself and the Church. Hence, the two sentences are closely linked with the same theologico-sacramental fulcrum through the same juridical facts.”⁵⁵⁰

Similar conformities are evidenced between determining error and total/partial simulation.⁵⁵¹

5.8 Concluding Remarks

Surely, what rests at the very core of the *CIC/83* is that the foundation of canon law is theology. This can be a practical consequence when courts must “decide on the conformity of two affirmative sentences which are based on two nominally different grounds.”⁵⁵²

Canonical jurisprudence in declarations of nullity in marriages involving baptized non-believers continues to develop. As an emerging ground, care is taken to integrate the canon law and theology while maintaining the integrity of both. While only God knows the faith of a couple entering marriage, and only a couple, living the reality of a God-oriented and sacramental marriage, can know the special firmness by which the sacrament strengthens the marriage.

This study has attempted to outline various consequences of the

⁵⁵⁰ *Coram Cologiovanni*, 511: “non est tantummodo iudicium-naturale, sed theologicum-supernaturale, sue tangit ipsam mysticam unionem ipsius Christi et Ecclesiae. Ideo duae sententiae idem fulcrum theologicum-sacramentale attingunt ex iisdem quidem factis iudicis.” English translation in Mendonça, 46.

⁵⁵¹ See *Coram Stankiewicz*, April 25, 1991, 285.

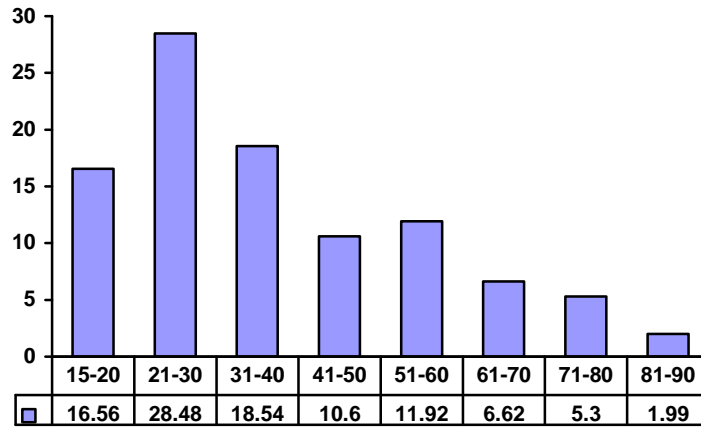
⁵⁵² *Coram Cologiovanni*, *ibid.*

Church's discipline on marriage for the baptized. It shows the special position and issues involved when baptized non-believers marry in the Church today. One can only hope that as jurisprudence continues to evolve key arguments will be addressed, and that, respecting the sanctity of marriage, a suitable recognition of sacramentality in marriage of baptized non-believers will present itself.

Appendix I

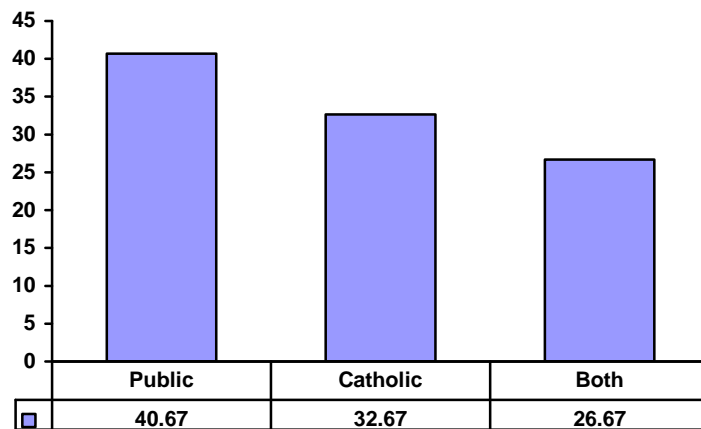
Charts and Graphs

Figure 1



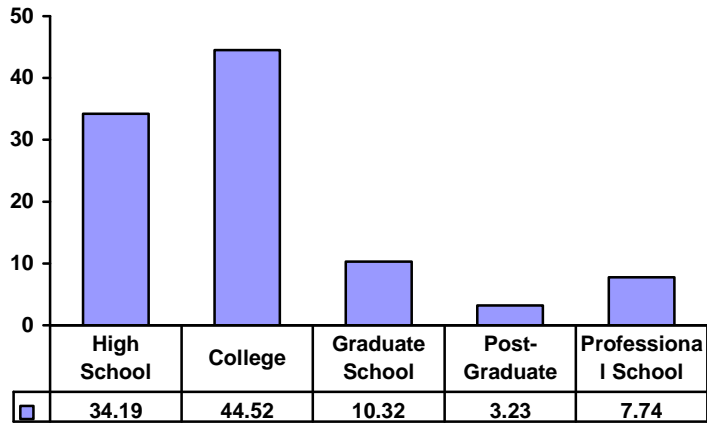
Distribution of Age Groups

Figure 2



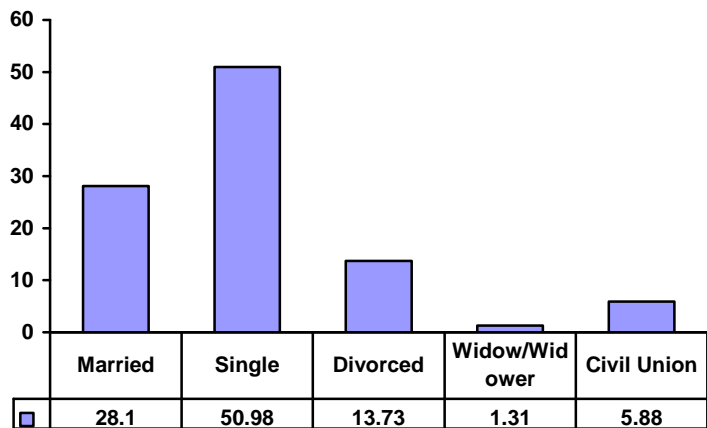
Distribution of Religious/Secular Education

Figure 3



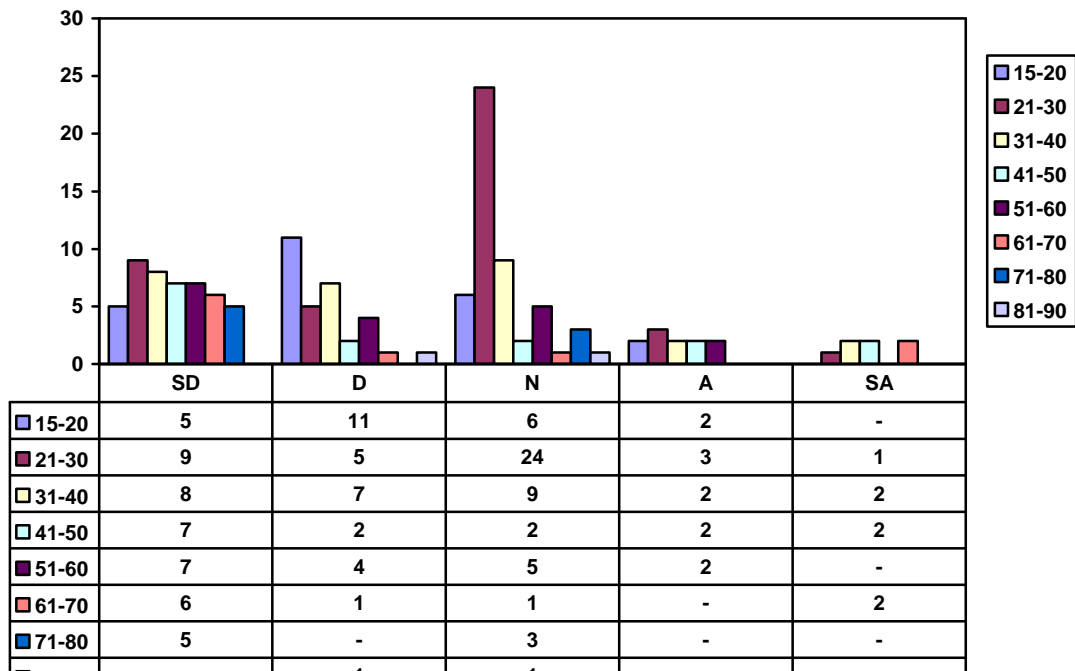
Distribution of Matriculation

Figure 4



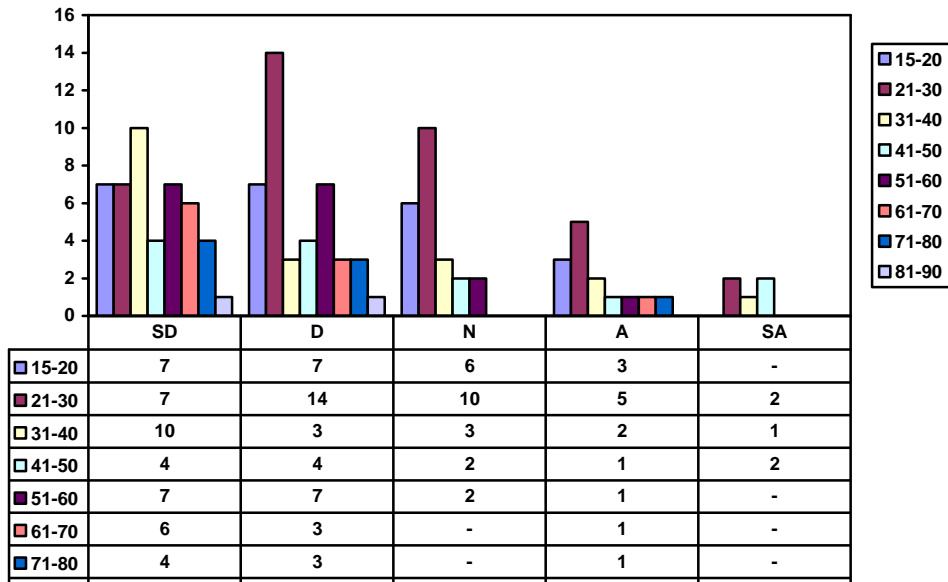
Distribution of Marriage Type

Figure 5



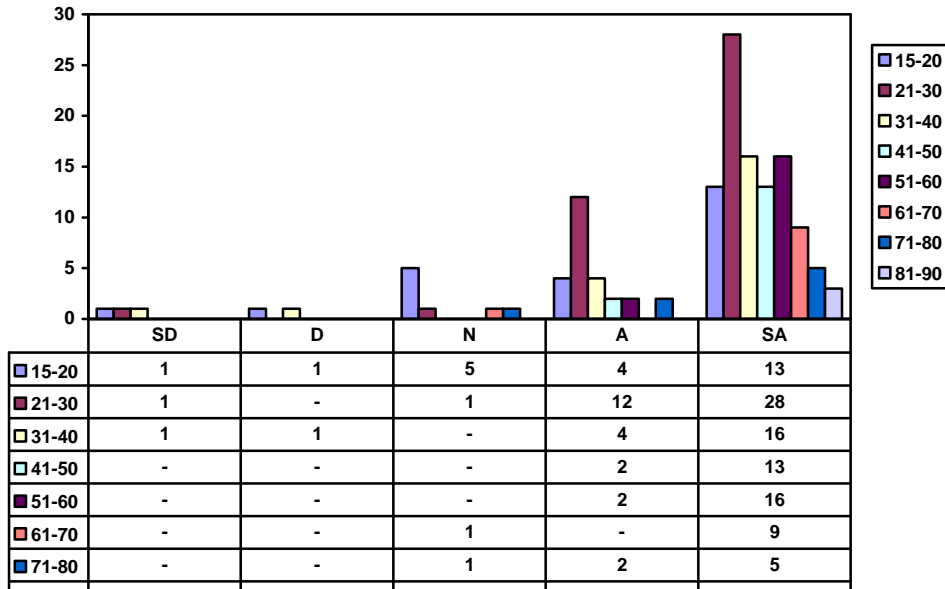
Other religions have the same understanding of sacraments as the Catholic Church (q.13)

Figure 6



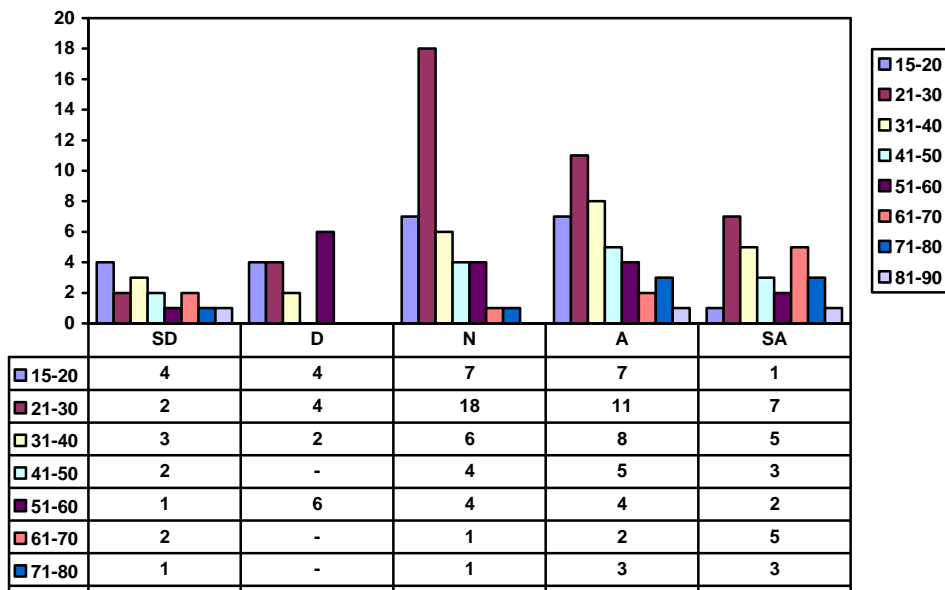
In contemporary society, people hold the same values regarding marriage as previous generations maintained (q. 32)

Figure 7



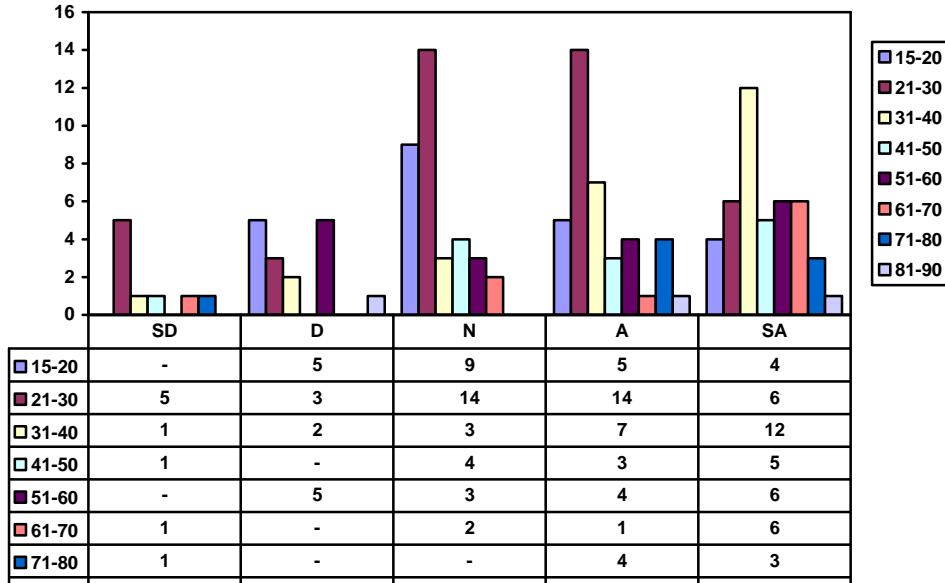
A child's understanding of marriage is affected by the example of their parents (q. 34)

Figure 8



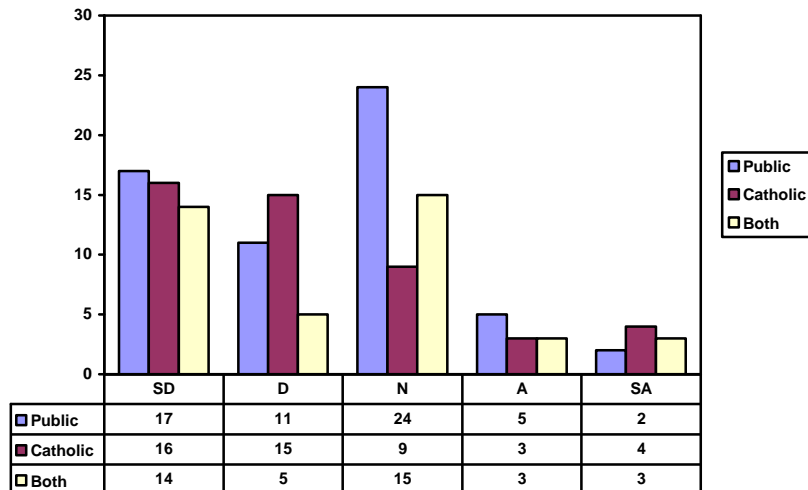
Marriage between the baptized was raised by Christ to the dignity of a sacrament. Sacramentality is an essential element added to the natural institute of marriage as a sign of God's grace. If a person does not understand what the Catholic Church means when it says that marriage is a sacrament, that person cannot include sacramentality in their marriage (q. 36)

Figure 9



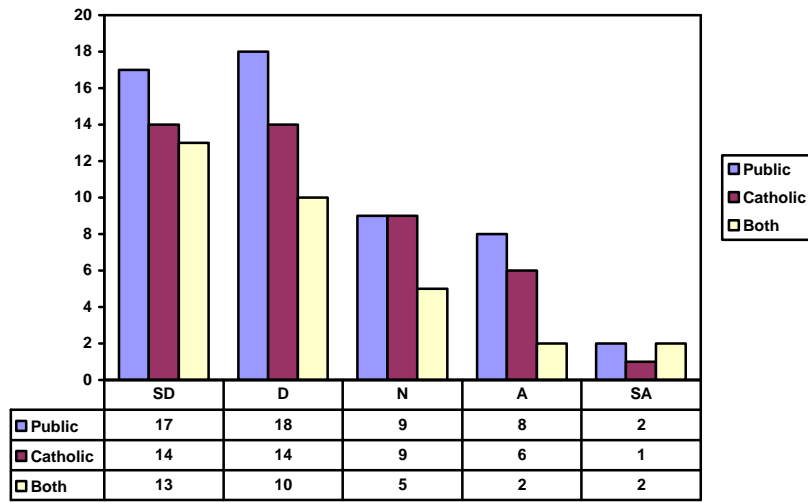
If a person does not believe in any of the sacraments of the Catholic Church, that person cannot include sacramentality in their marriage (q. 37)

Figure 10



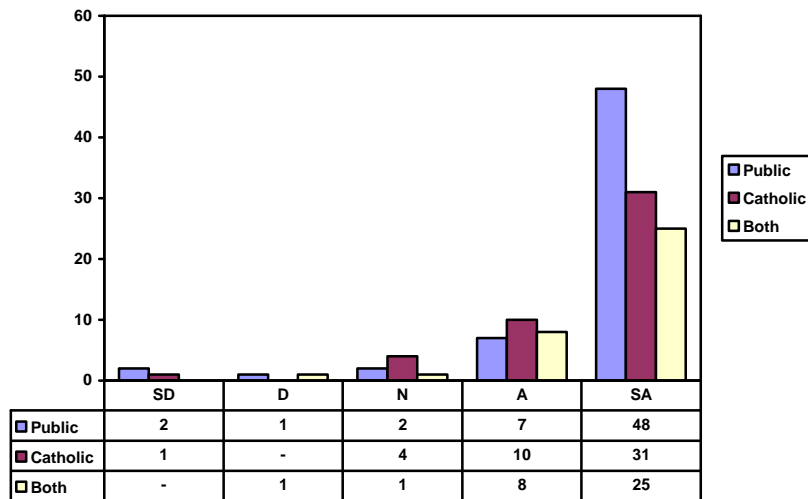
Other religions have the same understanding of sacraments as the Catholic Church (q.13)

Figure 11



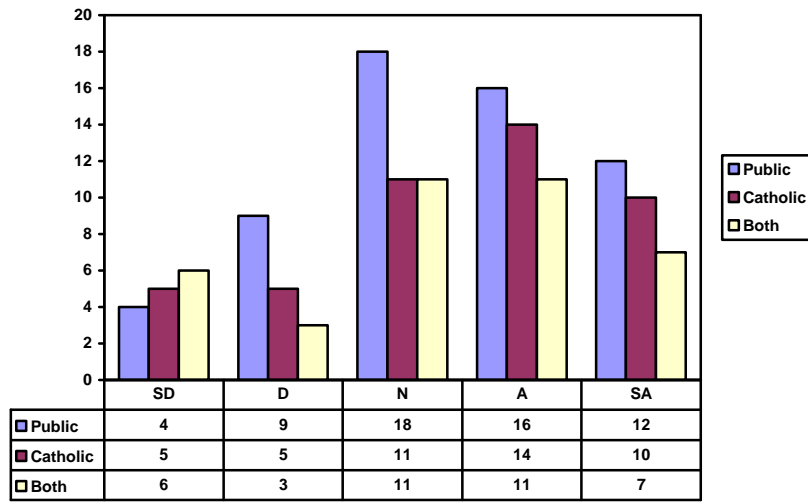
In contemporary society, people hold the same values regarding marriage as previous generations maintained (q. 32)

Figure 12



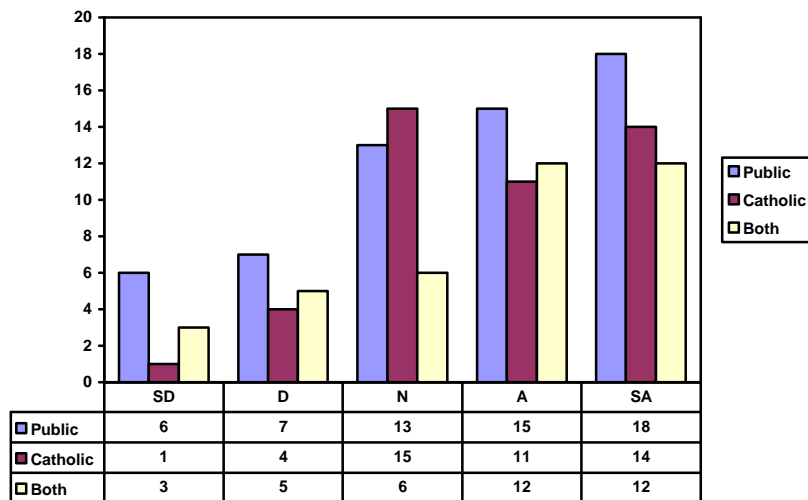
A child's understanding of marriage is affected by the example of their parents (q. 34)

Figure 13



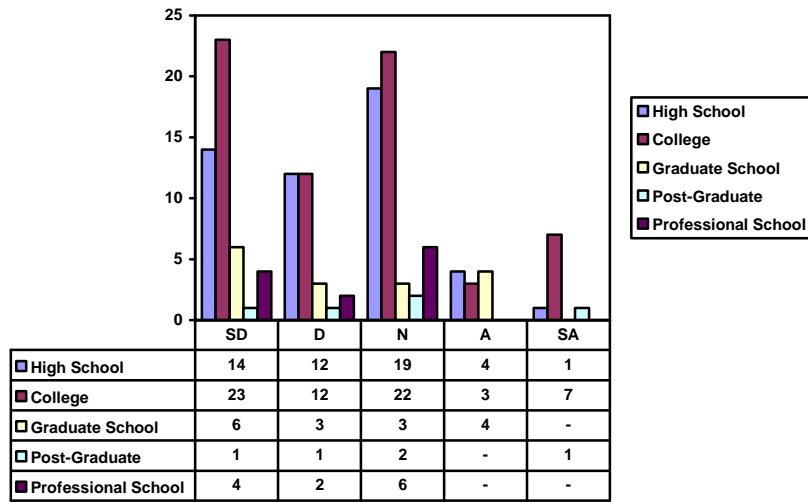
Marriage between the baptized was raised by Christ to the dignity of a sacrament. Sacramentality is an essential element added to the natural institute of marriage as a sign of God's grace. If a person does not understand what the Catholic Church means when it says that marriage is a sacrament, that person cannot include sacramentality in their marriage (q. 36)

Figure 14



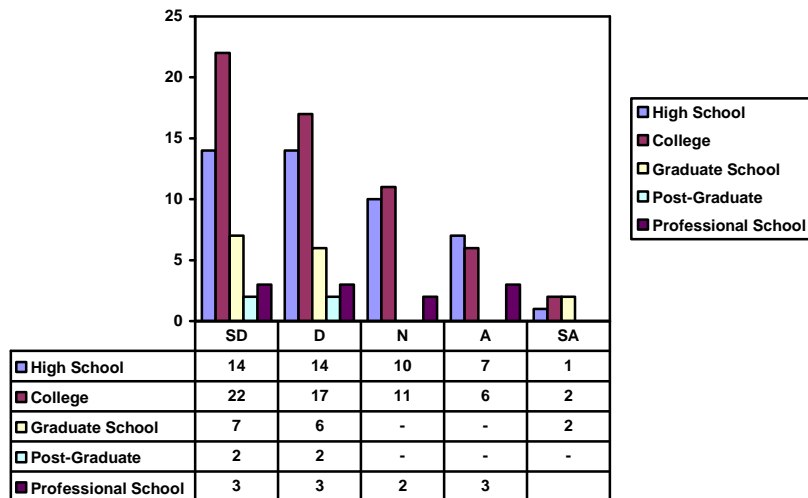
If a person does not believe in any of the sacraments of the Catholic Church, that person cannot include sacramentality in their marriage (q. 37)

Figure 15



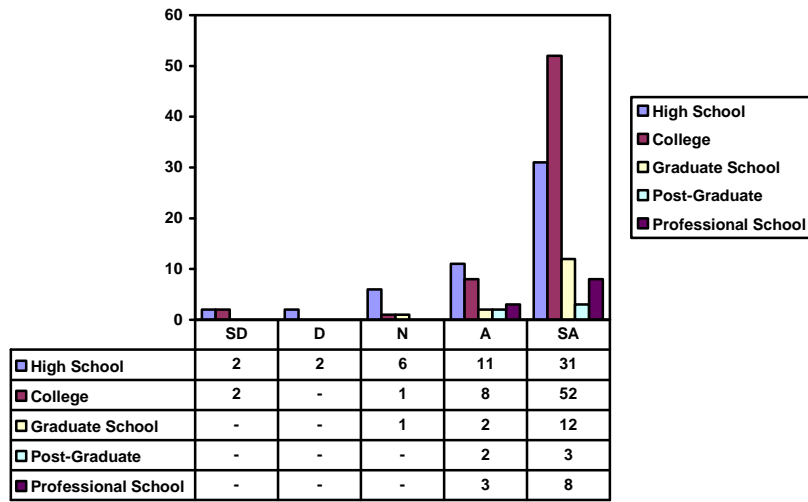
Other religions have the same understanding of sacraments as the Catholic Church (q.13)

Figure 16



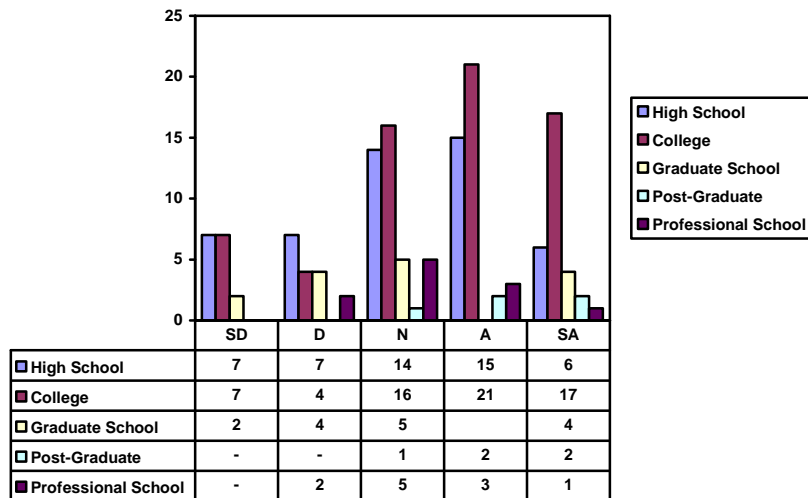
In contemporary society, people hold the same values regarding marriage as previous generations maintained (q. 32)

Figure 17



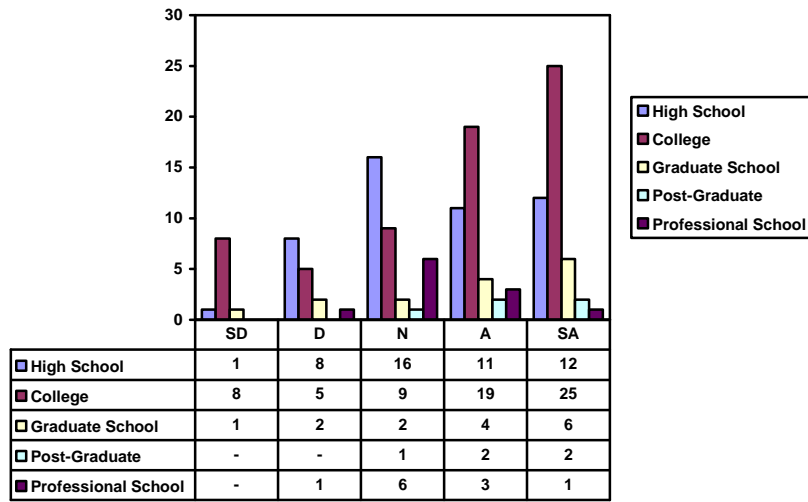
A child's understanding of marriage is affected by the example of their parents (q. 34)

Figure 18



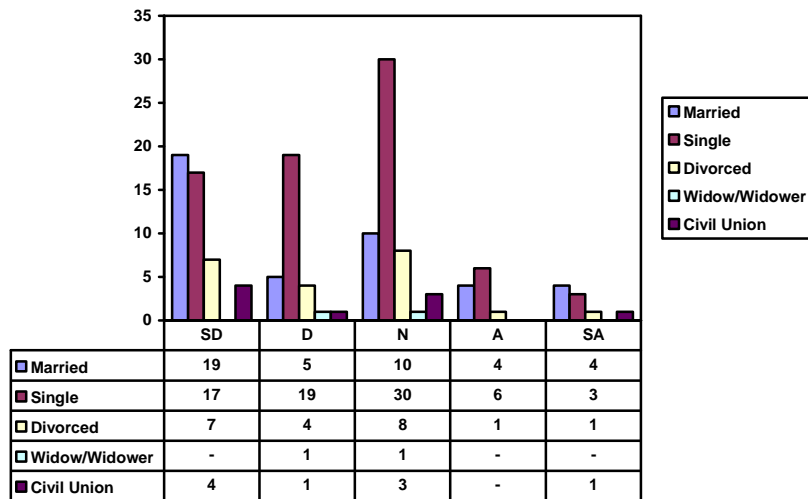
Marriage between the baptized was raised by Christ to the dignity of a sacrament. Sacramentality is an essential element added to the natural institute of marriage as a sign of God's grace. If a person does not understand what the Catholic Church means when it says that marriage is a sacrament, that person cannot include sacramentality in their marriage (q. 36)

Figure 19



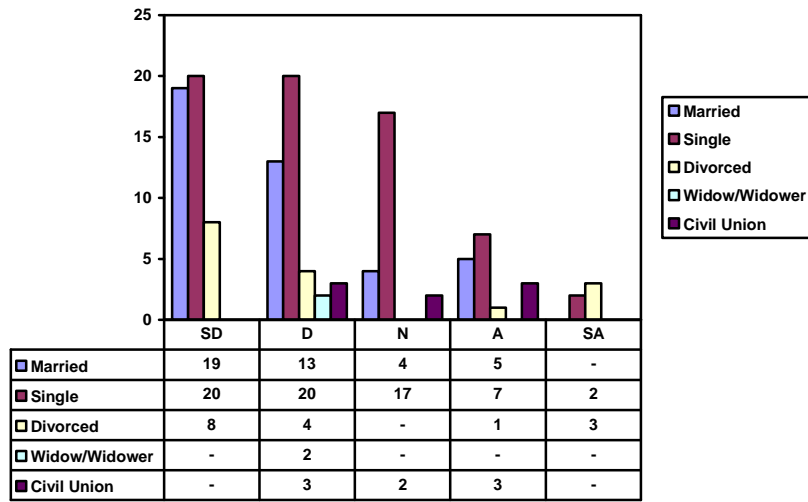
If a person does not believe in any of the sacraments of the Catholic Church, that person cannot include sacramentality in their marriage (q. 37)

Figure 20



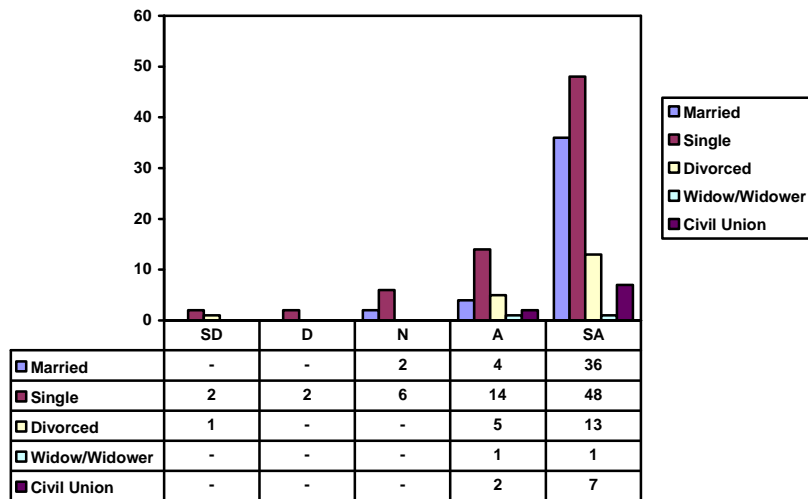
Other religions have the same understanding of sacraments as the Catholic Church (q.13)

Figure 21



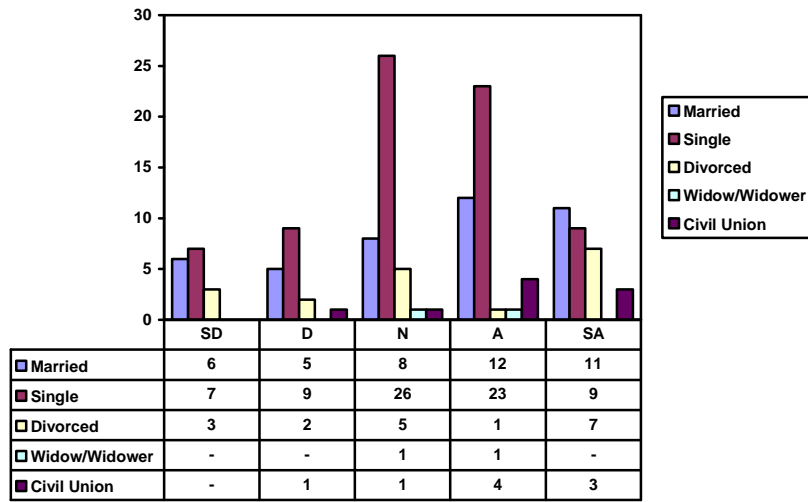
In contemporary society, people hold the same values regarding marriage as previous generations maintained (q. 32)

Figure 22



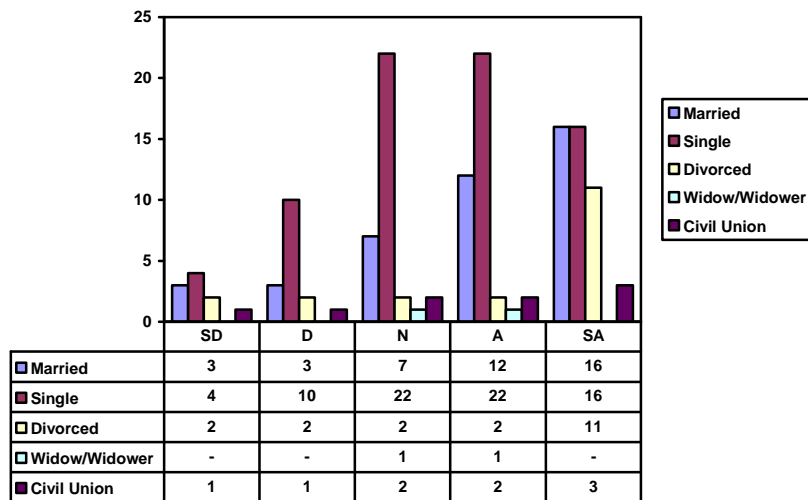
A child's understanding of marriage is affected by the example of their parents (q. 34)

Figure 23



Marriage between the baptized was raised by Christ to the dignity of a sacrament. Sacramentality is an essential element added to the natural institute of marriage as a sign of God's grace. If a person does not understand what the Catholic Church means when it says that marriage is a sacrament, that person cannot include sacramentality in their marriage (q. 36)

Figure 24



If a person does not believe in any of the sacraments of the Catholic Church, that person cannot include sacramentality in their marriage (q. 37)

Appendix II

Sacramentality Survey and Raw Data

Survey – The Sacramentality of Marriage

Directions: This is an anonymous survey. The only means of identification are age group, baptismal status, marital status, education, and religious affiliation. Please indicate your answer by filling in the square (☐) as indicated in the following, or, if you are not able to provide a answer, please leave it BLANK:

		Strongly disagree <i>(Please choose one)</i>			Strongly agree	
		1	2	3	4	5
Ex.: Snow is usually white.		☐	☐	☐	☐	■ (0)
<hr/>						
Age:	<input type="checkbox"/> < 15 – 20		<input type="checkbox"/> 21 – 30		<input type="checkbox"/> 31 – 40	
	<input type="checkbox"/> 41 – 50		<input type="checkbox"/> 51 – 60		<input type="checkbox"/> 61 – 70	
	<input type="checkbox"/> 71 – 80		<input type="checkbox"/> 81 - 90 +	☐ (1)		
Education:	<input type="checkbox"/> Public		<input type="checkbox"/> Catholic		<input type="checkbox"/> Both	☐ (4)
	Highest Level Attained:		<input type="checkbox"/> High School		<input type="checkbox"/> College	
			<input type="checkbox"/> Graduate School		<input type="checkbox"/> Post Graduate School	☐ (5)
Baptism Status:	<input type="checkbox"/> Baptized		<input type="checkbox"/> Non-baptized		<input type="checkbox"/> Unsure	☐ (2)
Marital Status:	<input type="checkbox"/> Married		<input type="checkbox"/> Single		<input type="checkbox"/> Divorced	☐ (6)
			<input type="checkbox"/> Widow/Widower			☐ (6)
Religious Affiliation:	<input type="checkbox"/> Catholic		<input type="checkbox"/> Non-Catholic		☐ (3)	

		Strongly disagree <i>(Please choose one)</i>			Strongly agree	
		1	2	3	4	5
<hr/>						
Nature of Sacraments						
Sacraments are external signs that provide divine grace to the recipient.		☐	☐	☐	☐	☐ (7)
Marriage is one of the sacraments of the Catholic Church.		☐	☐	☐	☐	☐ (8)
Baptism brings about a personal configuration to Christ.		☐	☐	☐	☐	☐ (9)
Christian marriage is a personal encounter with Christ.		☐	☐	☐	☐	☐ (10)
Marriage is a covenant made between two people.		☐	☐	☐	☐	☐ (11)
Religions other than the Catholic Church have sacraments.		☐	☐	☐	☐	☐ (12)
		Strongly disagree				Strongly agree

	<i>(Please choose one)</i>				
	1	2	3	4	5
Other religions have the same understanding of sacraments as the Catholic Church.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (13)
Faith and Sacraments					
Baptism is necessary for salvation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (14)
Sacraments presuppose faith.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (15)
Practice of faith is the same reality as belief.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (16)
Faith is necessary to enter marriage validly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (17)
Faith has relevance in the realm of marriage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (18)
Those entering marriage do not require any personal faith to enter into marriage validly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (19)
Intention in Marriage					
When people marry in a Catholic ceremony, it is presumed that they marry in accord with the Church's teachings on marriage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (20)
The marriage of two baptized persons is the sacrament by which Christ joins a man and a woman in a permanent, faithful, and life-giving union.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (21)
When a person marries, they can intend a reality that is substantially different from what the Church intends marriage to be.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (22)
Faith and Society					
Marriage has been divested of its sacredness.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (23)
Today's society generally approaches marriage as a secular reality rather than as a religious ceremony.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (24)
Persons with little or no faith marry for motives that are purely social, familial, or of convenience.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (25)
Where the principles of secular society have become pervasive, personal faith has little to do with marriage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> (26)

	Strongly disagree	<i>(Please choose one)</i>			Strongly agree	
	1	2	3	4	5	
The Church's ceremony for marriage, i.e., how the ceremony itself is structured, is merely empty ritual and has little meaning for the parties to a marriage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(27)
Marriage of the baptized is a natural right and is independent of the Church's teachings.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(28)
Marriage is rooted in an image of the Church as the bride of Christ. A man and a woman marrying one another reflects that reality. Regardless of one's faith, marriage participates in that reality:						
a) whether secular (<i>civil marriage</i>),	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(29)
b) religious (<i>Catholic or non-Catholic</i>), or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(30)
c) natural (<i>pair bonding/common law</i>).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(31)
In contemporary society, people hold the same values regarding marriage as previous generations maintained.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(32)
Faith as Learned Behavior in Marriage						
A child's understanding of a sacrament is learned from their parents or the Church.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(33)
A child's understanding of marriage is affected by the example of their parents.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(34)
A person, baptized as a baby but with little or no faith formation, can understand what a sacrament is in the mind of the Church without any additional education in the Church's teachings.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(35)
If a person does not understand what the Catholic Church means when it says that marriage is a sacrament, that person cannot include sacramentality in their marriage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(36)
If a person does not believe in any of the sacraments of the Catholic Church, that person cannot include sacramentality in their marriage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(37)

Survey on Sacramentality

	61-70	71-80	80-90	Totals
Strongly Disagree	1			6
Disagree				2
Neutral				7
Agree				16
Strongly Agree	9	8	3	120
Totals	10	8	3	151

Crosstabulation: Question 11 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	5		1	6
Disagree	2			2
Neutral	6	1		7
Agree	16			16
Strongly Agree	113	3	2	118
Totals	142	4	3	149

Crosstabulation: Question 11 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	6		6
Disagree	2		2
Neutral	4	3	7
Agree	15	1	16
Strongly Agree	108	14	122
Totals	135	18	153

Crosstabulation: Question 11 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	2	2		6
Disagree	1		1	2
Neutral	2	4	1	7
Agree	4	6	6	16
Strongly Agree	52	37	30	119
Totals	61	49	40	150

Father Glen J. Pothier
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Survey on Sacramentality

Crosstabulation: Question 11 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	3	2			
Disagree		1	1		
Neutral	2	2		1	2
Agree	9	4			2
Strongly Agree	39	60	14	4	8
Totals	53	69	16	5	12

Crosstabulation: Question 11 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	3	3			
Disagree		1	1		
Neutral		3	1		3
Agree	3	10	1	1	
Strongly Agree	37	61	18	1	6
Totals	43	78	21	2	9

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Survey on Sacramentality

Crosstabulation: Question 12 x Age group

	15-20	21-30	31-40	41-50	51-60	Totals
Strongly Disagree	2	4	4	1	1	12
Disagree	3	3	3	4	7	20
Neutral	4	18	10	4	7	43
Agree	7	8	3	2	2	22
Strongly Agree	9	6	8	7	8	38
Totals	25	39	28	14	18	145

	61-70	71-80	80-90	Totals
Strongly Disagree	3	2	1	6
Disagree	1	1	1	3
Neutral	2	1	1	4
Agree	3	1	2	6
Strongly Agree	1	4	2	7
Totals	10	8	3	21

Crosstabulation: Question 12 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	14	1	1	16
Disagree	10	10	10	30
Neutral	43	3	46	92
Agree	25	1	26	52
Strongly Agree	44	1	45	89
Totals	136	4	2	142

Crosstabulation: Question 12 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	15	1	16
Disagree	10	5	15
Neutral	41	46	87
Agree	24	26	50
Strongly Agree	38	10	48
Totals	128	18	146

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Survey on Sacramentality

Crosstabulation: Question 12 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	9	5	3	17
Disagree	3	4	3	10
Neutral	16	15	12	43
Agree	11	10	5	26
Strongly Agree	19	13	16	48
Totals	58	47	39	144

Crosstabulation: Question 12 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	7	7	2	1	1
Disagree	4	6	6	2	5
Neutral	12	21	6	2	2
Agree	12	13	7	3	3
Strongly Agree	16	19	15	5	11
Totals	51	66	22	11	22

Crosstabulation: Question 12 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	4	6	2	5	1
Disagree	2	8	2	1	1
Neutral	9	25	9	1	2
Agree	8	14	3	1	1
Strongly Agree	17	22	7	2	9
Totals	40	75	21	9	14

Crosstabulation: Question 13 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	5	9	8	7	7
Disagree	11	5	7	2	4
Neutral	6	24	9	2	5
Agree	2	3	2	2	2
Strongly Agree	24	42	28	15	18
Totals	48	83	46	28	36

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Survey on Sacramentality

	61-70	71-80	80-90	Totals
Strongly Disagree	6	5		47
Disagree	1	3	1	31
Neutral	1	3	1	51
Agree	2			11
Strongly Agree	10	8	2	7
Totals				147

Crosstabulation: Question 13 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	43	1	1	45
Disagree	30	2	1	31
Neutral	48	1	1	51
Agree	10	1		11
Strongly Agree	7			7
Totals	138	4	3	145

Crosstabulation: Question 13 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	42	5	47
Disagree	31	3	31
Neutral	43	8	51
Agree	8	3	11
Strongly Agree	8	1	9
Totals	132	17	149

Crosstabulation: Question 13 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	17	16	14	47
Disagree	11	15	5	31
Neutral	24	9	15	48
Agree	5	3	3	11
Strongly Agree	2	4	3	9
Totals	59	47	40	146

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Survey on Sacramentality

Crosstabulation: Question 13 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	14	23	6	1	4
Disagree	12	12	3	1	2
Neutral	19	22	3	2	6
Agree	4	3	4		
Strongly Agree	1	7		1	
Totals	50	67	16	5	12

Crosstabulation: Question 13 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	19	17	7		4
Disagree	5	19	4	1	1
Neutral	10	30	8	1	3
Agree	4	6	1		
Strongly Agree	4	3	1		1
Totals	42	75	21	2	9

Crosstabulation: Question 14 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	8	1	1	2	3
Disagree	2	1	1	2	1
Neutral	3	12	6	3	5
Agree	6	17	3	3	2
Strongly Agree	6	12	15	8	7
Totals	25	42	28	15	18

	61-70	71-80	80-90	Totals
Strongly Disagree	3	1		16
Disagree	1			11
Neutral	2	1	1	27
Agree	4	6	2	35
Strongly Agree	10	8	3	60
Totals				149

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Crosstabulation: Question 14 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	15	1		16
Disagree	10	2		10
Neutral	25	2	2	27
Agree	33	1	1	35
Strongly Agree	56	1	3	58
Totals	139	4	3	146

Crosstabulation: Question 14 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	12	4	16
Disagree	9	2	11
Neutral	23	4	27
Agree	33	2	35
Strongly Agree	55	6	61
Totals	132	18	150

Crosstabulation: Question 14 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	4	8	4	16
Disagree	3	5	3	11
Neutral	12	7	7	26
Agree	12	12	9	33
Strongly Agree	29	16	17	62
Totals	60	48	40	148

Crosstabulation: Question 14 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	8	4	2	1	1
Disagree	4	2	2	1	2
Neutral	8	11	3	1	4
Agree	11	19	3	1	1
Strongly Agree	21	31	6	2	4
Totals	52	67	16	5	12

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Crosstabulation: Question 14 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	3	10	2		1
Disagree	6	3		1	1
Neutral	6	17	2		1
Agree	6	23	3		2
Strongly Agree	21	24	14	1	4
Totals	42	77	21	2	9

Crosstabulation: Question 15 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	5	3	3	1	1
Disagree	3	1	1		1
Neutral	5	19	10	2	4
Agree	9	12	3	5	4
Strongly Agree	2	11	10	7	8
Totals	24	43	27	15	18

	61-70	71-80	80-90	Totals
Strongly Disagree	2	2		4
Disagree				6
Neutral	2	2		4
Agree	1		2	3
Strongly Agree	4	2	1	7
Totals	9	6	3	18

Crosstabulation: Question 15 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	14	1		15
Disagree	6			6
Neutral	40	2	2	44
Agree	36			36
Strongly Agree	40	1	1	42
Totals	136	4	3	143

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Crosstabulation: Question 15 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	12	3	15
Disagree	5	1	6
Neutral	37	7	44
Agree	35	1	36
Strongly Agree	41	5	46
Totals	130	17	147

Crosstabulation: Question 15 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	2	7	5	14
Disagree	2	3	1	6
Neutral	17	13	12	42
Agree	14	12	10	36
Strongly Agree	24	12	11	47
Totals	59	47	39	145

Crosstabulation: Question 15 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	5	8	2		
Disagree	4	2			
Neutral	13	16	6	3	5
Agree	12	19	3		3
Strongly Agree	15	23	5	2	2
Totals	49	68	16	5	10

Crosstabulation: Question 15 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	5	6	4		
Disagree	1	5			
Neutral	10	26	6		1
Agree	8	23	3	2	1
Strongly Agree	16	17	8		6
Totals	40	77	21	2	8

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Crosstabulation: Question 16 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	3	1	5	2	1
Disagree	3	6	3	3	6
Neutral	3	15	5	3	3
Agree	11	10	7	2	5
Strongly Agree	4	10	8	3	3
Totals	24	42	28	13	18

	61-70	71-80	80-90	Totals
Strongly Disagree	2	1	1	16
Disagree	1	1		22
Neutral	1	1		31
Agree	4		1	40
Strongly Agree	2	5	1	36
Totals	9	8	3	145

Crosstabulation: Question 16 x Baptismal Status

	Baptized	Non-Baptized	Totals
Strongly Disagree	15	1	16
Disagree	21		22
Neutral	29	1	31
Agree	39	1	40
Strongly Agree	32	1	33
Totals	136	4	142

Crosstabulation: Question 16 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	14	2	16
Disagree	21	1	22
Neutral	27	5	32
Agree	35	5	40
Strongly Agree	31	5	36
Totals	128	18	146

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Crosstabulation: Question 16 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	2	8	5	15
Disagree	13	4	5	22
Neutral	11	9	10	30
Agree	17	14	8	39
Strongly Agree	14	12	12	38
Totals	57	47	40	144

Crosstabulation: Question 16 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	3	9	3	3	1
Disagree	7	10	3	3	2
Neutral	6	17	3	3	3
Agree	19	12	2	1	5
Strongly Agree	13	20	4	1	1
Totals	48	68	15	5	12

Crosstabulation: Question 16 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	5	6	3	3	1
Disagree	7	12	2	1	1
Neutral	7	19	5	5	1
Agree	11	20	5	1	2
Strongly Agree	9	19	6	6	5
Totals	39	76	21	2	9

Crosstabulation: Question 17 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	2	3	2	2	2
Disagree	3	3	3	2	4
Neutral	5	5	2	4	4
Agree	9	15	4	4	1
Strongly Agree	6	19	17	6	7
Totals	25	42	28	14	18

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Crosstabulation: Question 17 x Baptismal Status

	61-70	71-80	80-90	Totals
Strongly Disagree	2	1	1	4
Disagree	1	1	1	3
Neutral	3	1	1	5
Agree	4	5	2	11
Strongly Agree	10	8	3	21
Totals	20	16	6	42

Crosstabulation: Question 17 x Catholic vs Non-Catholic

	Baptized	Non-Baptized	Totals
Strongly Disagree	12	1	13
Disagree	13	1	14
Neutral	17	1	18
Agree	36	1	37
Strongly Agree	60	2	62
Totals	138	4	142

Crosstabulation: Question 17 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	12	2	14
Disagree	12	1	13
Neutral	16	1	17
Agree	33	5	38
Strongly Agree	58	9	67
Totals	131	18	149

Crosstabulation: Question 17 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	6	5	2	13
Disagree	2	6	4	12
Neutral	7	6	4	17
Agree	14	14	9	37
Strongly Agree	30	17	21	68
Totals	59	48	40	147

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Crosstabulation: Question 17 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	5	8	1		
Disagree	6	6			1
Neutral	7	4	1	1	4
Agree	15	14	5	1	4
Strongly Agree	18	35	9	3	3
Totals	51	67	16	5	12

Crosstabulation: Question 17 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	6	5	3		
Disagree	8	4			
Neutral	4	10	2		1
Agree	9	26	2	1	1
Strongly Agree	15	31	14	1	7
Totals	42	76	21	2	9

Crosstabulation: Question 18 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	1	2	1		
Disagree	6	7	1	1	2
Neutral	13	15	6	3	6
Agree	5	19	19	11	9
Strongly Agree	25	43	27	15	18
Totals	61-70	71-80	80-90	Totals	

Strongly Disagree	1	5	2
Disagree	2	16	5
Neutral	7	48	16
Agree	10	77	48
Strongly Agree			77
Totals	148		148

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Crosstabulation: Question 18 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	1	1		2
Disagree	5			5
Neutral	15		1	16
Agree	46	1	1	48
Strongly Agree	71	2	1	74
Totals	138	4	3	145

Crosstabulation: Question 18 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	2		2
Disagree	5		5
Neutral	15	1	16
Agree	41	7	48
Strongly Agree	70	8	78
Totals	131	18	149

Crosstabulation: Question 18 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1			1
Disagree	3	1		4
Neutral	7	7	2	16
Agree	18	20	9	47
Strongly Agree	33	18	28	79
Totals	59	49	40	148

Crosstabulation: Question 18 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	1				
Disagree	5				
Neutral	11	4			
Agree	19	16	4	1	8
Strongly Agree	20	42	12	3	3
Totals	51	68	16	5	11

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Crosstabulation: Question 18 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	1	3	1		
Disagree	4	11	1		
Neutral	12	29	2	2	3
Agree	24	34	16	6	6
Strongly Agree	41	78	21	2	9
Totals					

Crosstabulation: Question 19 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	8	9	11	5	7
Disagree	6	14	9	3	3
Neutral	4	12	5	3	4
Agree	5	7	2	3	3
Strongly Agree	2	1	2	3	1
Totals	25	43	27	14	18

	61-70	71-80	80-90	Totals
Strongly Disagree	4	4	2	50
Disagree	2	1	1	39
Neutral	1	3		26
Agree	1	8	3	22
Strongly Agree	1			10
Totals	9	8	3	147

Crosstabulation: Question 19 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	44	2	1	47
Disagree	38	1	1	39
Neutral	25	1	1	26
Agree	20	1	1	22
Strongly Agree	10	4	3	10
Totals	137	4	3	144

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Crosstabulation: Question 19 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	43	8	51
Disagree	36	3	39
Neutral	21	5	26
Agree	20	2	22
Strongly Agree	10		10
Totals	130	18	148

Crosstabulation: Question 19 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	20	17	16	53
Disagree	16	11	11	38
Neutral	12	6	7	25
Agree	7	10	4	21
Strongly Agree	4	5	1	10
Totals	59	49	39	147

Crosstabulation: Question 19 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	19	24	8	2	1
Disagree	10	19	3	3	6
Neutral	8	10	3	2	3
Agree	9	10	2	1	
Strongly Agree	5	4			
Totals	51	67	16	5	11

Crosstabulation: Question 19 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	13	23	12	1	5
Disagree	9	22	4	1	2
Neutral	6	18	2		
Agree	8	10	3		
Strongly Agree	5	4			
Totals	41	77	21	2	9

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Crosstabulation: Question 20 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	1	1	1	1	1
Disagree	5	5	1	1	1
Neutral	9	18	5	1	4
Agree	10	20	18	14	14
Strongly Agree	25	43	26	16	18
Totals	61-70	71-80	80-90	Totals	

	61-70	71-80	80-90	Totals
Strongly Disagree	1	1	1	3
Disagree	2	2	2	6
Neutral	12	12	12	36
Agree	3	1	41	45
Strongly Agree	7	8	2	17
Totals	10	8	3	149

Crosstabulation: Question 20 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	2	1	1	4
Disagree	12	2	2	16
Neutral	38	12	12	62
Agree	86	2	1	89
Strongly Agree	138	4	3	145

Crosstabulation: Question 20 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	2	1	3
Disagree	10	2	12
Neutral	35	6	41
Agree	86	7	93
Strongly Agree	133	16	149

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Crosstabulation: Question 20 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1	1	1	3
Disagree	5	5	2	12
Neutral	17	13	10	40
Agree	37	30	26	93
Strongly Agree	60	49	39	148

Crosstabulation: Question 20 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	1	1	1	1	4
Disagree	7	2	1	1	11
Neutral	16	17	4	1	38
Agree	28	47	12	4	91
Strongly Agree	52	68	16	5	141

Crosstabulation: Question 20 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	2	10	1	1	14
Disagree	9	27	1	1	38
Neutral	34	38	17	7	96
Agree	43	77	20	2	142

Crosstabulation: Question 21 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	1	2	1	1	5
Disagree	4	10	2	3	19
Neutral	18	31	23	11	83
Agree	25	43	27	15	110
Strongly Agree	61	103	67	31	262

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	61-70	71-80	80-90	Totals
Strongly Disagree				1
Disagree				1
Neutral				8
Agree				22
Strongly Agree	10	8	3	117
Totals	10	8	3	149

Crosstabulation: Question 21 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	1	1		1
Disagree	1			1
Neutral	8			8
Agree	21		1	22
Strongly Agree	109	3	2	114
Totals	139	4	3	146

Crosstabulation: Question 21 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	1	1	1
Disagree	1		1
Neutral	7	1	8
Agree	21	1	22
Strongly Agree	104	14	118
Totals	133	17	150

Crosstabulation: Question 21 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1			1
Disagree	4	2	2	8
Neutral	7	8	6	21
Agree	47	39	32	118
Strongly Agree	59	49	40	148

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Crosstabulation: Question 21 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	1				
Disagree	4	3			1
Neutral	8	9	2		3
Agree	38	56	14	5	7
Strongly Agree	51	69	16	5	11

Crosstabulation: Question 21 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree					
Disagree		1	1		
Neutral	1	5	2		
Agree	6	13	1	1	1
Strongly Agree	36	57	17	1	8
Totals	43	76	21	2	9

Crosstabulation: Question 22 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	1	4	8	5	5
Disagree	6	10	4	3	3
Neutral	7	14	8	1	7
Agree	6	7	3	3	1
Strongly Agree	4	8	4	4	1
Totals	24	43	27	16	17

	61-70	71-80	80-90	Totals
Strongly Disagree	5	4	2	34
Disagree	1	1	1	28
Neutral	2	3		42
Agree	2	1		23
Strongly Agree	10	8	3	21
Totals	10	8	3	148

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Crosstabulation: Question 22 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	31	1		32
Disagree	26		2	28
Neutral	39	1	1	41
Agree	22	1		23
Strongly Agree	20	1		21
Totals	138	4	3	145

Crosstabulation: Question 22 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	31	2	33
Disagree	28	28	56
Neutral	37	5	42
Agree	19	6	25
Strongly Agree	18	3	21
Totals	133	16	149

Crosstabulation: Question 22 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	17	8	8	33
Disagree	7	12	9	28
Neutral	17	13	12	42
Agree	11	8	5	24
Strongly Agree	8	7	6	21
Totals	60	48	40	148

Crosstabulation: Question 22 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School	Totals
Strongly Disagree	8	17	4	2	4	35
Disagree	7	18	1	1	1	28
Neutral	17	14	6	2	3	42
Agree	11	8	3	2	3	27
Strongly Agree	8	11	2	5	11	37
Totals	51	68	16	11	21	167

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Crosstabulation: Question 22 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	16	7	5	1	5
Disagree	7	18	3		
Neutral	10	24	6		2
Agree	5	15	4	1	
Strongly Agree	5	12	2		2
Totals	43	76	20	2	9

Crosstabulation: Question 23 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	1	6	3		5
Disagree	4	6	4	3	2
Neutral	5	16	7	2	4
Agree	8	9	5	4	4
Strongly Agree	6	5	7	5	3
Totals	24	42	26	16	18

Crosstabulation: Question 23 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	16	2	1	19
Disagree	20	1	1	22
Neutral	34	1	1	36
Agree	34			34
Strongly Agree	33			33
Totals	137	4	3	144

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Crosstabulation: Question 23 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	16	4	20
Disagree	19	3	22
Neutral	35	1	36
Agree	31	3	34
Strongly Agree	31	5	36
Totals	132	16	148

Crosstabulation: Question 23 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	6	5	9	20
Disagree	8	7	7	22
Neutral	15	10	8	33
Agree	15	15	4	34
Strongly Agree	14	11	11	36
Totals	59	48	39	145

Crosstabulation: Question 23 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	5	9	3	2	1
Disagree	6	10	4	1	1
Neutral	13	17	2	1	4
Agree	11	18	2	1	1
Strongly Agree	13	14	5	1	4
Totals	48	68	16	5	11

Crosstabulation: Question 23 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	8	7	4		1
Disagree	7	13	2		3
Neutral	5	23	3	1	3
Agree	11	16	4		2
Strongly Agree	10	15	8	1	3
Totals	41	74	21	2	9

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Crosstabulation: Question 24 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree		2	1		1
Disagree	4	10	9	2	4
Neutral	11	21	6	8	11
Agree	10	10	7	5	2
Strongly Agree	25	43	25	16	18
Totals	61	70	43	25	38

	61-70	71-80	80-90	Totals
Strongly Disagree				3
Disagree				4
Neutral				29
Agree	7	3	1	68
Strongly Agree	3	5	2	44
Totals	10	8	3	148

Crosstabulation: Question 24 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	2			3
Disagree	4	1		4
Neutral	26	3		29
Agree	65		2	67
Strongly Agree	42		1	43
Totals	139	4	3	146

Crosstabulation: Question 24 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	2	1	3
Disagree	4		4
Neutral	25	4	29
Agree	62	6	68
Strongly Agree	40	6	46
Totals	133	17	150

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Crosstabulation: Question 24 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1	2	1	4
Disagree	10	7	11	28
Neutral	29	22	15	66
Agree	19	16	11	46
Strongly Agree	60	49	38	147

Crosstabulation: Question 24 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	1	3	1		
Disagree	11	9	5	1	3
Neutral	21	34	6	2	5
Agree	20	19	4	2	3
Strongly Agree	53	67	16	5	11

Crosstabulation: Question 24 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	3	1	3		
Disagree	5	15	2		6
Neutral	22	36	9	1	3
Agree	13	23	7	1	9
Strongly Agree	43	75	21	2	9

Crosstabulation: Question 25 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	2	5	2	1	
Disagree	3	11	2	1	2
Neutral	1	10	6	5	5
Agree	8	12	8	5	7
Strongly Agree	10	5	6	3	4
Totals	24	43	24	15	18

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Crosstabulation: Question 25 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	8	1	2	11
Disagree	19	1	1	21
Neutral	26	1	1	28
Agree	47	1		48
Strongly Agree	36			36
Totals	136	4	3	143

Crosstabulation: Question 25 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	7	4	11
Disagree	17	3	20
Neutral	27	1	28
Agree	42	6	48
Strongly Agree	37	3	40
Totals	130	17	147

Crosstabulation: Question 25 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	4	4	2	10
Disagree	10	5	4	19
Neutral	12	8	8	28
Agree	22	16	10	48
Strongly Agree	10	15	13	38
Totals	58	48	37	143

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Crosstabulation: Question 25 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	2	6	2		1
Disagree	8	7	4		1
Neutral	7	18	2		1
Agree	15	21	3	2	6
Strongly Agree	18	14	5	3	2
Totals	50	66	16	5	11

Crosstabulation: Question 25 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	2	5	3		
Disagree	2	15	2	1	
Neutral	8	14	5		1
Agree	18	20	5		4
Strongly Agree	13	17	6	1	4
Totals	43	71	21	2	9

Crosstabulation: Question 26 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	3	4	4		
Disagree	5	13	2	1	3
Neutral	9	19	8	4	6
Agree	3	7	3	7	7
Strongly Agree	5	5	5	1	2
Totals	25	43	22	15	18

	61-70	71-80	80-90	Totals
Strongly Disagree	1			14
Disagree	1	1		25
Neutral	1	1	1	49
Agree	5	1		33
Strongly Agree	3	5	1	22
Totals	10	8	2	143

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Crosstabulation: Question 26 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	13	1		14
Disagree	23	1	1	25
Neutral	46	1	2	49
Agree	31	1		32
Strongly Agree	21			21
Totals	134	4	3	141

Crosstabulation: Question 26 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	12	2	14
Disagree	22	3	25
Neutral	46	3	49
Agree	29	4	33
Strongly Agree	20	4	24
Totals	129	16	145

Crosstabulation: Question 26 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	5	6	3	14
Disagree	9	11	5	25
Neutral	22	12	13	47
Agree	18	8	6	32
Strongly Agree	4	11	9	24
Totals	58	48	36	142

Crosstabulation: Question 26 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	5	7	1		1
Disagree	7	12	4	1	1
Neutral	20	20	4	1	3
Agree	11	15	2	2	4
Strongly Agree	8	10	5	1	1
Totals	51	64	16	5	10

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Crosstabulation: Question 26 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	2	7	2		3
Disagree	6	17	2		
Neutral	6	31	5	2	4
Agree	19	9	5		1
Strongly Agree	10	8	5		1
Totals	43	72	19	2	9

Crosstabulation: Question 27 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	6	22	15	8	10
Disagree	11	9	5	3	4
Neutral	7	11	2	2	3
Agree	1	1	1		
Strongly Agree				2	1
Totals	25	43	23	15	18

	61-70	71-80	80-90	Totals
Strongly Disagree	6	7		13
Disagree	2	1	2	5
Neutral				37
Agree	1			25
Strongly Agree	1			4
Totals	10	8	2	144

Crosstabulation: Question 27 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	70	2	2	74
Disagree	35	1	1	37
Neutral	24	1		25
Agree	3			3
Strongly Agree	4			4
Totals	136	4	3	143

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Crosstabulation: Question 27 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	69	6	75
Disagree	33	4	37
Neutral	21	4	25
Agree	2		4
Strongly Agree	5	1	6
Totals	130	17	147

Crosstabulation: Question 27 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	36	20	18	74
Disagree	13	11	11	35
Neutral	6	12	6	24
Agree	1	2	1	4
Strongly Agree	3	3		6
Totals	59	48	36	143

Crosstabulation: Question 27 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	23	38	10	1	5
Disagree	15	13	1	2	5
Neutral	11	9	3	1	1
Agree	2		2		
Strongly Agree	1	5			
Totals	52	65	16	4	11

Crosstabulation: Question 27 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	28	30	10		7
Disagree	6	22	6	1	1
Neutral	3	19	2	1	
Agree	1	2	1		
Strongly Agree	5		1		
Totals	43	73	20	2	8

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Crosstabulation: Question 28 x Age group

	15-20	21-30	31-40	41-50	51-60	Totals
Strongly Disagree	7	11	8	2	3	31
Disagree	9	16	3	3	2	33
Neutral	9	3	3	2	2	19
Agree	4	1	1	1	2	9
Strongly Agree	25	41	21	14	16	117
Totals	61	71	80	90	136	339

	61-70	71-80	80-90	Totals
Strongly Disagree	5	6	1	12
Disagree	3	1	1	5
Neutral	1	2	3	6
Agree	1	1	1	3
Strongly Agree	9	8	2	19
Totals	19	18	6	43

Crosstabulation: Question 28 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	37	1	2	40
Disagree	35	3	1	39
Neutral	32	3	1	36
Agree	14	9	1	24
Strongly Agree	9	4	3	16
Totals	127	20	7	154

Crosstabulation: Question 28 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	39	4	43
Disagree	34	1	35
Neutral	31	5	36
Agree	9	5	14
Strongly Agree	8	2	10
Totals	121	17	138

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Crosstabulation: Question 28 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	24	8	13	45
Disagree	11	15	8	34
Neutral	14	13	9	36
Agree	3	9	2	14
Strongly Agree	6	2	1	9
Totals	58	47	33	138

Crosstabulation: Question 28 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School	Totals
Strongly Disagree	11	25	6	2	2	46
Disagree	12	18	2	1	2	35
Neutral	16	9	6	2	2	35
Agree	10	3	1	1	1	16
Strongly Agree	3	5	1	5	1	15
Totals	52	60	15	11	8	146

Crosstabulation: Question 28 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union	Totals
Strongly Disagree	23	8	9	1	6	47
Disagree	7	20	4	1	3	35
Neutral	6	25	3	1	1	36
Agree	2	12	3	2	2	19
Strongly Agree	4	3	2	2	2	13
Totals	42	68	18	7	12	147

Crosstabulation: Question 29 x Age group

	15-20	21-30	31-40	41-50	51-60	Totals
Strongly Disagree	3	1	6	3	3	16
Disagree	3	2	5	5	1	16
Neutral	3	19	7	2	6	37
Agree	9	11	2	1	4	27
Strongly Agree	5	5	4	3	3	20
Totals	23	38	19	11	17	108

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	61-70	71-80	80-90	Totals
Strongly Disagree	3	3	1	20
Disagree	1	1	1	14
Neutral	3	1	1	41
Agree	1	1	1	29
Strongly Agree	1	1	1	21
Totals	9	6	2	125

Crosstabulation: Question 29 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	16	1	1	18
Disagree	14	1	1	14
Neutral	39	2	1	42
Agree	29	1	1	29
Strongly Agree	20	1	1	21
Totals	118	4	2	124

Crosstabulation: Question 29 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	16	4	20
Disagree	13	1	14
Neutral	36	6	42
Agree	26	3	29
Strongly Agree	21	2	23
Totals	112	16	128

Crosstabulation: Question 29 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	7	6	7	20
Disagree	6	5	3	14
Neutral	22	11	8	41
Agree	9	12	7	28
Strongly Agree	9	9	5	23
Totals	53	43	30	126

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Crosstabulation: Question 29 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	3	12	4	1	1
Disagree	5	6	1	1	1
Neutral	14	17	6	1	4
Agree	12	11	1	1	4
Strongly Agree	10	12	1	1	4
Totals	44	58	13	4	9

Crosstabulation: Question 29 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	8	6	6	2	2
Disagree	4	4	2	2	1
Neutral	10	26	5	1	1
Agree	7	19	2	1	1
Strongly Agree	8	11	1	1	3
Totals	37	66	16	2	7

Crosstabulation: Question 30 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	1	2	1	1	1
Disagree	5	13	4	1	5
Neutral	6	12	5	5	5
Agree	12	13	11	6	7
Strongly Agree	24	40	21	12	17
Totals	61-70	71-80	80-90	Totals	Totals
Strongly Disagree	1	1	3	1	1
Disagree	1	29	29	37	37
Neutral	2	2	4	2	61
Agree	6	4	6	2	131
Strongly Agree	9	6	2	2	
Totals	9	6	2	2	

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Crosstabulation: Question 30 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	3	1		4
Disagree	1			1
Neutral	26	1	1	28
Agree	36	1		37
Strongly Agree	57	2	1	60
Totals	123	4	3	130

Crosstabulation: Question 30 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	2	2	4
Disagree	1	1	2
Neutral	24	5	29
Agree	34	3	37
Strongly Agree	56	7	63
Totals	117	17	134

Crosstabulation: Question 30 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	2		2	4
Disagree	1	1		2
Neutral	11	10	7	28
Agree	17	10	9	36
Strongly Agree	26	23	14	63
Totals	56	44	32	132

Crosstabulation: Question 30 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School	Totals
Strongly Disagree			4			4
Disagree	1					1
Neutral	10	10	2	3	4	29
Agree	13	18	3	1	3	38
Strongly Agree	22	29	9		3	63
Totals	46	61	14	4	10	138

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Crosstabulation: Question 30 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree		2	2		
Disagree	1				
Neutral	6	19	3		1
Agree	11	21	4	1	1
Strongly Agree	23	27	7	1	5
Totals	40	70	16	2	7

Crosstabulation: Question 31 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	1	4	7	2	1
Disagree	2	1	2	3	2
Neutral	7	20	4	4	5
Agree	6	9	5		5
Strongly Agree	7	4	4	2	3
Totals	23	38	22	11	16

	61-70	71-80	80-90	Totals
Strongly Disagree	4	3	1	8
Disagree	1	1	1	3
Neutral	2	1	1	4
Agree	1	1		2
Strongly Agree				
Totals	8	6	2	16

Crosstabulation: Question 31 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	20	1	1	22
Disagree	13			13
Neutral	40	2	1	43
Agree	27			27
Strongly Agree	19	1		20
Totals	119	4	2	125

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Crosstabulation: Question 31 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	21	2	23
Disagree	13	13	26
Neutral	37	7	44
Agree	23	4	27
Strongly Agree	18	3	21
Totals	112	16	128

Crosstabulation: Question 31 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	11	5	7	23
Disagree	7	3	3	13
Neutral	20	15	8	43
Agree	8	11	7	26
Strongly Agree	7	9	5	21
Totals	53	43	30	126

Crosstabulation: Question 31 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	2	16	4		
Disagree	4	7	1		1
Neutral	18	16	4	3	4
Agree	9	12	3	1	2
Strongly Agree	12	8	1		
Totals	45	59	13	4	7

Crosstabulation: Question 31 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	7	5	7		
Disagree	6	4	2	1	3
Neutral	12	28	3	1	1
Agree	7	17	2		1
Strongly Agree	5	13	1		2
Totals	37	67	15	2	7

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Crosstabulation: Question 29-324 * Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	7	7	10	4	7
Disagree	7	14	3	4	7
Neutral	6	10	3	2	2
Agree	3	5	2	1	1
Strongly Agree	2	2	1	2	
Totals	23	38	19	13	17

	61-70	71-80	80-90	Totals
Strongly Disagree	6	4	1	11
Disagree	3	3	1	7
Neutral				
Agree	1	1		2
Strongly Agree				
Totals	10	8	2	20

Crosstabulation: Question 32 x Baptismal Status

	Baptized	Non-Baptized	Totals
Strongly Disagree	45	1	46
Disagree	38	1	39
Neutral	21	1	22
Agree	13	1	14
Strongly Agree	4	1	5
Totals	121	4	125

Crosstabulation: Question 32 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	41	6	47
Disagree	36	5	41
Neutral	22	1	23
Agree	12	4	16
Strongly Agree	4	1	5
Totals	115	17	132

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Crosstabulation: Question 32 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	17	14	13	44
Disagree	18	14	10	42
Neutral	9	9	5	23
Agree	8	6	2	16
Strongly Agree	2	1	2	5
Totals	54	44	32	130

Crosstabulation: Question 32 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	14	22	7	2	3
Disagree	14	17	6	2	3
Neutral	10	11			2
Agree	7	6			3
Strongly Agree	1	2	2		
Totals	46	58	15	4	11

Crosstabulation: Question 32 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	19	20	8		
Disagree	13	20	4	2	3
Neutral	4	17			2
Agree	5	7	1		3
Strongly Agree	2	2	3		
Totals	41	66	16	2	8

Crosstabulation: Question 33 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree			1		
Disagree				1	
Neutral	5	19	7	4	7
Agree	10	22	13	10	10
Strongly Agree	9	41	22	15	18
Totals	24	41	22	15	18

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Crosstabulation: Question 33 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	1			2
Disagree		1		7
Neutral	3	1		51
Agree	7	7	3	81
Strongly Agree	10	6	3	141
Totals	21	15	6	42

Crosstabulation: Question 33 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	1		2
Disagree		1	7
Neutral	7		51
Agree	50	1	79
Strongly Agree	75	1	139
Totals	133	3	139

Crosstabulation: Question 33 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	1		2
Disagree		1	7
Neutral	7		51
Agree	44	7	83
Strongly Agree	75	8	143
Totals	127	16	143

Crosstabulation: Question 33 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1			2
Disagree		1		5
Neutral	1	3		49
Agree	20	20	9	84
Strongly Agree	37	23	24	140
Totals	59	46	35	140

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Crosstabulation: Question 33 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree		1		1	
Disagree					
Neutral	5		1		1
Agree	18	19	4	3	6
Strongly Agree	29	43	9	1	4
Totals	52	63	14	5	11

Crosstabulation: Question 33 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree			1		1
Disagree					
Neutral	1	5			
Agree	13	27	6	1	3
Strongly Agree	28	39	12	1	5
Totals	42	71	19	2	9

Crosstabulation: Question 34 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	1	1	1		
Disagree	1		1		
Neutral	5	1			
Agree	4	12	4	2	2
Strongly Agree	13	28	16	13	16
Totals	24	42	22	15	18

	61-70	71-80	80-90	Totals
Strongly Disagree			3	3
Disagree			2	2
Neutral	1	1	8	10
Agree	9	2	26	37
Strongly Agree	10	8	3	21
Totals	20	11	42	73

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Crosstabulation: Question 34 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	3	1		4
Disagree	2			2
Neutral	8			8
Agree	25	1		26
Strongly Agree	95	2	3	100
Totals	133	4	3	140

Crosstabulation: Question 34 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	2	2	4
Disagree	1	1	2
Neutral	7	1	8
Agree	23	3	26
Strongly Agree	94	10	104
Totals	127	17	144

Crosstabulation: Question 34 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	2	1		3
Disagree	1		1	2
Neutral	2	4	1	7
Agree	7	10	8	25
Strongly Agree	48	31	25	104
Totals	60	46	35	141

Crosstabulation: Question 34 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	2		2		
Disagree	2				
Neutral	6	1	1		
Agree	11	8	2	2	3
Strongly Agree	31	52	12	3	8
Totals	52	63	15	5	11

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Crosstabulation: Question 34 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree		2	1		
Disagree		2			
Neutral	2	6			
Agree	4	14	5	1	2
Strongly Agree	36	48	13	1	7
Totals	42	72	19	2	9

Crosstabulation: Question 35 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	7	12	14	7	12
Disagree	7	13	8	3	6
Neutral	4	10	1	1	
Agree	3	4		1	
Strongly Agree	3	3	1	3	
Totals	24	42	24	15	18

	61-70	71-80	80-90	Totals
Strongly Disagree	8	4	3	67
Disagree	2	1		40
Neutral				16
Agree		3		11
Strongly Agree				10
Totals	10	8	3	144

Crosstabulation: Question 35 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	63	2	1	66
Disagree	39			39
Neutral	13	1	2	16
Agree	10			10
Strongly Agree	10	1		11
Totals	135	4	3	142

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Crosstabulation: Question 35 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	60	7	67
Disagree	33	7	40
Neutral	14	2	16
Agree	10		10
Strongly Agree	11	2	13
Totals	128	18	146

Crosstabulation: Question 35 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	31	18	17	66
Disagree	17	11	11	39
Neutral	8	5	3	16
Agree	3	5	3	11
Strongly Agree	2	6	4	12
Totals	61	45	38	144

Crosstabulation: Question 35 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	22	33	8	2	3
Disagree	14	14	5	1	5
Neutral	6	8		1	1
Agree	5	5	1	1	1
Strongly Agree	5	6	1	1	1
Totals	52	66	15	5	10

Crosstabulation: Question 35 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	23	28	13	1	3
Disagree	10	22	4	1	2
Neutral	2	13	1		
Agree	4	7			1
Strongly Agree	3	6	1		2
Totals	42	76	19	2	8

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Crosstabulation: Question 36 x Age group

	15-20	21-30	31-40	41-50	51-60	Totals
Strongly Disagree	4	2	3	2	1	12
Disagree	4	4	2	2	6	18
Neutral	7	18	6	4	4	39
Agree	7	11	8	5	4	35
Strongly Agree	1	7	5	3	2	18
Totals	23	42	24	14	17	118

	61-70	71-80	80-90	Totals
Strongly Disagree	2	1	1	4
Disagree	1	1	1	3
Neutral	1	1	1	3
Agree	2	3	1	6
Strongly Agree	5	3	1	9
Totals	10	8	3	21

Crosstabulation: Question 36 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	15	1	1	17
Disagree	15	1	1	17
Neutral	38	2	1	41
Agree	40	0	0	40
Strongly Agree	23	0	1	24
Totals	131	4	3	138

Crosstabulation: Question 36 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	12	4	16
Disagree	15	2	17
Neutral	35	6	41
Agree	38	2	40
Strongly Agree	25	3	28
Totals	125	17	142

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Crosstabulation: Question 36 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	4	5	6	15
Disagree	9	5	3	17
Neutral	18	11	11	40
Agree	16	14	11	41
Strongly Agree	12	10	7	29
Totals	59	45	38	142

Crosstabulation: Question 36 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	7	7	2	2	2
Disagree	7	4	4	4	5
Neutral	14	16	5	1	5
Agree	15	21	2	2	3
Strongly Agree	6	17	4	2	1
Totals	49	65	15	5	11

Crosstabulation: Question 36 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	6	7	3	2	1
Disagree	5	9	2	2	1
Neutral	8	26	5	1	1
Agree	12	23	1	1	4
Strongly Agree	11	9	7	7	3
Totals	42	74	18	2	9

Crosstabulation: Question 37 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	5	3	2	1	5
Disagree	9	14	3	4	3
Neutral	5	14	7	3	4
Agree	4	6	12	5	6
Strongly Agree	23	42	25	13	18
Totals	46	79	49	26	36

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	61-70	71-80	80-90	Totals
Strongly Disagree	1	1		2
Disagree			1	1
Neutral	2			2
Agree	1	4	1	6
Strongly Agree	6	3	1	10
Totals	10	8	3	21

Crosstabulation: Question 37 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	8	1	1	10
Disagree	15	1		16
Neutral	33	2		35
Agree	37		1	38
Strongly Agree	39		1	40
Totals	132	4	3	139

Crosstabulation: Question 37 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	7	3	10
Disagree	12	4	16
Neutral	28	7	35
Agree	37	1	38
Strongly Agree	41	3	44
Totals	125	18	143

Crosstabulation: Question 37 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	6	1	3	10
Disagree	7	4	5	16
Neutral	13	15	6	34
Agree	15	11	12	38
Strongly Agree	18	14	12	44
Totals	59	45	38	142

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Crosstabulation: Question 37 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	1	8	1		
Disagree	8	5	2		1
Neutral	16	9	2	1	6
Agree	11	19	4	2	3
Strongly Agree	12	25	6	2	1
Totals	48	66	15	5	11

Crosstabulation: Question 37 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	3	4	2		1
Disagree	3	10	2		1
Neutral	7	22	2	1	2
Agree	12	22	2	1	2
Strongly Agree	16	16	11		3
Totals	41	74	19	2	9

Crosstabulation: Question 38 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	4	7	11	7	9
Disagree	6	15	8	2	3
Neutral	6	11	3	2	
Agree	5	7	1	1	5
Strongly Agree	3	1	2	1	1
Totals	24	41	25	13	18

	61-70	71-80	80-90	Totals
Strongly Disagree	7	3	1	11
Disagree				
Neutral	3	1		4
Agree	3	1		4
Strongly Agree	10	8	2	20
Totals	10	8	2	20

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Crosstabulation: Question 38 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	47	1		48
Disagree	34	1	2	37
Neutral	20	1	1	22
Agree	22	1		23
Strongly Agree	9			9
Totals	132	4	3	139

Crosstabulation: Question 38 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	45	5	50
Disagree	33	4	37
Neutral	19	3	22
Agree	19	6	25
Strongly Agree	9		9
Totals	125	18	143

Crosstabulation: Question 38 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	19	13	17	49
Disagree	19	10	8	37
Neutral	8	7	6	21
Agree	9	14	2	25
Strongly Agree	2	2	5	9
Totals	57	46	38	141

Crosstabulation: Question 38 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School	Totals
Strongly Disagree	10	29	7	3	2	51
Disagree	10	15	4	1	7	37
Neutral	10	10	1		1	22
Agree	13	9	2		1	25
Strongly Agree	4	3	1	1		9
Totals	47	66	15	5	11	144

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Crosstabulation: Question 38 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	19	19	10		3
Disagree	6	21	4	2	4
Neutral	3	19			
Agree	9	12	3		1
Strongly Agree	3	3	2		1
Totals	40	74	19	2	9

Crosstabulation: Question 39 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree			1		
Disagree			1	1	
Neutral	5	3	1	1	
Agree	3	10	4	5	7
Strongly Agree	16	28	19	7	11
Totals	24	41	26	14	18

Crosstabulation: Question 39 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	2	1		3
Disagree	10			10
Neutral	3	2	1	6
Agree	7	6	2	15
Strongly Agree	10	8	3	21
Totals	32	17	6	55

Crosstabulation: Question 39 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	2	1		3
Disagree	10			10
Neutral	35			35
Agree	88	3	3	94
Strongly Agree	135	4	3	142

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Crosstabulation: Question 39 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	2	1	3
Disagree	10	2	12
Neutral	34	10	44
Agree	82	35	117
Strongly Agree	16	98	114
Totals	128	146	274

Crosstabulation: Question 39 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1	1	1	3
Disagree	4	1	2	7
Neutral	16	4	9	29
Agree	37	11	8	56
Strongly Agree	59	31	28	118
Totals	112	46	38	196

Crosstabulation: Question 39 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	5	2	1	2	1
Disagree	11	4	2	2	5
Neutral	34	14	2	3	6
Agree	50	45	13	5	12
Totals	100	66	15	10	24

Crosstabulation: Question 39 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	1	1	1	1	1
Disagree	15	10	3	2	2
Neutral	25	12	15	7	7
Agree	41	75	19	2	9
Strongly Agree	15	12	3	2	2
Totals	92	100	31	11	11

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Crosstabulation: Question 35-406 * Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	4	2	1	1	2
Disagree	12	13	3	1	2
Neutral	4	16	8	4	5
Agree	2	12	13	8	9
Strongly Agree	24	41	26	14	18
Totals	46	84	52	26	36

	61-70	71-80	80-90	Totals
Strongly Disagree	1	1	8	10
Disagree	4	4	31	39
Neutral	2	3	1	6
Agree	8	4	2	14
Strongly Agree	10	8	3	21
Totals	25	20	43	88

Crosstabulation: Question 40 x Baptismal Status

	Baptized	Non-Baptized	Totals
Strongly Disagree	7	1	8
Disagree	4	4	8
Neutral	28	2	30
Agree	41	1	42
Strongly Agree	54	1	55
Totals	134	9	143

Crosstabulation: Question 40 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	5	3	8
Disagree	4	4	8
Neutral	26	5	31
Agree	39	4	43
Strongly Agree	53	6	59
Totals	127	18	145

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Crosstabulation: Question 40 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1	5	2	8
Disagree	1	2	1	4
Neutral	9	13	7	29
Agree	17	13	11	41
Strongly Agree	31	13	17	61
Totals	59	46	38	143

Crosstabulation: Question 40 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	4	2	2		
Disagree	2	1			1
Neutral	16	7	2		4
Agree	11	17	6	3	5
Strongly Agree	14	39	5	2	2
Totals	49	66	15	5	12

Crosstabulation: Question 40 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	1	5	2		
Disagree	1	2	1		
Neutral	15	27	2	1	
Agree	24	21	3	1	2
Strongly Agree	41	75	19	2	9
Totals	82	130	27	4	20

Crosstabulation: Question 7 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	3	9	1	1	
Disagree	3	9	1	2	
Neutral	10	20	10	2	3
Agree	7	13	15	11	15
Strongly Agree	23	42	27	16	18
Totals	46	73	54	32	36

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Crosstabulation: Question 7 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	5			5
Disagree	13	1	1	15
Neutral	43	2	1	46
Agree	77	1		78
Strongly Agree	138	4	2	144
Totals	272	8	4	284

Crosstabulation: Question 7 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	5		5
Disagree	13	2	15
Neutral	38	8	46
Agree	76	6	82
Strongly Agree	132	16	148
Totals	264	32	296

Crosstabulation: Question 7 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1	2	1	4
Disagree	6	4	5	15
Neutral	20	13	12	45
Agree	33	28	22	83
Strongly Agree	60	47	40	147
Totals	120	94	80	294

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Crosstabulation: Question 7 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	3	2			
Disagree	5	8			2
Neutral	18	15	5	1	6
Agree	24	44	10	4	3
Strongly Agree	50	69	15	5	11
Totals					

Crosstabulation: Question 7 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	1	4			
Disagree	1	11	1	1	1
Neutral	4	33	4	1	3
Agree	36	28	16		5
Strongly Agree	42	76	21	2	9
Totals					

Crosstabulation: Question 8 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree			1		
Disagree	1		1		
Neutral	4	5	1	1	1
Agree	20	38	25	15	17
Strongly Agree	25	43	28	16	18
Totals					

	61-70	71-80	80-90	Totals
Strongly Disagree				1
Disagree				2
Neutral	10	8	3	136
Agree	10	8	3	151
Strongly Agree	10	8	3	
Totals				

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Crosstabulation: Question 8 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	1			1
Disagree	1	1		2
Neutral	10	2		12
Agree	130	1	3	134
Strongly Agree	142	4	3	149
Totals				

Crosstabulation: Question 8 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	1		1
Disagree	1	1	2
Neutral	9	3	12
Agree	124	14	138
Strongly Agree	135	18	153
Totals			

Crosstabulation: Question 8 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree			1	1
Disagree	1	1		2
Neutral	3	5	3	11
Agree	57	43	36	136
Strongly Agree	61	49	40	150
Totals				

Crosstabulation: Question 8 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree			1		
Disagree	1	1			
Neutral	7	2	1		2
Agree	45	65	15	5	10
Strongly Agree	53	69	16	5	12
Totals					

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Crosstabulation: Question 8 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree		1			
Disagree					
Neutral		1	1		
Agree	1	8	1	1	1
Strongly Agree	42	68	19	1	8
Totals	43	78	21	2	9

Crosstabulation: Question 9 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	2		2		
Disagree	1				
Neutral	2	7	1	2	4
Agree	6	15	7	5	2
Strongly Agree	12	20	17	9	12
Totals	25	42	27	16	18

	61-70	71-80	80-90	Totals
Strongly Disagree				4
Disagree		1		1
Neutral				16
Agree	1			38
Strongly Agree	8	8	3	89
Totals	9	8	3	148

Crosstabulation: Question 9 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	3			4
Disagree	1	1		1
Neutral	14	1	1	16
Agree	38			38
Strongly Agree	83	2	2	87
Totals	139	4	3	146

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Crosstabulation: Question 9 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	2	2	4
Disagree	1	1	1
Neutral	15	1	16
Agree	34	4	38
Strongly Agree	80	11	91
Totals	132	18	150

Crosstabulation: Question 9 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1	1	1	3
Disagree		1	1	1
Neutral	7	3	5	15
Agree	13	11	14	38
Strongly Agree	39	32	20	91
Totals	60	48	40	148

Crosstabulation: Question 9 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	2	2			
Disagree	1				
Neutral	4	6	3	1	2
Agree	13	16	3	1	6
Strongly Agree	33	43	10	4	3
Totals	53	67	16	5	11

Crosstabulation: Question 9 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree		3	1		
Disagree		1			
Neutral	4	8	4		
Agree	6	27	2	1	2
Strongly Agree	32	38	14	1	7
Totals	42	77	21	2	9

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Crosstabulation: Question 10 x Age group

	15-20	21-30	31-40	41-50	51-60	Totals
Strongly Disagree	1			2		3
Disagree	6		2	1		9
Neutral	5	11	3	2		27
Agree	8	10	4	3		29
Strongly Agree	5	21	18	8		60
Totals	25	42	27	16		148

	61-70	71-80	80-90	Totals
Strongly Disagree				3
Disagree				9
Neutral		2		27
Agree	1			29
Strongly Agree	8	6	3	60
Totals	9	8	3	148

Crosstabulation: Question 10 x Baptismal Status

	Baptized	Non-Baptized	Unsure	Totals
Strongly Disagree	3			3
Disagree	8	1		9
Neutral	25	1	1	27
Agree	28		1	29
Strongly Agree	74	2	1	77
Totals	138	4	3	145

Crosstabulation: Question 10 x Catholic vs Non-Catholic

	Catholic	Non-Catholic	Totals
Strongly Disagree	2	1	3
Disagree	8	1	9
Neutral	24	3	27
Agree	26	3	29
Strongly Agree	71	10	81
Totals	131	18	149

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Crosstabulation: Question 10 x Public vs Catholic Schooling

	Public	Catholic	Both	Totals
Strongly Disagree	1	1		3
Disagree	2	6	1	9
Neutral	14	7	5	26
Agree	8	12	9	29
Strongly Agree	35	22	24	81
Totals	60	48	40	148

Crosstabulation: Question 10 x Education

	High School	College	Graduate School	Post-Graduate School	Professional School
Strongly Disagree	1	1			
Disagree	6	3			
Neutral	11	8	2		6
Agree	11	12	4	1	1
Strongly Agree	22	44	10	3	4
Totals	51	68	16	5	11

Crosstabulation: Question 10 x Marital Status

	Married	Single	Divorced	Widow/Widower	Civil Union
Strongly Disagree	1	1			1
Disagree	5	8	1		
Neutral	4	17	3	1	1
Agree	32	19	4	1	2
Strongly Agree	42	77	21	2	9

Crosstabulation: Question 11 x Age group

	15-20	21-30	31-40	41-50	51-60
Strongly Disagree	2	1	1		
Disagree			2		
Neutral	2	1	3	1	
Agree	5	6	2	1	2
Strongly Agree	16	35	20	13	16
Totals	25	43	28	16	18

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