

Faith and the sacramental dignity of marriage: Canonical considerations of the effects of radical error and simulation

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Declaration

I declare that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree, except for this one. Except where stated otherwise by reference or acknowledgment, the work presented is entirely my own.

Abstract

The CIC/83 contains 110 canons on marriage in cc. 1055 – 1165. The canons are a compilation of theological statements that are presented in juridical terms. 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.

The requirements of cc. 1099 and 1101, §2 are that one must not be in error about or exclude the sacramental dignity of marriage at the time of the exchange of consent. In 1977, the International Theological Commission admitted the existence of baptized unbelievers and baptized non-Catholics who neither understand nor believe in the sacramentality of marriage, nor exchange it at the moment of consent.

Through research on the historical development of theological and canonical principles, it becomes increasingly clear that the *theologico-juridico* principles of c. 1055 and the sacramentality of marriage must be revisited.

Key Words

Marriage, sacramentality, sacramental dignity, 1980 Synod of Bishops, baptized non-believers, intention against sacramentality, radical error, contract, covenant, faith, Roman Rota, simulation, exclusion, *Mitis Iudex, Subsidium*

Abbreviations, Initialisms, Acronyms, Symbols

CCC	<i>Catechism of the Catholic Church</i>
CIC/17	<i>1917 Code of Canon Law</i>
CIC/83	<i>1983 Code of Canon Law</i>
c.	Canon, with reference to canon law
cc.	Canons, with reference to canon law
DOPB	Diocese of Palm Beach
DOPBT	Diocese of Palm Beach Tribunal
ITC	International Theological Commission
§ and °	Section number, used in ecclesiastical documents divided into sections or paragraphs
PCF	Pontifical Commission for the Family
PCRC	Pontifical Commission for the Revision of the Code

Acknowledgements

This decision to pursue this investigation is related to my professional ministry as a Roman Catholic priest of the Diocese of Palm Beach. I am working full-time as a canon lawyer in the Tribunal and Office of Canonical Services and teaching canon law at Saint Vincent de Paul Regional Seminary, located in the territory of the Diocese of Palm Beach, which serves the seven dioceses that make up the Province of Miami. Time and again it has been observed that the sacral nature of marriage has been eroded, and that the parties to a marriage no longer marry according to the mind of the Church because they lack the fervent faith that past generations seemed to have enjoyed.

This study has two interwoven aspects: the first, which is canonical and related to annulments, provided a way for me to address the issues surrounding the breakdown of marriage due to lack of faith in the judicial forum; the second, and probably more important, is the question of what has been, or can be, done to curb this disturbing trend. What good would a study be if it only focused on problems without providing viable solutions?

This work would not have been possible without the assistance of a good Catholic man, Mr. John Rooney. With a generous heart he provided financial assistance over several years, allowing for the completion of this study without hardship.

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Archimandrite Glen J. Pothier

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1. Chapter one: Background and problem statement / questions arising

1.1. Background and problem statement

1.1.1. Background

Because society has become progressively secularized, the ideals that are held by the Catholic Church may no longer be relevant to the faithful. However, the CIC/83, the *ius vigens*, presumes that this secularization is irrelevant and admits no degrees to faith.

There are several Rotal auditors who have written both judicial sentences and academic works on faith and the sacramentality of marriage. Burke (2015:1-29) delves deeply into this topic as the first chapter of his book on the relationship between canon law and the theology of marriage, concepts which pervade his entire work. Pompedda (1990:33-65), the former dean of the Roman Rota, Boccafola (1996:305-325), Stankiewicz (1984:547-565) and Faltin (1990:66-104), together with Grochlewski (1978:283-295), former prefect of the Apostolic Signatura, have addressed the lack of faith and possible effects on validity.

Non-Rotal experts in canon law continue to address this matter. Örsy (1990:260-294) sees the connection of faith and sacramentality as a 'disputed' area between canon law and theology. He identifies the issue of baptized non-believers or Catholics with little or no faith and considers that their existence is an area of jurisprudence that will require further study as the desacralization of marriage continues. Mendonça (1998:5-48; 2007:129-239) has written extensively on error concerning the sacramentality of marriage as a contributing factor to the invalidity of marriages of the baptized, with faith formation as an important component. Killeen (2010) clarifies the underlying essence of marriage and its sacramentality, while Scicluna (1995) helps provide a definition of marriage according to the CIC/17 and CIC/83 by comparing and contrasting them.

While Mackin (1989) provides an extensive study on marriage in the Catholic Church as a sacrament, Kasper (1980) notes the difference between marriage as a contract and marriage as a covenant. Finn (1990:95-111) identifies marriage as a Christian reality that is sacred, but transformed by Christ, and yet admits that marriage comes about *ex opere operantis*. Woestman's (2000) work on simulation of marital consent provides details of Rotal sentences that address many forms of simulation in marital consent, including chapters on the sacramentality of marriage. Lawler (1991:712-731) sides clearly with the absence of faith as being detrimental to Christian marriage. Coughlin (2012) reflects on the Constitution *Gaudium et Spes* from the Second Vatican Council and the issue of personalism and faith. Morrisey (2014) addresses error concerning sacramentality and notes that there is an erosion of the presumption that people marry according to the mind of the Church. He explains how error affects the will, and the role of faith in entering

marriage. The International Theological Commission (1977) deemed that a lack of faith could impact the validity of consent.

Pope John Paul II (1981) in his apostolic exhortation *Familiaris Consortio* notes that, at times, couples marry in a Catholic ceremony for social and cultural reasons, and that faith exists in different degrees. He strongly proffers that pastors should discourage from marrying in the Church those individuals who are baptized non-believers.

In his September 2015 *motu proprio*, Pope Francis promulgated *Mitis Iudex Dominus Iesus* (2015) as new marriage procedural law for declarations of nullity effective December 8, 2015. The instructional segment of the *motu proprio*, art. 14, §1, explains that a new provision is being made in the CIC/83 for circumstances where, among other possibilities, there is a “defect of faith which can generate simulation of consent or error that determines the will,” the two areas of jurisprudence that are being investigated in this thesis. This brings to the forefront the importance of faith, simulation, and radical error in the positing of consent on the day of marriage.

Some of the above authors provide opposing views concerning the role of faith in simulation of marital consent due to an intention against sacramentality, while others address the role of faith with respect to error about the nature of sacramental marriage.

1.1.2. Problem statement

The primary research question is:

Is it possible for the faith of baptized non-Catholics and Catholics with little or no faith formation to be given juridic value and therefore impact the consent that is exchanged between a man and a woman on the day of marriage with respect to sacramentality, thereby overturning the presumption that people marry according to the mind of the Church?

1.1.3. Research questions

The questions that arise from the research question are:

- What is the nature of the sacramental dignity of marriage, and how is its historicity and canonical development related to radical error (c. 1099) and simulation (c. 1101)?
- What are the key points that emerge from a comparison of CIC/17 and CIC/83 regarding simulation and radical error, and what emerges from the comparison between traditional jurisprudence and contemporary jurisprudence in light of the Second Vatican Council?

- What are the key points that emerge from examination of specific Rotal sentences and data from the Tribunal of the DOPB with relation to radical error and simulation of sacramental dignity for baptized non-Catholics or Catholics with little or no faith?
- What are the criteria for distinction and influence on jurisprudence for situations where the possibility of the existence of baptized non-Catholics or Catholics with little or no faith weakens the presumption of the validity of marriage?
- Should radical error or simulation concerning sacramental dignity be admitted more regularly as *capita nullitates* in declaration of nullity cases involving baptized non-Catholics or Catholics with little or no faith formation given the reference in the *motu proprio* of Pope Francis (2015) *Mitis Iudex Dominus Iesus* to ‘defect of faith’ (*fidei defectus*)?

1.2. Research aims and objectives

1.2.1. Aims

The primary aim of this thesis is to evaluate whether juridic weight can be given to the faith of baptized non-Catholics or Catholics with little or no faith formation, and whether this juridic value can be applied in cases of marriage nullity based on radical error (c. 1099) and simulation (c. 1101), and to evaluate its expanded use as a distinct *caput nullitatis*.

1.2.2. Objectives

- To examine the nature of the sacramental dignity of marriage, and how its historicity and canonical development is related to radical error (c. 1099) and simulation (c. 1101);
- To compare the CIC/17 and CIC/83 regarding simulation and radical error, and determine what emerges from a comparison between traditional jurisprudence and contemporary jurisprudence in light of the Second Vatican Council;
- To examine specific Rotal sentences and data from the Tribunal of the DOPB with relation to radical error and simulation of sacramental dignity for baptized non-Catholics or Catholics with little or no faith;
- To identify the criteria for distinction and influence on jurisprudence for situations where the possibility of the existence of baptized non-Catholics or Catholics with little or no faith weakens the presumption of the validity of marriage;
- To evaluate whether radical error or simulation concerning sacramental dignity should be admitted more regularly as *capita nullitates* in declaration of nullity cases involving baptized non-Catholics or Catholics with little or no faith formation, given the reference in the *motu proprio* of Pope Francis (2015) *Mitis Iudex Dominus Iesus* to ‘defect of faith’ (*fidei defectus*).

1.2.3. Central theoretical argument

By admitting the juridic value of the element of faith and applying it to marriages of baptized non-Catholics or Catholics with little or no faith formation who lack knowledge of or exclude the sacramental nature of marriage, the presumption that people marry according to the mind of the Church cannot be maintained.

1.3 Research methodology

1.3.1. Literature and commentary / ecclesiastical jurisprudence

Literature and commentary regarding the Catholic Church's teaching on the sacramentality of marriage, and Roman Rotal decisions on exclusion of sacramentality or radical error will be reviewed, and a specific qualitative and quantitative analysis of Marriage Tribunal cases of the DOPB regarding faith formation and the sacramentality of marriage for derivation of common themes will be done.

1.3.2. Theological and canonical

With respect to the theological and canonical basis for the sacramentality of marriage, an analysis will be made of the data that have reference to the sacramentality of marriage, either expressed absolutely [i.e., an intention against the sacramentality of marriage (c. 1101), radical error regarding sacramental dignity (c. 1099), or, as some jurisprudence indicates, a grave lack of discretionary judgment concerning essential marital rights and duties (c. 1095, 2^o), where one of the components of discretion is that marriage is a special sacrament (cc. 1055; 1134)] or implicitly [i.e., as data overturns or weakens a presumption that people marry with an intention *facere quod facit Ecclesia*].

1.3.3. Qualitative and quantitative use of DOPB Tribunal Cases

The research questions can be seen either positively or negatively in the testimony of the parties to a marriage nullity case involving one of the *capita nullitates* listed above. The rationale for using actual marriage nullity cases (with no identifying personal information) can be understood by noting that these are the very cases that are adjudicated in the Tribunal of the DOPB. By identifying testimony related to the three questions above, *qualitative* research can be applied to verify whether the Church's teachings and presumptions can be upheld, whereas the *quantitative* data can be used to indicate trends.

1.4. Concept Clarification

Terminology and concepts that require clarification with the intention of limiting the scope:

- The notion of the sacramentality of marriage according to the Roman Catholic Church;
- Identification of baptized non-believers and Catholics with little or no faith formation;
- Identification of canonical notions of contract and covenant, and inseparability of contract and sacrament for the baptized;
- Identification of the ends, goods, and meanings of marriage with reference to the object of marriage;
- Differences between total simulation, partial simulation, and error of law.

1.5. Ethical considerations

With regard to any potential ethical issues, the following declaration can be made: Some of the research will involve reflecting on seventeen years of anonymous testimony from ecclesiastical marriage declarations of nullity cases ('annulments'). All personal identifying information will be expunged.

1.6. Classification of chapters

- Chapter 1: Introduction
- Chapter 2: Nature of sacramental dignity in canon law: history and canonical developments
- Chapter 3: Comparison of 1917 and 1983 *codices* regarding radical error and simulation
- Chapter 4: Rotal sentences addressing radical error and simulation of sacramental dignity
- Chapter 5: Criteria for overcoming the presumption of the validity of marriage
- Chapter 6: Conclusion: expanding the *capita nullitates* to include limited faith formation

2. Chapter two: Nature of sacramental dignity in canon law: history and canonical developments

2.1. Introduction

Sacramentality is an expression of God's largesse, not of his exigency (Burke, 2015:29). Canon 1055, §1 of the CIC/83 states a canonical norm that reiterates a theological principle affirming the nature of Christian marriage. The second paragraph declares the essential connection between covenant and sacramentality. Parties to a Christian marriage celebrate a human reality, according to Raymond Finn (1990:106) and "an event which of its very nature is sacral ... [that] has been transformed through the saving activity of Christ."

The covenant of marriage (*matrimonium in facto esse*) has been raised or elevated (Himes, 1990:198-220) by Christ the Lord to the dignity of a sacrament when it is celebrated between the *baptized* (cf. c. 1055, §1; Vatican II, 1965b:48,§1; Leo XIII, 1880:§9, 12, 19-20, 24, 39-40). For this reason, c. 1055, §2 states that between the baptized there cannot be a valid matrimonial contract that is not at the same time a sacrament. There can be neither the secular reality without the saving mystery (Örsy, 1990:50), 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'" (Gramunt, 1987:4). The Church's discipline makes it impossible to do otherwise.

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. It is also an expression of what has traditionally been reflected in canon law (Woywod & Smith, 1948:642).

The two statements in c. 1055 in the CIC/83 are directly concerned with the covenantal-contractual and sacramental nature of Christian marriage from the theological principle: (1) "... this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament." This reaffirms a traditional principle about the nature of Christian marriage. The second is equally important, and declares the intrinsic relationship between a covenant, as a natural reality, and the grace-filled sacramental reality of marriage: (2) "... a matrimonial contract cannot validly exist between baptized persons unless it is also a sacrament *ipso facto*."

The clause that closes c.1056 directs to a set of essential properties that in Christian marriage "acquire a distinct firmness by reason of the sacrament." The canon highlights the interrelationship of sacramentality to indissolubility and unity. Both unity and

indissolubility are considered essential properties of marriage, given a special firmness in Christian marriage by virtue of the sacrament. It is because of this relationship that sacramentality can be seen as an essential element or property.

While the Legislator does not provide a complete definition of marriage in the CIC/83, he does set forth a description of its substance in juridical terms. Marriage has both natural and supernatural planes, and the parties to a marriage, through catechesis (c. 1063; Pope John Paul II, 1981:66), are required to genuinely conform themselves to what the Church teaches with regard to marriage as a sacrament, particularly that marriage, a natural institution already in existence before the Incarnation, has been raised to be a sacrament by the will of Christ, unlike the other sacraments of the Catholic Church. There was no intent by Christ to create or change natural marriage, but rather that a baptized couple is a sign of the relationship found in Ephesians 5 that Christ has for his Church, and by marrying receive grace in living out their new conjugal reality.

The sacramental dignity of marriage (Lawler, 1991:712-731) 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 who celebrate and live them with the required disposition" (Catholic Church, 1994:1131) and therefore are not mere magic signs. Sacraments presuppose faith (Vatican II, 1963:68). 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 (Finn, 1990:105).

The natural institution has been elevated by Christ to the dignity of a sacrament, and identifies the entrance into the conjugal state with a supernatural truth that marriage between the baptized is *ipso facto* a sacrament. Rather than elaborating on the exact nature of the supernatural plane, the Legislator identifies natural marriage for the baptized as a sacrament (c. 1055, §2). It signifies and communicates supernatural grace. This is a clear demonstration of the CCC (Catholic Church, 1994:1617):

The entire Christian life bears the mark of the spousal love of Christ and the Church. Already Baptism, the entry into the People of God, is a nuptial mystery; it is so to speak the nuptial bath which precedes the wedding feast, the Eucharist. Christian marriage in its turn becomes an efficacious sign, the sacrament of the covenant of Christ and the Church. Since it signifies and communicates grace, marriage between baptized persons is a true sacrament of the New Covenant.

The Legislator writes in *Familiaris consortio*, “In a word it is a question of the normal characteristics of all-natural conjugal love, but with a new significance which not only purifies and strengthens them, but raises them to the extent of making them the expression of specifically Christian values” (Pope John Paul II, 1981:13).

The sacrament of marriage is celebrated by the Church and cannot be engaged by the baptized parties except through their willing to do as the Church does, an indication of c. 1057, §2 that “matrimonial consent is an act of the will.” 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,” (Mackin, 1972:221) necessitating that the sacramentality of marriage “cannot be discussed except in faith and cannot be embraced except by free commitment” (Finn, 1990:106).

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.

2.2. Historical development of c. 1055

A detailed history of the development of c. 1055 was conducted in previous research on this subject (Pothier, 2008:25-29). In the CIC/17, two canons dealt with the issue of sacramentality in marriage. In the introductory canons regarding marriage, the CIC/17 stated in c. 1012 that marriage between two baptized persons was automatically a sacrament. The implication is that a valid marriage between Christians cannot exist without it being *eo ipso* a sacrament. In c. 1013, the essential properties of marriage are unity and indissolubility. When addressing error of law (*error iuris*) in c. 1084, sacramental dignity is listed 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. When addressing the exclusion of “some essential property of marriage,” c. 1086, §2 notes that their exclusion by a positive act of the will invalidates marriage. Sacramentality appears to be an essential component of marriage, and capable of exclusion. Donald Campbell (1990:35-72) avers that consent is vitiated when error that influences the will causes one of these essential elements to be excluded. The differences in c. 1012 and c. 1086, §2 beg the question: Why did the CIC/17 mention sacramentality (sacramental dignity) when addressing *error of law* but omit its listing when addressing exclusion?

The evolution of c. 1012 of the CIC/17 into c. 1055 of the CIC/83 is indeed complex. Thomas Green (1976:353-441; 1984:357-411) and Joseph Fox (1988:800-850) detail the development of the CIC/83 following the Second Vatican Council, which ended in 1965,

starting with the establishment of a *Pontifical Commission for the Revision of the Code of Canon Law*. 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 which would, subsequently, be promulgated as law by the Legislator.

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 (PCRC, 3:69-81). According to Lawrence Wrenn (2000:207), and as a point of clarification, it was suggested by members of the *coetus* that the problem with the incongruity between cc. 1012 and 1086, §2 was not with c. 1086, §2 (on exclusion/simulation), but with c. 1084 (on error). They proffered (Fox 1988:824) that the term *sacramental dignity* should be removed from the canon. In 1975, the first *Schema on the Sacraments* was presented with no mention of sacramental dignity associated with the new formulation of c. 1084 on error.

Between February 1977 and February 1978, the *coetus* on marriage met twenty-four times in five sessions (Green 1980:60) to review comments and insights from the Roman Curia, worldwide conferences of bishops, and university faculties of canon law, among others. In session 3, (May 16-21, 1977), 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. Discussion on norm 302, §2 (the future c. 1101 of the CIC/83) on exclusion / simulation was also discussed, and again nothing was changed. While some well-known scholars, including Zenon Grochlewski (1978:283-295), would disagree with this decision and argued in favor of including both error about sacramental dignity and exclusion of sacramentality in marriage, none of his arguments were persuasive enough to alter the 1980 *Schema*.

In 1981, a *Relatio* was published, 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 exclusion / simulation (c. 1055, §2 of the *Relatio*). 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 baptized non-Catholics, and the publication of Pope John Paul’s Encyclical *Familiaris Consortio* in 1981. 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 of the plenary meeting, a compromise was reached with a proposal that, according to Wrenn (2000:213-214),

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.

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

From the discussion of sacramental dignity, several canonical considerations arise when applied to c.1055, §§1-2:

- a) are the sacramental and contractual aspects of marriage between two baptized persons identical, that is, are they inseparable, or are they two distinct characteristics of marriage?
- b) is baptism, validly conferred according to the mind of the Church, the basis for the sacramentality of marriage for the baptized?
- c) is there a relationship between faith and the sacrament of marriage and, if so, what?
- d) is sacramentality the essence of Christian marriage or is it a separate property / element of marriage?
- e) can a baptized person who is in error about the sacramental dignity of marriage (c. 1099) have it affect their will so as to make the object of marriage something substantially different from what the Church understands sacramental marriage to be?
- f) can a baptized person, believing that contract and covenant are separable, exclude the sacramental dignity of marriage?
- g) can a baptized person with little or no faith actually include sacramentality in marriage?

2.3. Inseparability of contract and sacrament for the baptized

From a historico-canonical perspective, from at least the Middle Ages, the Church identified contract and sacrament as one (Sequeira, 1985; Pius IX, 1864:73-74; Tanner, 1990:754).

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 (Woywod & Smith, 1948:642).

Mere words exchanged between the parties to a marriage cannot prove the sacramental nature of marriage. Rather, one must show that marriage is sacramental because it is fundamentally related to the saving work of Jesus Christ (Kasper, 1980:28). “Thus the marriage bond has been established by God himself” (Catholic Church, 1994:1640). In Christian marriage, it is the human reality of marriage itself that has been raised by Christ to the dignity of a sacrament: *contract* and *sacrament* are conjoined.

As noted above, the language of canon 1055, §2 retains the term *contractus*, which is understood in the same sense as *foedus* as is used in *Gaudium et spes* (1965b:48). For the baptized, the matrimonial covenant can come about in no other way than through a contract, “*estि sui generis*,” for both *covenant* and *contract* pertain to the same reality (PCRC, 15:222). Since marriage, as a natural institution, is a contract, the term itself cannot be suppressed (PCRC, 9:121). 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 (Pompedda, 1990:38).

Moreover, “as soon as two persons … join in a common undertaking, at once certain mutual obligations and rights arise between them” (Pospishil, 1991:182). This can be

understood as a *contract*. Since *covenant* is a species of *contract*, religious in nature, *covenant* (Kasper, 1980:27) more appropriately describes what is exchanged in 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” (Doyle, 1985:741). Therefore, “the marital pact is not a bare contract of buying and selling, but a bilateral, personal and consensual pact, *sui generis*” (Faltin, 1990:69).

Reflecting on the *fontes* of c. 1012 CIC/17, one notes that the information contained within them 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 Cardinal Gasparri’s *fontes*, some of which can be found in the *Syllabus of Errors* (Pius IX, 1864:65-67,71,73-74). 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 legitimate both the one and the other (Pius IX, 1963c:107).

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 (Pius IX, 1963c:108-109).

Pius IX placed his authority behind the doctrine of inseparability of contract and sacrament to counter the infringement of the State. On August 22, 1851, Pius IX, in an apostolic letter, *Ad Apostolicae*, condemned John Nuytz, a professor at 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 (Pius IX, 1963b). Additionally, on September 27, 1852, he wrote an allocution *Acerbissimum* (Pius IX, 1963a:110) which condemned civil laws that were contrary to the Church in New Granada (Colombia). His statement on civil matrimony condemns

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.

Both of Pius IX’s statements are explicit. In the former, the conjugal union between two Christians is not valid if it is not sacramental, and in the latter, contract and sacrament are one and the same, and 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 the Pope’s statement. A significant development can be understood in the statements of Pius IX that the term *Christians* (*Christianos*) includes baptized *non-Catholics* when it is related to the doctrinal inseparability of contract and sacrament.

Examining the *Schema de Matrimonio*, prepared in anticipation of the First Vatican Council (which never actually reached the stage of debate), one 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 (O’Callaghan, 70:84).

In his desire to protect the rights of the Church, Pius IX committed the Church to the inseparability of contract and sacrament. This was not to be the last word.

2.4. The architect of the CIC/17: Cardinal Gasparri

The first codification of canon law was entrusted to Pietro Cardinal Gasparri. Subsequent to its publication in 1917, an additional nine tomes of background information (*fontes*) were printed from 1923 to 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 assertion that *marriage* is a sacrament and the view that *the marriage contract between baptized persons* is a sacrament. Although others realized that the Council of Trent left open the 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.

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 (Brown, 1939:70-71).

In the CIC/17, Title VII of Book Three relates to marriage, and is a result of Gasparri's monumental work *Tractatus Canonicus de Matrimonio* (1892). 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 sacramentally, no Catholic theologian argues that it was specifically the *contract* of marriage that he established as sacrament. Though the Latin Church committed itself 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 (Lawler, 1991:725). This remains the belief and understanding of the CCEO/90, promulgated by the same Legislator in 1990, with respect to marriage.

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 (Denzinger, 1957:§1529-1532). The Council “wished 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” (Lawler, 2002:56). Rather, the Council “deliberately chose to leave the question open” (Lawler, 1991:726). 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” (Schillebeeckx, 1984:362-63).

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,

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 (Nowak, 1978:355).

As the Church exerted its jurisdiction over marriages of all the baptized, there was a consistent interchange of technical terms, i.e., *Catholic*, *the faithful*, and *Christian*, within the context of official letters of explanation. As noted above, 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 to the Church the question of its validity *among Christians*” (Byrnes, 1963a:109). 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 is false that the marriage contract *between Christians* is always a sacrament” (Pius IX, 1864:115). 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” (Pius IX, 1864:117). 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” (Pius IX, 1963a:110).

Gasparri was affected by the statements of Pius IX and successive popes during the drafting of the CIC/17. Michael Lawler (1991:728) expresses 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 infideles*, including *infideles baptizatos*.

The intention of Gasparri's contribution to the sacramentality of marriage was 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*.

2.5. Canonical developments: personalism

Personalism designates a focus on the interpersonal relationship between spouses. 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 (Faltin, 1990:73). Created male and female, spouses are complimentary, growing together in faith as a support to one another, forming what *Lumen Gentium* (Vatican II, 1965c:11) calls the "domestic Church." Reflective of a personalist understanding, *Gaudium et spes* (Vatican II, 1965b:49) describes marital love as "a free and mutual gift of self," and confirms the dignity of the marital love shared by the couple in their sexuality.

Concerning the necessary presence of faith for the celebration of the sacraments, *Sacrosanctum Concilium* (Vatican II, 1963:59) 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.'" The sacramental structure of the Church necessitates choosing the object of that faith. Faith rests always and exclusively in God, according to Herbert Vorgrimler (1992:82), but faith is also given to what God reveals as his will: "faith is not only an attitude of unshakable trust ... it also has a content." A connection between faith and sacrament is evident, where the outward sign of a sacrament is seen as the perceptible fulfilment of interior motive or profession of that faith. 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, however, of the Second Vatican Council. Canonists and theologians, including Herbert Doms (1939) 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 theses went counter to the CIC/17 faced condemnation by the Holy Office, as explained by Theodore Mackin (1989:598):

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 instrument 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 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.

Pius XI's encyclical *Casti Connubii* (1930) 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 (Byrnes, 1963:223-224).

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 (Byrnes, 1963:231-232).

This kind of interpersonal thought would influence the teachings of the Second Vatican Council, particularly *Gaudium et spes* (Vatican II, 1965b:48): God

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.

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”. John J. Coughlin (2012:173-176) contends that whenever the constitution describes the reality of marriage, it is seen in the *personalist* dimension, not as an institution with hierarchical ends.

2.6. Canonical developments: contract / covenant

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.

Robert E. Rodes (1975:409-430) notes that a *natural* union exists that is a valid marriage between the unbaptized, but it is non-sacramental. Conversely, William Marrevee (1977:91-109) notes that a marriage between the baptized is both a natural *foedus* (because every person can benefit from the institution of marriage) and a *sacramental* covenant.

The Council Fathers never used the word *contract* when discussing Christian marriage. One can easily appreciate that *covenant* is a more biblical term than *contract*. The term *covenant* is a transliteration of *conventio* or *conventus*, both derivations of the verb *convenire*, ‘to come together’ in order to shape a *foedus* or *societas*. As with the Israelites, ancient peoples understood the binding and inviolable character of a covenant as having a divine sanction attached to it. The witnesses to a *contract* are persons, with civil society

(or others) as the guarantor, whereas *covenants* have God or ‘the gods’ as the witness. God or ‘the gods’ act(s) 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 (Örsy, 1990:50), *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.

Walter Kasper (1980:41) notes that *foedus* relates to “a public and legal matter concerning the whole community of believers.” To contract (*contrahere*) means to draw 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. *Foedus* is a derivative of *fidus* or *fidere*, meaning ‘to trust’ or ‘to entrust oneself to another’. A covenant is seen as a relationship of mutual trust and fidelity (*fides*). Fidelity is the essence of a covenant, whereas contracts can be broken by mutual agreement, by 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, and this disturbs their sacred nature.

Nonetheless, Theodore Mackin (1972:217) explains that a “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.” Still, according to Edward J. Kilmartin (1973:275-286), the mystery of God’s love, fulfilled in Jesus Christ, is communicated to us through the imagery of human language.

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 (Eph 5:26-31) are called by God to grow into physical and moral dependence between themselves, for unity is essential to their mutual perfection.

Schillebeeckx (1965:396-397) writes,

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.

These two dimensions of marriage are the basis of the Council Fathers' teaching on marriage in *Gaudium et spes* (Vatican II, 1965b:48): 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." These two dimensions are reflected in c. 1055, §1. The development of c. 1055 shows that the varying *schemata* that defined marriage in the past were insufficient — that is, the three Augustinian *bona* of marriage (fidelity, progeny, and permanence), *matrimonium in fieri / in facto esse* (as understood of conjugal society), the properties of marriage (unity and indissolubility in c. 1056) that obtain a distinctive 'firmness' by reason of the sacrament, and the CIC/17's 'ends of marriage' in c. 1013. The Council Fathers avoid any reference to primary and secondary ends of marriage.

The conciliar teaching was developed further in the encyclical *Humanae Vitae* (Pope Paul VI, 1968:9), 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.

In Pope John Paul II's *Familiaris Consortio* (John Paul II, 1981:11b-11c) the personalist dimension can also 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," for each human is a temple of the spirit, called to love "in his unified totality".

John Coughlin (2003-2004:1-58) proffers that the translation of Conciliar and Papal teaching into juridical categories was not achieved easily. Those charged with revising marriage law reported in 1971 (PCRC, 3:3) that certain changes would be required. He states,

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 a 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 no longer be used.

Additionally, in the official documentation of the Committee (PCRC, 3:75), 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.

The teachings of the Council Fathers, found in *Gaudium et spes* (Vatican II, 1965b:48b), could now be presented as a manifestation of the covenant of the Lord 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 Saviour, the Spouse of the Church, now encounters Christian spouses through the sacrament of marriage.”

The marriage covenant made it easier to describe the Church’s teaching on sacramentality in marriage. Few words have such an intense theological meaning as *covenant*. Hosea (2:2) uses the imagery of marriage covenant as a metaphor for the love of God for his people Israel. The covenant is seen as being irrevocable. In the New Testament (Heb 9:15; 1 Cor 11:25), Jesus is presented as the mediator of the New Covenant that is guaranteed in His Blood. Pierre Grelot (1980:105) shows that Saint Paul effectively presented to the Ephesians this imagery, and notes that

[f]rom 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.

However, unlike other sacraments, the sacramental nature of marriage cannot be reduced to a mere moment. Kasper (1980:28) notes that marriage “is a sacrament because it is fundamentally related to the saving work of Jesus Christ.”

2.7. *Ex opere operato*

Doctrine and jurisprudence have long considered the raising of the natural institution or contract of marriage to its sacramental dignity to be effected *ex opere operato* by a baptized contractant's consent to marry. Sacraments are effective 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, but it is the result of the influence of nominalism that an automatic or mechanistic interpretation was impressed upon post-Tridentine sacramental theology.

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 (Vorgrimler, 1992:54).

The *sacramentum* concerns the effective sign, and therefore is identified 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. Michael Ashdowne (1975:297) explains that 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."

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 as *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: the CCC (Catholic Church, 1994:1127-1128) notes that it is "... he who acts in his sacraments in order to communicate the grace that each sacrament signifies." 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.

Although this draws out a minimalist attitude (Vorgrimler, 1992:83-86) whereby the only concern was for the essential elements in each of the sacraments, these fundamental actions could constitute validity even in emergencies. It guaranteed that sacraments were valid, presuming the minister possessed the power to carry out the action, and had the intention to do what the Church does. It, too, underscores the reality mentioned in the CCC (Catholic Church, 1994:1128) "that 'the sacrament is not wrought by the righteousness of either the celebrant or the recipient, but by the power of God.'"

Kenneth Boccafola (1988:89) affirms that in the case of marriage, the same conditions apply as are 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 [the person] 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.

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

Post-Tridentine sacramental theology dealt with matter and form, 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 Raymond Finn (1990:305) notes is

[m]ore 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.

The legality that enshrouds the sacrament presents the minimum that is required for validity, reflecting both the contractual and sacramental nature of marriage, and by fulfilling these conditions the sacrament, *ex opere operato*, is effected. Since the contract and sacrament are indistinguishable, “anything that renders the contract invalid also renders the sacrament invalid” (McAreavey, 1997:57). 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” (Pospishil, 1991:177).

In revising the parallel canon in the CIC/17, c. 1012, §2, the proposals “started by opposing so-called ‘sacramental automatism,’” it being seen, according to Mario Pompedda (1990:38-39) as “a mere euphemism for denying the principle of sacramental validity *ex opere operato*.” Proposals were made to the *coetus* that were meant to change the assertion 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.”

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 it 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. Rotal judge Cormac Burke (1994:171-172) comments that from here “it moves us … to a level not of juridical effects, but of ontological realities.” The human will must be considered. The ontological change does not diminish the will’s freedom, but endows it with a supernatural efficacy, a gift that is freely bestowed. 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 Trent defended the Church’s continual teaching on the sacraments against the doctrines of the Reformers. Norman Tanner (1990:754) states that one canon has continued to influence the sacramental structure of the Church, and has particular importance with relation to c. 1101, §2 on exclusion / simulation: “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.*” Put forth in the teachings of the Council, the implicit intention in the minister is essential to the conferral of the sacraments, which requires 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 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,” and, celebrated worthily in faith, “the sacraments confer the grace they signify” (Catholic Church, 1994:§1124;§1127). 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.*”

Pope John Paul II, in *Familiaris Consortio* (1981:68), stated that the spouses, by virtue of their baptism and right intention, have already accepted the divine plan and at least implicitly “consent to what the Church intends” when they seek to marry in the Church because they generally will to contract marriage by means of a religious rite.

The presumption of the efficacy of a general intention is the foundation on which traditional Rotal jurisprudence approached the exclusion of sacramental dignity. In the Latin rite of the Church, there is no specific *liturgical* rite that has been canonized as the form of marriage, but rather, according to c. 1057, it is the mutual exchange of consent of qualified parties who are free to marry.

2.8. 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 re-established the consultative practice of synods of bishops, usually assembled every three years. The fifth general assembly (Grootaers & Selling, 1983) of the Synod of Bishops met in Rome from September 26 to October 25, 1980, 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 (Weigel, 1999:382). The 1980 Synod showed that

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 (Weigel, 1999:384).

Although the technical theme was “The Role of the Christian Family in the Modern World”, much time was devoted to 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” (Synod ’80, 10:315). Additionally, the Bishops stated that “sad is the situation of those Catholics who scarcely believe or practice their faith, but are obliged by the canonical form” (Synod ’80, 10:316). The Synodal Fathers proposed 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” (Synod ’80, 10:316). Their suggestions reflect the teachings of the Second Vatican Council in *Sacrosanctum Concilium* relating to liturgical adaptation (Vatican II, 1963:37-40).

A representative segment of 216 Catholic bishops from around the world met for one month. Their concerns can be divided into two categories (Cahill, 2005:363-388):

- 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 sacraminity – 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 Christian marriage (Schmeiser, 17(1):185-186).

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 were the *baptisés malcroyants*. For these bishops, 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 (Schmeiser, 1983:186-188).

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 (Schmeiser, 1983:187).

Additionally, interventions were levied because of the position in which the priest finds himself. Two possibilities exist:

[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;

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 (Schmeiser, 1983:187).

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 fail, 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 ITC had earlier done. They added, however, that there were differences between the *minister* of the sacrament and the *subject* of the sacrament (*Synodus Episcorum*, 1980:32-33). It is important to note that the Synod of Bishops was asked to consider four statements (Robinson, 43:99-100), 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.

These four propositions were approved by the participants (Robinson, 1983:100). Changes were suggested and related to the drafting of Pope John Paul II's Encyclical on the Family, *Familiarias 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 (Provost, 1990:574-587).

The Synodal Fathers in their *Relatio*, however, demonstrated the importance of canon law as structural theology, giving juridical shape to theology (PCRC, 1981), 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" (Synod '80, 10:316). They noted that "new forms should arise organically from already existing forms" (Vatican II, 1963:23).

2.9. Post-Second Vatican Council: ITC and *Familiariis consortio*

Because of the need for faith, the phenomenon of baptized non-believers raises new questions (ITC, 1978:235-239). 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 (ITC, 1978:§2.3). However, the problem of the intention and the problem 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] 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" (Saint Aquinas, 1947: §1190-1192). 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" (Faltin, 1990:82).

In revisiting this issue, the ITC notes that:

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 (ITC, 1978:§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* (Serrano, 82:431-445) in the realm of sacramentality. A couple is unable to contract a valid marriage if they lack faith and the intention of doing what the Church wishes; they also, however, have a natural right to enter 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 (ITC, 1978:§3.5).

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 basis for the 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 life" (Vorgrimler, 1992:305).

With this in mind, 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 (Pope John Paul II, 1980:68).

He points out that an evangelical discernment (Pope John Paul II, 1980:5) 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 (Faltin, 1990:74).

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, the Pope expressed that 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 and unjustified anxieties to the consciences of married couples; and third, one would be in 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 (Pope John Paul II, 1981:68).

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 (Burke, 1994:174).

Pope 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” (Pope John Paul II, 1981:68). “Even if, humanly speaking, [these motives] are understandable, they are not sufficient as the only motives” (Faltin, 1990:75). 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” (Pope John Paul II, 1981:68).

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 (Pope John Paul II, 1981:68). Still,

it would be a mistake to think that [Pope 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 (Faltin, 1990:75).

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.

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, an attitude which cannot exist without God’s grace’ (Stankiewicz, 1988:325).

Both the ITC and *Familiaris Consortio* affirm that those who “lack even a vestige or trace of faith, to the point where they clearly do not intend to do what the Church does” (Wrenn, 1998:154) 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” (Pompedda, 1990:60).

2.10. A catechumenate for sacramental marriage

In 1975, the Diocese of Autun, France, published an eight-page brochure called *À ceux qui envisagent le mariage* 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” (Schmeiser, 1980:49). A significant underlying motive for its writing, identified in *Dignitatis Humanae* (Vatican II, 1965a: 929-930), 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” (Schmeiser, 1980:51).

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 accueil*), and sacramental marriage (Provost, 1980:170-172).

Although these options were experimental and were *contra legem*, the brochure was produced in consultation with the Congregation for the Doctrine of the Faith 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 (Mick, 2006:107).

- *Civil marriage*: This form of marriage is recognition by the Church of the “value of human commitment” (Schmeiser, 1980:49), conducted at City Hall but recognized by the Church as valid though not sacramental, even for the baptized.
- *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” (Schmeiser, 1980:49) 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, even for the baptized.
- *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 with no sacramental effects; those with some faith in God but with no real relationship to the Church celebrated a civil marriage followed by a religious service, but, again, with no sacramental effects; 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 suggested by the 1980 Synod of Bishops.

2.11. 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” (Pompedda, 1990:36), creating difficulty in identifying baptized non-believers. By *baptized non-believers* can be understood those who never came to any act of faith (Örsy, 1980:57) in virtue of their baptism, or those who have explicitly abandoned all belief in the Christian mystery. They lack or reject the faith (ITC, 1978:§2.3; Faltin, 1990:74) and thus do not exhibit the minimum conditions required for valid sacramental marriage. They act “with little or no faith” (Stankiewicz, 1991:280-290), at times marrying “for motives purely social, familial, or of convenience” (Faltin, 1990:96). 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 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 (Pompedda, 1990:56).

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 (McAreavey, 1997:35).

It cannot be forgotten that sacraments are “signs and means by which the faith is expressed and strengthened” (c. 840) — a sacrament “proceeds from faith and is based on it” (c. 836). *Familiaris consortio* proposes that when baptized couples marry, they

implicitly show their “right intention,” having accepted God’s plan for marriage (Pope John Paul II, 1981:68). Although it is not in the realm of canon law to determine theological issues, theologians are reluctant to presume that couples implicitly consent as the Church intends them to do.

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 CIC/83 equates them (Lawler, 1991:720-721).

Faith situations are included in what Pope Francis intended in the accompanying instruction to the *motu proprio Mitis Iudex Dominus Iesus* (Pope Francis, 2015) where the issue of faith and marriage is referenced as an area for further investigation for situations involving baptized non-Catholics or Catholics with little or no faith formation when challenging the validity of marriage.

3. Chapter three: Comparison of 1917 and 1983 *codices* regarding radical error and simulation

3.1. The scholastic philosophical understanding of making decisions: *intellect* and *will*

With respect to radical error and sacramentality for the baptized, a marked change between the two codices provides an opportunity to examine the effect of radical error on an individual's consent. This change involves magisterial statements that acknowledge that contemporary society threatens traditional presumptions, affecting the convictions of individuals at the moment of their exchange of consent, so that people enter marriage as a relationship that differs from what the Church understands. With specific regard to sacramentality, unlike the CIC/17 (which indicated that the error about sacramentality, even if it was the cause of the contract, did not vitiate consent), the CIC/83 introduced error as a possibly invalidating ground if it actually determined the will, i.e., radical error.

With respect to simulation of sacramentality for the baptized, between the two codices there evolved a tacit admission that, like radical error, traditional presumptions had been challenged and that spouse(s) may no longer marry according to the mind of the Church, choosing to exclude the sacramentality of marriage. Traditional jurisprudence understood the rejection of sacramentality as a rejection of marriage itself, i.e., without sacramentality the contract did not exist. For two baptized persons who marry, marriage is always a sacrament, because the intention of the baptized is to marry as the Church intends. Rejection of sacramentality was known as total simulation, wherein marriage itself is excluded. However, at least between the two codices, a number of canonists, including those in the Rota, began to admit that sacramental dignity may be one of several essential properties or elements of marriage that may be excluded from a marriage.

3.2. Radical error

Consent is an act of the will, but since *nil volitum quin praecognitum*, the act of the will requires previous minimal knowledge of the object of consent. Several canons express what an error may be about. The basis is found in c.126, that error is about an element of substance, a *sine qua non* condition, and these relate to the substance of the act.

The radical error in c. 1096 includes error about permanence, consortium, heterosexuality, procreation, and sexual cooperation. In cc. 1061, §1 and 1134 are found the essential elements of the right to conjugal acts, perpetuity, and exclusivity. Finally, when related to sacramentality, c. 1099 expresses that error concerning unity, indissolubility, or sacramental dignity, if the error determines the will, can vitiate consent.

The underlying presumption of c. 1099 is that there are two species of error that reflect philosophical categories of intellect and will: error that affects only the mind and does not determine the will, and error that overflows the will and determines what will be chosen (Örsy, 1990:140-141).

Traditional jurisprudence in c. 1084 of the CIC/17 is that simple error concerning the unity, indissolubility, or sacramental dignity of matrimony, even if it is the cause of the contract, does not vitiate the marriage consent. The understood meaning is that simple error concerning properties of marriage never determines the will, but only touches on the intellect. People were presumed to marry as the Church intended, and this intention overcomes simple error. Thus *coram* Stankiewicz (1991:44) notes, when speaking on indissolubility,

First of all it should be said that according to the common and constant jurisprudence of our Court, erroneous opinions about the indissolubility of the marriage bond *per se* remain only in the sphere of the intellect and therefore do not enter into the decision-making process. For since those opinions by their nature pertain to intellectual error, they involve only a speculative judgment, namely a judgment that does not regard the practical reason for acting. The will, however, does not automatically follow what is presented to it by the intellect, since contrary reasons can prevail that gainsay what the mind is urging. Indeed the will itself, affected by erroneous opinions, can remain quiescent, in a state of mere disposition for acting, without actually eliciting an act against the indissolubility of the bond.

But, marriage is both a sacred and a juridic reality. The essence of marriage consists in the exchange of spousal consent which brings about a marriage, and the consummation of the consent through a conjugal act (c. 1060, §1).

3.2.1. Marriage is a juridic act

A juridic act, according to Olis Robleda (1980:392) “is an externally manifested act of the will by which a certain juridical effect is intended.” A juridic act occurs through a decision of a person to act in a certain way as a human act which is free and rational. This decision requires an interplay between intellect and will. The intellect presents a certain matter. Once a decision has been made, the will can be manifested and an individual carries through on a particular action.

A juridic act is the manifested choice of a person who is capable of acting. Once an act is placed, the juridic reality endures beyond the moment when the action was carried out, and thereby the person or persons become the subject of rights and obligations.

In c. 124, it is expressed that

For the validity of a juridic act, it is required that the act is placed by a qualified person and includes those things which essentially constitute the act itself as well as the formalities and requirements imposed by law for the validity of the act.

Thus, it is required that this act is performed by a legally qualified person, for one who is prohibited in canon law cannot validly place an act. Included in the canon is that the essence of the act is that which is required for the act to be what it is meant to be, and conforming itself to legal requirements that are manifested externally in a specific form. In the context of marriage, c. 1058 states that “all persons who are not prohibited by law can contract marriage,” and are thus qualified. The person(s) must exchange consent, where the exchange of consent is the very essence of marriage, not as they may understand marriage, but as the Church understands marriage, and therefore do what the Church intends to do when the exchange of consent takes place. The person(s) must conform to a legally required external form. Additionally, for marriages where at least one of the parties is Catholic, the canonical form of marriage (c. 1108) must be observed.

In a judicial examination, the three elements contained in c. 134 need to be analysed to determine their juridic validity, and in the case of marriage, the specific requirements for consent. Gramunt & Wauck (1992:534) observe that marriages are usually challenged, for purposes of declarations of nullity, in one of three ways: (a) the presence of a diriment impediment; (b) a total lack of canonical form; and (c) a defect of consent. Of interest is a defect of consent, for it, too, can exhibit itself in three ways, which correspond to the divisions in the *Code*: those incapable of consent as mentioned in cc. 1095, 1°-3°, i.e., those who lack sufficient use of reason, those who suffer from a grave lack of discretion of judgment concerning essential marital rights and duties, and those who, because of a psychic incapacity, are not able to assume and fulfil the duties and obligations of marriage; those who have defects of knowledge (cc. 1096-1099), i.e., ignorance, error, fraud, or *error iuris*; and defects of the will (cc. 1101-1104), i.e., exclusion (simulation), condition, force and fear, and proxy consent. This present study relates to the second section on defects of knowledge.

In the general norms section of the CIC/83, c. 126 states that

[a juridic act performed] out of ignorance or out of error concerning something which constitutes its substance or which amounts to a condition *sine qua non* is invalid. Otherwise it is valid unless the law makes provision. An act entered into out of ignorance or error, however, can give rise to a rescissory action according to the norm of law.

Ignorance is knowledge that one should or ought to have. Error is mistaken knowledge or false judgment. Both are defects of knowledge which, according to c. 126, can invalidate a juridic act when it concerns the substance of the act or amounts to a condition *sine qua non*.

There are two types of error in canon law: *error facti* (error of fact) and *error iuris* (error of law). According to James Provost (1995:306), “*Error facti* is an error concerning the partner himself or herself, a quality of the partner, or concerning the motives for marrying” whereas “*error iuris* is about the substance, properties, or goods of marriage.” *Error iuris* was later also attributed by the Legislator, Pope John Paul II (John Paul II, 1993), to error “regarding an essential property of marriage or its sacramental dignity,” in accord with cc. 126 and 1099.

The foundational canon, c. 126, states that a juridic act can be vitiated if the error pertains to the substance of the marriage. After the canon addresses ignorance and error about the substance of an act, or a condition *sine qua non*, it proffers a *nisi* statement: unless (*nisi*) the law makes provision. One provision is contained in the application of c. 1099. The canon states that “[e]rror concerning the unity or indissolubility or sacramental dignity of marriage does not vitiate matrimonial consent provided that it does not determine the will” (c. 1099). Conversely, and stated positively, an error about one of the above properties does vitiate consent if the error determines the will. This is an exception to c. 126, which normally provides that an error concerning a property of marriage does not invalidate consent because it is not related to the essence of marriage. In accord with c. 18, however, an exception must be interpreted strictly. Only error that determines the will can invalidate marriage. This is called *determining error* or *radical error*.

In scholastic style, defects pertain to the intellect or will. Ignorance (1096, §1), error of person or quality (c. 1097, §§1-2), deceit or fraud (1098) and determining error (c. 1099) all relate to the intellect. Exclusion (simulation) (c. 1101, §§1-2), condition (1102, §§1-2), and force and fear (1103) all relate to the will.

Canon 1099 specifically relates to determining error or radical error that determines the will. The canon mentions error in the context of three properties that may invalidate consent if the will is determined. The content or object of consent is described in cc. 1055, §§1-2 and 1057, §2. Consent is a human act of the will. It is a judgment by which a person chooses to enter marriage with another person. It is a juridic act that makes the party/ies the subject of rights and duties from the moment that the consent is exchanged. Gramunt & Wauck (1992:549-550) explain that the parties to a marriage may exchange a right at the time of consent, but only later actually use it. The validity of the consent is based on the actual handing over of that right. According to c. 1055, §2, when consent is validly

exchanged between two baptized people, it is automatically a sacrament. When one of the parties withholds a right or reserves the right to determine how the right will be given, there may be a defect in the consent.

Consent is a function of both the intellect and the will. Error is mistaken judgment, but the will cannot choose something other than what is presented to it (*nil volitum quin praecognitum*). The intellect has knowledge and the will chooses what is known. In relation to faith formation, Fellhauer (1975:117) notes that a person chooses in accord with what that person has come to know or value. This can have an effect on consent.

The understanding of the impact of error on the will has evolved as the result of reflection on the human experience of the interplay between intellect and will. To understand the development of radical error as a legitimate *caput nullitatis*, an analysis of the shift between the CIC/17 and CIC/83 can prove useful. In the CIC/17, c. 1084 addressed error, stating that “simple error concerning the marital unity, indissolubility, and sacramental dignity, even if it be the cause of the contract, does not vitiate matrimonial consent.” Thus, although one of the parties was in error about the essential properties of marriage, consent was not vitiated, even if the consent caused the contract of marriage. Error alone was not an obstacle to valid consent. The basis of c. 1084 can be found in the ‘Benedictine presumption’ of Pope Benedict XIV (Benedict XIV, 1748:1,13,c. 22,n. 8).

There are two types of error that do not determine the will: *error simplex* and *error pervicax*, and there is relationship that exists between error of sacramental dignity (c. 1099) and *error pervadens*.

Mario Pompedda (1990:51) explains that lack of faith may be expressed in terms of *error pervadens*. This is equivalent to a person formulating their own doctrine on marriage in which an element or quality is excluded (Pompedda, 1990:40):

[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.

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.

Consistent with Kenneth Boccafola (1996:305-325), 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. It remained solely in the intellect and did not move the will. With respect to sacramentality, it can be said (Pompedda, 1990:57) that lack of faith can positively cause the exclusion of sacramentality of marriage. Pompedda writes,

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 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.

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 c. 1099 and enters the area of incapacity (Faltin, 1990:91) found in c. 1095, 2°. With those who show hostility or aversion toward the Church (Dewhirst, 1992:74), there is “a psychological(ly) irreversible obstacle,” rendering these people incapable of assuming and fulfilling the essential rights and obligations of married life. This does not suggest a mental illness (Faltin, 1990:102-103), but rather “an abnormal concept of marriage and a moral depravity, a deformity of the Christian concept of marriage.”

According to Pope Benedict XIV (Pfnausch, 1995:728), an individual’s erroneous ideas regarding the properties of marriage were considered as being purely private opinion which did not influence the will. By entering marriage, a person implicitly accepted all properties flowing from it. He states,

[G]eneral intention absorbs, as it were, the private error; nevertheless, where a formula involving either an explicit or an implicit condition contrary to the perpetuity and indissolubility of the marriage bond is used, then it cannot be said that the particular error remains absorbed by the general intention of contracting according to the institution of Christ.

Error simplex was understood by commentators on the CIC/17 to be related to general judgment. The error regarding essential properties remained in the intellect without influencing the will. Consent to marriage was still the overriding intention. Thus, there was no possibility of using *error iuris* as a distinct *caput nullitatis*.

Woywod & Smith (1948:745) note that simple error could not vitiate the will because it was a private matter, where “a person’s private opinions, errors, or mistakes” have no relevance to consent because the error of a person could not take precedence over the good of the institution of marriage itself or the will of Christ. Only *simulation* or *condition*, which could be influenced by error, could nullify matrimonial consent, but *error simplex* could not.

3.2.2. Determining error

The error mentioned in c. 1099 concerns unity or indissolubility or sacramental dignity of marriage. In c. 1056 these three elements are referred to as properties. They are qualities that flow from the very nature of marriage. The third element mentioned, sacramental dignity, is considered both as an element and a property. According to c. 1055, §2, the contract between two baptized parties is automatically a sacrament. Because it is listed in c. 1056, it is also a property. The properties of unity and indissolubility, for a marriage between two baptized persons, “obtain a special firmness by reason of the sacrament,” which can only be dissolved by death.

The properties of unity or indissolubility or sacramental dignity are so essential to the validity of marriage that the corollary canon on simulation, c. 1101, §2, states that if any of these properties is intentionally excluded, the person contracts marriage invalidly. A person who has an error about these properties may invalidate their consent. The person does not know that they are in error, as the party may believe that others, too, hold an erroneous view of marriage. Simple error regarding the properties does not affect consent. But error that determines the will does affect consent. A person who chooses to marry according to their own definition of marriage creates a condition *sine qua non*, where marriage according to the mind of the Church is not intended.

The significance of determining error is that the error in question becomes manifest in a choice which has taken place. The error is not merely an error residing within the person. It is one which determines the will of the individual, and, according to Pope John Paul II (2000:554) is a “formal refusal to celebrate a sacramental marriage.” It is necessary that the will be positively moved to choose something other than a sacramental marriage. It is not necessary, however, that the person actually know that consent was given to a redefinition of marriage.

3.3. Canonical developments specifically related to error and to simulation of consent

3.3.1. Ignorance and simple error

Ignorance is lack of knowledge, or knowledge that one should have, in contrast with error, which is false judgment or mistaken knowledge. Ignorance is specifically related to five areas stated in CIC/83 1096, §§1-2 that define the substance of marriage: permanence, consortium, heterosexuality, procreation, and sexual cooperation. The presumption stated in the canon is that a person who has achieved the age of puberty is not ignorant, but because the presumption is a conjecture, it may be overturned by contrary proof. The level of knowledge required for valid consent is minimal.

Canonical tradition distinguishes between various kinds of error, some which rendered consent invalid, and others which did not. Ignorance and error only affect the validity of acts placed when it concerns an element that constitutes the substance of the act. The *substance of the act* refers to constitutive elements mentioned above that must explicitly be intended by the person who is entering marriage.

3.3.2. Pre-conciliar

The CIC/17 (c. 1084) attributed little weight to error as a factor in assessing the validity of marital consent, describing error as ‘simple’ and irrelevant to the validity of consent because the error remained in the intellect and did not move the will. Contractants to a marriage were presumed to marry as the Church intended, and this intention overcomes simple error.

Simple error did not affect the will except in two instances: if the error redounded to error of person, or if the error concerned the condition of a person as a slave rather than a free person (c. 1083, §§1-2). Some, including Kenneth Boccafola (1996:305-325) held that error about the essential qualities of marriage was merely simple error, affecting only the intellect and not the will. As long as the parties intended to contract a valid marriage by a general will, they also consented to marriage itself.

The distinction between intellect and will has been ensconced in canon law. In the CIC/17 there could be defects of the intellect that rendered the marriage to be null. Condition (c. 1092), ignorance, i.e., knowledge that people should have but do not (c. 1082), and error of person / quality of person (c. 1083) are species of error. Defects of the will (c. 1086) include simulation (exclusion) and force and fear (cc. 1081; 1087). With the development of the science of psychology, it was recognized that the faculties of the intellect and will interact more than had traditionally been acknowledged; hence, what was once thought as properly distinct actually have more influence on each other than may have been

previously admitted.

Because the CIC/17 allowed for the effect of error on consent in certain circumstances, jurists increasingly posited greater weight to error in relation to marital consent. Although the simple error of CIC/17 c. 1084 remained only in the intellect, the influence of error on the will could be applied to situations of simulation / exclusion in CIC/17 c. 1086, §2. According to Francis Morrisey (2011:148), error was not recognized as an autonomous ground of nullity, but its influence could be a motivating cause in cases involving simulation / exclusion. The jurisprudence between the CIC/17 and the CIC/83 can be seen as error in relation to a positive exclusion of marriage itself or one of the essential properties of marriage, and when error determined the will.

According to Donald Campbell (1990:35-36), the Rotal decisions from *coram Giulio Grazioli* (1926) and *coram Cesare Pecorari* (1938) assisted in establishing the relationship between error and simulation, helping to distinguish the influence of motivating error from that of simple error. Antoni Stankiewicz (1986:123) shows that both Rotal decisions demonstrate that “the close relationship of motivating error with the will of the subject could not be ignored.” Rotal judge Heinrich Ewers (1968:350-351) notes that a principle was derived from these important sentences: “the deeper the error and the more reflexive or conscious it is, the easier is the transit from error to act of the will.” Furthermore, Campbell (1990:46-48) states that the principle suggests that “in weighing the evidence, the deep-rootedness of the error must be given some weight: to do otherwise, to give no weight to error, would be to go against reason and to have a simplistic and unreal notion of the psychology of human acts.” The will “irresistibly follows the strongest type of error, the one deep-rooted and engrained in the person’s nature.”

It was recognized, then, that error neither remained purely nor only passively in the intellect, but could influence the will to simulate / exclude marriage itself or an essential property. Rotal jurisprudence, particularly in the writings of Pericles Felici (1954; 1957) and Boleslaw Filipiak (1956), was now poised for more opportunities to study the impact of error on the will. However, this was not to suggest that radical error itself only had an effect when related to simulation. A new juridic figure began to emerge which recognized that error can invalidate marital consent.

John Beal (2009:523) and Elissa Rinere (2004:70-71) comment that when the era of the Second Vatican Council commenced, there was already a significant consensus in Rotal jurisprudence that intellect and will were not faculties of the mind that remained uninfluenced by the other, but that the deep-rooted error of the intellect had an effect on the will.

3.4. Between Second Vatican Council and the CIC/83

The concept of radical error that determines the will can be seen in the decisions of Pericles Felici (1950; 1953; 1954; 1957; 1959). His emphasis in several sentences was that a person acts on the basis of deep conviction, and indicated that an error can be so deeply engrained that it constitutes a new nature in a person, thereby determining the will and vitiating consent. Felici's sentences form a precursor to those of Lucian Anné (1964; 1965). Anné's decisions provided direction on radical error because of the significant influence that society, culture, education, and life experience have in the decision-making process. Thus, in a society that strongly believes divorce is permissible, a person's intellect can be so in error that the only type of marriage that the will can choose is the type that has been presented to it by invincible error.

During the revision of the CIC/17, statements promulgated in the documents of the Second Vatican Council acknowledged that beliefs and actions of contemporary society have weakened the presumption that the parties to a marriage actually hold to the teachings of the Church on marriage. In the Constitution *Gaudium et spes* (Vatican II, 1965b:47), this weakening becomes clear:

Yet the excellence of [the institution of marriage] is not everywhere reflected with equal brilliance. For polygamy, the plague of divorce, so-called free love, and other disfigurements have an obscuring effect. In addition, married love is too often profaned by excessive self-love, the worship of pleasure, and illicit practices against human generation. Moreover, serious disturbances are caused in families by modern economic conditions, by influences at once social and psychological, and by the demands of civil society. Finally, in certain parts of the world problems resulting from population growth are generating concern.

Still on the advent of the CIC/83, the Legislator, Pope John Paul II, wrote the exhortation *Familiaris consortio* (Pope John Paul II, 1981:6) as a conclusion to the Synod on the Family. In it, he notes,

Signs are not lacking of a disturbing degradation of some fundamental values: a mistaken theoretical and practical concept of the independence of the spouses in relation to each other; serious misconceptions regarding the relationship of authority between parents and children; the concrete difficulties that the family itself experiences in transmission of values; the growing number of divorces; the scourge of abortion; the ever more frequent recourse to sterilization; the appearance of a truly contraceptive mentality.

Rotal judges, including Mario Pompedda (1971:54), helped shape the influence of error when it is held deeply, for

[t]he 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. When that happens, the will follows along almost irresistibly.

The consequence of these decisions, according to Luigi De Luca (1986:837-838) is that “in practice, jurisprudence hardly even recognizes anymore the likelihood that there would be an act of the will that is distinct from a person’s own basic convictions that are contrary to the teaching of the Church.” The reality, according to Rotal auditor Pio Vito Pinto (1972:673), is that

in our day it is not possible to presume that with a general or prevalent intention the parties will have willed to contract marriage according to divine institution while they obstinately persevere in their errors even though they know sufficiently well the doctrine of the Church ... nor can it be expected that a spouse wishing to remain in a state against the same divine authority can undertake true matrimonial consent for a religious motive.

Because the presumption has been weakened and the effect of error has been admitted more generally, the wording of CIC/83 1099 has significantly changed from its predecessor in the CIC/17. Error has been established as more relevant to marriage consent than before.

3.5. CIC/83

In the CIC/83, error can be about an element of substance, a *sine qua non* condition based on c. 1096 (permanence, consortium, heterosexuality, procreation, sexual cooperation), essential elements as found in cc. 1061 and 1134 (the right to conjugal acts, perpetuity, exclusivity), and on the substance of the act, found in c. 1099 (unity, indissolubility, sacramental dignity). Error can influence validity in several ways: a person knows no better and marries according to their own views, or a person marries because of error, or a person knows better but is determined to follow their own views (which amounts to simulation), or a person does not know better and is not able to evaluate or understand (which may result from ignorance).

In the revision process and after promulgation of the CIC/83, the issue of error has not completely been resolved. Various views on *how* error might influence the will abound: error does not influence the will, as it is still error simplex; error is the basis for a condition *sine qua non* (c. 1102); error produces an inability to assume and fulfill the duties and obligations of marriage found in c. 1095, 3°; *pervicax error* can lead to a lack of due discretion of c. 1095, 2° or to simulation; error can be ‘relevant’ error which bears on the will; or *pervicax error* (deep-seated error) can determine the will.

Although much of the jurisprudence and other scholarly work has focused on error concerning unity and indissolubility or marriage itself, the principles can equally be applied to error concerning the sacramental dignity of marriage and the influence of faith (or lack thereof).

3.6. Simulation

The CIC/83 does not use the term *simulation* in matters pertaining to marriage, but rather the term *exclusion* is used in c. 1101; nevertheless, according to James Provost (1995:702), the jurisprudence of the Roman Rota continues to use *simulation*, reflecting Roman law. The presumption of law is that the internal consent of the mind agrees with words or signs used in celebrating marriage.

In a roatal decision *coram Faltin* (1993:576) the general notion of simulation has been clearly presented:

In law, simulation or fiction occurs when someone, for whatever reason, either for a licit end or an evil one, while acting in good faith or in bad, externally and seriously produces words and signs which of themselves express or signify the will to place a definite juridic act intended to have legal effects according to the proper norm of law, and therefore essentially aimed at the substance of object of the act. However, internally, either secretly or by agreement of the parties, the person not only lacks such a will, but possesses a will positively contrary to the external declaration, or does not want, either totally or partially, the substance of the declaration.

Although the words are not stated in the canon itself, established canonical jurisprudence related to 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*. Apart from the above, *marriage itself* can be excluded (CIC/83 c. 1055), *essential elements* of marriage can be excluded, i.e., perpetuity and exclusivity (CIC/83 c. 1134), and essential properties can be excluded, i.e., unity and indissolubility (CIC/83 c. 1056). With the advent of the CIC/83, jurisprudence on two more *bona* are developing: an intention *contra bonum coniugum*, and *contra bonum*

sacramentalitatis. Lawrence Wrenn (1998:119) notes that although discussion continues in determining the categorization of these two additions, nonetheless both are indeed essential to the marriage covenant.

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. Rotal judges, too, particularly Edward Egan (1984:477-484) have helped contrast the two:

The difference between the two [kinds of simulation] is that the one is fictitious consent (total simulation), while the other is incomplete consent. One who elicits a totally simulated consent, unlike a partial simulator, cannot ignore the fact that he/she acts invalidly. Whereas, a person who simulates only partially, unlike the former, almost always has in mind that he/she consents to some form of marriage.

Total simulation occurs when the content of marital consent itself (cc. 1055, §1; 1057) is excluded through a positive act of the will. In traditional jurisprudence, total simulation has been seen as an intention of not contracting marriage, of consenting to marriage for reasons other than marriage, or as intending an object different from marriage. Furthermore, Rotal judge Igino Ragni (1983:471-472) helped clarify notions of total simulation, noting that

total simulation can occur: a) when the contracting party has the intention of not contracting, which is to say he puts on an act while manifesting (in which case the substance of the contract is destroyed); b) when the contracting party consents to marriage solely and exclusively for personal reasons (*ob finis operantis*) absolutely extraneous to the *finis operis*, that is, to marriage itself; c) when the very cause of the marital contract (that is, the mutual handing over of the perpetual and exclusive *ius in corpus*) is excluded because, if the contracting party exclusively intends another covenant essentially different from marriage, the contract collapses; d) when the dignity of the sacrament is excluded from the contract; e) when the contracting party wishes to substitute for the notion of Christian marriage a concept which really excludes it, or even if he excludes the permanent society between a man and a woman to procreate children.

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 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. Rotal judge Francesco Bruno (1988:167) notes,

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.

3.7. Traditional jurisprudence on total simulation and sacramental dignity

Michael Himes (1990:199) notes that traditional jurisprudence held that the sacramental dignity of marriage is indistinguishable from Christian marriage itself, and that Christ has raised marriage *in its essence* as a natural institution to the dignity of a sacrament between baptized spouses. In *Familiaris Consortio*, Pope John Paul II (1981:68) explained that it is Christ who acts upon the consent of the contracting parties because of their baptized status, and who is the efficient cause of the sacrament of marriage.

Consent to the contract, which is the natural dimension of marriage, establishes for the baptized a single reality of the natural contract in its essential properties and ends and a supernatural dimension of sacramental dignity (Pompedda, 1990:38), for, in the words of Pope Leo XIII's *Arcanum* (1880:394), sacramental marriage "is the contract itself, when legitimately celebrated" among the baptized. The immediate effect of sacramental grace (*res et sacramentum*) upon the mutual consent of the spouses is the conjugal bond itself and only secondarily the sacramental end. The declaration of c. 1056 solidifies this assertion when it expresses that the sacramental dignity of marriage adds a special firmness to the natural properties of marriage.

3.7.1. Inseparability of contract and sacrament for the baptized

James A. Nowak (1978:315-363) and John Baptist Sequeira (1985) affirm that from an historico-canonical perspective, from at least the Middle Ages, the Church identified contract and sacrament as one. An investigation can help present the rationale for this doctrine. Michael Himes (1990:198-220) explains that the covenant of marriage (*matrimonium in facto esse*) has been raised (elevated) by Christ the Lord to the dignity of a sacrament when it is celebrated between the baptized. For this reason, c. 1055, §2 states that between the baptized there cannot be a valid matrimonial contract that is not at the same time a sacrament. Ladislas Örsy (1990:56) notes that there cannot be the secular reality without the saving mystery; Ignatius Gramunt (1987:4) confirms that there cannot 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.'" For Mario Pompedda (1995:4), this Church's discipline makes it impossible to do otherwise:

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.

This is 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. In a familiar commentary on the CIC/17, Woywod & Smith (1948:642) noted above that Christ made consent to the contract “the instrument by which to convey the sacramental grace.”

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 (Kasper, 1980:28), and, therefore, according to the CCC (Catholic Church, 1994:1640) “the marriage bond has been established by God himself.” In Christian marriage, it is the human reality of marriage itself that has been raised by Christ to the dignity of a sacrament: *contract* and *sacrament* are inseparable.

3.7.2. Partial simulation and sacramental dignity

For most of this century, it was understood that an exclusion of sacramental dignity could be heard only on the ground of *total* simulation (Wrenn, 2000:148). In 1978, a new understanding emerged which provided impetus to this ground as partial simulation, provided by Zenon Grochlewski (Wrenn (2000:207), who notes,

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.

3.7.3. Simulation *contra bonum sacramenti*

The *bonum sacramentum* (Himes & Coriden, 2004:453-499) gives special strength to the two essential properties of marriage expressed in c. 1056, which, according to the CCC (Catholic Church 1994:1644-1647), “through the sacrament, the indissolubility of marriage receives a new and deeper meaning.” This indissolubility is found within the context of unity and fidelity, and characterizes the special partnership that finds its origin in the marriage covenant. The essence of the *bonum sacramenti* is the indissolubility of the bond between the spouses that is exclusive: “[n]othing is added to the persons involved from the outside; their transformation is from the inside” (Örsy, 1990:203-206). When related to the baptized, “[w]hen this new orientation is sealed by God’s grace, it belongs to the

saving events of the Kingdom ... [and] is indeed a 'consecration' for a new state of life." To highlight the action of God's grace, the Council Fathers at the Second Vatican Council, in *Gaudium et spes* (1965b:48-50), expressed that

[marriage] is an institution confirmed by the divine law and receiving its stability, even in the eyes of society, from the human act by which the partners mutually surrender themselves to each other; for the good of the partners, of the children, and of society, this sacred bond no longer depends on human decision alone. For God himself is the author of marriage and has endowed it with various benefits and with various ends in view.

The Council Fathers continued,

But marriage is not merely for the procreation of children: its nature as an indissoluble covenant between two people and the good of the children demand that the mutual love of the partners be properly manifested, that it grow and mature. Even in cases where despite the intense desire of the spouses, there are no children, marriage still retains its character of being a whole manner and communion of life and preserves its value and indissolubility.

These properties are particularly strengthened by the grace of the sacrament which provides assistance to the spouses to remain indissolubly faithful to each other. The *bonum sacramenti* of c. 1134 is "a bond between the spouses, perpetual and exclusive by its nature [by which] in a Christian marriage the spouses are strengthened and ... consecrated by a special sacrament" for marriage. Because they are essential properties, if one or both parties excludes them in the marriage contract, the covenant is invalid (Gramunt, 1987:4).

To the notion of exclusion can be added the effect of error about indissolubility. The requirement of c. 1099, stated positively, is that such an error does vitiate matrimonial consent provided that the error does 'determine the will'. A deep-seated conviction about divorce, religious laxity or minimal faith formation, or a nominal period of cohabitation may be indicative of this.

As a consequence of an erosion of the indissolubility of marriage, Rotal jurisprudence has developed significantly because the presumption of c. 1101, §1 has been challenged. For Wrenn (1998:137-138), when "one decides that one will enter something less than an indissoluble perpetual marriage, that decision or intention stands in direct and diametric contradiction to the terms of the marriage covenant."

In Mario Pompedda's (1971:53-54) view, some people intend to end marriage and recover full freedom:

Indissolubility can be excluded because the spouse, knowing the true doctrine on marriage, nevertheless contracts it with the understanding that he has the option, albeit hypothetical, of dissolving the bond and recovering his former status of full freedom.

Such an intention requires a positive act of the will that excludes the juridical teaching on the permanence of marriage for an intentional motive.

Others substitute their own views for the Christian institution of marriage, doing this explicitly and recognizing that they contravene teaching. Some, however, do the substitution, as Mario Pompedda (1971: 53-54) notes, but are not aware it is contrary to the Christian perspective.

Indissolubility can be excluded because the party formulates his own doctrine on marriage (realizing or not that it contravenes the official teaching of the Church on indissolubility), a doctrine from which the idea of indissolubility is absent, and to which he adheres totally with both intelligence and willpower, so that when marrying he meant to celebrate marriage in that very manner and not otherwise.

In Vittorio Palestro's (1989:237) view, some people have an *implicit* hypothetical reservation:

It is sufficient, however, that the party reserves to himself the right to dissolve the bond at some time without positively intending that the bond will *de facto* be dissolved; neither is it required that the party intends to seek a civil divorce or beginning a process for an annulment so that he might enter a new marriage since it is enough that he considers marriage as not having any limitation except as he thinks of himself as bound. Nor is it necessary that there be an absolute intention of somehow dissolving the bond since the exclusion of *bonum sacramenti* which invalidates marriage is also present when the will is conditioned by rescinding the bond because something might happen; e.g., if love or harmony are absent, or conjugal life becomes unhappy.

Or again, in Eduardo Davino's (1991:493) assessment:

According to our constant jurisprudence, it is well to remember – in *coram Filipiak* of March 23, 1956 ... marriage is not only null because of an absolute exclusion of indissolubility, but also by hypothetical exclusion, that is limiting it by some hypothesis, e.g., infidelity, even if the party neither knows nor foresees that that conjugal bond will truly be broken.

The importance of reflection on the *bonum sacramenti* is its relationship to the sacramentality of marriage, for Pope John Paul (2001:62) notes, "it is precisely the correct

understanding of this sacramentality in the Christian life that spurs us to a new estimation of its natural dimension.”

4. Chapter four: Rotal jurisprudence regarding error and simulation concerning sacramental dignity

4.1. Introduction

In his 2015 *motu proprio Mitis Iudex Dominus Iesus* (*The Gentle Judge, the Lord Jesus*), Pope Francis promulgated a revision of the canons of the CIC/83 pertaining to cases regarding the nullity of marriage. On December 8, 2015, the revised canons 1671-1691 gained the force of law and became the *ius vigens*.

The *motu proprio* is divided into two parts, with the first part, cc. 1671-1682 and 1688-1691, reorganizing but still reflecting traditional procedural law, and cc. 1683-1687, which are newly developed and proffer a “briefer matrimonial process before the bishop”.

As a part of the *motu proprio* and following the new ordering of the canons, a set of 21 articles were included “that we consider necessary for the proper and accurate implementation of this law, which must be observed diligently to foster the good of the faithful.” The commentary on cc. 1683-1687 provides one article, art. 14, §1, related to the faith of the parties at the time of marriage: “Among the circumstances of things and persons that can allow a case for the nullity of marriage to be handled by means of the briefer process according to cc. 1683-1687, are included, for example (among others): the defection of faith which can generate simulation of consent or error that determines the will.” Although this applies to the “briefer matrimonial process before the bishop,” it provides, at very least, a formal expression by the papal magisterium of Pope Francis that the faith of the parties to a marriage requires consideration and can impact the consent of either or both parties, either by error regarding sacramental dignity or exclusion of sacramental dignity.

According to Jenkins (Martens, 2017:320), “it is important to begin by noting that this particular circumstance does not concern a lack of faith among the baptized that, simply due to the lack of faith, results in an invalid marriage.” Merely not having faith or belief in the sacramental dignity of marriage does not provide certainty that marital consent is somehow vitiated. For lack of faith to have an impact, there must be a positive act of the will to exclude sacramental dignity or an error about sacramental dignity which determines the will. Thus, “marriage itself, or some essential element, or property, of marriage is excluded, not by a lack of faith, but by a positive act of the will” (Akpoghiran, 2017:725).

In January 2016, the Apostolic Tribunal of the Roman Rota issued a *Subsidium* for the application of the *motu proprio Mitis Iudex Dominus Iesus* (Roman Rota, 2016). In section 3.1b, the Apostolic Tribunal explained that “these circumstances are not, *in fact*, new grounds of nullity” (italics in original). Rather,

[w]e are dealing here simply with situations that jurisprudence has long enucleated as *symptomatic elements of the invalidity of marital consent*, which can easily be proved by testimonies or documents that can be readily procured.

These can present, in some cases, such factual weight as to suggest evidence of the nullity of the marriage. In this regard, a more attentive and realistic reading of the global condition of the faithful in today's world, when studied in its cultural context, allows for the identification of some elements which are strongly indicative of the invalidity of consent, which perhaps in previous and different social-cultural context would not be recognized in all their significance (emphasis in original).

Furthermore, subsequent explanation provides a detailed means of application (2016: 3.1c):

The text refers to a lack of faith that leads to a *false understanding* of marriage or to an induced simulation, not devoid of consequences for the maturing of nuptial will. In other words, one is facing an error that determines the will (cfr. can. 1099), or a defect of a valid intention through the exclusion of the marriage itself, or of one of its essential elements or properties (cfr. can 1101, § 2).

The 'de-Christianisation' of today's society provides a grave *deficit* in the understanding of marriage itself, to such an extent that it determines the will. The *crisis of marriage, therefore, at its root, is nothing other than a crisis of knowledge enlightened by faith*. The human and cultural formation of persons undergoes a strong and sometimes a very determining influence of world mentality; a faith imprisoned in subjectivism, closed in the immanence of his or her own thoughts and feelings, reveals itself insufficient to uphold a correct understanding of the institution of marriage and its constitutive obligations.

To this is often added a substratum of *psychological and moral fragility of the contracting parties*, particularly if they are young or at least immature, from which derives a perception of marriage that considered it to be a mere form of affective gratification which can push the contractants to a simulation of consent, or to a mental reservation about the permanence of the union, or about its exclusivity (emphasis in original).

In his address to the Roman Rota at the beginning of the new judicial year on January 23, 2015, Pope Francis (2015b) noted the role of faith and its effect on consent. He stated:

For this reason the judge, in deliberating the validity of expressed consent, must keep in mind the context and value of faith — or the absence or lack thereof — in which the intention to marry is formed. Indeed, the lack of knowledge of the

contents of the faith might lead to what the Code calls *determinant error of the will* (cf. can. 1099). This circumstance can no longer be considered exceptional as in the past, given the frequent prevalence of worldly thinking imposed on the magisterium of the Church. Such error threatens not only the stability of marriage, its exclusivity and fruitfulness, but also the ordering of marriage to the good of the other. It threatens the conjugal love that is the “vital principle” of consent, the mutual giving in order to build a lifetime of consortium. “Marriage now tends to be viewed as a form of mere emotional satisfaction that can be constructed in any way or modified at will” (Ap. Ex. *Evangelii gaudium*, n. 66). This pushes married persons into a kind of mental reservation regarding the very permanence of their union, its exclusivity, which is undermined whenever the loved one no longer sees his or her own expectations of emotional well-being fulfilled.

Both the *Subidum* and Pope Francis’ allocution to the Roman Rota provide an opportunity to see the development of thought in Rotal jurisprudence in areas of sacramental dignity.

4.2. Use of Rotal jurisprudence

The Roman Rota is the highest appellate court of the Catholic Church. According to c. 19 of the CIC/83, in situations where there is a lack of clarity about a matter of law in the Church, “the jurisprudence and *praxis* of the Roman Curia” is to be considered. Furthermore, the Instruction *Dignitas Connubii* (PCLT, 2005: preamble) and *Pastor Bonus* (John Paul II, 1988:126) state that the Roman Rota, “by virtue of its own decisions, provides assistance to lower tribunals.” In various allocutions to the Roman Rota, the Supreme Pontiffs (Benedict XVI, 2009) have expressed the importance of studying Rotal jurisprudence to ensure that lower tribunals will apply sentence models uniformly throughout the world. In relation to simulation and radical error that determines the will, the jurisprudence of the Roman Rota proves to be indispensable.

In his first allocution to the Roman Rota after the promulgation of the CIC/83 on January 26, 1984, Pope John Paul II noted (Woestman, 1994:185):

The value of the Rota[!] jurisprudence in the Church has always been noteworthy, given the knowledge and experience of the judges and the authority they enjoy as papal judges. Canon 19 of the new Code expressly confirms this.

In the new Code, especially in the matter of marriage consent, not a few explanations of natural law from Rota[!] jurisprudence have been codified.

There still remain canons of great importance in matrimonial law, however, which have been necessarily formulated in a generic way and which await further

determination, to which especially the expert jurisprudence of the Rota could make a valuable contribution.

[...] These important determinations, which should serve as direction and guidance to all the tribunals of the particular churches, must be the fruit of mature and profound study, of serene and impartial discernment in the light of the perennial principles of Catholic theology, but also of the new canonical legislation inspired by the Second Vatican Council.

Everyone knows with what ardour and tenacity the Church supports, defends and fosters the sanctity, dignity, and indissolubility of marriage, often threatened and corroded by cultures and laws that seem to have lost their moorings to those transcendent values deeply rooted in human nature, which form the basic fabric of the institutions of marriage.

In the Apostolic Constitution on the Roman Curia *Pastor Bonus* (John Paul II, 1988:126, §1), Pope John Paul II explained the role of the Roman Rota and its decisions as a “court of higher instance at the Apostolic See, usually at the appellate stage, with the purpose of safeguarding rights within the Church; it fosters unity of jurisprudence, and, by virtue of its own decisions, provides assistance to lower tribunals.” Rotal decisions, then, are what forms the jurisprudence of the canonical system (Martens 2017:286).

4.3. Radical error determining the will

In the previous chapter, comparisons of the two codices revealed developments related to radical error that determines the will. A traditional understanding is seen in the words of Pope Benedict XIV (1806) and Pietro Cardinal Gasparri (1932), two architects of the CIC/17, who commented that “the general intention of contracting marriage according to the institutions of Christ prevails, and that general intention absorbs, as it were, the private error” (Benedict XIV, 1748:1,13,c. 22,n. 8), but Gasparri hints at the possibility that the presumption of marriage according to the mind of the Church can be overturned: “If the laws of the region admit divorce as to the bond, or polygamy, there would seem to be the presumption that those marrying will to enter a marriage conformable to the laws or customs of the nation; hence, it would follow that all marriages celebrated in that region must be held to be invalid, unless in particular cases it is proved that those marrying had a different will in the act of marriage. But it can easily be shown that this doctrine cannot be admitted” (Gasparri, 1932:§807).

4.3.1. Rotal decisions regarding *error iuris* regarding sacramental dignity

Since the 1983 *Code of Canon Law* has been promulgated, there have been only a few sentences that address *error iuris* in relation to the sacramental dignity of marriage. Nonetheless, recent Rotal jurisprudence (Mendonça 2007:222) identifies the legitimacy of *error iuris*, in relation to the sacramental dignity of marriage, as an autonomous ground. The following sentences and associated discussion clarify the juridical principles contained within cases adjudicated on this ground. However, each decision is replete with references to both error and simulation simply because both are related to the will – one by which mistaken knowledge determines the will, and one by which the will chooses something different than what the Church intends.

In his 1993 allocution to the Roman Rota, Pope John Paul II distinguished between simulation and error of law (John Paul II, 1993). In it can clearly be seen that the *mens legislatoris* is made evident:

it could cause serious harm to the stability of marriage and so to its sacred nature, if the fact of simulation was not formulated concretely on the part of the alleged simulator in a ‘positive act of the will’ (*actus positivus voluntatis*); or if the so-called *error of law* (*error iuris*) regarding an essential property of marriage or its sacramental dignity did not acquire such intensity as to condition the act of the will, thus causing the consent to be null.

The Legislator clearly distinguishes the positive act of the will excluding marriage itself or one of its essential properties (simulation) from error which determines the will, thus admitting radical error as a separate and autonomous ground of nullity. The subsequent Rotal decisions reflect this distinction.

The significance of Rotal decisions regarding radical error is that by the time of the Second Vatican Council it can be seen that there was substantial accord among Rotal judges that the philosophical categories of intellect and will do have serious interplay, and that error in the intellect, especially when deeply entrenched, could have reverberations in the will (Mendonça, 2007:*passim*), something which was seemingly not permitted under the CIC/17 in its strict interpretation.

- A Rotal decision *coram Felici* (July 13, 1954), addresses the issue of erroneous views concerning the nature of marriage. In his decision, Felici presents the concept of a “radical error” as something so rooted in the mind of the holder that it redounds to a new nature. Felici explained that “a human being acts according to how he deeply feels because of the dynamic nature of ideas and images, according to which the more vivid and profound they are, and the deeper they reside in the

mind of the person, the more efficacious they become, that is to say, they induce the person to act with greater force.”

- Two years later, in a decision *coram Filipiak* (March 23, 1956), the judge builds on Felici's 1954 decision, and shows how erroneous views can become “second nature”. By examining the conviction with which a person holds the erroneous view, the judge can determine how deep-seated the error is and how it can influence the will. What is important in this decision is how intellect and will are related, and the influence that error can have on the will.
- Another decision *coram Felici* (December 17, 1957) notes that erroneous beliefs about marriage can be so deeply rooted in a person's personality that this person might not be able to will differently. After appeal, a second decision was written on the same case, but this time *coram Pucci*. He explained that it may be possible for erroneous beliefs to attain such importance in one's intellect that stubborn adherence to it may impact the will. He showed that the erroneous views of a person concerning the essential elements and properties of marriage can redirect the will to choose a different object of consent, formed because of obstinacy of the persons' incorrect belief, and because the will can only choose what it is presented with.
- Almost four years after the end of the Second Vatican Council, a decision *coram Ewers* (February 24, 1968) expressed that, with respect to divorce, if a person reveals a firm and stubborn intention to hold to the error of divorce and the impermanent nature of marriage in practice, it no longer remains simply an opinion, but has evolved to be a positive act of the will. Error can thus flow into the will. The will chooses the object presented by the intellect (*nil volitum quin praecognitum*) and moves it as an end – “a person decides as he feels.” If an object is presented to the will as good, then the will necessarily adheres to it and chooses it. This positive act of the will may be implicit – “when the only object presented to the will by the intellect is substantially defective due to error and the will chooses it without knowing it is defective, there is an implicit act of the will.” The error becomes the cause of the defective act of consent.
- Another decision *coram Ewers* (May 18, 1968) builds on his previous sentence. He states that a culturally induced moral ethos has an inescapable effect on how people, both Catholics and non-Catholics, conceptualize and choose the institution of marriage. Again, he links error with a defect of the will, and does not yet see error as a distinct ground of nullity. He raises the question of whether an “habitual intention” can lead to nullity, leaning towards that possibility. But, more importantly, he questions whether the presumption of the prevalence of the general intention

when people marry – the general intention to marry as Christ and the Church teaches (*facere quod facit Ecclesia*) – is sometimes “extinguished and choked by the particular error, which clearly prevails and dominates.” It is possible for non-Catholics to exclude at least implicitly what is essential to marriage, but he notes that this, too, can apply to Catholics who assert a personal right to have recourse to divorce and lack of permanence. The stronger one’s ideas and opinions, the stronger is the presumption of their influence on the will, and thus the presumption of the “general will” to contract as the Church intends can no longer be universally upheld as always applicable, although it is still a fundamental principle. The deep-rootedness of the error must be given some weight. To do otherwise would be to go against reason and to have a simplistic and unreal notion of the nature of human acts.

In the CIC/17, radical error was known among canonists as *error pervicax*, in distinction from *error simplex*. For nullity to be declared, then, the particular intention of applying one’s error to one’s own marriage had to be proven as prevailing over, and removing altogether, the natural inclination to contract marriage as God has intended it. The stronger the error, the weaker is the general presumption for the individual and the greater is the presumption for a positive act of exclusion.

Mendonça (2007:184-185) deduced from these selected decisions the state of Rotal jurisprudence at the time the CIC/83 was promulgated:

1. The presumption of a “general will” to do what Christ and the Church teach when people marry is no longer regarded as absolute.
2. The presumption that error always remains in the intellect is no longer sustainable because of the interactions between intellect and will.
3. An error can be “radical” or “tenacious”, rather than being just a “simple” error; if so, it impedes the person from making a choice contrary to what this person thinks or feels.
4. Error was not considered to be an autonomous ground of nullity.
5. The lack of discretion of judgment, an evaluative capacity, is beginning to become linked with the result of erroneous opinions, and is not related exclusively to simulation.

It is clear that changes made to c. 1084 of the CIC/17 have established error determining the will as an autonomous ground of nullity and that this position is the considered view of the majority of Rotal judges and serious canonists.

Thus, in a decision *coram Stankiewicz* (1991:41-47), he writes:

Since however baptized spouses who have completely lost the faith or in whom the faith has been greatly diminished, are so imbued with errors about the indissolubility of marriage that, based on the dictates of their erroneous consciences, they cannot act in a way that differs from the invincible error into which their mind directs and urges them, this error presents to their will only a kind of dissoluble marriage, and it can be said then that the error reduces the assent of the will to a dissoluble marriage and determines it to choose only that kind of marriage.

In a decision *coram* Bottone (Morrisey, 2011:155), the Rotal judge gives an indication as to how to determine proof in such situations. He says,

Proof is possible if a certain number of elements concur: the juridical or extra-judicial confession of the person, in non-suspect time; a proportionate cause, whether remote or immediate, but at least grave for the party; the concordant testimony of witnesses worthy of credibility; antecedent or concomitant circumstances, which enable the court to determine the true state of mind of the contractant on the occasion of the celebration of the marriage. If the confession is confused, or does not exist, it is extremely important to consider the conduct of the person who is simulating, and from which, with the declarations of the witnesses, truth can be attained.

In a Rotal decision *coram* Monier (1996:488-493), the judge raises in passing the question of the influence of error on consent:

It cannot be denied that Protestants hold a doctrine about marriage, which is strongly opposed to the Catholic faith, since, denying the sacramentality of marriage, they even admit the possibility of remarriage through divorce. The principal question in this case is: whether the person was so imbued with error about the essential property of indissolubility of marriage that he in fact contracted while excluding this property from his marriage, and so entered a null marriage.

More recently, however, after the principle was given further study, it was questioned whether the presumption that these people [non-Catholics] had the intention of doing what the Church does was still valid, and after determining the matter more profoundly, our jurisprudence abandoned that principle. Indeed, in our day there has arisen the principle that, among non-Catholics, there often exists error determining the will ... that is to say, an error that so pervades the person that a presumption now exists that error enters consent in such a way that the person in error cannot intend a marriage different from the marriage as he or she conceives it.

In a decision *coram* McKay (2005:159-175), the judge examined the effect of religious upbringing on the issue of radical error. The Petitioner belonged to the Baptist Church. The motive underlying the grounds in the case was the belief in divorce admitted by the Baptist doctrine.

McKay looks at certain cultural principles that could be involved in the situation:

Before its manifestation in an external public form, this human act arises, is prepared, matures and is completed from within; indeed, an act formed fully in the heart of a human being can be then manifested externally.

In other words, consent is the result of a very long process. The culture in which a person lives moulds the personality of a person and has inevitable consequences on the decisions made. But consent is an act of the will, and the will can act only on what is presented to it by the intellect. While the decision notes that there is a significant distinction between an *explicit* positive act of exclusion, which is a conscious and deliberate act on the part of the will (an act of simulation) and the *implicit* positive act of exclusion, which is the consequence of a culturally or religiously induced deeply ingrained error concerning the object perceived as good, it does give validity to determining error as being an autonomous ground of nullity.

In another decision, *coram* Sciacca (Morrisey, 2011:157), related to non-Catholic Christians, the Rotal judge notes that error, *per se*, does not invalidate marriage. However, one's convictions derived from religious beliefs can constitute an obstinate error and thereby substantially disfigure the object of one's matrimonial consent. The major difficulty in such lies in determining how such an error passes into the will – an error of mind is turned into a mental condition which determines the intrinsic limitation of consent. This happens when error is turned into an end intended by the will: what is presented to the will for its action is the object that lacks some essential element or property. The decision referred explicitly to one of the parties' "Protestant mentality", behaviour, and the fact of being "steeped in error". Effectively, religious denominations which ascribe to the doctrines contrary to what is contained in c. 1099 are likely to be a source of radical error.

Furthermore, in a decision *coram* Pinto (2008:531), it was noted,

In fact, we are not dealing only with a mentality favourable to divorce, which is something totally erroneous, but of a manner of thinking and acting on the part of young people today, and this is much more serious. Indeed, this thought pattern refers to a radical refusal of the institution of marriage founded on nature and raised by Christ, in the New Testament, to a greater dignity.

One general dimension of the mentality of young people today, and something that is much more serious, is that they profess to be believers, and yet, at the same time, consider themselves free to adhere to contemporary thought which, through the media of social communication, exalts more and more the person who marries civilly two, three, or even four times.

In another decision *coram* Pinto (2009:527) relating to the exclusion of indissolubility by Catholics because of what is considered to be a ‘socially acceptable mentality’, he posited that:

It happens more and more frequently these days that the person entering into marriage considers himself to be the arbitrator of the permanence of the matrimonial bond, and decides that the dissolution of this bond and the capacity to regain his freedom depend solely on his power through the use – or, more correctly, the abuse – already intended before the celebration of the marriage, of those evil civil institutions known as definitive legal separation and divorce. It happens most frequently that the contracting party draws up his own doctrine on marriage (whether he knows or not that this is repugnant to the teachings and discipline of the Church), and adheres fully, both in mind and in heart, to this, even though the notion of indissolubility is not included, and it is according to this mind-set that he wishes to celebrate the marriage. ... People who hold such ideas are Catholic in name, but their hearts and their wills are no longer attached to God and to the doctrine of the Church.

The importance of this decision relates to people who are Catholic, but who have fallen away from the faith. Both of Pinto’s decisions clearly admit that the youth of today are influenced by the culture in which they live, and there are instances, at least generally, where radical error has an effect on the will.

Directly related to error about sacramentality, a decision *coram* Boccafola (2004:267-282) which also references simulation of consent, notes that the exclusion of sacramentality can be reduced to total simulation between baptized persons, or it may be excluded in the same way as the exclusion of an essential property or element of marriage. The autonomy of this ground of nullity – i.e., radical error – is clearly recognized in this decision.

Likewise, a decision *coram* Bottone (2006:6) explained that with an error concerning the sacramentality of marriage, which, unless one is ignorant of it, can be excluded only by an act of the will, proof is required that the error has rendered the contractant averse only to the sacramentality, and as a consequence would not have contracted marriage with it, and that the marriage contracted, in its nature and substance, was really different from that which had been externally manifested.

As Rivella (2008:104) notes,

the sacramentality of marriage is excluded if marriage itself is excluded by a positive act of the will (total simulation). Error regarding sacramentality must be more than simple error, the erroneous judgment about the nature and characteristics of marriage. It must be pervasive, that is, it must be to will marriage only as the party incorrectly understands it. It is unlikely that an error concerning the sacramental dignity of marriage would lead to a real exclusion of the sacramentality of marriage since someone who does not believe cannot be induced to reject something which does not exist for them and does not have real consequences, like unity and permanence.

At this time for Rotal judges, the notion of determining error is absorbed in the ground of simulation or at least points to the ground of simulation. Others maintain that it constitutes an autonomous source of nullity – which seems to be more probable. The difference between proving the two is that a positive act of the will is only required for cases of simulation.

Because culture plays such a dominant role in the formation of mentalities which give rise to determining error, any investigation into the possible invalidating effects of error on matrimonial consent must take into consideration all aspects of the socio-cultural, familial, and educational factors that might have been at the source of erroneous mentalities with regard to the nature of marriage as taught by the Church. Separating intellect (error) from will is to disregard a person's mentality and cultural background, and Catholics and non-Catholic alike are affected by the secular views on marriage.

4.4. Rotal jurisprudence regarding simulation / exclusion of the sacramental dignity of marriage

In this category, Rotal jurisprudence is more plentiful, although still somewhat rare. What is available places it appropriately in context.

The Roman Rota has debated over whether the ground of exclusion of sacramentality is of total or partial simulation (Faltin, 1990:90). 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 wilful act, there is discord between the internal consent and external action of the baptized non-believer. According to Colagiovanni,

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 (Colagiovanni, 1992:510).

As it touches on the very nature of the contract and the sacrament, the plane on which it exists is both juridic and theological in nature. 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 (Burke, 1994: 545-565). It favours the inseparability of sacrament and contract.

Conversely, as c. 1101 has changed the object of consent from its predecessor in the CIC/17 (c. 1086, §1), 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 (Wrenn, 2000:148-149; Grochlewski, 1978:283-295).

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 (*coram Bruno*, 1988:167-168).

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 (*coram Ragni* [May 30, 1996]).

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 (Finn, 1990:109).

It remains that “[b]aptism is not an efficient cause of marriage but a necessary prerequisite so that the contract may become a sacrament” (Faltin, 1990:92). 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 (Versaldi, 1990:421-440; Stankiewicz, 1984:547-565).

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.

4.4.1. Rotal jurisprudence of the traditional school – total simulation

1. Coram Staffa, August 5, 1949 (Staffa, 1949:468-489)

Two people met during World War I, and married in 1918. Their marriage ended in a final legal separation in 1930, following the death of each of their three children before

childbirth. The validity of the marriage was challenged by the female petitioner on the ground of the exclusion of the good of the sacrament with the argument focusing on the anti-Catholic attitude of the male respondent and that he was a non-believer who grew up in a Masonic family.

In his argument, Staffa stated that a non-believer's rejection of the sacramental dignity of marriage can affect the validity of consent, but, in the juridical forum, only to the extent that non-belief makes the rejection of the sacramental dignity the principal motive for a positive act of the will in simulation, which he references as the doctrine of prevailing will. He states,

Contractants who do not have or reject the faith consequently disparage the sacramentality of marriage. Provided however that consent is expressed in the prescribed form, by itself, all things being equal, the sacrament does occur between the baptized because the reason for the sacrament in those who contract marriage depends not on the will of the spouses, but that of Christ. Therefore, the sacrament is only able to be missing when, to exclude the sacrament, which is rejected by an absolute and prevalent act of the will, the contract is also excluded.

Pietro Gasparri describes the doctrine of prevailing will, noting that it must be proven and not presumed (Gasparri, 1932:§907). He states,

The sacrament is null according to this ground when a person, in order to exclude the sacrament, rejects it by an absolute and prevailing will that also excludes the contract, saying, for example, 'I want marriage, but I do not want the sacrament; otherwise I do not want marriage itself'.

Gasparri applies the principle used in conditioned consent, that is, that the sacramental dignity of marriage is the condition for the act of total simulation of marital consent. Exclusion of sacramental dignity is a *sine qua non* before consent to marriage will be given. Staffa uses this principle and states, "In this case the marriage is null by reason of the defective act of consent: 'then I do not want the marriage,' based on the exclusion of the sacrament or the condition, 'if the sacrament comes about'." The intention to exclude the sacramental dignity of marriage overcomes an individual's desire to marry; marriage itself is excluded from consent by a positive act of the will.

The conclusion of the decision showed that there was a will to exclude the sacrament on the part of the man, but there was not sufficient evidence that the will to exclude the sacrament overcame the will to contract marriage itself. Traditional Rotal jurisprudence held that a lesser intention, i.e., exclusion of sacramental dignity, could not invalidate consent because it did not overcome the primary intention to contract marriage itself.

2. *Coram Pompedda*, May 9, 1970 (Pompedda, 1970:475-481)

Two baptized Catholics both abandoned the faith and had an intention to marry only in a civil ceremony. Their parents pressured them into marrying in a religious ceremony following the civil ceremony. Children were born of the marriage, but the marriage ended in divorce in 1965. The marriage was challenged on the ground of total simulation because of the exclusion of sacramental dignity because the man expressed his aversion toward the Church and the religious ceremony. His aversion caused him to positively exclude the sacramental dignity of marriage, and, therefore, invalidate his matrimonial consent.

The Pompedda argument cited the 1949 decision *coram Staffa* (above) regarding the necessity of the man's 'prevailing will' to exclude sacramental dignity. Because of the traditional jurisprudence of the day, Pompedda identified the exclusion of sacramental dignity with the total simulation of marital consent.

Argumentation reiterated the consistent teaching of the Magisterium that legitimate marriage between the baptized has been raised to the dignity of a sacrament. This is an application of the Church's historical claim against the secular powers who attempt to sever the marriage contract from the sacrament (Leo XIII, 1880). Central to the argument is whether the lack of faith and aversion to the sacrament was the motivation that caused the man to simulate his consent. Hence, Pompedda notes that faith is not necessary to enter marriage, but only mutual consent (Pompedda, 1970:476, n.3). Contract and sacrament are identified as one, and cannot, for the baptized, be separated by those entering marriage. The baptized faithful who enter marriage receive the sacrament because they actually are baptized and have manifested their consent to the contract (Pompedda, 1970:476, n.3). As long as the contractants intend to contract a true marriage, the intention to reject the sacramental dignity of marriage does not vitiate consent. For it to do so, an absolute and 'prevailing will' to reject not only the sacrament but also marriage itself would have to be present.

The sentence rendered upheld the validity of the marriage because it could not be proven that the 'prevailing will' rejected both the sacrament and marriage itself. It was clear that the man felt pressure to enter a sacramental marriage against his will which was caused by his aversion to the faith and reception of the sacrament. It was equally clear that the man willed to exclude sacramental dignity from his consent on the day of marriage, but there was not a 'prevailing will' to exclude marriage itself. The sentence affirmed that the man consented to a true marriage in the civil ceremony, which perdured for the exchange of consent in the religious ceremony (Pompedda, 478; 481, nn. 7;12).

3. Coram Fiore, July 17, 1973 (Fiore 65:591-599)

Two graduate students, both raised in the Catholic faith, were cohabiting prior to marriage. They were averse to the Catholic faith and lived according to secular values. The testimony proffered suggested that the man willed to exclude sacramental dignity from his consent. The marriage lasted six years and ended in divorce, and the man intended to enter a new marriage, challenging the previous marriage on the grounds of partial simulation by exclusion of the goods of children, fidelity, and sacramentality on the part of both parties. In the first instance decision, a *non-constat* (negative, i.e., the validity of the marriage was upheld) decision was rendered, but was overturned on appeal, and the turnus *coram* Fiore admitted the case in Third Instance with an additional ground of total simulation of consent caused by exclusion of the sacramental dignity of marriage. Traditional argumentation, and the equation of sacramental dignity with the marriage contact itself, draws out several important points.

Fiore reiterates that a positive act of the will to exclude sacramental dignity is only capable of causing a defect of consent if it includes the will to exclude the contract. The decision commented that “to achieve the nullity of the marriage, the exclusion of the sacramental dignity always requires a positive act of the will by which the marriage itself is excluded as if it might be separable from the sacramental dignity” (Fiore, 1965:593, n.4). The presumption stated in c. 1086, §1 CIC/17 must be overturned. He does state clearly, however, that there is the possibility of the lack of faith serving as the motive for a positive act of the will excluding marriage itself and thereby overturning the presumption that the contractants marry according to the mind of the Church:

In that which regards marriage among the baptized ... whether as believers or unbelievers, the *only interest is what the contractants willed*, and certainly what they intended by the words of exchanging and receiving the matrimonial rights. It is of no interest what they believed or thought of marriage or of its sacramental value, unless it is to what extent their errors, or *lack of faith*, induced them to elicit an act of the will, by which the marriage consent was totally assailed (Fiore, 1965:595, n.8).

In *coram* Fiore, the conclusion upheld the *non-constat* decision of the first instance court. Although he argues that there is sufficient evidence to establish that sacramental dignity was rejected, he affirms that there was insufficient proof with regard to *total simulation*, since the couple wanted a religious service, and understood its religious significance (Fiore, 1965:598, n.12); hence, moral certitude could not be achieved.

4. *Coram Burke*, June 23, 1987 (Burke, 1987:393-397)

An Italian man and a Belgian woman married in a Catholic ceremony. The man's family desired a Church wedding; the woman, although she did not practice her faith before or during the marriage, did not object to a Church wedding and freely participated. Two children were born of the marriage, but the marriage ended because of the infidelities on the part of the man.

In the first instance court, the man challenged the validity of the marriage on the ground of total simulation and / or the ground of exclusion of the *bonum sacramenti*. The court entered a *non-constat* decision on both grounds, and the case was appealed directly to the Roman Rota where a doubt was formulated as either simulation or exclusion of the *bonum sacramenti* (Mendonça, 1997:38).

The argumentation in *coram Burke* identifies that there is a relationship between error concerning sacramental dignity that results from a lack of faith and its influence on a person's positive intention to exclude the sacramental dignity of marriage. In the CIC/83, this becomes a possibility when taken together with his analysis of the exclusion of sacramentality as a form of partial simulation, something that had not previously been well explored and not admitted in the CIC/17.

Burke reflected on the arguments that the man's canonical advocate had proposed while the case was being adjudicated in first instance. The advocate contended that active faith was a prerequisite for the woman to have validly contracted marriage, and then alleged that the woman had directly excluded the sacramental dignity of marriage as a baptized Catholic, albeit a non-believer. Nonetheless, Burke responded to the advocate's contentions regarding direct exclusion of sacramental dignity by noting that such an act "had no foundation in the ecclesial magisterium" and proposed arguments to support his claim.

The *in iure* section of the sentence addresses the developing jurisprudence surrounding the influence of error on the sacramental dignity of marriage. He explains that consent can indeed be invalidated by error, for "if anyone excluded positively sacramentality as strictly understood, they contract invalidly" (Burke, 1987:394, n.3), which is marriage as instituted by Christ, with the error leading to exclusion of sacramental dignity either by an act of total or partial simulation. Equally important is that total simulation equates the exclusion of sacramental dignity with exclusion of the contract as coincidental, but partial simulation reflects the choice of a marriage that is "bereft of sacramentality".

From the ensuing discussion, it is possible for a person who lacks faith to erroneously will the contract but not the sacrament because it has no value to that person. There is a loss

of fruitfulness in grace received from the sacrament which diminishes according to the degree that a person positively excludes the sacramental dignity of marriage (Burke, 1987:395, n.4). Furthermore, a lack of faith or error about the sacramental dignity of marriage results in more than a simple aversion to a religious ceremony. Such a person may only advance a “positive act of the will to reject the sacramental character of marriage such as has been constituted by Christ” (Burke, 1987:395, n.5).

Although the decision was *non-constat*, it is important to note that this decision *coram Burke* was the first decision related to sacramental dignity after the promulgation of the 1983 *Code of Canon Law*. His argumentation demonstrated that the simple lack of recognition or a false understanding of marriage as a sacrament has no juridic effect on marital consent, unless such a rejection explicitly and openly leads to the total simulation of marriage itself. Since the respondent had accepted the essential properties and ends of marriage and participated in marital preparation, the marriage was upheld.

5. *Coram Burke*, May 18, 1995 (Burke, 1995)

An Italian couple married in 1987 after a ten month engagement. Within six months, serious incompatibilities arose and, without any resolution, they separated two years later. In 1989, the man petitioned for a declaration of nullity on the ground that the woman excluded indissolubility. He indicated that the woman’s lack of faith and cultural beliefs caused her to exclude the sacramental dignity of marriage from her consent. A *non-constat* decision was rendered in the First Instance Court, which was overturned in the Second Instance Court, and the case was forwarded to the Rota in 1993 in Third Instance.

Burke’s argumentation relates to the effects of defective faith or error as a motivating influence on the exclusion of the sacramental dignity of marriage, particularly since the advocate for the Petitioner had argued that sacramental dignity could be partially excluded in the same way that the traditional three *bona* of marriage could be excluded. However, Burke argues that this cannot be admitted, since this equation is “based on an inadequate reading of c. 1099 and 1101, §2” (Burke, 1995:n. 15). His argumentation reflects the understanding of sacramental dignity as related to the whole of marriage (*matrimonium ipso*), and not as an essential property or element. From a minimalist perspective, lack of faith or error does not affect marriage. At the fundamental level, what is essential is that the party(ies) understand and accept marriage when they choose the natural contract. He expresses that even a prevalent divorce mentality “does not easily overcome the basic dispositions of human nature which tend to assert themselves with more than ordinary force in a choice so particular and personal as that of marriage” (Burke, 1995: n. 7). He reiterates that sacramental dignity is the “whole essence of marriage” and notes,

It is a mistake to regard it [sacramental dignity] as an essential ‘property’ or a constitutive ‘element’ of Christian marriage. A matrimonial property, such as indissolubility or unity, describes one aspect of the essence, whereas sacramentality transforms the whole essence of marriage. ... It should be noted that canon 1055, §2 does not speak of the marriage contract between baptized persons ‘becoming’ a sacrament or ‘acquiring’ the property of sacramentality, but being a sacrament (*‘quin sit eo ipso sacramentum’*). From the doctrinal point of view, therefore, it does not seem correct to treat sacramentality as an essential property of matrimony, or as an essential element, e.g. under c. 1101, §2 (Burke, 1995:n. 14).

For Burke, sacramental dignity upholds the inseparability of contract and sacrament reiterated in c. 1055, §2. He avers,

The fact is that a person can effectively want a ‘marriage’ deprived of exclusivity or indissolubility. He or she simulates consent to a true marriage, but wants a ‘semi’-marriage, that is, a ‘marriage’ bereft of one of its essential properties. It is *in his power* to ‘have’ such a ‘marriage’, i.e., one deprived of permanence, for instance, or of exclusiveness. ... Now if a Christian, in marrying another Christian, does choose a true marriage (exclusive, permanent, and open-to-life) but bereft of sacramentality ... [t]he fact is that he is choosing something *impossible*, two things that cannot go together: a marriage between Christians that is a *true marriage*, but that is also a marriage *bereft of sacramentality* (Burke, 1995:n. 15).

Consequently, the “effective exclusion of sacramentality therefore is inaccurately dealt with under the heading of partial simulation” (Burke, 1995:n.15).

4.4.2. Rotal jurisprudence of the contemporary school – partial simulation

While some still hold to the traditional school of exclusion of the sacramental dignity of marriage as exclusion of marriage itself, there is considerable jurisprudence admitting that the exclusion of sacramental dignity could also be an example of partial simulation. The following sentences help to demonstrate this.

1. Coram Stankiewicz, April 25, 1991 (Stankiewicz, 1991:41-47)

Two Catholics married in 1982 according to the rites of the Catholic Church. Although the female Respondent was baptized in the Catholic Church, she grew up in a household imbued with secularism because of her parents’ lifestyle, including a rejection of the Church’s teachings on marriage. Because of the male Petitioner’s desire to marry in the Church, the Respondent consented. The marriage ended a few months after it began. A

child was born, but because of the Respondent's objections to the faith, the child was never baptized. The Petitioner challenged the marriage on the ground of exclusion or error about indissolubility, and the first instance court decided in favor of the nullity of the marriage. The second instance court overturned the decision, and it was appealed to the Rota, *coram* Stankiewicz, on the ground of determining error.

In his decision, which was also significant in the section on error above, Stankiewicz (1991:42) reflects on the impact of culture on the mind and on the effects of personal faith. One point bears repeating:

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. ... The error is truly leading the will to consent to a dissolvable marriage and is determining the will to choose only that kind of marriage.

2. *Coram Boccafola*, May 6, 2004 (Bottone, 2004:267-282)

Two Catholics exchanged consent in January 1992. The female Respondent was pregnant before marriage. The complaint of the male Petitioner was that “[w]e did not live our faith either before receiving the sacrament of marriage or after its reception; we both never spoke of God.” The first instance court found in the affirmative on the ground of the exclusion of the sacramental dignity of marriage, treated under c. 1101. The court of second instance overturned this decision. The petition was appealed by the petitioner and was judged *coram* Boccafola.

There are elements of the decision that apply to both exclusion of sacramentality (c. 1101) and error (c. 1099). The conclusion of the decision defends the autonomy of determining error as an independent *caput nullitatis* related to the sacramentality in marriage. While much of the decision is doctrinal, its inclusion here is to demonstrate the validity of challenging a marriage by understanding how the will is determined either through error or through positive exclusion.

Marriage is one the seven sacraments instituted by Christ (see c. 1055), to which *coram* Boccafola reflected traditional doctrine that in “a Christian marriage the contract cannot be dissociated from the sacrament and, therefore, there can be no true and legitimate contract without it being at the same time a sacrament”. Furthermore, whenever two baptized spouses legitimately marry in the Church, there forms an indissoluble bond and a sacrament. What forms “is not dependent on the faith of the contracting party but depends on the will of Christ,” for “one who wants marriage wants something instituted by God by means of the natural law” (n .7).

Because of their desire to enter a true marriage, “the spouse who wants a true marriage, *implicitly* also wants the essential elements, including the sacramental dignity of marriage, and also the properties of marriage” (n. 7). Therefore, “if a person really wants to contract a true natural pact, he or she does not have to add anything else to his or her matrimonial consent in order to receive also the sacramental grace. The only necessary thing one has to do is to place a true matrimonial consent. From this it follows that what is necessary is not the faith, but only the consent” (n. 7). The consequence, according to Boccafola, is that the lack of faith, or, indeed, its non-practice has no juridic relevance. When spouses exchange consent, the requirement is, at minimum, the parties must have an intention *facere quod facit ecclesia*, where consent is given to the natural conjugal covenant that includes the essential properties and elements.

Nevertheless, he proceeds to show that this minimum requirement does not preclude the possibility of excluding, by a positive act of the will, the sacramentality of marriage. Boccafola makes ample use of a decision *coram Fiore* (1973:591-599) noting especially that

a marriage between two baptized persons can be invalid due to exclusion of the sacramentality of marriage by one of the contractants – reborn in the waters of baptism – because it is not possible to have a contractual bond between two baptized persons on its own that is not itself a sacrament (c. 1012, §2); nevertheless, in order to have such invalidity, it is always necessary that the sacramental dignity be excluded by a positive act of the will, by which the marriage itself would have been excluded if it were separable from the sacrament. Therefore, one who, cleansed by the waters of baptism, does not want the sacrament of marriage but wants the contractual bond before the Church, in reality – that is to say, in fact – does not exclude the sacrament; if the matrimonial contract really – this is to say, in fact – cannot be separated from the sacrament, a Christian faithful, therefore, who marries cannot separate the sacrament from the matrimonial contract (n. 4).

Boccafola requires, then, that “in the case of invalidity of the marriage accused on the ground of positive and deliberate exclusion of the sacramental dignity of marriage, the validity or invalidity of the matrimonial consent is determined by using the same principles and proofs as in simulation of consent, that is, in the exclusion of an essential element of marriage” (n. 8). Morrisey (2011:158) notes that what is important in this decision is that

the exclusion of sacramentality can be reduced to total simulation between baptized persons, or it may be excluded in the same way as the exclusion of an essential property or element of marriage. The autonomy of this ground of nullity – i.e., determining error – is clearly recognized in this decision.

3. Coram De Angelis (March 10, 2006) (De Angelis, 2016:125-148)

A marriage between a male petitioner and a female respondent was celebrated on November 21, 1981. It was advanced by the pre-marital pregnancy of the Respondent, who received baptism just before the wedding. Two children were born of this union, which lasted thirteen years, resulting in divorce in July of 1994. The Petitioner presented his petition on December 4, 1995, challenging the marriage on the ground of exclusion of the sacramental dignity of marriage on the part of the woman, with the first instance court finding *non constat* on February 19, 1998. This decision was directly appealed to the Rota by the Petitioner where it was judged in second instance by the turnus *coram De Angelis* on March 10, 2006. It is important, as the decision relates to the roles faith and intention play in the valid celebration of marriage.

The Respondent chose not to provide testimony in the first instance court, but, according to the evidence presented in the Rotal appeal, when the decision of the first instance court was communicated to her, she stated “that she had agreed to receive baptism and to celebrate marriage in the Church only because the concrete living situation required it of her, but that on her part there was absolutely no reference to faith and that she had not attributed any religious significance either to the baptism or to the marriage” (Mendonça, 2007:228), hence the question of whether the respondent had excluded the sacramental dignity of marriage due to lack of faith necessary for the valid celebration of marriage.

De Angelis’ analysis affirms the desacralization of marriage, and notes that, because of the societal ethos of today, persons baptized in their infancy do not retain any trace of Christian faith and may not believe in Christ or in the Church’s sacraments. He explains that “[...] it is necessary for the validity of marriage that all the elements required on the part of both the minister and the subject receiving, for the validity of a sacrament according to the Catholic doctrine, are present simultaneously in both parties.” He notes, too, that

[o]n the part of the recipient of the subject, it is required for validity at least the will to receive the sacrament, otherwise thought of as the fruitful reception of the sacrament. The assertion that the reception of the sacraments flows from faith is completely valid. Defect of faith does not stand in the way of the sacrament being validly received, but it impedes the fruitful reception for the salvation of the soul.

Although the invalidity of baptism by the Respondent was not explicitly raised in this case as a possible source of the nullity of marriage, De Angelis addresses baptism by noting that “if someone asks for an adult baptism as a means to another end, for whatever lawful or unlawful reason, in order to please our parents or leaders, then they may give rise to a doubt about the validity of the sacrament.” Furthermore, De Angelis addresses the absence or lack of faith as affecting the intention to receive the sacrament by quoting a

significant passage from *coram* Pinto (June 28, 1971), who argued that complete absence of faith would cause the nullity of a sacrament, for

[o]ne who has absolutely no faith, one who denies the sacrament, considering it as an empty ritual, is incapable of intending a sacrament. For, as St. Thomas says, 'the desirable does not move the desired except to the extent it is understood' (Saint Thomas [Aquinus], *Summa Theologiae*, I, q 80, a. 2, ad 1 m). Should the person, only for the purpose of being allowed to contract marriage, intend an empty ritual, he / she could hardly be said to intend to receive the baptism as Christ instituted it and as the Church teaches. Indeed, Christ did not institute an empty ritual but an efficacious sign of spiritual regeneration. According to the common opinion of theologians, in an adult an internal intention on the part of the subject is necessary, namely the one that includes not only the merely external rite but also in some way the sacramentality of the ritual as well; either because he / she explicitly acknowledges this sacramentality, or because at least implicitly intends it, for example, by the very fact he / she wishes to receive that which Christians usually receive in accord with their religion (Pinto, n. 14).

In the above argument, Pinto supports the invalidity of baptism when an adult has absolutely no faith, which strengthens the position of De Angelis. He summarizes his reflections by expressing that one who contracts marriage should manifest a minimum of intention of doing what the Church does (*facere quod facit Ecclesia*), a simple requirement of the Council of Trent, which is an intention to enter into a conjugal bond. This allows for the marriages of baptized non-Catholics to be considered valid and sacramental. But he notes that lack of faith in the contractants varies. It is possible that parties entering sacramental marriage merely consider marriage before the Church as a pure formality, devoid of meaning, necessarily chosen in order to please the parents. In such a case, if the parties intend the conjugal bond, the marriage is valid. He states,

Often together with lack of faith there is also a strong opinion that conjugal relationship is valid only until love lasts, love here understood in its corrupt sense of affective feeling; that no pact can be considered definitive by which one spends his/her entire life; then the error concerning the indissolubility of marriage seems so deeply rooted that it generally enters into the will of the contractant, and thus there is the nullity of consent due to exclusion of the good of the sacrament (indissolubility).

Noting the theological and traditional juridic principles, De Angelis draw the conclusion that lack of faith, which is frequently verified in those who marry these days, *per se* does not impede a contractant from celebrating the sacrament of the new law. The same lack, however, constitutes the ground in which there can arise the exclusion of

marriage itself, or more frequently of the good of the sacrament or even, more rarely, of the sacramental dignity, because no one is considered to exclude what one does not hold in high esteem.

It is clear then, that when challenging a marriage on the exclusion of the sacramental dignity of marriage or error concerning the sacramental dignity of marriage, it is necessary to prove that the prevalent will of the party/ies that intend(s) to exclude the sacrament, includes the following: "I marry you, but I do not want the sacrament, and if marriage becomes a sacrament, I do not want marriage." In the above rationale, the exclusion of the sacramental dignity of marriage because of lack of faith on the Respondent's part was the motivation to challenge the validity of the marriage. Error was an underlying factor, but the case was not decided on this ground.

The sentence solidifies the theological and juridic principles already in doctrine and jurisprudence. For De Angelis, absence of faith *per se* does not cause the nullity of marriage, but weakens the presumption that marriage itself or its essential elements or properties, including its sacramental dignity, are included in marriage.

4. *Coram Bottone* (May 12, 2006) (Bottone, 2006:56,6)

Two Catholics married in the Catholic Church on April 8, 1959. The Petitioner, a male, was baptized in the Catholic Church but never raised in the Catholic Church, and only completed the sacraments of initiation in his teenage years, although perfunctory, as he never actually practiced his faith. He married the Respondent, a female, who was raised in a family bereft of religion. Her rationale for baptism, later in life, was motivated solely by her desire to enter a Catholic college operated by religious sisters. The Petitioner accused the Respondent of having no faith and as exhibiting intense hostility against the Catholic Church.

Although the Petitioner had not regularly practiced his faith, he perceived that a spiritual renewal of the Church had taken place upon the completion of the Second Vatican Council, and the Church's role in the modern world seemed more relevant. The Petitioner focused on the new life ushered into the Church by the Second Vatican Council. He returned to the practice of the faith in 1965 with the hope of salvaging his marriage, even though he had earlier suggested divorce when the marriage was in trouble. Hoping for the best, he asked the Respondent to recommit to the marriage, to which she consented, with peace lasting for ten years. In 1982, the marriage would end for a short period, followed by reconciliation, and then divorce.

The Petitioner presented a petition to the local tribunal on May 5, 1992, and challenged the validity of the marriage on the ground of error concerning the indissolubility and

sacramental dignity of marriage on the Respondent's part. The defender of the bond suggested that the ground of exclusion of indissolubility and sacramental dignity of marriage be added. The first instance court decided the case in favour of the nullity on the ground of error concerning the indissolubility and sacramental dignity of marriage, and did not address the second ground. The second instance court found in favour of the marriage on both grounds, and the sentence was appealed to the Rota to be heard *coram* Bottone. Although there are no new insights, *coram* Bottone does reiterate what has been stated previously in Rotal jurisprudence.

Bottone states that

faith is not required, but for contracting a valid marriage, especially in the times of today, there is no doubt that either the absence of faith, or public exposure to straying ideas of marriage in all directions, and, more easily than in times before, can lead to the error of the simulation with respect to any essential property or end of marriage (n. 4).

He explains that error is a false judgment concerning the object of matrimonial consent, and that c. 1099 of the CIC/83 determines more clearly that error concerning unity or indissolubility or sacramental dignity of marriage "does not vitiate marriage provided that it does not determine the will" (c. 1099). The problem to be resolved is when error really can vitiate the will. Furthermore, he notes,

Error concerning some essential element of marriage, or sacramentality, vitiates the will if it is rooted and so deeply imbued in the mind of the [contracting party] that it causes a firm adherence of the intellect to the erroneous view about the object of marital consent such that, in relation to error, [what is] proposed is chosen (n. 6).

Quoting *coram* Masala, Bottone explains,

Consequently, consent is not vitiated solely by the fact that the contractant nurtures a false opinion, view or even convictions about the essential properties of marriage but it is vitiated only if the contractants will 'by a positive act', that is to say, truly elicited and never retracted, and so adheres to the false opinion or conviction that it both ratifies the error itself and accepts it as its own cause (*coram* Masala [1970, n. 4]).

Bottone concludes by explaining what proofs are required, and that

[a]s to the error concerning the sacramentality of marriage, which, unless one is ignorant of it, which can be excluded only by an act of the will, one would have to prove that the error had rendered the contractant averse only to the sacramentality, and as a consequence would not have contracted marriage with it, and that the

marriage contracted, in its nature and substance, was really different from that which had been externally manifested (Morrissey, 2011:158).

Although much of the jurisprudence on error has been within the context of error concerning indissolubility or exclusion of marriage itself or a property of marriage, the principles set out can be applied to error about the sacramentality of marriage, and thus *error iuris* can be identified as an autonomous ground. Error can be shown to be present in the intellect and be so strong that it prevails over the desire for a true marriage. Error presents to the will an erroneous notion of marriage as the only possible object of consent. While the Rotal judge affirms the identity of contract and sacrament in c. 1055, §2, error about sacramental dignity is, at least, analogous to the other essential properties, and therefore makes c. 1099 an applicable guide for the interpretation of c. 1101, §2 (Grochoweski, 1978:283).

5. *Coram Turnaturi* (July 21, 2005) (Turnaturi, 2005:339-382)

A man and woman established an intimate relationship. At the insistence of the woman, and for the sake of legitimate cohabitation, a marriage was celebrated on December 26, 1979. The man had previously obtained a declaration of nullity from a previous marriage on the grounds of exclusion of the *bonum sacramentum* and the *bonum prolis* on the part of his former spouse. After the birth of a daughter, conjugal relations lasted until 1996, and the civil court granted legal separation of the parties. There were also problems associated with the religious upbringing of the daughter born of the marriage. On October 19, 1998, a petition was made to the regional marriage tribunal to challenge the validity of the marriage on the ground of exclusion of indissolubility and exclusion of sacramental dignity on the part of the Respondent. A civil divorce was finally sought and concluded on November 20, 2001.

With the normal formalities of the procedural law, a favourable decision was finally reached on November 23, 2000, but only on the ground of exclusion of indissolubility on the part of the Respondent. The sentence was automatically appealed to the appellate tribunal, and the defender of the bond and the parties were given the opportunity to proffer observations. Only the defender of the bond and the Respondent actually provided comments.

On April 14, 2002, the decree of the appellate court stated that the affirmative decision of the court of first instance was not to be confirmed, and that the case would be submitted to an ordinary examination at the appellate level. The ordinary examination proceeded with the *contestatio litis* being determined as “exclusion of the good of the sacrament (indissolubility) and sacramental dignity on the part of the Respondent.”

Following closely the law section on the exclusion of sacramental dignity (§§ 14-20), it is possible to see the jurisprudence employed in the case.

- The judge refers to the case of *coram Staffa* (1949) that “[the] Sacrament is absent only when ... one, in order to exclude the sacrament, which he or she rejects with an absolute and prevalent will, excludes also the contract” (14). He referenced the Magisterium of the Church, noting that only “consent is sufficient and faith is not necessary” (14), mirroring what is found in c. 1012 of the CIC/17.
- Next, he references the decision *coram Pompedda* (1970) which provides an additional perspective, noting that “consent is not rendered defective nor marriage ... invalid if a baptized person intends to contract a true marriage and simply excludes the sacramentality of marriage,” since this is only an exclusion of sacramentality and not marriage itself. But the converse is true: “[O]ne would have to say differently if the contractant were to exclude the sacrament in such a way that he or she would not want marriage itself.” Interestingly, he provides several Rotal decisions in justification, together with reference to Gasparri’s (1932) *Tractatus canonicus de matrimonio*.

Turnaturi reflected on the Apostolic Exhortation *Familiaris Consortio* of Pope John Paul II, and notes that there is a natural reality to marriages that spouses should embrace, and that “this does not require faith but a right intention.” Furthermore, and of great significance, is a letter to the Bishops of the Catholic Church (1998) on situations surrounding the reception of Holy Communion by the faithful who have entered a new marriage after divorce, in which then-Prefect for the Congregation for the Doctrine of the Faith, Cardinal Ratzinger, “links ... the truth of indissolubility with the gift of faith and, concretely with the practice and life of the same faith.” Ratzinger said,

The successive theological reflection had clarified that only the marriages between the baptized are a ‘sacrament’ in the strict sense of the word and that absolute indissolubility is valid only for those marriages which come with the ambit of faith in Christ. The so-called ‘natural marriage’ has its own dignity from the order of creation, and is, therefore, oriented towards indissolubility. ... The sacramental marriage, consummated, cannot be dissolved by anyone. ... On the other hand, the question [of] whether non-believing Christians – baptized, who have never believed or no longer believe in God – could truly contract a sacramental marriage, calls for more in-depth studies. In other words, it is necessary to clarify whether every marriage between two baptized persons is truly *ipso facto* a sacramental marriage. In fact, even the Code indicates that only a ‘valid’ matrimonial contract

between the baptized is at the same time a sacrament (quoted in *coram Pinto* [January 16, 1998]).

Turnaturi expressed that regardless of the debates surrounding sacramental dignity, “[sacramental dignity] can be excluded by a positive act of the will or due to error determining the will concerning the same: in both hypotheses the conjugal consent is rendered invalid.” He reverts to the issue of prevalent will, but demonstrates that

one who, due to erroneous or contrary mind ‘rejects the sacraments, considering it as an empty ritual, is incapable of willing the sacrament … and if, only to be allowed to contract marriage, he / she wants an empty ceremony,’ he / she certainly cannot be said to intend to receive it. … The will to exclude the sacrament is not overturned by the will to go through the ritual, for even if the sacred rite is made available to him / her, it is received by the simulator as not sacred, which in fact is not sufficient for the sacrament.

He concludes by noting that “according to the Code, only a valid marriage between the baptized becomes a sacrament; but if a contractant attributes no value to a marriage celebrated before the Church, one can hardly speak of the resulting sacramental dignity of marriage thus celebrated.”

4.5. The use and effects of rotal jurisprudence

The previous sampling of Rotal decisions on the grounds of error concerning sacramental dignity (c. 1099) and total / partial exclusion of the sacramentality of marriage (c. 1101) provides a framework for challenging the validity of marriages according to these two canons. In proving the grounds, presumptions contained in the CIC/83 need to be overturned by yielding 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 or that an error was so deeply seated that the will could not choose anything other than what was presented to it by the intellect.

As observed in *Familiaris consortio* (Pope John Paul II, 1980:§68), 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.

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. According to Pompedda, (1990:53-54),

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 anymore; therefore it would not be possible to easily suppose a consequent intention *in which faith is a fundamental presupposition.*

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.

It has become clear that some people do at times “clearly understand when they choose marriage and reject the sacrament” (Mendonça, 1997:12). 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”. Those who lack formative grounding in faith easily confuse the secular institution with the sacred. Again, *coram Stankiewicz* (Stankiewicz, 1991:282-283) notes,

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.

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” (Bruno, 1988:166-171). 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” (Mendonça, 1997:35).

The above illustrations present the complex nature of the issue of faith and the exclusion

of sacramentality in marriage, either by way of error that determines the will or total / partial simulation. The Roman Rota has provided an opportunity to show that the traditional framework of proving the nullity of marriage continues to develop.

5. Chapter five: Using cases from the Tribunal of the Diocese of Palm Beach to establish criteria for overcoming the presumption of the validity of marriage related to sacramental dignity

5.1. Introduction

A *presumption*, according to c. 1584, “is a probable conjecture about an uncertain matter.” 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. The canon presumes agreement between words and intention. According to Pospishil (1991:348), it is, however, sufficient that a marriage is willed implicitly within the framework proposed by the Church.

As has been demonstrated in Rotal jurisprudence, and because it can be seen in general society, there is an inability to maintain the presumption that people intend to marry according to the mind of the Church. The growing indifference in the Catholic faith among young people who have been brought up as Catholics, or even educated in Catholic schools, tends to favour confusion about the religious or sacramental aspect of marriage in an increasingly secular world. The ITC identified the presence of baptized non-believers, or those who have little or no faith formation. Their existence is, indeed, important because of theological and juridical implications, together with effects in the pastoral realm. According to Serrano (1990:435),

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.

But just as baptism does not prevent a person from proceeding with a conscious human act opposed to the faith, Mendonça (1988:12) notes that neither does it “impede a baptized person from deliberately choosing a covenant which is not a sacrament and, consequently, not marriage itself.”

Because of the cultural milieu and dependence on the secular nature of marriage (Mendonça, 1988:16), 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.” Those who lack formative grounding in faith easily confuse the secular institution with the sacred, as has been readily demonstrated.

An underlying cause of simulation may be found, according to a decision *coram Bruno* (1988:171), in the holding of an error due to hatred held “in the minds of the parties toward

religious marriage itself, whose sacramentality and essential properties are despised and rejected.” Mendonça (1988:35) notes that 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.” The relationship between error and simulation is clearly seen.

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 either explicitly or implicitly exclude the sacramental aspect of marriage, causing its invalidity. It is the intention against sacramentality – 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.

Since the very definition of marriage contained in cc. 1055 and 1056 notes that marriage for the baptized is sacramental, a question arises as to whether one or both parties to a marriage could have an incapacity to assume the obligations of a sacramental marriage, as Pompedda (1983:194) suggests, “To arrive at a point of applying incapacity to the obligations which derive from sacramental marriage is a … complex issue” and submits that there may be “an incapacity for sacramentality” for “contractants who live without expressing their faith”.

These illustrations present the complex nature of the issue of faith and the exclusion of, or error concerning, the 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.

Thus, Pompedda (1990:65) notes, too, that 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.” When the minister or recipient of the sacrament of marriage intends to exclude sacramentality in marriage, traditional proofs (Burke, 1994:722; Faltin, 1997:255; Versaldi, 1990:438-439) are engaged that must clearly overturn the presumption of canon 1101. The Roman Rota (Fiori, 1973:592-593; De Jorio, 1975:353-355; Caberletti, 1998:811-816) has consistently seen the properties referred to in c. 1099 about which people may be in error as also being capable of being excluded when error determines the will.

Simulation requires that an external expression be contrary to an internal intention, as *coram Giannecchini* (1996:565) notes:

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.

However, Giannecchini (1996:421) also expressed that, 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.” The confession, motive, and circumstances must demonstrate incongruity between expression and intention. Faltin (1988:5) explains:

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.

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 cc. 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.

To overturn the presumption of c. 1101, certain factors must be considered (Boccafola, 1988:89):

[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.

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* (Ragni, 1996:396).

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 (Faltin, 1997:257-259):

Therefore, since we are dealing here with the intention in giving consent, it is most certain that in this investigation the external behaviour 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 cause 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.'

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 (Faltin, 1997:461):

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.

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 the sacramentality of Christian marriage and whether this error was so deeply rooted that it influenced the will. Especially

in the case of the baptized non-believer, the question of marriage remains whether or not 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 (Stankiewicz, 1982:282-283), 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. cc. 1057, §2; 1101, § 2). For this reason it is of the utmost importance to determine the object of the will (Gianneccini, 1996:417).

The object of consent is not canonical marriage, for the baptized non-believer has no concept of what that is. Another way (Palestro, 1992:281) to probe this aspect of object is to say that

one who totally simulates has no intention of contracting 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.

Intention is focused in light of faith. Because sacramental marriage is not chosen, consent is offered to an object that does not involve sacramentality.

At an address (Oulette, 2014:242) at the Opening of the Judicial Year of the Ecclesiastical Tribunal of Valencia, Spain, in March 2014, Cardinal Marc Ouellet recalled that tribunals are very used to traditional grounds corresponding to the trifold *bona* of marriage (*fides, proles, sacramentum*; fidelity, procreation, and indissolubility). He recollects that Pope John Paul II in his address to the Roman Rota (Pope John Paul II, 2003) stated that “an attitude on the part of those getting married that does not take into account the supernatural dimension of marriage can render it null and void only if it undermines its validity on the natural level on which the sacramental sign itself takes place.” Pope Benedict XVI (2013) encouraged continued research with respect to the ground of the

bonum coniugum (the good of spouses).

But Cardinal Ouellet (Oulette, 2014:242) goes further by stating:

[T]he question of the relation of faith to the sacrament merits further study. Ought a minimum faith on the part of the fiancés be required for the validity of the sacrament? Is the fact that they are asking to marry enough for us to justify that they ‘intend to do which the Church does’? There is no abstract answer to these, for each just be treated on its own. ...

The negative path suffices: that is, to refuse access to the sacrament (or later, to recognize the nullity of the marriage) if the fiancés do not acknowledge themselves to be members of the Church through their baptism, declare themselves openly to be unbelievers, and / or show no interest in following a certain path of preparation beyond a meeting considered a purely juridical formality. The pastoral dialogue with those asking for marriage, conducted with respect and cordiality, must then help them to understand the Church’s obligation with regard to the truth of the sacraments of faith.

5.2. Cases from the archives of the Tribunal of the Diocese of Palm Beach

Several types of cases are processed by any diocesan tribunal. In limiting this study to marriage cases presented for adjudication, one can easily see the trends that develop.

- a. The first subset of marriage cases to be considered includes marriages that have at least one party who is bound to the Catholic canonical form of marriage (cf. c. 1108), but who have chosen not to observe it. A common example might be marriage by a notary public or a Justice of the Peace, or sometimes marriages of convenience or elopement. These are merely *civil marriages* with respect to their civil effects, and understood in canon law as having no ecclesiastical or sacramental effects.

When addressing such a situation, one must consider the rationale for the parties getting married outside of the Church. Their motivation may have included a lack of proper catechesis or even a sense of indifferentism to organized religion. Nonetheless, even for a nominal Catholic, or one who has merely been baptized in the Catholic faith, the canonical form is required for validity. At times, for example, when children born of this marriage are ready to be baptized, or reach the age to receive First Holy Communion or Confirmation, often the parish sacramental coordinators will ask about the canonical status of the marriage of their parents. Oftentimes, this becomes the catalyst for a dialogue with those concerned. All else being equal and with whatever requirements having been met,

the parties may choose to validate their civil marriage in the Church according to the proper canonical form.

The above scenario is very common but has been incorrectly labeled as ‘convalidation’, which is a technical canonical term related to the remedy for the invalidity of a marriage due to an undispensed impediment or a lack of jurisdiction on the part of the priest or deacon (cc. 1156-1165). Thus, technically, the validation of a civil marriage in the Church according to the proper canonical form is ‘marriage as if for the first time’. The importance of the validation to this study is related to the ability for one or both parties to give consent to a new marriage, their motivation with regard to the religious aspect, whether or not they were simply celebrating a religious ceremony because of outside influence (e.g., from the sacramental coordinator when children are old enough to receive or complete the sacraments of initiation or parental / societal pressure), and their acceptance of the duties and obligations of marriage contained therein.

- b. The second subset of marriages consists of those that have been adjudicated on the ground of total simulation or partial simulation, especially with respect to entering marriage sacramentally when there was never an intention to do so.
- c. The third subset of marriage relates to those that have been decided on another ground, mainly a grave lack of discretionary judgment (c. 1095, 2°) but that demonstrate a lack of understanding of the nature of marriage as a sacrament or of the elements that are to be included in marital consent.

5.2.1. Invalid convalidation – simulation as merely renewal of marital consent

The following six cases that were adjudicated in the Tribunal of the Diocese of Palm Beach concerning the issue of the validation of an invalid marriage demonstrate that at least one of the parties did not enter marriage as the Church intends, and, in fact, believed that the civil marriage ceremony sufficed. Their validation of marriage neither changed their perspectives on marriage nor did it affect their marriage in any significant way.

1. DOPBT Protocol Number: 0522008: In case 1, the Petitioner, a Catholic woman, age 22, married the Respondent, a Methodist male, age 23. The Petitioner explained that marriage took place outside the Catholic Church because “[the Respondent] was not Catholic and the Respondent’s parents would not attend if there was a Catholic wedding.” The Petitioner admits that, after the civil marriage, she felt that she was truly married. She states that her attitude toward the validation was “something that just needed to be done,” and that the parties had

done no preparation for the validation. She explained further that “[the Respondent] had just finished his conversion [to Catholicism],” so he was a neophyte.

Furthermore, at the time of the validation of marriage, the Petitioner avers, “Our marriage was just blessed – [it] was a very simple service with just two witnesses. For me, the Catholic ceremony made no difference in our relationship. … After the validation, I [we] continued to celebrate December 28 [the civil marriage date] as the date of my anniversary.” The Witnesses for the declaration of nullity noted that the validation “was a renewal of earlier consent. … It was done to strengthen the union and start over.”

According to the decision rendered by the judge, the Petitioner invalidly validated and simulated her marriage to the Respondent. There was no new act of the will as required, and she just went through the motions as something that was perfunctory. She admitted that, in her understanding, their civil marriage was just ‘blessed’ and that the Catholic ceremony made no difference in her marriage, as she (or they) continued to celebrate the anniversary of their marriage on the date of the civil union. The witnesses show that the marriage was in trouble already and its validation was, erroneously, an opportunity to strengthen the relationship and start over. Moreover, the religious dimension of the marriage was not present. The marriage was challenged on the simulation of marital consent because new consent – i.e., marriage as if for the first time with a new act of the will – was not given. The sacramental nature of marriage had no effect on the marriage, which is evident since the parties continued to celebrate the civil marriage date.

2. DOPBT Protocol Number: 0212008: In case 2, the Petitioner was a 20-year-old Catholic female who married a 29-year-old Catholic male. The Petitioner stated, “Our marriage took place outside the Catholic Church because neither of us was a practicing Catholic at the time. After the civil ceremony, I felt I was validly married.” She notes that after the civil ceremony our relationship was “pretty much the same as when we were courting. No change.” She also noted that the civil marriage was in trouble from the beginning, as she proffers, “We got married civilly in December 1995. I think I loved his daughter (from a previous marriage) more than I loved him.” But she clearly avers that the Catholic ceremony “was forced on us [because of] RCIA [i.e., the *Rite of Christian Initiation of Adults*] and [the rector of the Cathedral] prior to getting our Communion and Confirmation [completion of sacraments of initiation]. Otherwise, we couldn’t go through the process.”

The Petitioner clearly admits, “I wanted to get married on my own terms, after I had completed my sacraments. … [The rector of the Cathedral] and the rest of [the

RCIA team] pressured us [to have a Catholic ceremony]. I vocalized that and was told if I didn't, I wouldn't be able to receive my Communion and Confirmation." She viewed the Catholic ceremony as "an obligation to get to where I wanted, which was Communion and Confirmation. It wasn't really a wedding to me since we were already married." She acknowledges that the Respondent's attitude was "the same," and that at the Catholic ceremony she "renew[ed] her marriage promises. It was just a ceremony. I don't even remember the date. I really felt it was forced on me by RCIA." At least for the Petitioner, the Catholic ceremony made "no difference" since the parties continued to celebrate their wedding anniversary on "the civil date, December 14, 1995. ... I felt like [the ceremony was] just a gathering, nothing different. ... We were pushed and forced by the Church into convalidating a marriage which was unstable from the beginning in order to receive the rest of our sacraments. It just shouldn't have happened. Period!"

The Respondent corroborated the Petitioner's testimony. He stated, "I do agree that an important element was missing from the beginning of this union, namely love. I freely admit that I never really loved [the Petitioner] and certainly did not marry out of love. I married [the Petitioner] because I felt guilty that this emotionally fragile woman aborted our first child and was also in need of a provider. This was an act of honour, not fraud, but I understand that these are not reasons to marry, and I accept that certain rights and duties of the marriage as seen by the Catholic Church did not appropriately fall into place as a result of this poorly thought-out union. ... While I respect the sincerity of the Tribunal and respect the Church's right to define for its purposes the spiritual aspects of this marriage, the legal marriage and divorce remain intact regardless of the Tribunal's actions, and further, the findings of the Tribunal will have no meaningful or lasting effect on my life." It is additionally evident, then, that the Respondent, also a Catholic, saw no value in the Catholic ceremony, since he gives no value to the religious aspects of marriage, as it has "no meaningful or lasting effect on my life."

In the decision phase, the judge noted that the requirement for the validation of marriage is that a new act of the will must be made when consent is exchanged. The testimony clearly shows that the Petitioner did not consider her validation of the civil marriage as anything important, and that it was only a requirement to complete her sacraments of initiation rather than entering a sacramental marriage. Effectively, the celebration of the validation added nothing to her marriage, which was already failing. She felt that the decision to marry was forced upon her because she was receiving instructions to complete her sacraments of initiation, and the rector of the Cathedral and the RCIA team were adamant that the Church's

requirements had to be met, requiring that their invalid civil marriage be rectified. The Petitioner admitted that the anniversary of their marriage was only that of the civil exchange of vows, and that she does not even remember the date of the ecclesiastical marriage celebrated according to the canonical form. On the part of the Respondent, he never even mentions the Church marriage, but rather refers to the legal marriage and divorce as being of importance to him.

3. DOPBT Protocol Number: 0472006: In case 3, a female Baptist, age 30, married a 33 year old Catholic male. The Petitioner explained that the civil marriage took place outside of the Catholic Church because "I was non-Catholic and my parents were paying for the ceremony. Also, [the Respondent's] family was insistent that we have a Catholic wedding, but no one in their family had attended Mass in years! [The Respondent and I] decided that I would convert [to Catholicism] when I was ready."

Regarding the validation of the civil marriage, the Petitioner acknowledged, "I considered myself to be truly married after the [civil] ceremony, because at the time I was not Catholic. ... I suggested the Catholic ceremony, after I completed RCIA [the *Rite of Christian Initiation of Adults*] classes. [The Respondent] did not care. I had discovered in late May I was pregnant and having just converted wanted to have the marriage ceremony performed in the Catholic Church so that our relationship was validated by God and the Catholic Church. ... Of course, [the Respondent's] mother was now very pleased. ... [The Respondent] did not care and told me to do whatever I wanted to do." The Petitioner states, "I really wanted it since [the Respondent] and I had discussed prior to our marriage that he wanted our children [to be] raised Catholic. I then wanted our marriage to also be the 'right' thing in the eyes of God. [The Respondent] didn't care – he told me he would show up when it was time."

Furthermore, the Petitioner explains that having "just completed one year of RCIA classes and [having] converted to Catholicism ... [our priest] indicated we would not have to take pre-Cana classes, as we had already been married civilly for one year." The Petitioner indicated that she "was practicing [her] faith at the time of the Catholic ceremony. [The Respondent] was not. [The ceremony] did not make much difference to [the Respondent]. I felt I had made the right decision to make our marriage blessed, and 'right' in the eyes of God and to show our unborn son that we did have a Catholic ceremony. We still celebrated [the anniversary] on April 8, since that was the date all of our friends and family attended."

The Witnesses corroborated the Petitioner's testimony and noted that the rationale for getting married in the Church was "mainly because [the Respondent's] mother insisted. [The Respondent] does not attend at all and never did as long as I knew him. ... [The Petitioner] was raised to be a Christian. She goes to Mass every week and is raising [their son] in the Catholic religion." It is interesting to note, however, that the witnesses were not in agreement with which party acted sincerely, for another witness affirmed, "[The validation took place] only because [the Respondent] was Catholic and wanted [the Petitioner to be] Catholic so he could control and possess her as his own. In other words, he wanted to take her 'away' from her family. ... [The Petitioner] went through it only for the other party and also so that their child would be born and christened Catholic. ... [The Petitioner] converted to the Catholic faith because that was [the Respondent's] religion." Although conflicting, the statements, nonetheless, clearly demonstrate the lack of interest in the sacramental aspects of marriage.

In the conclusion of the sentence rendered by the adjudicating judge, he noted that in the validation new consent was not present. The Petitioner provides the rationale for the marriage originally taking place outside the Church as being that "[m]y parents were paying for the ceremony." She explains that the Respondent "did not practice any faith" and "No one in [his] family had attended Mass in years!" Of all things that the Petitioner states, her understanding of the validity of her marriage is poignant: "I considered myself to be truly married after the [civil] ceremony." She noted, "I felt I had made the right decision to make our marriage blessed, and 'right' in the eyes of God and to show our unborn son that we did have a Catholic ceremony." The judge took care to note the words 'blessed' and 'truly married' in the testimony.

Equally important is the date of the recognized anniversary: "[W]e still celebrate [the anniversary] on April 8, since that was the date all of our friends and family attended." The judge concluded that "[o]ne cannot make a new act of the will and maintain that the marriage is simply 'blessed' and that one still celebrates the date of the civil marriage, in spite of the validation, since the Petitioner's feeling is that [they] were 'truly married' at the time of the civil ceremony." He ties the ecclesiastical marriage to the forthcoming child[ren], for the Petitioner expressed that they "wanted our child to be raised Catholic" and that there was a desire that marriage "also be the 'right' thing in the eyes of God."

It is was not only the Petitioner who misunderstood the nature of the validated marriage. She clearly admits that "I suggested the Catholic ceremony" but that

“[the Respondent] did not care. I had discovered in late May I was pregnant and having just converted wanted to have the marriage ceremony performed in the Catholic Church so that our relationship was validated by God and the Catholic Church.”

4. DOPBT Protocol Number: 0572003: In case 4, a 45-year-old Catholic woman married a Catholic male who was 42. The Petitioner had been married before, and the previous marriage ended in a declaration of nullity in 1972.

Regarding the validation of the Petitioner’s marriage to the Respondent, she states, “I married [the Respondent] in a civil ceremony November 4, 1987, with a Protestant minister in my sister’s home. This was for financial reasons, for the business that we owned, and for the home we were buying.” She continues, “We decided that we wanted to have the marriage blessed in the Church. We spoke with [a [priest] at Saint Paul of the Cross Parish, and began our preparations. It was important to me to have the Church recognize our marriage. [The priest] told us that what the Church was doing was blessing our civil marriage, and that the date of November 4, 1987, would still be the date that we would celebrate as our anniversary.”

The Petitioner clearly indicated, again, that the date of the marriage – in her mind and, apparently, in the mind of the priest who celebrated the validation of their marriage – was the date of the civil marriage. She stated, “Throughout our marriage we continued to celebrate the date of our anniversary as November 4, 1987, when the date our marriage was blessed in the Church was actually March 14, 1988. In my mind, I considered myself to be truly married on November 4, 1987, and the rationale for marrying in the Church was simply to achieve the grace that comes with the Church’s blessing. During the Church ceremony, I simply renewed my consent. The Catholic ceremony gave me a sense of peace that now God had blessed this marriage.”

Concerning the validation of the marriage, one of the witnesses affirms that both parties were “cradle Catholics. [The Petitioner] wanted to receive the sacraments.” When asked if either party felt the Church validation was simply a “blessing” of their marriage, the witness asserts, “[The Petitioner] felt it was a blessing.” Another noted, “[The Petitioner] wanted to get her marriage blessed.” When specifically asked if the parties considered this convalidation simply a ‘blessing,’ and if it was done to help strengthen a union already in trouble, the witness replied, “Yes, because it was a blessing... .”

In the judge's decision, he indicated that the parties decided that marriage in the Church was "the right thing to do to have relationship blessed by God and Church." They, therefore, decided to have the marriage validated. He shows that the parties "spoke with [the priest] ... and began our preparations. ... [The priest] told us that what the Church was doing was blessing our civil marriage, and that the date of November 4, 1986, would still be the date that we would celebrate as our anniversary." This demonstrates, firstly, that the information provided to the parties was faulty, but moreover, it affirms that the Petitioner was simply renewing her vows and not giving new consent, for she admits that "I simply renewed my consent", and confirms that "throughout our marriage we continued to celebrate the date of our anniversary as November 4, 1986," noting, too, that the real reason for marriage in the Church was "to achieve the grace that comes with the Church's blessing."

5. DOPBT Protocol Number: 1052002: The fifth case involved a Catholic male, age 30, and a non-Catholic female age 21. The Petitioner was Vietnamese and the Respondent was American, but both were living in Paris, France, when they met. Specifically on the issue of the validation of their marriage in the Church, the Petitioner states that they were married in October 1994, in Pennsylvania. He explains that the reason the marriage did not take place in the Catholic Church was that "we did not have the time available to plan for a Catholic ceremony. We wanted to get married and move to the US." He continues by indicating that he did consider himself to be truly married, "but not entirely. ... We were considering each other as husband and wife. I suggested [the Catholic ceremony]. ... There was not any pressure [to validate]." The Petitioner states, "Yes, at the time of the Catholic ceremony, [I thought I] was already validly married." He avers that the Respondent also thought this.

When questioned specifically about new consent' or 'renewal of consent' at the Catholic ceremony, the Petitioner avers that there was no new consent: "We renewed our marriage promises." It was his understanding that "we had our marriage blessed." When asked what difference the Catholic ceremony made in his relationship, the Petitioner responded, "I do not know." The Petitioner poignantly stressed that the date the parties celebrated their marriage anniversary remained "September 21st."

Regarding the validation, the Witnesses state that "[the parties] decided to get married as soon as possible at the time so that they can move back to the US." He responded to the question about the parties considering themselves truly (validly)

married, saying, "I believe so." He continues, "[The Petitioner] wanted this marriage to be blessed in the Catholic Church. ... The parties believed they were already validly married." When asked about the new consent versus renewal of vows, the Witness clearly affirms, "They renewed their marriage vows. ... They had their marriage blessed during the Catholic ceremony." Another Witness commented that the "[Petitioner's] parents suggested the Catholic ceremony. ... [The Petitioner's] mother wished them to have a wedding at the Church." The Witness responded to the question about the parties considering themselves truly (validly) married, saying, "[The ceremony] was a renewal from Paris (France). ... [T]hey had their marriage 'blessed' during the Catholic ceremony" because the parties "believed they were already validly married." In this ceremony, however, one difference was the "[the Respondent's] parents were present at the marriage." She concludes that the marriage broke up "because of different culture and different religions [and that the Respondent's parents] never accepted [the Petitioner] as a son-in-law."

The judge explained that "[i]n the present case, the parties were required to give their consent anew, by a positive act of the will. The Petitioner asserts that the Catholic ceremony was a formality following the civil union, and notes, 'Yes, at the time of the Catholic ceremony, [I thought I] was already validly married.' This being the case and the frame of mind, the Petitioner goes further to indicate that there was no new consent: 'We renewed our marriage promises,' as he indicated that 'we had our marriage blessed.' The final admission that the Catholic ceremony made little difference is indicated by the date that the parties celebrated their anniversary: 'September 21st.' The impetus for marriage outside the Church related to the parties trying to get into the United States, namely that 'we didn't have the time available to plan for a Catholic ceremony. We wanted to get married and move to the US.'"

6. DOPBT Protocol Number: 0552001: The sixth example was a marriage validated between two 32-year-olds who were both Catholic. The female Respondent had previously been married in the Catholic Church, and that marriage was eventually declared null by the Church. The Petitioner notes that he suggested that the marriage be validated, explaining that "I wanted to [pursue her annulment] so I could receive Communion and feel a part of the Church again and have a marriage that the Church recognized. I attempted to get her to pursue an annulment, but she wouldn't. Finally, the marriage was annulled due to her husband obtaining one. I do not believe she ever filled out the questionnaire she was sent concerning the annulment. I believe she just got married in the Church because I wanted to.

Also, our son was now eighteen and could be a witness. I pressured to have a Catholic ceremony. She received a letter notifying her of the annulment. I asked her to check with the Church and see what the next step would be to marry in the Church. It was three years before she did so. There was no opposition to a Catholic ceremony to my knowledge. None was ever brought forward. ... It bothered me a great deal to go to Mass and not be able to go to Communion. Her attitude was very casual. I think she did it because I wanted it; if I hadn't pushed for it she would not have cared one way or another. Also, since her son was now eighteen he could be a witness and I think she thought that would impress him."

Regarding preparation, the Petitioner explains that "we really didn't take any steps to prepare. Our first marriage was in a Lutheran Church and we met once with the minister for about an hour. When we married in the Catholic ceremony we did not attend any programs or classes. We scheduled the ceremony and we were married. ... It was a simple, very quick ceremony one weekday evening at the Church. We just renewed our marriage promises." When posed the question of the marriage being 'blessed' or 'entering marriage for the first time', the Petitioner responded, "I am almost positive the marriage was simply blessed by the Church." Furthermore, "[the Catholic ceremony made] very little [difference in our marriage]. By that time, we had been married over twelve years. However, I felt much better being married in the Church and being able to partake in Communion. We celebrated our anniversary on the date of our original marriage."

When the Respondent was questioned about the validation, she explained the rationale for this marriage commencing outside the Catholic Church was related to the fact that "I was divorced, and that annulment had not been finalized." She also notes that she felt that this 'first' marriage was truly valid in the eyes of God." The decision to marry in the Church was "to enjoy the whole of being a Catholic, especially receiving Communion without feeling guilty. [The Petitioner] wanted to receive Communion. He was not able to do so at his father's funeral, and that bothered him a lot. I procrastinated, but I didn't oppose it. We both wanted it to be a non-event. My son and [the Petitioner's] best friend were our witnesses. ... This was something we needed to do to feel like 'whole' Catholics. We really did little preparation other than meeting with the local priest and setting the date. [Our consent] was a renewal. Sadly, I must admit, I saw it as a necessary exercise that [the Petitioner] wanted to do. I felt [the marriage] was blessed and now recognized by the Catholic Church. ... [The only change was that] we could receive Communion comfortably." The Respondent explained, too, that the parties celebrated "our original marriage date" and not the date of the validation. "As the

marriage was a small event, there wasn't much to prepare, but we each did things. ... I feel [the Petitioner] went through the Catholic ceremony to be able to receive the sacraments – Communion – again. We did not receive Communion at his father's funeral, and I know that was very difficult for him. Ironically, our relationship began to unravel shortly after. ... The foundation of our relationship was not mutually strong enough."

One of the witnesses explained, "I know [the Petitioner] had always attended Mass and wanted to be married in the Church. ... [However], I think [the consent in their validation] was a renewal of an earlier consent. ... They may have considered it a blessing of their marriage. I do not believe either looked at it as strengthening a union in trouble." Another noted, "[The Petitioner] was more religious than [the Respondent]. Neither could receive the sacrament of the Holy Eucharist. This bothered [the Petitioner] more than [the Respondent]. I know for a fact [that the Petitioner] pushed to have their marriage in the Church. He did all the organizing, phone calling, [and] meeting arrangements. [The Respondent] did not seem that interested. [The Petitioner] was more serious about being married in the Church than [the Respondent]."

The judge reasoned that "the parties could not marry in the Catholic Church because the Respondent was divorced. The Petitioner 'attempted to get her to proceed with an annulment but she never pursued it. ... I felt by law we were married but that was the extent of it.' ... It is evident that the Respondent showed no interest in the value of marriage in the eyes of the Church." The judge noted that the Respondent "just got married in the Church because [the Petitioner] wanted to." The rationale for the Catholic ceremony and validation was "to alleviate the feelings of the Petitioner regarding the reception of the sacraments. '[The Catholic ceremony made] very little [difference in our marriage]. By that time we had been married over twelve years. However, I felt much better being married in the Church and being able to partake in Communion.' ... The defining element in the mindset of the parties is the statement of the Petitioner: 'We celebrated our anniversary on the date of our original marriage.' With no new act of the will, the civil (non-Catholic ceremony) was still considered to be the important ceremony, whilst the Catholic ceremony was mainly engaged for the ability to fully participate in Communion."

For the judge, the Respondent's statement is equally clear: "[O]ur consent was a renewal. Sadly, I must admit, I saw it as a necessary exercise that [the Petitioner] wanted to do. I felt it was blessed and now recognized by the Catholic Church. ...

[The only change was that] we could receive Communion comfortably.” It is clear that, according to the judge, “[a] new act of the will was not engaged, for the Respondent notes, too, that they celebrated ‘our original marriage date’ and not the date of the validation as their anniversary date, the Catholic ceremony being a ‘non-event.’ The Respondent noted the minimal preparation required for the validation ‘other than meeting with the local priest and setting the date.’”

5.2.2. Total or partial simulation of marital consent due to sacramentality

The following twelve cases that were adjudicated in the Tribunal of the Diocese of Palm Beach concerning the issue of a marriage declared to be invalid due to simulation on the part of one or both parties, either total or partial. They involve issues of faith, the nature of the sacrament of marriage for the baptized, and a lack of understanding as to the sacramentality of marriage.

1. DOPBT Protocol Number: 1062016: In first case in this category, the Petitioner was a 38-year-old Catholic male, and the Respondent was a 33-year-old Jewish convert to Catholicism, a conversion which took place before the validation of their marriage. The Petitioner explained, “[We were] civilly married on January 2, 1998. This decision was strongly influenced by my mother who I was very close to. We also both wanted a large family. Marriage validation was in 2008 and we wanted to celebrate our 10th wedding anniversary. … As we approached our 10-year wedding anniversary, [the Respondent] wanted a bigger wedding to be presented at a Church ceremony. We did not receive any information to prepare us [for] the sacramental nature of marriage.” The file has a notation that the Respondent was baptized and fully initiated in the Catholic Church in 2004.

Additionally, the Petitioner notes, “There was no preparation for the sacramental marriage (validation). Only getting her a new ring and the celebration after the ceremony.” He explained that “[w]e married outside the Church because neither of us were strong in our faith at that point, and she was Jewish. I thought civil marriage was the same as being married in the Church. [The Respondent] made the decision because she wanted a big ceremony in Church. I did not want it; [she] wanted the ceremony for the new ring and the celebration. The only step I remember is signing a form. We did not receive any preparation from [the priest] for marriage or attend any programs.”

With respect to the exchange of consent, the Petitioner notes, “I approached the ceremony with the original vows in mind. There was no new consent, merely a renewal of previous marriage promises.” He notes, “We simply had our original

marriage blessed in the Church. The ceremony made no difference in our relationship. We kept the anniversary on our original wedding date of January 2 (1998). ... Prior to our validation, we received no instruction on the sacrament of marriage. We both saw the validation as a stamp of approval of our original marriage, but not realizing the true nature of consent. We went through the motions to celebrate our 10th wedding anniversary. I didn't even know what validation was until I started filling out [the annulment] paperwork."

In the judge's argument, he wrote that "[t]he rationale for the civil marriage was that the 10th anniversary of the parties was about to take place. The Petitioner notes, '[We were] civilly married on January 2, 1998. ... Marriage validation was in 2008 and we wanted to celebrate our 10th wedding anniversary. ... As we approached our 10-year wedding anniversary, [the Respondent] wanted a bigger wedding to be presented at a Church ceremony. We did not receive any information to prepare us [for] the sacramental nature of marriage.' The Respondent had converted from Judaism to Catholicism during the period of the marriage. The Petitioner explains that during the civil marriage, 'I tried to make her happy in many ways. But she always was unhappy. We attended marriage counselling for over ten years.' ... While the parties were already having difficulties in marriage, no new marital preparation was begun. The Petitioner explains, 'There was no preparation for the sacramental marriage (validation). Only getting her a new ring and the celebration after the ceremony. We married outside the Church because neither of us were strong in our faith at that point and she was Jewish. I thought civil marriage was same as being married in the Church. [The Respondent] made the decision because she wanted a big ceremony in Church. I did not want it, [she] wanted the ceremony for the new ring and the celebration.' The judge affirms, "This is a clear demonstration of the motive for simulation, as the Petitioner simply thought civil marriage was the same as being married in the Church. Thus, the Petitioner is able to state what he was doing at the time of the exchange of consent when he avers, 'I approached the ceremony with the original vows in mind. There was no new consent, merely a renewal of previous marriage promises. ... We simply had our original marriage blessed in the Church. The ceremony made no difference in our relationship. We kept the anniversary on our original wedding date of January 2 (1998). ... We both saw the convalidation as a stamp of approval of our original marriage, but not realizing the true nature of consent. We went through the motions to celebrate our 10th wedding anniversary. I didn't even know what validation was until I started filling [the annulment] paperwork. ... Prior to our validation, we received no instruction on the sacrament of marriage."

The judge's conclusion is clear: "The Petitioner totally simulated marriage. By a positive act of the will, he excluded marriage itself, because he consented to something other than a new marriage, holding the civil marriage as being valid of its very nature. The motive for excluding marriage was that he felt that the previous marriage was, indeed, valid, and that he was honouring the wishes of the Respondent who wanted to celebrate a big wedding on their anniversary. There were already serious issues in the marriage, and the parties had been in counselling for marriage for some time, and no marriage preparation (for the Church marriage) took place. One ceremony was as good as another. Tragically, the marriage failed."

2. DOPBT Protocol Number: 0962016: In the second case, a 36-year-old Catholic male Petitioner married a 37-year-old female Respondent, with the only indication of the Respondent's religion being that she was 'Protestant'. During the investigation, the Petitioner was asked why the civil marriage took place outside of the Catholic Church and he responded, "Ex-spouse [the Respondent] was non-Catholic at the time of the civil ceremony." When asked whether after the civil ceremony he considered himself truly and validly married, the Petitioner answered, "Yes." When asked why the couple wanted to marry in the Church, the Petitioner answered, "We both agreed it was desired to have our marriage 'blessed' in the Catholic Church." Furthermore, when asked whether at the time of the Catholic ceremony the Petitioner believed he and the Respondent were already validly married, the Petitioner responded "yes," nothing that he believed that the Respondent felt the same way.

The Petitioner was probed further, and he was asked whether at the Catholic ceremony the couple gave *new* consent or merely *renewed* their marriage promises, to which the Petitioner answered, "We renewed our marriage promises." When asked whether the Petitioner thought they were simply having their marriage 'blessed' during the Catholic ceremony or did they really enter marriage for the first time, the Petitioner clearly answered, "Our marriage was 'blessed' in the Catholic Church." It was noted that it appears that the date for the validation was chosen out of respect for the date of the civil marriage, which underscores the pre-eminence placed on it.

The judge, in rendering his decision, concludes, "The exclusion of marriage that is involved in simulation need not be actual or explicit to be invalidating. It suffices if the exclusion is virtual and implicit. Occasionally a person will go through a marriage ceremony for an extraneous reason or as a means to an end. In this case,

the couple believed that by having the Church ‘bless’ their existing marriage, it would be sacramentalized and therefore carry added grace. However, the couple also believed that they were already married and that the Church was merely validating the civil marriage. The couple did not believe that this marriage in the Church was necessary, [but] only that it improved somehow their existing civil marriage. Neither the Petitioner nor the Respondent believed that the Church marriage was necessary and neither entered it with a new act of the will.”

3. DOPBT Protocol Number: 0272015: The third marriage scenario relates to a marriage between two Catholics. The Petitioner was a female, aged 23, and the Respondent was a male, aged 21. The Petitioner testified, “My family was a traditional Catholic family by *Colombian standards* [italics in original] … my family rarely went to Mass on Sundays [and] I was never confirmed as a teenager [because] my parents seemed to not know or care. … Catholicism was not a practice of faith; it was a following of a tradition. … [T]he focus on marriage was on not creating scandal by not being married in the Church and the social aspects of the wedding ceremony and celebrations.”

The Petitioner testified, “I considered cohabitation to be sinful. I did not consider being married either by the law or by the Church to be sinful.” The judge, thereby, concluded that the Petitioner considered marriage equally valid whether by civil or Church authority.

Regarding preparation, the Petitioner stated, “We attended the required Pre-Cana classes. The only recollection I have of the classes was thinking how silly it was for us to go through this process given that we were already married. … No one but our parents knew about our civil marriage.” The judge explains, “So to an outsider, the Church wedding would have been believed to have been the first.”

Furthermore, the Petitioner testified, “I believe we both understood the relationship to religion and to the Church existed, but [it was] not clearly understood what that entailed precisely.” Underscoring this was the response to the question about the Petitioner’s feelings about the marriage prior to or during the ceremony. She clearly responded, “I especially was glad we were getting a *blessing* from the Church.” Inquiring further, when questioned specifically about the nature of the Church wedding and the couple’s understanding of what they were participating in, the Petitioner responded, “I believe we both felt that the civil marriage was a valid marriage and that the Catholic ceremony was a ‘blessing’. … I believe that was our understanding, the civil marriage was real. However, our families were both traditional Latin (Colombian and Brazilian) families and a Catholic wedding was an

expectation.” Clarifying further, when asked if either considered themselves married before the Catholic ceremony occurred, the Petitioner responded, “Yes we did. … [I]n fact, our parents asked us to keep the civil marriage quiet so the Catholic marriage would appear to be the primary one [because] culturally, having a Catholic ceremony was a given. So despite having been married civilly, a wedding in the Catholic Church was expected and [it] was what my parents wanted.”

The witnesses confirm the Petitioner’s statements. One notes, “[T]he Catholic ceremony was a confirmation of their previous legal one.” Another notes, “[The Petitioner] asked me to be a bridesmaid for their Catholic wedding ceremony in Florida.” She also mentioned that “[t]hey had already been married in a civil ceremony. I remember being surprised and confused by it all, but we had lost contact for several months. [The Petitioner] was excited for the preparations and brought her usual cheerful outlook to the festivities, but they both seemed to be lacking the usual wedding enthusiasm . . . Both parties were raised Catholic. I did not know there was a civil ceremony until [the Petitioner] asked me to join them in their Catholic ceremony. As I recall, the Catholic ceremony took place because [the Petitioner’s] mother insisted. . . . I recall both parties seeming uncomfortable, and that it was unnecessary. I think [the Petitioner] considered the Catholic ceremony to be a *blessing* and hoped it would strengthen their vows.”

The judge’s conclusion affirms that the parties totally simulated marriage purely for cultural and familial reasons and always believed that their civil marriage was valid and that the Church wedding was merely a blessing of the civil marriage. The couple never understood that the Church marriage was the only valid one, or that a new and free consent was necessary for validity.

4. DOPBT Protocol Number: 0192014: The fourth case involves the marriage of a 24-year-old male Petitioner, who was in the military, to a 24-year-old female Respondent. The Petitioner explains, “We decided to get married around May of 1974 over the opposition of my superiors and my friends. But at the same time, they were the ones pressing for me to marry her or to end the relationship. I decided to marry her instead. I have never been able to answer the question as to what the reason was to marry her. She was not pregnant; I don’t think that either of us was in love with the other.”

Regarding the validation of the marriage, the Petitioner commented, “[The Respondent’s] parents and sister did not attend the wedding and neither did any of my family. The wedding was attended solely by my military friends. We married civilly in July of 1974 and in the Church in February of 1975. My assistant

commander told me not to get married, that he thought that the marriage was too premature. My family strongly objected because no one knew her. I went to that town for eight months and came back married (civilly), then married in the Church due to pressure from my commander who never approved of the civil union. I did not feel free not to marry [the Respondent], because there was always a guilty conscience as if we were doing something very wrong (immoral). The driving force for Church marriage was the pressure from my military superiors and their wives."

The Petitioner's reticence was notable, for he states, "I truly had no expectations for this marriage. For the Church marriage, we had no prenuptial preparations for marriage. I spoke to a priest and due to the instability of my military career we were married without any sacramental preparation. We went to the Church alone in the morning with no reception after the wedding. Not even photos were taken. My cousin and his wife were the witnesses. ... When [the Respondent] returned home after the Church wedding and I went back to my military base, and she came to see me 4 months later, I told her that the marriage was a mistake and we separated. She accepted and returned to her town with her parents. We did not seek professional counselling. We got disenchanted and just separated, fell out of love." There was little contact after the ecclesiastical marriage, as he notes, "We mainly communicated by phone. From our civil marriage to the Catholic marriage and [into] the divorce, we lasted about a year in which our communication was by phone and some ended in arguments, mostly about if we were living together. ... We never lived together. We got civilly married and I went back to my base and she stayed with her family. Then we got married in the Church and the same [thing] happened. So, we really never lived as a couple."

Furthermore, the Petitioner opined, "I was never interviewed by the priest. Through my brother, I obtained a baptismal certificate and arranged the Church wedding and, due to the problems with my military duty schedule, further preparations or interviews were waived by the priest. We did not speak about a future family together. The wedding was like a 'procedure', something I had to do. ... I still do not know why we got married in the Church, except to appease my military commanders and to appease my guilty conscience. Having sex outside of marriage was a mortal sin."

Clearly, the Petitioner explains what transpired, as he notes, "The fact that we separated right after the Church wedding substantiates [the fact] that [we] did not really intend to get married. I was intimidated by my military commander who told me that not being married in the Church threatened my career. Our families were

never invited to the wedding, and no one showed up. It was a private wedding – and no reception. ... This marriage was probably a mockery of the sacrament. We never considered any plan to have children or even spoke about a relationship for life. This was more on my part to appease my military commander who threatened to stop my promotions if I did not marry in the Church. A civil marriage was not seen as a true marriage by them.”

The Witnesses backed the statements of the Petitioner. One states, “I do not think that [the Petitioner] had a clear understanding of [the] responsibilities that came with marriage. [There was] a difference in their formation both educational[ly] and spiritual[ly]. God was never present as the spiritual centre of their union. Due to the fact that the courtship and marriage process took place in a very remote area, I doubt that [pre-marital counselling] was even available to them. ... The [parties] were both Catholic, but did not practice their faith at that time, as a fundamental of their spiritual lives.”

In the judge’s decision, he stated that “[t]he Petitioner totally simulated his marital consent on the day of marriage. ... The Petitioner noted the impetus for the ecclesiastical marriage was that ‘our courtship became public knowledge, [and] the military superiors did not see [it] with good eyes, because it was not of good moral character to have a sexual relationship out of marriage and start pressing me to end or get married.’ The rationale for marriage was to satisfy the requirements of the military superiors, but not necessarily for the good of the parties.”

5. DOPBT Protocol Number: 2022001: In this fifth case, two very young parties, a 17-year-old male Petitioner and a 15-year-old female Respondent, married in a civil ceremony. The decision to marry was based on the fact of an unplanned pregnancy, and even though his father thought that he should not enter the union, and after discussing it with her parents and all concerned, it was decided it was the right thing to do. This marriage occurred in 1949 and they entered marriage without observing the proper canonical form in the Catholic Church, celebrating the marriage in a non-Catholic Church. The Petitioner stated at that time religion meant little or nothing to him. The Petitioner related that his expectations for marriage, especially since he was an adolescent and radically immature, were that “I had no expectations whatsoever.”

With respect to the validation of the marriage in a Catholic ceremony, the Petitioner stated that the only reason that he agreed to a Catholic ceremony was because of their daughter and her baptism and his wife’s desire to be Catholic. The Petitioner noted, “We just went to St. Joseph’s and was informed of the procedure. We just

renewed our consent. Truthfully, I did not enter into this with much forethought but felt it would be best for our daughter.”

The Petitioner stated that he considered his first marriage before a non-Catholic minister to be the true marriage, and this is the anniversary that they celebrated. He states, “We referred to our blessing in the Church as that: a blessing.” When specifically asked if he gave new consent concerning the Catholic ceremony, the Petitioner said, “No. I was already married. I only did this as a procedural matter for my daughter to be baptized.”

The Respondent participated and provided some useful testimony. She stated, “As regards the courtship and dating, we met in high school, and did the usual things of high school kids.” She notes, “We were married on January 17, 1949, in a Protestant Church. … I was pregnant. [We] decided the best thing was to marry. People married young in those times.”

She explained the intent of the Catholic ceremony, and notes, “I felt that our marriage would become stronger and wanted to raise our children in the Catholic faith. I also wanted to practice my Catholic faith.” When asked specifically if she renewed her consent or if this was a blessing of the Church, the Respondent stated that “in my eyes it was a blessing of the Church.”

Witness testimony clarifies the issue. With respect to the validation and the Catholic ceremony, the Witness noted that the Petitioner, “considered himself Catholic but he felt he could not practice his faith because of the circumstances of the marriage.” This Witness described the ceremony in the Catholic Church as “putting the *Good Housekeeping Seal* on their marriage. For many years, they did not celebrate an anniversary at all, feeling ashamed of the circumstances, and later they celebrated the anniversary of their marriage of 1949 for the sake of the children so that they would not think they were illegitimate.” This Witness stated that at the time, the validation was “a simple blessing and because the union was already in trouble, and this was a way to solve the problem.”

Another Witness states, “I believe it was a renewal because the anniversary date was always the date in January which was their true marriage. … [T]he ceremony in the Catholic Church was truly a blessing and not a marriage.”

The judge’s conclusion was that “the ceremony at the Church was tied to the baptism of his children and that this ceremony and religion ‘meant little or nothing to me.’ The Petitioner stated that they celebrated their civil union and that he emphatically stated … that he was already married and that the ceremony in the

Catholic Church was a procedural matter ‘for my daughter to be baptized.’ Furthermore, the judge also notes that the Respondent in her testimony indicates that, “indeed, the Petitioner only agreed to have the marriage ‘blessed in the Church because she wanted to raise the children Catholic.’ The witness testimony also indicates that the Petitioner considered himself married at the time of the first union and considered the Catholic ceremony only to be something done to help him put the, as one witness stated, ‘Good Housekeeping Seal on their marriage.’”

The judge concluded, “Evidence indicates that she considered herself to be married in January 1949 and that she celebrated her wedding anniversary at that time and stated that she only sought the help of the Church because she felt ‘our marriage would become stronger and wanted to raise our children in the Catholic faith.’ The Respondent admitted that she did not practice her Catholic faith and that the ceremony was a blessing of the Church and that they could come to the Church ‘so that they could solve their problems.’

6. DOPBT Protocol Number: 0902001: The sixth case is a marriage between a Catholic male Petitioner, age 18, and a Catholic female Respondent, age 19. The Petitioner related that, during the courtship and dating, “there was really no intention of marrying; we were just having a good time together, we were sexually active, and on the spur of the moment we decided to elope and enter into a civil union.”

The Petitioner stated that after they were married “problems began to start and centred around the fact that we could not communicate” and that they had different value systems, and that their ideas for raising children were at completely opposite ends. He explained, too, that he stopped attending Church and so did the Respondent, that she became sloppy and smoked, and “when she became pregnant with our first child in 1975, I thought we should change our lives, but she did not.”

There was a civil ceremony. When asked specifically about his marriage, the Petitioner noted, “We were married young, and the marriage was not planned. It was a surprise to the family and friends. We did it on the spur of the moment, that is the civil ceremony.” About problems at the time of the marriage civilly to the time their marriage was validated in the Church, the Petitioner stated, “I was very immature with poor communications skills. We stayed together because we escaped from our parents’ control, and it was fun.”

But with respect to the Catholic ceremony, the Petitioner noted, “At the time being married in the Catholic Church was not important, but my son was born in April

1975 and the priest at the Church I attended would not baptize him because we were not married in the Church." The Petitioner noted that the baptism was directly tied to the ceremony in the Church, and when asked what his attitude was towards the Catholic ceremony, he stated, "[I]ndifferent, and this was the same for my former spouse."

When asked directly at the time of the Catholic ceremony if he thought he was already validly married, the Petitioner answered "yes" and stated that this was the same for his former spouse. There was no preparation for the Catholic ceremony, for in his mind marriage in the Church was "just a blessing." The Petitioner noted that the only reason they went through the ceremony was "because we wanted our son to be baptized in the Catholic Church." The Petitioner stated that they never celebrated the Church ceremony, but always celebrated the civil date of the anniversary of their marriage on August 13, 1973.

The Respondent testified that the baptism of their child was tied directly to the Catholic marriage ceremony and that the priest would not baptize their child because they were not married in the Church. She testified that the Catholic ceremony meant little or nothing to her "because I was not a believer." The Respondent also noted that the Petitioner "had a great fear of his mother who was a very strong and domineering woman and told her that he was going to hell unless he had his marriage blessed in the Church." The Respondent stated that she agrees that marriage consent was simulated, and that this "was exactly what happened. I clearly considered myself truly married and truly had a baby, and the Church was just going to bless our union."

Witnesses corroborated that evidence well. About specifically the Church ceremony, one Witness stated, "There were no preparations, and no one knew this was happening." When asked specifically as to whether the principals believed their marriage ceremony in the Church was a true marriage, the same Witness stated, "No. The only reason they had their marriage blessed was because they wanted their child baptized, and they had to be blessed by the Church in order to do this." Additionally, he noted that the principals always celebrated the anniversary of their civil date for their marriage anniversary and stated that the Catholic ceremony "was needed for the baptism only." This Witness stated that both parties considered the ceremony in the Church to be a "blessing." Another Witness stated that the religious ceremony in the Church meant nothing to the Respondent and stated that they considered their marriage to be 1973 and that in 1976 they had a ceremony because of the baptism of their child. A third Witness

explained that the Petitioner's mother insisted that they be married in the Catholic Church and that they did this only to have their child baptized, and that was the sole reason they went through any type of ceremony.

The judge's conclusion was that the Petitioner entered into the marriage in the Church "only for the reason of having their child baptized and that he considered the Church marriage not to be a true marriage. He admitted that he did not renew his consent but had a blessing from the Church because he was not married according to its law. He indicated that the Respondent, like him, had little or no attachment to the Church and that the ceremony of marriage in the Church had little or no meaning for him. ... The act of having the marriage in the Catholic Church was an external act of blessing and not the renewing or giving of consent. The Petitioner admitted that he did consider himself truly married before the time of the ceremony in the Church and that the ceremony in the Church was indeed, only a 'blessing'." Additionally, the judge took note that of the Respondent's testimony: "Our marriage was blessed in the Church because I was not a believer." The Petitioner, in his own words, stated that there was no preparation for the Catholic ceremony and that he was indifferent to it. He said he already considered himself legally and validly married to the Respondent with a child and that this was "something that they had to do because of baptizing the child."

7. DOPBT Protocol Number: 1772000: The seventh scenario relates to a marriage between a Catholic male, age 22, and a baptized non-Catholic female, age 21, whose actual religion could not be determined. The Petitioner explained that he was a nominal Catholic and the Respondent practiced the occult, but because he was a nominal Catholic, it did not matter to him that he was not married in the Catholic Church because the parties had entered a true marriage in the Presbyterian Church in California. The Petitioner explained, "If we didn't marry we would never know because she would have stayed in Indiana and perhaps married her old boyfriend." He comments that "logistically, it was easier to elope."

The Petitioner commented that they later had the marriage blessed in the Church. He states, "After an aborted divorce we both agreed to try again. Maybe by having the marriage blessed by the Catholic Church our lives would be different." The Petitioner stated he had extramarital affairs, and this led to the possibility of a divorce. He reconciled with the Respondent and he stated, "She insisted we have the marriage blessed so I would be able to live a life of fidelity." However, according to the Petitioner, the ceremony "did nothing" and they continued in their previous

ways. He separated himself more and more from the Respondent. He continued his adulterous affairs, and to drink to excess and use illegal drugs.

When asked specifically about the first ceremony and second ceremony in the Church, the Petitioner noted, "We were truly married in September of 1971." The Petitioner also stated, "I have no idea when the blessing ceremony took place. In fact, I can't even remember the year. I know it was sometime in the spring of either '81 or '83 or around there. ... This seemed as a magical act that somehow would make everything better and solve all her problems." With respect to his attitude toward the Catholic ceremony, the Petitioner stated, "[The Respondent] was into the occult and the condition for reconciling was that we have our marriage blessed." The Petitioner stated there was no preparation for the ceremony in the Church and neither of them were counselled by the priest. They just filled out some papers and the next day went through the formality.

When asked if he gave *new* consent or did he *renew* his consent the Petitioner noted, "I always believed I was married in 1971. We had a blessing to bless our marriage. The words we said were not what we meant. In fact, I don't remember the words." The Petitioner also noted it was just a formality, a renewal. "It was not new consent, that was the farthest thing from both our minds."

When questioned whether the Catholic ceremony made any difference in the relationship he answered, "It made no difference. This blessing did not solve our problems. We ended our relationship in divorce."

The Respondent participated very succinctly. She notes, "A Presbyterian minister in Santa Barbara, California, married us on September 11, 1971. ... A Roman Catholic priest blessed the marriage at a Carmel Mission in Carmel, California, at a later date."

Witnesses note that "the Catholic ceremony was never mentioned" by the principals, and "[t]he date of the anniversary of their marriage was always celebrated on September of 1971. This is when they considered themselves married." One Witness maintains that "[the Petitioner] knew the Catholic ceremony was only a formality for both parties." The second Witness was an attorney, and he stated, "both parties ... considered the ceremony in the Catholic Church as a blessing. They always celebrated their anniversary in September of 1971."

The judge concluded that "at the time of the Catholic ceremony [the marriage] was a problem-filled relationship. The condition for reconciling after an aborted divorce was a blessing by the Catholic Church. The Respondent ... in her letter to the

Tribunal, states they were married by a Presbyterian minister in California on September 11, 1971. She even enclosed a copy of the marriage certificate. The Respondent also stated in writing, ‘A Roman Catholic priest blessed the marriage at Carmel Mission in Carmel, California, at a later date.’ Furthermore, “it also has been determined that the simulation was truly [also] on the part of the Respondent, but [this decision] has limited itself to that of the Petitioner because of the overwhelming evidence. First of all, he was a nominal Catholic and the Catholic ceremony meant little or nothing to him. ... There was no counselling and the condition for reconciliation was to have a blessing by the Church to see it as some type of magical act.” Additionally, “the Respondent, being into the occult, would think a blessing could solve problems and the Petitioner went along with it. He stated, ‘Nothing changed.’ ... [T]he Petitioner’s words did not match what his intent was. The true marriage in his mind was the marriage that took place before a Presbyterian minister in 1971. The ceremony that took place in March of ’83 was a simulation of the sacrament of marriage and not marriage.”

8. DOPBT Protocol Number: 0512001 (on permanence): The eighth marital scenario was decided on a ground other than total simulation. It was between two Catholics, a male Petitioner, age 28, and a female Respondent, also age 28. The underlying issue was permanence or perpetuity. The Petitioner expresses emphatically that the reason he wanted to marry was simply because “she wanted to be married” and not that he wished to marry. The Petitioner explains, “We had a sexually active courtship. It was a great factor in the decision to get married. No pregnancy was involved.”

The Petitioner states that “even though he always knew that marriage was supposed to be forever,” in this case “I knew that it was going to break apart before we married.” The Petitioner notes, however, that the Respondent had “the same notions about marriage being forever with only one person.” In terms of preparation, there was little. There was a realization that “pre-matrimonial preparation is important and to make sure that there is a common agreement on what marriage means.”

The Petitioner was also explicit regarding the notion of divorce. He states, ardently, “For me, yes, it was an option. ... Before marriage I knew that I was going to divorce [the Respondent] because the marriage in the Church was only to please [her] and I did not want it. ... The consent was invalid because I always knew it would end in divorce. I was not as prepared for marriage as was [the Respondent]. I pretended to be as prepared as she was. I did not want to be married in the Church.”

Witnesses help corroborate the evidence. One notes, “[The Petitioner] was not very excited about getting married. … [The Petitioner] didn’t want to marry but [the Respondent] pushed him to do it. … They really never talked about marriage. … I don’t think they knew what love meant. She wanted to get married but my brother didn’t. … [The Respondent] pushed him to do it. … The marriage didn’t work out with them. … [D]ivorce was an option … for me.” He excluded permanence in his consent, positively stating, “I knew that I was going to divorce [the Respondent].” To this extent, the Petitioner also states, “We never spoke about marriage as being binding in any way. … Our marriage should have had the possibility of surviving, but I didn’t want that. A marriage entered with this in mind, and intended as an outcome, cannot survive.”

The judge concluded, summarily, that “[w]hile marriage in the Church was of cultural importance, the ecclesiastical wedding ceremony was not the idea of the Petitioner: ‘The marriage in the Church was only to please [the Respondent], and I did not want it. … I pretended to be as prepared as she was. I did not want to be married in the Church.’”

9. DOPBT Protocol Number: 0692014 (on discretionary judgment): The ninth marriage situation was between a Catholic male Petitioner, age 28, and a 24-year-old Methodist female Respondent. The decision was reached on a grave lack of discretionary judgment concerning essential marital rights and duties, which relates to the evaluation of entrance into marriage rather than simulation. The motivation for marriage in the Church, however, was for baptism of a child.

The Petitioner testified that after having been married in a Methodist church, he and the Respondent “subsequently married in the Catholic Church in order to have our daughter baptized,” because the local pastor would not baptize the child unless the parents were married in the Catholic Church according to the canonical form.

The judge’s conclusion was that, among other issues, there was “additional external pressure of the denial of baptism for his child, which added further coercion to the Petitioner’s decision to marry.”

10. DOPBT Protocol Number: 0442017 (on discretionary judgment): In the tenth case, a female Catholic Petitioner, age 26, married a male Catholic Respondent, age 24. This case, too, was adjudicated on the ground of a grave lack of discretionary judgment concerning essential marital rights and duties. The Petitioner explains, “We decided to get married in January 1998. I did not believe I would find a better person for myself at the time. I had moved all the way from NJ to California to be

with [the Respondent]. The next logical thing was to marry. During the [validation] I was already married, it seemed that there was no decision to make."

The Petitioner comments, "For the first marriage, [being free from coercion] seemed to not apply because it seemed as it should be. For the second marriage (remarriage), I was already married, so I did not feel free not to marry."

The Petitioner continues, "The 1998 civil marriage was decided on the day before when we were leaving to drive from CA to NV; we were not even sure it would occur until that actual day it took place. My decision to marry in 1998 was mostly because I believed I had found a good, honest man and that I probably would not come across this again, so I should say 'yes' now before I lost out on a good relationship and a good person to be married to."

The Petitioner notes, "We decided to marry and that occurred within a few days. There was not much thought or talk of any expectations for a marriage. The expectation was that we would get married again and tell our family and friends at that time."

Regarding the validation of the marriage, the Petitioner explains that the reason the civil marriage took place was because "[h]e asked me to marry him. I asked him why he wanted to marry me. He did not say. I felt he was not good at expressing his love for me. So I said, 'How about we get married in Las Vegas', feeling [that] if he truly loved me he would drive 11 hours there and would show he did truly want to be married."

The Petitioner confirms, "I considered myself to be truly married after the civil ceremony; it was not in the Catholic Church because we agreed we would get married again in the Catholic Church when we had our finances in a better place." She notes, "Our relationship was the same after the first ceremony. I was a little confused about how to feel that it was a secret."

The Petitioner states, "I cannot remember who suggested the Catholic ceremony. However, we did both agree we would be married again 'Catholic' before the first ceremony. ... I wanted to be married in a Catholic ceremony because this is the religion I grew up in and where I saw myself being married. ... I was glad to finally have God formally in our marriage, although I did believe God was there also as a part of the first marriage ceremony as well. [The Respondent] was okay with the Catholic ceremony." The Petitioner explains, "We took pre-Cana classes in Sacramento. This had me view marriage in more detail and also as a process of growing together. The priest was only talking to my former spouse about flying

airplanes at a pre-wedding meeting. This I did not understand – I still do not understand this today.”

Regarding the validation itself, the Petitioner notes, “I am unsure what we did at the validation. [The priest] said we would have to perform a re-marriage; however, he would have it performed as a first-marriage, so no one would be aware we were already married.” She notes, “I felt I was married from the first time I said ‘I do’. I felt as if the Catholic ceremony was more of a ceremony bringing the marriage union under God’s eyes. It was confusing for me however.” Furthermore, “The second ceremony was performed without saying there was a first ceremony.”

The Petitioner notes, “I was much more enthusiastic about a wedding in 2001, than he was. My parents gave us \$30K for a wedding. I was planning a big event. He was not that interested.”

The Petitioner comments, “It was confusing for me to know how to feel about the ceremonies for marriage. The first ceremony was real because it was the first time getting married. It did not feel right because it was not in a Church and there were no family or friends present. That was okay because I knew we would have that ceremony later with family and friends. However, the second ceremony felt not right because there was a secret being kept from others present. This was confusing. There were friends, several in the wedding party, from California who knew that we were getting married for the second time. ... I did not discuss this with anyone. In total there were seven friends from California who were aware of the first wedding celebration; they agreed to not say anything to anyone about that. We had discussed what would be best to do with telling or not telling our family.”

The Witnesses explain what they knew of the marriage ceremonies. One notes, “I think it was an immature decision to marry secretly and then have a big wedding pretending it was his first. [The Petitioner] made the decisions regarding the second marriage. [The Respondent] just appeared to want to have fun and play. [The Respondent] was a person who acted first, then reacted. He should have acted more mature[ly]. ... They married because all their friends and peers were getting married. [The Petitioner] stated to me, after her Church wedding, that she did not want to marry [the Respondent], but she was already legally married. She dreamed about a great wedding ceremony. [They] had different levels of education and economic status.” The Witness confirms, “At the time of their marriage, [the Petitioner] did not intend a true and permanent union.”

The judge’s sentence identifies the issues present. He indicated that “[t]he decision to get married in the Church was made before the civil marriage. The

consent exchanged at the civil wedding was predicated on the promise that the marriage would eventually be validated in the future. The Petitioner explained, 'I cannot remember who suggested the Catholic ceremony. However, we did both agree we would be married again 'Catholic' before the first ceremony.' The statements from the Petitioner of what was going on in her thought processes clearly show that her actions were not in accord with the requirements of a true exchange of consent anew. She mentioned that 'I wanted to be married in a Catholic ceremony because this is the religion I grew up in and where I saw myself being married. ... I was glad to finally have God formally in our marriage, although I did believe God was there also as a part of the first marriage ceremony as well. [The Respondent] was okay with the Catholic ceremony.' To the point, the Petitioner asserts, "During the [time of the validation], I was already married; ... I considered myself to be truly married and felt it was only not in the Catholic Church because we agreed we would get married again in the Catholic Church when we had our finances in a better place.' The consequence of 'marriage in the Church' should have yielded a blessed marriage, and yet she commented that '[o]ur relationship was the same after the first ceremony. I was a little confused about how to feel that it was a secret.' Her judgment as to what marriage to the Respondent would entail, as a consequence of a Catholic marriage ceremony, was deficient."

The judge continues, "This is not to suggest that there were no preparations made for the ecclesiastical marriage. But even the meeting the priest went awry. She explained, 'We took pre-Cana classes in Sacramento. This had me view marriage in more detail and also as a process of growing together. The priest was only talking to my former spouse about flying airplanes for a pre-wedding meeting. This I did not understand – I still do not understand this today.' ... If either party had understood the importance of pre-marital preparation, some correction should have been attempted. ... The recollection of the Petitioner as to what occurred on the day of the validation provides a deeper insight into the lack of understanding that she actually had about the intent of the ceremony and its consequences, as she notes, 'I am unsure what we did at the validation. [The priest] said we would have to perform a re-marriage; however, he would have it performed as a first marriage, so no one would be aware we were already married.' She notes, 'I felt I was married from the first time I said, 'I do'. I felt as if the Catholic ceremony was more of a ceremony bringing the marriage union under God's eyes. It was confusing for me however.' Without a clear understanding of what she was attempting to do and to what she was consenting, a covenant could not be established. Additionally,

she explained, 'It was confusing for me to know how to feel about the ceremonies for marriage. The first ceremony was real because it was the first time getting married. It did not feel right because it was not in a church and there were no family or friends present. That was okay because I knew we would have that ceremony later with family and friends. However, the second ceremony felt not right because there was a secret being kept from others present. This was confusing.' In her confusion, the Petitioner could not discern the truth of what she was doing."

11. DOPBT Protocol Number: 0072015: The eleventh scenario is a wedding between a 27-year-old Catholic female Petitioner and a 26-year-old Catholic male Respondent. Describing the courtship with the Respondent, the Petitioner stated, "I actually broke up with my college boyfriend right after I met the Respondent. I met the Respondent in a night club where I was living in California and we began a serious relationship from the first day. He asked me to marry him a month later and we were married three months after first meeting." The Petitioner became pregnant one month into this relationship and it was the pregnancy which prompted the engagement after only one month and the subsequent civil marriage two months after the discovery of the pregnancy.

The Petitioner stated, "We found out I was pregnant early on in our relationship. [The Respondent] asked me to marry him right after I had a doctor confirm I was pregnant. I accepted. ... We were married by a Justice of the Peace in Lake Tahoe, NV, a couple months later. Our witnesses were friends of [the Respondent]. ... Had I not been pregnant, and we had an opportunity to date longer, I don't know if our relationship would have progressed to marriage. I'm really not sure." Subsequent to the civil marriage, the parties validated their marriage in the Catholic Church.

When asked why the Petitioner participated in a religious ceremony after the civil marriage, she responded, "I had recently had my first child and wanted to have her baptized. I was told that I could not have her baptized unless I was married in the Catholic Church." She was asked what she thought the purpose of the Church wedding was, to which she responded, "Once the baby was born, I turned my attention to her baptism, not realizing I could not have her baptized unless I was married in the Catholic Church. [T]he priest called it a 'reaffirmation of vows' and then we had our child baptized on the same day immediately following."

When asked if she believed that she was already in a valid marriage after the civil ceremony, the Petitioner answered, "Yes, I felt like I was a married woman with a husband and an impending family." But when asked what, in her mind, was

accomplished with a Church wedding, the Petitioner responded, “I felt the sacrament meant that my daughter could now be baptized.” Furthermore, the Petitioner was asked if she believed that she had any other choice than to consent to the Church wedding, and she responded, “No, as I mentioned, we were told that we would have to have the sacrament of marriage in place before the baptism could be held. … I would go to the ends of the earth to have her baptized.”

The Witnesses helped to clarify the rationale for marriage civilly and in the Church. When asked whether the couple was aware that before the validation of their marriage in the Catholic Church that the civil marriage was invalid, one Witness responded, “The civil marriage, to be married legally prior to the birth of their baby, was important to both. … I believe they recognized both dates (civil and religious marriages) but celebrated the first date of marriage (the civil one).”

The judge’s decision considered the pregnancy and the subsequent requirements for the baptism of the parties’ child. He states, “[There is] no doubt that the unplanned pregnancy was the impetus for the decision of the Petitioner to marry and that the ultimatum of the pastor to withhold the baptism until the couple was wed in the Church impeded the free will of the Petitioner in the extreme. It is questionable whether the civil marriage would have ever taken place absent the pregnancy, or whether there might never have been a religious marriage if the condition for the baptism had not been present. In addition, for a valid validation, it is required that both parties a) personally recognize the invalidity or at least the probable invalidity of the civil marriage and b) transfer the marital right to their partner, i.e., not merely confirm or reiterate a former exchange of rights but actually give a new marital consent distinct from the former ineffectual one. In these cases, it is not necessary to prove simulation, i.e. exclusion of consent by a positive act of the will; but it is only necessary to prove the omission of the new consent required for a valid convalidation.”

12. DOPBT Protocol Number: 0022016 (on discretionary judgment): The twelfth and final case, determined on the ground of a grave lack of discretionary judgment concerning essential marital rights and duties, was an examination of a marriage between a female Catholic Petitioner, 19 years old, and a Christian male Respondent, also 19 years of age. Specifically related to children, the Petitioner notes, “I was already pregnant, and we did not discuss having children. After that, we were poor.” She notes, “I wasn’t attending Church regularly at the time. We had the marriage blessed because [the pastor] at Saint Paul of the Cross where my father attended Church told us we should.”

The Petitioner avers, "The marriage could not be cancelled because I was pregnant. We had the marriage at Saint Paul of the Cross blessed so that our child could be baptized."

The judge determined in his sentence that "[a]dditionally, with respect to discretionary judgment, there was a push by the priest who married the parties to have their marriage validated in the Church before their child could be baptized. This occurred 8 months after the parties were married civilly. The Petitioner explains, 'We were married civilly at my parent's [house] but when we wanted to have the baby baptized, [and] we went to my father's Church at the time, Saint Paul of the Cross. [The priest] wanted us to have the marriage blessed in order to baptize the baby ... [and] preparations for the marriage were done very quickly. ... I really didn't consider the blessing at Saint Paul of the Cross a real marriage. [The priest] told us we should do that in order to get the baby baptized. I was going through the motions.' Marriage in the Church did not solve the original problem: marriage was not freely entered by the parties because of the grave external cause of pregnancy and fear of the Petitioner's father."

5.2.3. Other types of cases related to simulation and error

The following 67 select cases are related to simulation of consent with respect to marriage as a sacrament or error concerning sacramental dignity. Inclusion of these cases required that the decision was rendered on either ground but may have also been decided on multiple grounds. In all cases, the two parties were baptized, but not necessarily as Catholics. Testimony was taken from the definitive sentence. All cases were rendered in the affirmative (*constat de nullitate*), i.e., the nullity of the marriage was proven.

DOPBT Protocol No.	Pertinent testimony in the definitive sentence	Criteria used for nullity based on error or simulation
0702008	"[The Respondent] wore a black dress and did not seem sincere to me at this Church ceremony, that for her was a mere formality, and for my son it was a blessing to fix the problems of the marriage."	<ul style="list-style-type: none">• Fix problems• Mere formality
0612001	"The courtship was sexually active. I do not feel that it had any [influence], positive or negative, on the decision to marry." "We did not practice the faith very much. Our work schedules kept us busy both days of the weekend. Religion did not have a high value in our lives. We attended the programs for marriage [preparation], though it is hard to remember now what value they held."	<ul style="list-style-type: none">• No practice of faith

0962009	"They did not approach the Church, but her father approached the priest and asked if he would bless their marriage. They had the marriage blessed, but there was no feeling, there was no formality, there was no one at the ceremony, and they never celebrated the fact that they were married in the Catholic Church."	<ul style="list-style-type: none"> • One parent's request
0982007	"They were not in agreement with the teaching of the Church. Neither [the Petitioner] nor [the Respondent] were practicing Catholics at this time and only went through the formality of a Church marriage and determined what they considered marriage to be."	<ul style="list-style-type: none"> • Non-practicing • Mere formality • Meaning of marriage was self-determined
0982008	"[T]he religious wedding was just to follow the [family] tradition because they [the parties] only wanted a civil marriage. The church ceremony was merely a formality: they looked happy [but] they were pretending."	<ul style="list-style-type: none"> • Family tradition • Mere formality • Only wanted a civil marriage
1332004	<p>"The Catholic ceremony was a formality and it was just a blessing that would affect us, I hoped, for the better so that we would communicate. Neither [of us] made our First Communion or Confirmation until the time that we had the marriage blessed. The only reason for the blessing by the parish priest was so we could have our child in the Catholic school. It was just a formality for [our daughter] to go to the Catholic school. We picked the date for the blessing by the priest to coincide with our civil marriage date."</p> <p>"The priest told us that we should get our marriage blessed in the Church in order for our children to be in Catholic school. It was just a formality for both of us so that the children could go to Catholic school."</p>	<ul style="list-style-type: none"> • Marriage to allow children to attend a parochial school • Mere formality
1342003	"I know that we focused too much on the wedding reception and the honeymoon rather than our marriage vows. The ceremony seemed more of a formality. [The Respondent] was not Catholic and did not have much of an opinion on our vows. I was not very strong in my faith at that point in my life. For these reasons, we saw our vows as a formal obligation and focused more on the party and honeymoon aspects of our wedding."	<ul style="list-style-type: none"> • Mere formality or obligation • Weak faith
1412000	"When we both answered 'yes' to whether we would accept children lovingly from God and raise them according to the law of Christ in His Church. For [the Respondent], a Catholic ceremony was just a formality without much meaning, so I didn't think it bothered him that much to lie to that question. To me, I was hoping to have children in the future and hoping he would change his mind."	<ul style="list-style-type: none"> • Mere formality • Untruthful response
1482000	"I hoped he would change, and marriage would make her settle down. In my mind marriage was a formality. I had no intention of being married, although I was married. I was young, and I felt I could not help myself. I did not love [the Respondent]. I never intended to bind myself in any way to her. For me marriage was a formality."	<ul style="list-style-type: none"> • Mere formality • Intention against marriage itself
1482005	"I was looking for a lifetime partner and starting a family with children. I believe she was looking for financial security and she did not want children. We did not consider marriage a sacred ceremony and we believed in divorce. I don't believe either one of us were honestly committed to the permanence of the relationship. Neither one of us	<ul style="list-style-type: none"> • Marriage not a sacred ceremony • Mere formality

	considered the seriousness of taking an oath before God. The ceremony in the Army base chapel was more of a formality than a faith-based decision."	
1542002	"The pressure to do this came from [the Respondent's] parents as well as the parish priest who stated that for the sake of our child and subsequent children, we should agree to the formality and ceremony."	<ul style="list-style-type: none"> • Parental pressure • Clerical pressure • Mere formality
0512002	"I felt the Catholic ceremony was merely a formality and only went through it because of the Respondent's family."	<ul style="list-style-type: none"> • Mere formality • Parental pressure • Mere formality
0902005	"When we found out I was pregnant, we went to my Church, but my priest would not marry us. So, we went to his Church and there we enrolled in a short pre-marriage program which we had to go to a few times. I think we were looking more at formality than we were at a sacred sacrament."	<ul style="list-style-type: none"> • Mere formality
0942009	"We never consulted a priest or participated in any marriage preparation classes such as pre-Cana. [The Respondent] refused to have anything to do with the Catholic Church as she had what she considered as 'bad experiences' at [a Catholic academy] in West Palm Beach, Florida, when she was in school. She almost never attended Church with me and only agreed to get married in the Church as a concession to me, because it was important to me. She would do it as long as it was just a formality. There was never any intent on her part to take the Catholic marriage seriously. There was no preparation to enter the sacrament of marriage. We did not even consider it a sacrament because she wouldn't take the notion of it seriously."	<ul style="list-style-type: none"> • Married only if the Church marriage was merely a formality • Concession to spouse • Did not consider the Catholic ceremony to be a sacrament
0422013	"My mother and father's sister insisted on this formality to go through a church ceremony."	<ul style="list-style-type: none"> • Parental pressure
0452015	"[The Petitioner] and his family are devoted Catholics before, during and after his marriage. From what I understand, [the Respondent] and her family are non-practicing Catholics. [The Respondent] also seemed interested in Kabbala belief, always carrying 'bracelets' and other things of Kabbala. [The Respondent] was apparently raised to be very open to lifestyles that are not consistent with the teachings of the Catholic faith. [The Respondent] expressed that she only got married in the Church to please [the Petitioner's] mother."	<ul style="list-style-type: none"> • Only to please parents • Parental pressure
0752011	<p>"[I] had not been practicing my faith and saw marriage in the Church as a formality. [The Respondent] was Church of England and the marriage ceremony meant little to him."</p> <p>"My parents arranged everything [for the marriage]. They wanted [it] in the Church. [The Respondent] wasn't religious; neither was I. I was obedient to my parent's request, and [the Respondent] didn't care about a religious wedding."</p> <p>"The marriage ceremony was a formality. I was not a practicing Catholic, nor was I religious. At the time of marriage, I was not thinking of marriage as a sacred</p>	<ul style="list-style-type: none"> • Mere formality • Not a sacred ceremony • Only important for parents

	<p>ceremony. I also knew my parents wanted me to get married in the Church. It was especially important to my mother. [The Respondent] did not care either way about the marriage because he is not Catholic. Religious ceremonies are not important in his family. In fact both of his two brothers are married, but not in the Church. I didn't know the teachings of the Church."</p>	
0862016	<p>"At the age of 19 years, I did not understand, and I was not prepared in the Catholic teaching as my parents forced me to get married in the Church. Sacramental marriage was not my motivation as I was not prepared for marriage. I went to Catholic school but was very naïve and young. I did not have preparation for marriage or a dress or a party. I did not receive my pre-marital course in the Church because I was married quickly. I was forced to marry in the Church as a punishment for my behaviour. The only formality in getting married was to satisfy my parents, not me. At that time, I was only following my parent's wishes. I was not prepared or ready. I was obligated to obey my parents and not my own reasons or wishes."</p>	<ul style="list-style-type: none"> • Parental pressure • Mere formality
0702011	<p>"He considered himself to be the owner of his own body with the right to do what he wanted, when he wanted, with whom he wanted, that the exclusiveness of involving another person in the sacrament of marriage was beyond his understanding, and that he did not accept the teaching of the Church on this subject even though he was Catholic."</p>	<ul style="list-style-type: none"> • Non-acceptance of Church teaching on marriage as a sacrament
0042013	<p>"[The Respondent] has never had any idea what the sacrament of marriage is supposed to be and has never tried to maintain the sanctity of his marriage, nor did he want to. [The Respondent] was only, and always, looking out for his own best interests, and did not care if he physically or mentally abused the person he was supposed to be taking care of and had promised to love under the banner of God's love. He has made a sham of this marriage and of marriage in general."</p>	<ul style="list-style-type: none"> • Lacked understanding of marriage as a sacrament
0052012	<p>"[The Respondent] was not prepared for the sacrament of marriage. He was prepared for a quick civil marriage, and a quick divorce after his paperwork was signed and sealed, and he was a citizen. He was intending to complete the same scheme that [his friend] had done to his wife. [The Respondent's] consent at the wedding ceremony was defective and invalid because of all of these reasons. He was manipulative, just trying to gain an easy citizenship."</p>	<ul style="list-style-type: none"> • Only wanted a civil marriage • Immigration benefit
0182013	<p>"[My] intention was not 'marriage,' but rather a desire to use the sacrament of marriage to 'fix' the instability of my marriage with the Respondent."</p>	<ul style="list-style-type: none"> • Object other than marriage
0441013	<p>"Based on [the Respondent's] behaviour over the years and lack of faith and adherence to the practices of Catholicism, I do not believe she believed or understood the sacrament she was consenting to. An indication of how far from the sacrament of marriage [she] has wandered, she would not support or consent to our son being confirmed in the Catholic Church."</p>	<ul style="list-style-type: none"> • Lacked understanding of marriage as a sacrament
0532014	<p>"I was very immature and not fully committed to Christ and our Church. I was not ready and did not understand the sacrament of marriage. [The Respondent] was not committed to our Church and never really went to Holy</p>	<ul style="list-style-type: none"> • Lacked understanding of marriage as a sacrament

	<p>Mass. We both did not understand the Church's teaching on the sacrament of marriage. We were both very immature and did not understand the serious [nature] of marriage."</p> <p>"I was baptized Catholic, but I was sponsored in the Church and took my First Communion as an adult. Having had a thorough adult education in the <i>Catechism</i>, I had a full understanding of a belief in the sacrament of marriage. [The Respondent] was not raised in the Church, and I encouraged her to be baptized in the faith. I made a Catholic education and baptism in the Church a condition of our marriage for [the Respondent]. She complied accordingly so that we could be married in the Church, but she never fully believed in the sacraments of the Church."</p>	<ul style="list-style-type: none"> • Catholic faith and sacraments were a condition for marriage
0542015	<p>"We took no steps to prepare ourselves to enter the sacrament of marriage; in fact, I didn't know what a sacrament it was, I never heard of it. She said we had to take some classes to get married and I thought that that was the most ridiculous thing I had ever heard of. I thought it was one of those silly backward cultural things I encountered in the Dominican Republic, such as when I asked a girl out and we had to go with the chaperone such as a younger brother or sister of the girl that I was going out with."</p> <p>"We did go to a class, [but] I cannot remember how many times we went, once [or] twice, I do not remember, but I thought it was really ridiculous. I do not recall the preparing clergyman. I recall a priest sitting with us for about five minutes, maybe less, and asking why you want to get married and my answer was simply 'because I love her'. I do not recall anything else."</p>	<ul style="list-style-type: none"> • Thought religious ceremony was absurd • Lacked understanding of marriage as a sacrament
0552015	<p>"I was not attending Mass and was not practicing my faith at the time. I married in the Catholic Church to please her. It was not important to me at that time to get married in the Catholic Church; it would have been the same whether it was a priest, a Protestant pastor, or a Justice of the Peace."</p> <p>"The rationale was not to receive the grace of the sacrament, but because, for [the Respondent], it was very important to get married in a Catholic Church. I did it just to please her."</p>	<ul style="list-style-type: none"> • Simply to please the other party • Civil and religious marriage was the same
0862016	<p>"[The Petitioner] was forced to get married by the Catholic Church as a moral and religious requirement of the family. The reason for them to [enter] Catholic marriage was family pressure because they were living in sin without the sacrament of marriage."</p> <p>"My father forced her to get married. We were all very obedient to our [my] father's decisions. There was no discussion. Dad's decisions had to be obeyed. If [he] was not obeyed, all his financial support was lost. [The Petitioner] feared for dad's reaction. There was no option at that time for them. They had no choice but to abide by the family's decision to marry in the Catholic Church. Marriage was the only option. There was a real external threat, which was the obligatory requirement of [the Petitioner's] family."</p>	<ul style="list-style-type: none"> • Family tradition • Parental pressure • Fear of financial reprisal (inheritance)

0132001	[We] were planning a party, not the sacrament of marriage."	<ul style="list-style-type: none"> Motivation other than marriage (festivity)
0132002	[The Respondent] did not consider marriage permanent. ... If you wanted to continue to date others, you didn't get married. He kept dating. To marry was more to plan a party than it was to plan a life together as the sacrament of marriage."	<ul style="list-style-type: none"> Motivation other than marriage (festivity)
0572002	"I definitely did not think of it (marriage) as a binding sacrament. Did I realize then what the Sacrament of Marriage was all about? No. I only understood that I was Catholic; I memorized 7 sacraments, I would complete 6 of those 7 before the end of my life on earth. Did I understand that the Sacrament of Marriage was a covenant with my partner as well as with God? Not even close. As I stood in the Church, in front of God, and recited words off of a piece of paper, I did nothing different than my 12 years of schooling and my life, I memorized and recited and did what I was supposed to. I now understand the saying, 'If I had only known then what I know now.'"	<ul style="list-style-type: none"> Lacked understanding of marriage as a sacrament
	"What existed for me was the lack of understanding the Sacrament of Marriage. I was the obedient, well-trained cradle Catholic. Did I see marriage as a covenant (promise) to God? No. Did [we] pursue a life of Catholicism? Not together. I did not even own a Bible until the birth of our son. I recited words put in front of me, I was lacking the education to truly understand marriage, let alone the Sacrament of Marriage. I knew I entered into my marriage for the wrong reasons."	
1282002	"There was literally no preparation when entering into the sacrament of marriage. [The Respondent] was in Oklahoma when he proposed (on the phone) and was living there until our marriage. I do not remember why my parents or myself chose the Church we did to get married -- Church of Faith, Hope and Charity. The only reason I can think of is that it was close to the hotel where we were having the wedding reception. My father and I went to the Church to discuss the wedding with the priest that was there. We ended up asking him to conduct the ceremony. I do not recall if [the Respondent] ever met him or not before the actual wedding ceremony. There was no participation in any marriage program that would have prepared either of us for marriage."	<ul style="list-style-type: none"> Lacked understanding of marriage as a sacrament Church was close to reception venue No preparation
1342003	"I would now like to list the problems I have identified at the root of our failure to be a compatible married couple: Lack of faith. I stopped regularly attending Mass a few years after starting college. I let it become a low priority. [The Respondent] was not Catholic and did go to Church on a regular basis. He had no plans to convert and was not interested in attending Mass with me or learning the faith. I have no excuses for allowing my faith to lapse but being in a marriage with someone who wasn't practicing did not help. I think I felt that our differences in religion were too great an obstacle to get over, so I did not try very hard and neither did he. I pushed my faith away when it could have been a source of deep comfort during our troubled marriage."	<ul style="list-style-type: none"> Lack of faith Lacked understanding of marriage as a sacrament

"I think the lack of faith and the lack of interest in pursuing it together was a fundamental element missing from our relationship. We lived for the moment; we did not lay down a foundation for the future. We never seriously discussed plans for raising children in the Catholic Church and if they were to be baptized as Catholics. He did not believe they should be brought up strictly as Catholics. Neither of us had the depth of faith to appreciate the gravity of the sacrament of marriage."

0022005

"At the time of the marriage, I had absolutely no notion of the Catholic view of the sacrament of marriage. As far as I remember, [the Respondent] never spoke of marriage as a sacrament. She felt more strongly against living together while unmarried than I did. [The Respondent's] mother made all preparations for the marriage. All we did was to set the date and reserve a train ticket. I never saw the clergyman until the day of the marriage. We did not attend any marriage programs."

"I feel very strongly that I was led to marry in the Church. I was not aware of any of the preparation required for a Catholic marriage. I was not given a choice; I was not educated on the meaning of the sacrament of marriage. I wish that the priest who married us had taken the time to tell me that this was not normal. He should have told me that we needed to wait and prepare. He should have asked me at the very least if I was aware that we were bypassing some extraordinarily important steps in our preparation for a life as husband and wife."

"Finally, I feel that I was caught in this situation unwillingly. I did not believe in the Catholic faith. I did not feel that I was participating in the sacrament of marriage; I thought I was having a civil wedding that needed to take place in the Church. I had not the foggiest idea that I would be bound to her through the Church. I never in a million years dreamed that I would be involved in this process of annulment, because I did not feel that I was bound to her beyond our personal promise and our legal commitment."

0522009

"I had no form of conviction to the truth of the sacrament of marriage from the moment of its celebration according to the Roman Catholic Church. How did I know what was required of me? We had a wedding day. I believed no sacramental union was established. The Church carried on with the wedding. Before the wedding, I had no idea that I needed to adequately prepare for the sacrament of marriage. I never contacted anyone in the church to inquire about any requirements before the wedding. I never attended any classes or read to prepare for the marriage. I just showed up the day of the wedding."

"When I look at myself back then, who was I? I stated I was Catholic. What does that mean to you, the Church, and what does that mean to me in the secular world? ... To me, I was in the secular world. My mother did baptize me as a baby. I did remember as a young child going to Church. ... I live in a community where there is a Catholic Church. I walked past the Church and it was pretty. I did not understand anything. I just belong to a Catholic heritage or culture because I was baptized as a child."

- Lacked understanding of marriage as a sacrament
- Did not believe in the Catholic faith
- Merely a civil marriage that happened to take place in a Catholic Church

0712005	<p>"They had little knowledge of what the sacrament of marriage was about. He did not have a solid foundation of what the sacrament meant since in his family no one was married by the Church and they did not consider it important. They were too young and immature and with little knowledge of the meaning of the sacrament of marriage. I think that the relationship started as it ended, with hurried decisions and little thought out, without knowledge of the responsibility marriage takes with it."</p> <p>"For [the Respondent], getting married in a Church or signing a paper in front of a judge was only a tradition, and that marriage was as serious as one wanted to make it."</p>	<ul style="list-style-type: none"> • Mere formality • 'Formal' marriage was only a tradition
0812000	<p>"Neither had an understanding of marriage and its level of commitment and sacrifice under God. The fact that she became pregnant was the reason they married with no basis on trust, love, and compatibility. Their motivation for getting married violated all the significance our Church gives to the sacrament of marriage."</p>	<ul style="list-style-type: none"> • Lacked understanding of marriage as a sacrament
0852005	<p>"We were married in Church and the clergyman spoke with us briefly about the sacrament of marriage. There was no marriage program at that time."</p> <p>"We married in a chapel off of an academy. The priest who married [us] was a friend of [the Respondent]. We had no preparation from the Church – only a course required by the State of Michigan which was provided by a non-Catholic gentleman. This was a hoop to jump through. We were planning for the wedding, not a marriage. We didn't comprehend what the sacrament of marriage actually was. Neither of practiced our respective religions – I, a Catholic, and [the Respondent], Presbyterian. We could not have known what the Church expected. We didn't prepare for the sacrament of marriage. We simply believed we were ready. We only took a part in the marriage ceremony – not for the married life itself."</p>	<ul style="list-style-type: none"> • Planning a ceremony, not a marriage • Lacked understanding of marriage as a sacrament • Pre-marital preparation was a 'hoop to jump through'
1182009	<p>"We didn't plan the marriage. [The Respondent] or I never took any steps to prepare ourselves to enter the sacrament of marriage. We just went to the nearest priest to set the wedding date. No course, no preparation at all."</p>	<ul style="list-style-type: none"> • Lacked understanding of marriage as a sacrament
1242005	<p>"We spent more time preparing for a wedding ceremony than the sacrament of marriage. [The Respondent] was raised as a Southern Baptist, and the ceremony took place in her church. The only active preparation that we took was the compatibility tests with [the priest], although we did not make the time to discuss the results."</p> <p>"I must confess that at the time much of my energy and time was being dedicated to the completion of my graduate program."</p> <p>"Because of the planning and relationship stresses, I regrettably skipped the graduation ceremony in order to concentrate more effort on the wedding ceremony. The marriage itself was of lesser importance than studies. I entered into the proposal too rapidly and did not take enough time to consider all the facts and expectations that marriage entails. I believed that her notions were similar to mine. This was based more on assumption than on active</p>	<ul style="list-style-type: none"> • Planning a ceremony, not a marriage • Lacked understanding of marriage as a sacrament • Simply to please the other party

	<p>and meaningful dialogue because we did not ask each other about our expectations."</p>	
	<p>"Both of us prepared very little for a sacramental marriage. We did not adequately prepare. I often felt caught in the middle and would appease [the Respondent] without exploring the issue in greater detail."</p>	
1292000	<p>"[The Respondent] promised to be faithful – she was not. She promised to bear many children – and after one, she refused to have any more. She promised to bring up the children in the Catholic faith – but did nothing to encourage my son's development. In fact, she discouraged it. She stopped going to Church. [She] did not believe in the sacrament of marriage."</p> <p>"I did, and still do, believe in the sanctity of the sacrament of marriage. I don't believe [the Respondent] took the sacrament of marriage seriously, regarding the Catholic Church. She had her own version that she followed. As with everything else, she took the parts she liked and then made up her own set of rules for the rest."</p>	<ul style="list-style-type: none"> • Lacked understanding of marriage as a sacrament • Self-created version of marriage • Object of marriage different from what Church intends
1352004	<p>"I never attended Catholic Church. I always attended Southern Baptist Church prior to my marriage. I do not know what the Catholic Church intends when a man marries a woman, nor what a sacrament is. My parents have been married and active in the Southern Baptist Church all my life. I was raised to believe in what you read in the Bible."</p>	<ul style="list-style-type: none"> • Lacked understanding of marriage as a sacrament
1422001	<p>"It was more a wedding than a marriage. Marriage was not a commitment before God in His Church, but merely a celebration of our love for each other in a Church ceremony. God needs to be in our marriage, not as witness to our marriage."</p>	<ul style="list-style-type: none"> • Lacked understanding of marriage as a sacrament • Planning a ceremony, not a marriage
1812001	<p>"We took no formal steps to prepare to enter the sacrament of marriage. We were married in the Methodist Church in Tallahassee where [the Respondent's] sister-in-law was a member. We went to see the clergyman before the ceremony. [He] didn't go over any values of marriage with us, and we attended no marriage programs. The clergyman just briefly went over the ceremony with us, as to what was going to be recited."</p>	<ul style="list-style-type: none"> • Lacked understanding of marriage as a sacrament • No preparation
0422013	<p>"My mother and father's sister insisted on this formality to go through a Church ceremony."</p> <p>"The only reason there was a Church ceremony was to keep peace in the family and the hope that [the Petitioner's] father would speak to her again after disowning her. They were already married in the courthouse with witnesses and felt that they did not need the Church ceremony, but they were rushed into it in order to please her mother and to reconcile with her father. [The Petitioner] was very quiet, she didn't ask any questions, they had a renewal of their vows, and that the Church ceremony made no difference in their lives."</p>	<ul style="list-style-type: none"> • Parental pressure • Family peace
0872012	<p>"I did not want to be married in the Church. He just followed his mother's request. I only wanted a civil wedding."</p>	<ul style="list-style-type: none"> • Insistence of a relative for validation in a

	<p>"I was not happy or emotional about it, it was just the procedure."</p> <p>"We got married civilly first and after we went to the Church because his family [were] devout Catholics and would not admit a marriage out of the Church."</p> <p>"I never really wanted to enter into the marriage; I was pressured to do so by my aunt and future in-laws. I never knew why but I did not want to be married in the Church. It was a big step and I was not really in love."</p> <p>"I did not feel in love at the time and was pressured by my aunt to get married after I had decided not to get married. I went through it to avoid a scandal and embarrass my aunt and [the Respondent's] family."</p> <p>"There were no photos of the Church ceremony because I was against it and did not consider it a marriage ceremony."</p>	Catholic ceremony
0082009	<p>"I believed I was truly married in God's eyes at the time of the civil ceremony in November of 1985, and that the validation was simply a blessing in the Church in which we did not take vows. We renewed our vows. The ceremony in 1989 was a blessing. It was private, with [the priest] and the witnesses."</p> <p>"The only reasons for the ceremony in the Catholic Church was the insistence of my mother, grandmother, and mother-in-law and to correct problems in the relationship, which it did not."</p>	<ul style="list-style-type: none"> • Family pressure for Catholic ceremony to preclude scandal • Did not want to be married in the Church
0152006	<p>"We renewed the marriage vows, we had the marriage blessed and we kept the civil date of our marriage because when we were married civilly is when we were married legally, and the Church ceremony was only a blessing in order that our children could partake of the sacraments and so could we."</p> <p>"The Church ceremony was only a blessing."</p>	<ul style="list-style-type: none"> • Parent's insistence for validation in a Catholic ceremony
0202010	<p>"I considered myself married before the ceremony in the Church and agreed to the Church ceremony because of pressure placed upon me by my parish priest."</p> <p>"She went through the Church ceremony with the understanding that she was already married in the Church and that, indeed, this was just a blessing in the Catholic Church."</p> <p>"My daughter thought that having her marriage blessed by the Church would cause the problems to go away."</p>	<ul style="list-style-type: none"> • Parish priest's insistence for validation in a Catholic ceremony • Fix problems in marriage
0402003	<p>"My civil union was the 'real marriage' and the ceremony in the Church was a blessing of that union."</p> <p>"We had our marriage blessed in the formal Church ceremony. We considered ourselves to be a married couple when we went to the Church to have our marriage recognized as a formality."</p>	<ul style="list-style-type: none"> • Catholic marriage merely a blessing • Civil marriage was the valid marriage
0512004	<p>"My whole family and friends were against the marriage and that is why we got married away from home in Disney World."</p> <p>"The Church ceremony was a renewal of our vows of consent and we celebrated the anniversary of our civil marriage."</p>	<ul style="list-style-type: none"> • Catholic ceremony was a waste of time • Civil marriage was enough

	<p>"The marriage ceremony in the Church was a blessing to strengthen and honour [the Petitioner's] religious beliefs even though they were having serious problems."</p> <p>"[The Respondent] thought the Catholic Church ceremony was ridiculous and a waste of time and money."</p>	
0532007	<p>"I renewed my marriage promise. I felt that our marriage was now blessed by the Catholic Church."</p> <p>"We did not attend Church regularly, and the Church ceremony relieved [us] of being persecuted by our parents for not being married in the Church, and that was very good."</p> <p>"We always celebrated our wedding anniversary on the date of our civil marriage, never on the date of our validation."</p>	<ul style="list-style-type: none"> • Parent's insistence for validation in a Catholic ceremony • Avoid family persecution
0692006	<p>"We, the parents, insisted on having the marriage blessed in the Catholic Church."</p> <p>"[The Petitioner] considered the civil marriage to be a true marriage and that the ceremony was only a blessing. The marriage in the Church was a renewal of their vows because they considered themselves already married. [The parties] did not understand anything."</p> <p>"For me, [the Church ceremony] was just a formality. It really didn't matter to my former spouse if we were married in the church. My mother said that we need to have a priest and God's blessing on our marriage."</p> <p>"We had no preparation for the Church ceremony; we were to attend a seminar, but just paid the fee and did not attend, receiving no preparation whatsoever."</p>	<ul style="list-style-type: none"> • Parent's insistence for validation in a Catholic ceremony • Mere formality
0722010	<p>"The annulment of my first marriage was in process longer than we expected and I feel [the Petitioner] wanted us to be married before we lived together."</p> <p>"I believed I was truly married after the civil marriage, but I do not believe [the Respondent] felt that way. [She] wanted a Roman Catholic Church ceremony."</p> <p>"For me it was simply a renewal. We kept the 1st date, 9/24, of the civil marriage, as our anniversary date."</p> <p>"Going through the Catholic ceremony was just something to please [the Petitioner], and that as far as I was concerned, it had no other effect whatsoever."</p>	<ul style="list-style-type: none"> • Spouse's insistence for validation in a Catholic ceremony • Belief that civil marriage was valid
0962001	<p>"My parents forced her to have the marriage in the Church, and at the time of the Church wedding, I did not tell the priest of the difficulties we were having in the relationship."</p> <p>"My parents really pushed it. To [the Respondent] it was nothing, because he did not believe in God – he believed in nothing except himself."</p>	<ul style="list-style-type: none"> • Parent's insistence for validation in a Catholic ceremony
0962009	<p>"We celebrated our [Las Vegas wedding] in May 2000 and not the Church ceremony. I do not even remember the date we went to the Church for a ceremony."</p> <p>"The Catholic marriage ceremony was some three months later because [the Petitioner's] father insisted on it. Neither party cared much about having the Church ceremony."</p>	<ul style="list-style-type: none"> • Parental insistence for validation in a Catholic ceremony

0982008	<p>[T]he religious wedding was just to follow the [family] tradition because they [the parties] only wanted a civil marriage."</p> <p>"The Church ceremony was merely a formality. They looked happy [but] they were pretending."</p>	<ul style="list-style-type: none"> • Family tradition • Only intended a civil marriage • Merely a formality • Motivated by visit of relatives
1022004	<p>"I phoned [our priest] a week before my mother-in-law and [the Respondent's] sister were to visit. I thought that since we were married twelve years that it would be nice to have the marriage 'blessed' by the Church when they were in town. This might make my mother-in-law and [the Respondent's] sister accept me into the family. I explained this to [the priest] and we set the date and time."</p> <p>"[The Respondent] had no opinion about the Church ceremony since he never went to Church. He thought it would be nice for his mother and sister. There was no instruction."</p> <p>"We never celebrated the 'Church ceremony'. [The Respondent] and I celebrated our marriage of 1986 and received cards from family members on that date."</p> <p>"I continued to go to daily Mass but had no idea what the Church blessing was about. [Our priest] never told me about renewal of consent and I can honestly say I do not remember what we did at the Church ceremony in 1998."</p>	
1022005	<p>"We were blessed by the Church. We were already married. The civil ceremony was acceptable to both of us, but her parents wanted a ceremony in Catholic Church, and so we went to New Jersey and her parents arranged everything. I was told about the ceremony in the Church only one week before and decided to go ahead with it because I knew we were already married."</p>	<ul style="list-style-type: none"> • Parental insistence on validation in a Catholic ceremony
1212005	<p>"[The Respondent] was the one who brought it up, but not as a suggestion. He had already discussed it with our parish priest and just told me that we had to make an appointment to set up the Church wedding. We never discussed it. It was just another sore subject during the marriage. He actually spoke to our parish priest before talking to me about it. I felt betrayed and in a corner with no choice but to go through with it."</p> <p>"I felt pressure because he had already discussed it with our priest. I was embarrassed and couldn't find a way out of it without a divorce. I didn't oppose it because I felt trapped. I had no idea what I was doing and really didn't want to do it."</p> <p>"Our anniversary was celebrated on August 22, the original date. I must look on the papers to look up the date of the validation. I cannot even remember it."</p> <p>"The motivation for the Church marriage was that [the Respondent] got out of rehab, and he thought that the blessing of the Church would change his life. Within a week of the Church ceremony the problems resurfaced, and the Respondent's drug addiction worsened, noting nothing at all had changed."</p>	<ul style="list-style-type: none"> • Spousal insistence for validation in a Catholic ceremony • Spouse made plans for Church marriage without consulting the other spouse • Pressure to marry
1332004	<p>"The Catholic Church ceremony was not a marriage but a formality to have his child enrolled in the local Catholic School."</p>	<ul style="list-style-type: none"> • Marriage to allow a child to

		go to Catholic school
1502003	<p>"[The Respondent] rejected our son who was born with Down's syndrome. There were no preparations for the Church ceremony and the only reason I received a blessing from the Church was because I wanted to have God's blessings so that my son would be better."</p> <p>"I considered the Church marriage to be a blessing, not a marriage, and besides it was the anniversary of my father's death."</p> <p>"The priest told me I should have my marriage blessed in the Church. In that way, God would forgive me and, in some way, cure her son."</p>	<ul style="list-style-type: none"> Priest suggested Catholic ceremony as a means for forgiveness and for the well-being of a child with Down's Syndrome
1542002	<p>"I considered myself to be married by the civil ceremony and only agreed to the Church ceremony at the insistence of the parish priest to have our child baptized."</p>	<ul style="list-style-type: none"> Marriage to have child baptized
0792010	<p>"The Church [where] my daughter was to make her First Communion suggested the Church ceremony. It was three months before her special day in which the records showed her father and I were not married in the Church; therefore, she would not be allowed to make her First Communion unless we married in the Church. [We] did it for the sake of our daughter. We were doing it to appease the Catholic Church. Both me and [the Respondent]. At the time of the Church ceremony, I believed we were already married. So did [the Respondent]."</p> <p>"The 15-minute Catholic ceremony made no difference to the marriage."</p>	<ul style="list-style-type: none"> Marriage for the child of the parties to be able to receive First Holy Communion
0922003	<p>"I never thought of the future. We married in the Church because our parents wanted us to. I never thought about marriage as receiving a sacrament."</p> <p>"We were supposed to attend 3 pre-Cana meetings and we only went to two. I had a strong negative attitude toward any preparation by a clergyman. I had a lot of anti-Catholic ideas. I wanted the Church ceremony to be over we could go to the reception."</p> <p>"I stated drinking apricot brandy in the morning of my wedding day to calm myself. I drank until it was time to go to Church. I was afraid and expressed it to my mother."</p>	<ul style="list-style-type: none"> Parental insistence for validation in a Catholic ceremony Anti-Catholic
1122002	<p>"The [civil] marriage took place outside the Catholic Church so that we would be legally married so that my parents would let us share a room together and that we would be married before the year was ended."</p> <p>"After the first ceremony, I considered myself to be married. After the civil ceremony, [the Respondent] wanted to get married in the Church. He is not Catholic, and he did not attend Mass or show any signs of faith, but it seemed to be very important to him. I suppose I thought that my parents were trying to get him to concede to a Church ceremony. [The Respondent] was pretty much the same as far as his behaviour went."</p> <p>"[Two other individuals] suggested a Catholic ceremony. I wanted to get married in a Catholic ceremony to appease my parents. My parents had done so much for me and I</p>	<ul style="list-style-type: none"> Marriage to be able to share a room in parent's home Parental insistence for validation in a Catholic ceremony

thought that this might make up for all the bad things I had done to them. I wanted to make them happy."

"I think that the reason that [the Respondent] wanted to get married in a Catholic ceremony was that he thought that I would not leave him. There was pressure to marry in a Catholic ceremony by my parents. I needed to make it work because we had a child together and [the child] deserved to have a family."

"I was upset that [the Respondent] did not want to get dressed up for the Church ceremony. He was going to the Church in extremely casual clothes, but later did put on a jacket and a tie, I believe with blue jeans. [The Respondent] was interested in making it more difficult for [the Petitioner] to leave him."

1422001 "I believe that [the Respondent] and I looked at our marriage not as a commitment before God in His Church, but as merely a celebration of our love for each other in a Church ceremony. I'm not certain of how she feels now, but I came to realize through the worst of it all that God needs to be in our marriage, not as a witness to our marriage. I trust I'm getting wiser, not just older."

- Preparation for a wedding, not a sacrament

"We did not prepare [ourselves] for the sacrament of marriage. It was more a wedding than a marriage."

1572002 "I got married because [the Respondent] proposed to me and I felt confident that he loved me and that we can have a happy life together. He got married because his marriage with me was a way to get his papers for a legal stay in the United States. We didn't discuss long-term visions for our future marriage."

- Wanted a civil marriage only
- Spousal insistence for validation in a Catholic ceremony

"[The Respondent] wanted to get married, but only in a civil wedding, because this was the fastest and cheapest and most sure way to get his papers. He wasn't excited about the Church wedding but went along with it – he thought that if the Church wedding doesn't matter to him, why should he be bothered about the significance of getting into the sacrament of marriage."

"He agreed on the Church ceremony because I was insisting on getting married in Church as the only meaningful wedding ceremony. Unfortunately, the Church wedding ceremony didn't assure the marriage that I wanted. He was very eager to get married but only in the civil order. He was not interested in a Church wedding ceremony."

5.3. Trends

The above data provide ample consideration for trends in marriage ceremonies that relate to both radical error and simulation with respect to sacramentality. Common overlapping themes readily appear:

- faith and sacraments, or lack of understanding of marriage a sacrament
- intention of the parties who are to enter marriage and the object of marriage, or motivations other than marriage

- societal influence on marriage, and generational changes that affect traditional concepts of sacraments
- civil marriage vs. Church marriage
- positive/negative influences on faith and faith development because of familial issues/examples
- relationship to the understanding of other religions' concept of marriage as a sacrament

5.3.1. An examination of several trends yields productive results:

5.3.1.1. The effect of faith and sacraments

The Constitution *Sacrosanctum Concilium* (Vatican II, 1963:§59) established that 'sacraments presuppose faith'. This presupposition is at the centre of the discussion related to sacramentality in marriage. There is substantial agreement that faith is a criterion in the context of a sacramental marriage. General commentaries in canon law, sacramental theology, and Rotal decisions suggest that faith is necessary to enter marriage validly and does have relevance to consent. Such positive affirmations cast doubt on those Catholics who, with minimal faith, or were baptized as children / infants but not reared in the faith, choose to enter a sacramental marriage. They are, effectively, baptized non-believers. Those of other Christian denominations who were baptized as children or had no faith exposition also belong to this category.

5.3.1.2. The effect of intention in marriage / effect on the will of the parties

The CIC/83 (c. 1101) 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 their consent, either explicitly or implicitly, the essential elements and properties of marriage (cc. 1101, §§1-2, together with the elements/properties mentioned in cc. 1061, §1; 1096; 1134; and 1099, together with c. 1055, §§1-2). This is equally applicable to radical error. When, according to c. 1099, such error determines the will, the matrimonial covenant is vitiated. For this to be operative, a person knows no better and marries according to a view of marriage different than that of the Church. It is possible, then, that people can intend a different reality than the Church understands for marriage.

The data shows that in several marriages, the object of marriage differed from what the Church intends. This included marriage for immigration purposes, marriage to 'fix' marital instability, marriage as a civil institution only, and that the Church ceremony was merely a

formality. The data also demonstrates that, in many instances, the motive for marriage was affected by a lack of understanding of marriage as a sacrament, or, more generally, a lack of faith.

5.3.1.3. The effect of faith and society

As can be noted in Pope John Paul II's apostolic exhortation *Familiaris Consortio* (Pope John Paul II, 1981) and in the writings of the 1980 Synod of Bishops, marriage has seen the encroachment of secularism. The sacredness of marriage has been divested by a society that commonly approaches marriage as a secular reality rather than as a religious ceremony. It also appears that where the values of a secular society have become pervasive, faith has a lessened importance. It is evident, too, that people marry for motives other than religious, especially for motives that are purely social, familial, or of convenience. These motives, too, were a significant conclusion of the 1980 Synod of Bishops on the Family, and motivated Pope John Paul II to address the issue in his apostolic exhortation.

In the cases above, it is easily gleaned that, for many, marriage is not a sacred ceremony, especially for those who view civil and religious marriage as being no different. For those who validated an invalid civil marriage in the Catholic Church, there were consistent statements that marriage in the Church is a mere formality or a tradition, or that Catholic marriage was merely a blessing. Some insisted that the civil marriage was the valid marriage. There were several instances, too, where one of the parties only intended / wanted a civil marriage, and so clearly intended a marriage reality different from the understanding of the Church.

It is also evident that parties married or validated their marriages in the Church for diverse reasons that have limited connection to marriage. As a common example, there was pressure from a spouse, parents, relatives, or a cleric to marry in the Church for such reasons such as inheritance, preclusion of scandal, family peace, avoidance of family persecution, being able to share a room in a parent's home, fixing problems in civil marriage, or blessing a child with Down's Syndrome. To this can be added the requirement, in some parishes, for parents to be validly married to ensure that their children are able to go to parochial school or receive the sacraments in the Catholic Church. Although these may be noble motives, the ulterior motive betrays the nature of marriage in the Church.

Another consistent recurrent theme is that the parties were planning a *ceremony*, i.e., the wedding day and its associated events, and not a *marriage*, i.e., the sacramental and covenantal aspects of marriage. Motives ranged from festivity to family tradition to the

Church being close to the reception venue. Unfortunately, marriage itself is lost.

5.3.1.4. The effect of faith as learned behaviour

Culture, family, societal, and religious roots shape young minds. Although each person is responsible for individual actions, faith is learned behaviour, especially as the home is the ‘domestic Church’. The importance of the connection between a child’s formative years and its influence on the understanding of marriage cannot be underestimated. A child learns what marriage is through its parents. In support of the importance of faith formation, one who has little or no faith formation but was baptized as a child cannot understand what a sacrament is (according to the *mens Ecclesiae*) without additional education in the Church’s teachings. It is probable that marriage preparation courses (cc. 1063-1072) may be useful in refreshing a person’s understanding of the sacrament of marriage, but if there was never a solid foundation on which to build, this may not yield the intended result.

5.3.1.5. Nature of sacraments for Catholics vs non-Catholics

The CCC (Catholic Church, 1994:1210-1211) and c. 840 of the CIC/83 both have summary statements about the nature of sacraments. It appears from the data that faith has an influence on sacramentality as a necessary element of marriage. It is notable that:

- other denominations may not have the same understanding of sacraments as the Catholic Church;
- in contemporary society, people do not hold the same values regarding marriage as previous generations maintained;
- a child’s understanding of marriage is affected by the example of their parents or the secular environment in which they grow;
- marriage between the baptized was raised by Christ to the dignity of a sacrament, but it is more common today that people do not understand sacramentality as an essential element added to the natural institute of marriage as a sign of God’s grace; and,
- a person who does not understand what the Catholic Church means when it says that marriage is a sacrament may not be able to include sacramentality in their marriage.

What was once a long-established understanding of sacramental marriage has been significantly altered (at least since the Second Vatican Council), especially since the parties to marriage have been gravely affected because of emerging trends within secular society. Because the period in history where individuals are formed in faith, societal values, or general notions associated with marriage as an institution do not remain a consistent factor, the values of any particular historical period will have significant implications on marriage in a particular society.

In comparing varying ecclesial denominations' understanding of sacraments in relation to the Catholic Church's understanding, the basis for inquiry is found in the Council of Trent's statement that marriage is one of the seven sacraments of the Catholic Church (Denzinger, 1957:1801) and that the CIC/83 maintains that the marriage covenant has been raised by Christ the Lord to the dignity of a sacrament (c. 1055, §1). If marriage is not counted as a sacrament instituted by Christ, there appears to be, necessarily, a difference in understanding of the sacraments.

5.3.1.6. Faith and family

Unlike the hierarchy of ends in the CIC/17, where the primary purposes of marriage were the procreation and education of children, in the CIC/83 there is no hierarchy of ends, and marriage is no longer a mere contract but a covenant (compare cc. 1012-1013 CIC/17 to c. 1055, §1 CIC/83). This is a clear 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 (PCF, 1996: §1) on marriage preparation, dealing especially with the material contained in c. 1063 on marriage preparation. In this magisterial document, it 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. Vatican Council II, 1965b: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. Therefore, interest in, and initiatives for, providing adequate and timely answers to preparation for the sacrament of Marriage are growing everywhere.

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 formation of an adult and the understanding of marriage is influenced by the family, which 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*” (John Paul II, 1981:21; Vatican II, 1965c:11; Catholic Church, 1994:2204). The Christian family is an intimate community of persons where parents hold a privileged role and responsibility in family life (Catholic Church, 1994:2221-2230). 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. Through this sacrament, parents express their personal faith and commitment to God, to the 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, according to the *General Directory for Catechesis* (Congregation for the Clergy, 1998:226),

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”.

Faith is cultivated in the family. If faith is not passed on by parents, or if appropriate catechesis at home or at the parochial/diocesan level is lacking, the presumption of marriage according to the mind of the Church is weakened.

5.3.1.7. Lack of understanding of marriage as a sacrament

Regardless of how sacramentality affects marriage, or whether it is 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*, can a person include sacramentality in their marriage, or is sacramentality equal to the underlying natural bond of marriage? The contemporary situation does affect the convictions of people, and may affect their consent, as noted in *coram Pompedda* (1971:53-59):

In our judgment, it is not a legitimate conclusion from c. 1084 [CIC/17] to say there exists a presumption in favour of marriage for those people who,

perhaps largely because of their religious beliefs or secular education, are labouring 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 favour 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.

Such an error is not lost on the sacramentality of marriage. One reads in *coram Huot* (1987:627),

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.

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.

A final aspect of consideration is whether those without faith or belief in the sacraments of the Catholic Church are able to include *sacramentality* in their marriage. For example, *coram Pinto* (1972:672-680) suggests that

[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.

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. 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 statements above reflects some aspect of the Church's theological or canonical teachings on sacramentality. Collectively, the 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 (Woestman, 1994:214-218):

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. ... [I]n particular, in the affluent and consumeristic western world, 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.

The effect of such a rejection of the institution of marriage may render a marriage invalid when one is in error of sacramentality (Wrenn, 1994:41-47):

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 that this will, under the appearance of good, accepts the object.

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.

5.4. Determining criteria for the invalidity of marriage due to radical error or simulation regarding sacramentality

In the cases presented above, the criteria for judging whether the parties had an intention against sacramentality in marriage or were in error about sacramental dignity rests on the difference between *intention*, i.e., intending to exclude sacramentality, and *knowledge*, i.e., being in (or having an) error concerning sacramental dignity. Additionally, there is an overarching issue in the cases of civil vs. Catholic marriage related to *renewal* of previous consent, i.e., a re-expression of the invalid consent given at the civil ceremony, and the *positing of a new act of the will* in giving consent, i.e., marrying ‘as if for the first time’. This can be readily seen when the date that is celebrated as the anniversary of the marriage is the date of the civil marriage rather than the date of the ecclesiastical marriage.

Boccafola (2014:67-71) provided three points that summarize the attitudes of the parties to a marriage that is being challenged on either ground: 1) faith, 2) indifference, and 3) aversion to the faith and its relation to the sacramental dignity of marriage. These may give rise to the invalidity of marriage if present.

Accordingly, he notes that a common attitude relates to a “devout and faithful Catholic who with full understanding and acceptance of the Church’s teaching … consciously marries in the Lord, fervently seeking the benediction of the Church and the grace of the sacrament,” and there is “no obstacle to the lawful and valid exchange of consent, which consent brings into existence the marriage sacrament, whose fruitfulness then will depend on the state of grace of the parties.” For Boccafola, this is the ideal. However, when the above cannot be verified, indifference and aversion to the faith may be considered.

Indifference can be found where a person “has little or no faith, and is concerned principally with the things of this world [and] simply intends to marry as others in society do, although [the person] is not particularly hostile or averse to religion or to the Church.” He notes that “[the person] does not have a living faith [and] is not opposed to the faith or in rebellion against it” and “can [even] be said to have a certain amount of respect for the Church in so far as he has consented to enter the Church building, to submit himself to its discipline and ceremony.” Boccafola argues that this minimum intention fulfills the requirements for validity. Nevertheless, he notes, “The spouse … is indifferent to the sacramental and religious nature of marriage [and] perhaps does not even know what a sacrament is, so how can [the person] will to receive it?”

Ralph Brown (1979:7) notes,

Quite clearly, the notion of exclusion is classified and referred to as simulation of some sort. Would the notion of non-inclusion also be termed simulation? In my

view the answers can be ‘yes’. ... To fulfill the terms of simulation (total or partial) the eventual question was always whether the terms of [c. 1086, §2, CIC/17 on simulation] had been fulfilled. If they had been, there was simulation. Now what essentially constituted simulation was that when a person said ‘I will’ in the marriage ceremony, he was in fact willing the reverse; and no valid marriage ensued. Broadly speaking, the same may be said of non-inclusion, since this is certainly akin to what is held by Rotal jurisprudence with regard to *simulatio cum specio fictionis*, i.e., the case of a person who does not so much exclude marriage as such, but ‘marries’ for a reason totally different to marriage itself.

Brown concludes his observations by indicating that

the questions which the judges would have to ask ... would be these: (a) how did the persons in question view ‘marriage’, i.e., what was [the] concept or notion or definition of the marriage? (b) is this concept, which was perceived by the person, marriage as understood by the Church? (c) if it is not, then does anything upset the presumption that the person would have formed an act of will (that is an explicit one) to enter into what he conceptually understood marriage to be?

Returning to Boccafola (2014:70), a third point is that a baptized person may or may not truly intend to marry, but does so “with an attitude of opposition or aversion to the faith and to the sacramental dignity of marriage.” Such persons present themselves for marriage in the Church with defective faith or a serious error that has induced aversion to the Church, the marriage rite, and the sacramental dignity of marriage. Furthermore, he explains a hypothetical situation where he notes,

‘I want marriage, but I refused to accept marriage as the Church presents it, i.e., as a sacrament’. In that case his will and his consent are directed to an impossible object, since no true marriage which is not at the time a sacrament is possible for a baptized person. ... If on the other hand [it is determined]: ‘I want marriage, but only if it is the way I envision it, i.e., non-sacramental and dissoluble,’ this would amount to his placing a condition on his consent and the marriage would be invalid.

In his conclusion, Boccafola (1996:324-325) provides an additional three perspectives related to sacramentality, all of which permeate the various cases identified above from the Tribunal of the Diocese of Palm Beach.

- i. The first relates to exclusion of sacramentality, where he admits that “it seems correct to say that one can directly exclude sacramentality by a positive act of the will as a result of a deliberate intention contrary to sacramentality, so that in the psychological order such an act might be described as a partial simulation;

however, one must always be mindful that in the ontological order ... true partial simulation becomes in fact ... total simulation, in so far as consent to an impossible object is inefficacious and totally invalidates true matrimonial consent. The exclusion of sacramentality, then, results in the exclusion of the essence of marriage, and the marriage ceremony itself effects only an implicit act of simulation or an implicit act of conditioned consent."

- ii. The second relates to radical error concerning sacramental dignity, where he notes that "error concerning the sacramental dignity of marriage is an error that has truly determined the person's will in the individual cases. ... The acts of the case must show that the error did not simply remain in the person's intellect, but actually passed over and had an influence on the will." In such cases, it must be determined how strongly the error influences the will.
- iii. With respect to faith, he notes that "[l]ack of faith can be taken as a conditioning factor which helps one to determine if the error concerning sacramentality has truly determined the person's will. In the case of *error pervadens* where the lack of faith may have prevented the spouse from intending and willing a specifically religious act, one must examine the seriousness and internal sincerity with which the spouse lets himself be involved in the religious ceremony, that is, with which he consents to truly contract marriage in that setting."

Further considerations may include whether the desire to exclude sacramental dignity so dominated a person's intention to marry that it was the motivation for total simulation, i.e., if the circumstances of the persons' background provide the remote cause for simulation, or if there were any pressures to marry despite a strong aversion to a religious celebration of the marriage and, therefore, the Church marriage was a compromise because of love or family harmony. One could later determine if the circumstances in the marriage support the exclusion of sacramental dignity, and whether there was an aversion to Church ceremonies, limited practice of the faith, refusal to baptize or educate the children born of the marriage, or serious contempt for the Church.

In jurisprudence, 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, error of quality, deceit, condition, or even incapacity of fulfilment of marital obligations (Faltin, 1990:102-103). Sacramentality is an integral constituent of marriage, and its exclusion, through lack of intention on the part of the minister or recipient, precludes the forming of a valid marital covenant.

A judge needs 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;
- implicitly, the judge must look at religious values, family background, and role models and their impact on a person, for faith feeds into intention;
- the judge may consider a person's expressed opinions on faith or sacramentality before marriage, and whether there is any relationship between rejection of the sacrament and the ending of the marriage.

If the lack of faith produces an error about sacramental dignity that goes so far as to determine the will, error is present. The presumption that baptized people enter marriage as the Church teaches clearly does not hold today. When a person's views are quite adamant that marriage is not a sacrament, this could lead to a deep-seated error which does influence the will and must be proven case by case.

5.5. Use of data and future possibilities: resurrecting a 'catechumenate for marriage'

The data above and the trends that have been identified are mainly concerned with determining the nullity of marriage. However, the data can be used to influence future generations of people who wish to marry. To this end, it appears that the Church has taken notice.

From September 24-26, 2018, the Diocese of Rome and the Tribunal of the Roman Rota sponsored a *Corso di Formazione su Matrimonio e Famiglia* in Basilica of Saint John Lateran in Rome. At its conclusion on September 27, 2018, Pope Francis gave his closing remarks.

During the conferences, three of the sessions included reflections on the ecclesiology of Pope Francis' magisterium with respect to marriage and family, and on the catechumenate for sacramental marriages. The Pope renewed his resolve to establish a means to bolster the Catholic Church's understanding of marriage, similar to the attempts in the Diocese of Autun, France, in 1980-1981, as noted in an earlier chapter. It is worth noting what the Pope states (Pope Francis, 2018):

Marriage is not just a 'social' event, but a true sacrament that involves an adequate preparation and a conscious celebration. The marriage bond, in fact, requires an

engaged choice on the part of the engaged couple, which focuses on the will to build together something that must never be betrayed or abandoned. In various dioceses of the world initiatives are being developed to make family pastoral care more appropriate to the real situation, meaning with this expression in the first place the accompaniment of engaged couples to marriage.

So many times, the ultimate root of the problems that come to light after the celebration of the sacrament of marriage is to be found not only in a hidden and remote immaturity ... but above all in the weakness of the Christian faith and in the non-ecclesial accompaniment. ... And they find themselves inadequate, especially if they are confronted with the scope and value of Christian marriage, about the concrete implications connected to the indissolubility of the bond, to openness to transmit the gift of life, and fidelity.

I reiterate the need for a permanent catechumenate for the Sacrament of Marriage concerning its preparation, celebration, and the initial period. ... The accompaniment of the ordained minister will help the newlyweds to understand that marriage between a man and a woman is a sign of the spousal union between Christ and the Church, making them aware of the profound meaning of the step they are about to make. The more the journey of preparation will be deepened and extended in time, the earlier the couples will learn to correspond to the grace and strength of God. ...

In the courses of preparation for marriage it is essential to resume the catechesis of Christian initiation to the faith, whose contents are not to be taken for granted or as if they were already acquired by the engaged couple. In most cases, however, the Christian message is all to be rediscovered for those who have remained caught in some elementary notion of the catechesis related to first Communion and, if all goes well, to Confirmation. ...

Through a sincere attitude of welcoming couples, an adequate language and a clear presentation of the contents, it is possible to activate dynamics that overcome the widespread gaps today: both the lack of catechetical formation and the lack of a filial sense of the Church, which also makes part of the foundations of Christian marriage. ... [I]t is a matter of helping young spouses to acquire the tools and the supports to live their vocation. And this can only happen through a path of growth in the faith of the couples themselves. The fragility that, under this profile, is often found in young people who approach marriage makes it necessary to accompany their journey beyond the celebration of the wedding."

When Pope Francis revised the requirements for declarations of nullity in 2015, he also provided a *processus brevior*, or a shorter process, to assist the faithful in circumstances where it is canonically applicable. To this end, he proffered several examples where the shorter process may be used. In his concluding comments at the *Corso di Formazione su Matrimonio e Famiglia*, he states (Francis, 2018):

Regarding those spouses who experience serious problems in their relationship and find themselves in crisis, it is necessary to help them to revive faith and rediscover the grace of the sacrament; and, in some cases – to be assessed with rectitude and inner freedom – to offer appropriate indications to undertake a process of nullity. How many have become aware of the fact that their union is not a true sacramental marriage and want to get out of this situation. ... In this regard, the legislation on the new marriage process is a valid instrument, which must be applied concretely and indiscriminately by everyone, at every ecclesial level, since its ultimate reason is the *salus animarum*!

5.6. Conclusion

The data and the analysis above are helpful in overcoming the presumption of the validity of marriage related to sacramental dignity with respect to both simulation and radical error. Where formerly a presumption was made that people marry according to the mind of the Church, generational changes have given way to a reduced importance ascribed to marriage in general and Church marriage specifically.

Marriage according to the mind of the Church has many contributing aspects. To understand the relevance of the data, one must know the mind of the Church and what it expects of its 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, have been catechized in theology and instructed, albeit cursorily, in canon law. Currently, and 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.

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. The CIC/83 addresses preparation in several 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 (cf.

c. 1063, 1°-4°). However, the CIC/17 stated this directly and 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.” According to cc. 213, 217, “the Christian faithful have a 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.” The obligation for catechesis is incumbent upon the pastors of the Church and parents as a general right of the faithful, and is a right for the laity (c. 229, §§1-2):

§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. Pastors are charged with preparation, and although they have immediate contact with the parties, “the conference of bishops is to establish norms about the examination of spouses” (c. 1067). The Christian faithful are to be instructed “about the meaning of Christian marriage and about the function of Christian spouses and parents,” and to prepare couples “to enter marriage, which disposes the spouses to the holiness and duties of their new state.” 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” (c. 1063, 1°-3°).

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, the CIC/83 (cc. 1096; 1099; 1134) presumes that these should be known in the intellect: permanence, consortium, heterosexuality, procreation, sexual cooperation, the right to conjugal acts, unity, indissolubility, and sacramental dignity, perpetuity and exclusivity. Each of these essential properties and elements should be intended and exchanged by words and/or actions at the time of consent (c. 1101, §§1-2).

Marriage preparation acts as a means to an end, as the CCC (Catholic Church, 1994: 1632) notes, “So that the ‘I Do’ of the spouses may be a free and responsible act and so that the marriage covenant may have solid and lasting human and Christian foundations, preparation for marriage is of prime importance.” By comparing what the Church teaches

and what the participants understand, it becomes increasingly clear that the presumption that people marry according to the *mens Ecclesiae* cannot be maintained.

6. Chapter six: Conclusion: expanding the *caputa nullitatis* to include limited faith formation

6.1. Possible pathways regarding issues of sacramentality in marriage

As the data from the Tribunal of the Diocese of Palm Beach and Article 14, §1 of the *motu proprio Mitis Iudex Dominus Iesus* (Francis, 2015) clearly identify, issues of faith formation or religious belief have an influence on the ability of a person to give consent in marriage. By examining both radical error and simulation with respect to faith and sacramentality, and with the insight of the *motu proprio*, the use of these grounds could assist in resolving petitions for the nullity of marriage when appropriate.

However, while the end of marriage, i.e., a judgment of nullity, has been the focus of this investigation, entrance into marriage, i.e., suitable preparation and catechesis, needs to be addressed. The following summary will provide a suitable conclusion to both issues.

6.1.1. Faith, sacramentality, and consent: objective differences between radical error and simulation

6.1.1.1. Radical error

Error is a false judgment concerning an object which resides mainly in the intellect. Therefore, *per se*, it will have no bearing on the will. An error is called ‘simple’ when it does not influence the will. It remains an abstract idea. But it is possible for an error to impact the will in such a way that it determines the choice or decision the will makes. In relation to its influence on matrimonial consent, error can be either ‘simple’ or ‘radical’. The radical error has been identified in Rotal jurisprudence as ‘obstinate’ or ‘stubborn’ error (*error pervicax*) because of the strength with which it controls human behaviour. It becomes second nature to the person and induces that person into acting according to the erroneous thinking it creates.

According to c. 1099, error does not invalidate if it does not determine the will. By its use of the phrase “provided that it does not determine the will,” the canon implies that error as such does not vitiate matrimonial consent. Nonetheless, the invalidity of consent results when error does determine the will. Some useful insights were derived from Rotal jurisprudence on this matter in Chapter 4:

- There is a concrete condition favourable to the development of a mentality or erroneous thinking about the nature and essential properties of marriage, including sacramentality. Such thinking is not only passively accepted but consciously nurtured by persons in many cultures and modern societies.
- The more profound the erroneous thinking and the more such an error is made

personal, the greater is the probability that it will influence the will. This would include hatred or extreme aversion for the Church and its sacraments. Nevertheless, it will need to be established, in each individual case, whether a person's erroneous opinion of sacramentality has effectively determined his or her will.

- In the realm of proof, it is necessary to attend to the tenacity with which the erroneous opinion is held and made personal by the person concerned, or to the particular occasion or circumstance which could have induced that person into applying the error to his or her own marriage. Unless there is a transition of error into the will, the error concerning the sacramentality is irrelevant to the validity of matrimonial consent (Mendonça, 2015:25).
- Radical error is possible both in Catholics as well as in non-Catholics (Mendonça, 2015:26).
 - Catholics who may have either rejected the Church and its teachings, or even those who may still claim to be members of the Church, may be so influenced by secular values contrary to the substance of marriage as taught by the Church that they reject either its essential elements or its essential properties. If there was serious pre-nuptial preparation, and the persons with the erroneous thinking about marriage continued to cling to their views, it is likely that their error has given way to simulation because of the awareness of the Church's teaching on marriage.
 - The situation with non-Catholics may present different circumstances. When Catholics marry and one or both hold views entirely opposed to the nature of marriage, which have probably not been challenged or addressed, they are likely to enter upon marriage with radical error concerning the substance of marriage. But if a non-Catholic marries a Catholic, and the couple has gone through the usual pre-nuptial preparation, it is quite possible that the erroneous views held by the non-Catholic party have been addressed, in which case there may not be radical error, but simulation. The difference between these premises is important in differentiating the presence and possible effects of radical error concerning the matrimonial consent of Catholics and non-Catholics.

6.1.1.2. Simulation

Marriage comes into being when, during the wedding ceremony, the two parties externally manifest their consent. The consents of the two parties must be in accord with the words

they use. The conjugal bond would be non-existent if one of the spouses were externally to manifest a will which did not correspond to his or her internal will. When there is a difference between the internal will and its willful manifestation, there is simulation (Mendonça, 2015:26):

The term ‘simulation’ in reference to invalidity of marriage is not found in the CIC/17 or CIC/83, but its use, together with the distinction between total and partial simulation, has been constant in doctrine and jurisprudence. While total simulation implies exclusion of marriage itself, partial simulation consists in the exclusion either of an essential element or of an essential property of marriage.

Total and partial simulation are two distinct types of exclusions. In *total simulation*, the will to contract marriage is absent; in *partial simulation* such a will is present, but it is intrinsically contradictory because the person simulating lacks a true and proper matrimonial will. Even though the juridic effect of both types of simulation is the same, that is, invalidity of consent, the distinction has been maintained in doctrine and jurisprudence.

The distinction between the two is important:

- One who simulates *totally* is aware of his or her act which is the source of invalidity of the consent. Total simulation does not consist in the mere absence of will or lack of intention to marry, but rather is the presence of a positive will which excludes marriage itself or a positive intention not to marry. Since, at least for the baptized, an intention against the sacramentality of marriage is an exclusion of marriage itself (because sacrament and contract / covenant are the same), one who excludes marriage itself by a positive act of the will cannot be unaware of the nullity of the marriage he or she is contracting. Both the content and the effects of the act of consent are thus consciously excluded in total simulation.
- Conversely, one who simulates *partially* intends to marry, but the intended marriage does not correspond to the one envisioned in canon law. In this case, neither the content nor the effects of the act of consent are totally excluded. There is a lack of conformity between the matrimonial will of the person simulating and that required in canon law, which recognizes the juridic effect of a person’s will only when it is in conformity with the requirements presented by the Church, i.e., what the Church intends, which, with respect to sacramentality, is that sacramentality must be included in consent on the day of marriage, or, that sacramentality must not be excluded from consent (Mendonça, 2015:26-27).

Simulation in c. 1101, §2, refers to two essential aspects of marriage, namely its essential elements and essential properties. The canon itself does not identify the ‘essential

elements' of marriage. However, canonical doctrine and jurisprudence have noted that a systematic analysis of cc. 1055, 1056, 1057, 1061, 1101, §2, 1134 and 1136, in light of conciliar and magisterial teaching, yields to the identification of the following elements: a) communion of life (interpersonal relationship); b) conjugal acts; c) conjugal acts *per se* open to the generation of offspring; d) good of children (aspects of their upbringing); e) good of the spouses in its various aspects. Each of the spouses has an equal right to these elements (cf. c. 1135). Therefore, this right cannot be denied to either of the spouses. But added to these are the three essential properties of marriage mentioned in c. 1099: unity, indissolubility, and sacramentality. The concept of unity includes unity of the bond (which is opposed to polygamy) and unity / exclusivity (which is opposed to infidelity). Indissolubility reflects the Church's understanding that marriage may not be dissolved intrinsically or extrinsically by any force because the bond of marriage remains until death. According to c. 1055, §§1-2, a marriage between two baptized persons is a sacrament. Whether this is an element or a property or the equivalent of marriage itself, may be disputed, but together with the essential elements, it, too, can be the object of partial simulation.

It is admitted both in canonical doctrine and jurisprudence that erroneous opinions concerning the essential elements or properties of marriage may determine the content of the matrimonial will of the persons whose minds are infected by them. This situation may lead to either *explicit* or *implicit* simulation.

- *Explicit* simulation occurs when a person, being aware of the difference between the kind of marriage canon law requires and the one he or she has in mind, explicitly indicates that he or she intends to enter upon the marriage without one or more of its essential elements or properties.
- *Implicit* simulation, known in jurisprudence also as non-inclusion, occurs when a person, because of a distorted view, chooses a marriage which does not correspond to the one determined by canon law. What is explicitly chosen is a marriage shaped by the views which reject either an essential element or an essential property. Since this form of simulation does not entail any explicit simulator, its presence can be verified by paying attention to the developmental background, the socio-cultural milieu, the personal views expressed, and the behaviour of the person concerned, which may provide indications of a deeply rooted mentality as regards the values inherent in marriage.

6.1.2. Faith, sacramentality, and consent: Possible pathways for entering a faith-filled marriage

6.1.2.1. 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. According to Finn (1990:109),

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.

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 (Faltin, 1990:99):

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.

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 separates the effectiveness of the sacrament from the faith of the community lived in its ecclesial dimension.

Susan Wood (1987:279-301) noted that a statement of intention cannot be made in the case of the baptized 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. Furthermore, 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 (1987:300), 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.

6.1.2.2. Statement of necessity of faith at time of consent

John Huels (1994:53-57) notes that, 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. Such an explanation would affirm the statement of the ITC (1977) regarding the presence of living faith in a sacramental marriage. Lived faith would also reflect the theological principle that sacraments presuppose 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 respond with an intention formed by that faith. The Belgian Conference of Bishops in 1972 advocated this position (1972:979-982) following the 1980 Synod of Bishops, from which Pope John Paul II's 1981 apostolic exhortation *Familiaris consortio* was derived. They proffered that

[t]he 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 behaviour of the engaged couples would be devoid of all meaning, even from a simple human point of view.

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.

According to DeSiano (1973:504), 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." The couple intending to enter marriage would have to express, in accord with Pope John Paul II's (2003) understanding in his address to the Roma Rota, what their vision (or lack) of faith is, and its implications in their relationship as a covenant.

6.1.2.3. Need for better 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 used 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. Cuenin (1978:38) notes, “The difficulty arises with those couples who seem unable to discern a faith-motive in their request for marriage.”

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. Wrenn (1967:269-273) noted that 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. Writing about updating the law on marriage immediately following the Second Vatican Council, 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 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.

6.1.2.4. Betrothal

Following in line with what Pope Francis has suggested on a catechumenate for marriage, and noting that the CIC/83 did not reproduce the canons of the former CIC/17, by recovering betrothal as ‘cohabitation that is destined for marriage’ there would be the revival of 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.

Among others, according to Lawler (2004:625) 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.” Effectively, according to Lawler & Risch (2007:18-22),

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.

Progressive sacramentalization of marriage might be achieved by betrothal. Just as catechumens journeying through the catechumenate program (cc. 206, §1; 1183, §1) are in the bonds of the Church although not yet fully Christian, so, too, a catechumenate approach might provide a means of gradation to the sacramentality of marriage (Thatcher, 2002:216):

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 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.

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. 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 the exchanged consent, is no longer relegated merely to a moment in time, i.e., a singular juridic act, or to the day of solemnization.

Restoration of betrothal would allow pastors, among others, an opportunity for serious marriage preparation, required by c. 1063, as 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.

Restoration of betrothal would allow acknowledgement that the time of courtship preceding the marriage solemnization also participates in the graces of the marital covenant.

6.1.2.5. Catechumenate for marriage

In Chapter 5, mention was made of the recommendation of Pope Francis that marriage, like the sacraments of initiation, be given a formal preparatory period. He recommended that the formation of a catechumenate for marriage would be a useful tool in helping couples prepare for marriage in the Church generally, and, for the baptized, sacramentally. If proper preparation is carried through, this may alleviate the number of marriages that end in divorce and, subsequently, are adjudicated in tribunals throughout the world.

6.1.2.6. Ecumenical considerations

The present disposition of c. 1055, §2 imposes sacramentality upon all baptized persons (Rigal 2003:137). It assumes a relationship between baptism and faith. In other Christian denominations, marriage may be considered as a merely natural bond, or a human conjugal covenant. Sacramentality in such situations is extrinsic, and therefore any intention to contract a sacramental marriage is unavoidably difficult 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.

6.2. Other considerations

In c. 1055, §1, it is clearly asserted 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 c. 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. According to *Gaudium et spes* (Vatican II, 1965b:48), marriage, too, is securely rooted in “a participation in the love between Christ and his Church,” that simply cannot be legislated unless 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 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 (Finn, 1990:103). 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.

6.3. Closing remarks

There must be further discussion on cc. 1055, 1099, and 1101. Unresolved pastoral, theological, and canonical perspectives have pervaded this 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 what 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.

The core of the CIC/83 is that the foundation of canon law is theology. Canonical jurisprudence in declarations of nullity in marriages involving baptized non-believers or those with little or no faith continues to develop. Care must be taken to integrate canon

law and theology while maintaining the integrity of both. At the same time, if the Church worked more closely with those who wish to marry and provided better preparation, the deterioration / desacralization of marriage might be slowed. While only God knows the faith of a couple entering marriage, that couple, living the reality of a God-oriented and sacramental marriage, can know the special firmness by which the sacrament strengthens the marriage.

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Appendix I. Latin and French terms

Latin terms

Bona	'Goods' (of marriage)
Coetus	Meeting
Coniugali foedere	Conjugal covenant
Constat de nullitate	Nullity (of marriage) demonstrated
Contestation litis	Joinder of Issues
Contractus	Contract
Contra bonum fidei	Against the good of fidelity
Contra legem	Contrary to the law
Contra bonum prolis	Against the good of children
Contra bonum sacramentum	Against the good of permanence (the Sacrament)
Coram	In the presence of (a judge)
De facto	In reality
Eo ipso	Of the thing itself
Ex opere operatis	From the work of the doer
Fideles	The faithful
Finis operis	The object or the end
Foedus	Covenant
Fontes	Notes and sources
In iure	As found in law or jurisprudence
Infideles baptizatus	Baptized non-believers
Instrumentum laboris	Working document
Inter Christianos	Between Christians
Inter Christifideles	Between Christians (Christ's faithful)
Inter infidels	Between unbelievers
Intimas totius vitae coniunctis	Intimate union of the whole of life (of spouses in marriage)

Ipsa factio	By the fact itself
Ius in corpus	Right to the body (in marriage)
Ius vigens	The living law or the current law
Matrimonium in facto esse	Marriage as being lived out
Matrimonium in fieri	Marriage in the act of becoming
Matrimonium inter baptizatus	Marriage among the baptized
Matrimonium ipso	Marriage itself
Mens Ecclesiae	The mind of the Church
Mens legislatoris	The mind of the Legislator
Motu proprio	Of his own volition (of a Pope and his writing)
Nil volitum quin praecognitum	Nothing is willed unless it is known beforehand
Non-constat	It does not stand (of nullity actions)
Ob finis operantis	Because of its object (ends)
Praxis	Practice
Pro veritate	According to the truth
Relatio	Retelling of an occurrence, usually involving taking testimony
Res et sacramentum	Effect and sign, that which remains after the ritual
Signum rei sacrae	The sign of a sacred thing
Sine qua non	An essential condition
Sui generis	Of its own kind
Turnus	Three judges

French Terms

Baptisés	The baptized
Malcroyants	Unbelievers
Mariage avec accueil	Marriage with welcome