

FAITH, SACRAMENT, CONTRACT, AND CHRISTIAN MARRIAGE: DISPUTED QUESTIONS

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THE PURPOSE of this article is to examine two frequently asked, and disputed, questions concerning Christian marriage. If the questions sound theoretical, let me assure the reader that the answers have far-reaching practical consequences. For once, what is on the minds of theologians is of interest to those in parochial ministry. The perennial institution of marriage cuts through many dividing lines.

Both questions were addressed by the International Theological Commission at its meeting in 1977. Its answers were published in the form of "Propositions on the Doctrine of Christian Marriage." Those propositions represent a significant step in doctrinal development; they certainly carry the discussion forward.¹

In my Introduction I shall briefly recall our tradition on the uniquely sacred nature of Christian marriage. The belief that it is an event of salvation and sanctification is the clue to understanding the debated issues and their resolution. In the body of the article I shall turn to the two disputed questions, the one on the requirement of faith, the other on the relationship between the contract and the sacrament. They are closely connected. In my concluding remarks I shall reflect on some urgent needs in theological and legal research, always about Christian marriage. Throughout my exposition I shall be referring to both doctrine and legislation; they are co-ordinates. An enlightened mind is the mother of wise laws; critically-grounded theories are the source of sensible legislation.

UNIQUELY SACRED NATURE OF CHRISTIAN MARRIAGE

Christian marriage has been described as a "secular reality" which has become a "saving mystery." Indeed, in the "new creation" in which we live, marriage has acquired a new purpose. Besides being for "mutual help" and "procreation of children," it is there to "save and sanctify." Christians perceived this new elevation of the old institution right from

¹ An English translation of the "Propositions" was published in *Origins* 8 (1978) 235-39. I shall use this translation throughout. For a Latin version, see *Gregorianum* 59 (1978) 453-64; for a French version, *Documentation catholique* 76 (1978) 704-18. As far as I know, none of the several versions should be taken as the official text. The International Theological Commission has also published a volume which is partly a collection of its working papers, partly a commentary on the "Propositions": Philippe Delhay, ed., *Problèmes doctrinaux du mariage chrétien* (Louvain-la-Neuve: Centre Cerfaux-Lefort, 1979).

the beginning, although they did not systematically explain it until the twelfth century, when the Scholastics classified marriage as one of the seven sacraments.

My purpose here is not to prove this uniqueness of Christian marriage nor to explain it at length; I want simply to recall it. But I want to recall it through the authorities of the Scriptures and of Vatican Council II.

In the First Epistle to the Corinthians Paul speaks of a mysterious force operating inside the union, even if only one of the partners is a believer. Because one is holy, his or her partner is made holy; not only that—their child is made holy too: “For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband. Otherwise your children would be unclean, but as it is they are holy” (1 Cor 7:14). This statement is as close as it can be to an up-to-date and articulate description of a sacrament. Note also that Paul speaks of the whole family, children included. The family of a believer is holy throughout; they are part of the new creation.²

The Epistle to the Ephesians contains a highly developed understanding of marriage. It is given in a relatively short passage, pregnant with meaning: “Husbands, love your wives, as Christ loved the Church and gave himself up for her, that he might sanctify her, having cleansed her by the washing of the water with the word, that he might present the Church to himself in splendor, without spot or wrinkle or any such thing, that she might be holy and without blemish” (Eph 5:25–27). Marriage is presented in the form of strong affirmations, not of elaborate explanations. I cannot comment on them at length, but some pointers are in order.

The doctrine of Ephesians is usually rendered in canonical and theological textbooks as “Christian marriage is the symbol of the love of Christ for the Church.” A more faithful presentation of the fundamental theme would be to say that the bond between the husband and the wife is rooted in the bond which binds Christ to his Church. In both cases there is a covenant originating in the mysterious depths of God. He holds

² See Hans Conzelmann’s comments on this text: “Through the believing partner, the marriage between a pagan and a Christian is withdrawn from the control of the powers of the world. In living together with the world, the ‘saints’ are the stronger party. The decisive idea lies not in an ontological definition of the state of the non-Christian members of the family, but in the assertion that no alien power plays any part in the Christian’s dealings with them” (*1 Corinthians* [Philadelphia: Fortress, 1975] 122). The commentator of the *Traduction oecuménique de la Bible* displays an even greater sensitivity to the theological issue: “Il ne s’agit pas d’une sainteté morale, mais d’une appartenance à la communauté chrétienne, la communauté des *saints*. Par le mariage, en effet, mari et femme sont devenus une seul chair (Gn 2:24; cf. 1 Cor 6:16) et le conjoint païen bénéficie d’une certaine manière de la sainteté de la communauté” (*Nouveau Testament: Traduction oecuménique de la Bible* [Paris: Cerf, 1976] 504, n. 1).

the married ones together as He holds His Son and the Church together. Hence Christian marriage is not simply the symbol of another reality. The union of man and wife, if they are believers, is much more than an external sign of the "great mystery."³ Paul's intuitive insight has led the more alert theologians to speak of Christian marriage as the beginning of a small *ecclesia*, a small "coming together of the faithful" within the large gathering of all believers. *There* God's promises are fulfilled.⁴

Undoubtedly this is an exalted understanding of marriage and family. For that reason it is often quietly disregarded—and discarded. It appears otherworldly, far from the earthly reality that marriage is. Such a lofty vision cannot account for real marriages. Or so the objection goes. But such a rejection of Paul's understanding springs from a misconception. Since the couple or the family is a small church, it does not follow at all that it is perfect, since the Church was never meant to be perfect on this earth. Of course, we speak of it as the New Jerusalem, the Body of Christ, the People of the New Covenant, and so forth (Vatican II used many such images), but we know also that it is composed of human beings who carry divine gifts in fragile containers, whose intelligence and freedom are limited in many ways, who are marked by weakness and sinfulness (Vatican II did not speak much of this human side of the Church). As the universal Church is marked by holiness and sinfulness, so is the community that comes into being through Christian marriage. Through a correct understanding of the complex character of the Church, we can come to a correct vision of the equally complex character of the com-

³ Heinrich Schlier comments on verse 25: "Denn nun wird das Verhältnis von Mann und Frau deutlicher nicht nur mit dem Verhältnis Christi zur Kirche verglichen, sondern erscheint als in ihm begründet. Das *kathos* schliesst, wie wir sahen, beides, Vergleich und Begründung, ein. In der Parallelstelle 5, 2 überwiegt sogar der begründende Character dieser Konjunktion. Die Liebe des Mannes zu seiner Frau und damit das Verhältnis beider zueinander ist also in der Tat als Nachvollzug der sie begründenden Liebe Christi zur Kirche verstanden" (*Der Brief an die Epheser: Ein Kommentar* [Düsseldorf: Patmos, 1971] 255). For a detailed analysis of 5:25–27, see J. Paul Sampley, "And the Two Shall Become One Flesh": A Study of Traditions in Ephesians 5:21–33 (Cambridge: Cambridge Univ., 1971) 126–39. Among modern theologians Walter Kasper stresses the same idea and quotes Scheeben in support: "The sacrament of marriage is in a special way a participation in the sanctifying service of Christ (see Eph 5–26). . . . As M. J. Scheeben pointed out, sacramental marriage is not simply a symbol or an external example of the mystery of Christ and the Church, 'but a copy of that mystery that has grown out of the union of Christ with the Church and is borne up by and penetrated with that union. Marriage does not merely symbolize that mystery. It really represents it in itself and represents it by showing itself to be active and effective in it' (*Die Mysterien des Christentums*, Freiburg, 1951, p. 496)" (*Theology of Christian Marriage* [New York: Seabury, 1980] 37).

⁴ E.g., Karl Rahner writes: "The Church becomes present in marriage: marriage is really the smallest community of the redeemed and the sanctified. Its unity can be built on the same basis on which the unity of the Church is founded, and hence it is truly the smallest individual church" (*Foundations of Christian Faith* [New York: Seabury, 1978] 421).

munity of man and wife and their children. There, too, divine gifts are present in a fragile vessel; there, too, things divine and human blend into a unity no philosopher can discover.

It is not an exaggeration to say that the Christian family is a small church. Indeed it is—heavenly and earthly to the core. There is nothing wrong with such a blend of opposites, provided that in the family (as in the Church) there is a movement from the domination of *sarx* (this cannot be translated well into English—whatever pulls a human being away from God) to the domination of *pneuma* (which can be translated as the Spirit of God or the human spirit transformed by grace). There is the paradox of Christian marriage: in it the strength of God is revealed in the weakness of the couple.

Vatican II chose to call the sacrament of marriage “covenant,” *foedus*.⁵ If there is a covenant, there are covenantors. Who are they? The man and the woman exchanging promises. They mutually agree to a communion of life until death do them part: a bilateral agreement.⁶

But Christian marriage is not an ordinary covenant. There is another Person standing by and taking part in it; He is the Father of all who made human beings male and female and wants to join them together. He makes His own covenant with the couple.

A sacrament, according to our most ancient traditions, which go back well beyond the systematic speculations of Peter Lombard or Aquinas, is a saving event. Through it the Spirit is poured out again to renew the face of the earth. Behind every such event there is a unilateral covenant: God gives, human beings receive. In this way God concluded His covenant with Abraham, and Abraham became the beneficiary of the promise. Indeed, in the case of marriage the Scriptures stress God’s action: “What therefore God has joined together . . .” (Mk 10:9). In Christian marriage God covenants with the couple before they can covenant with each other.

⁵ See *Gaudium et spes* 48 and 50.

⁶ That there is a covenant and that the parties are the covenantors is universally accepted in all Christian churches. Not quite so with the specifically Latin doctrine “the parties are the ministers of the sacrament.” The Orthodox Church may not have worked out its position with great precision, but it always attributed a substantial role to the nuptial blessing or crowning by a sacred minister. Hence we should be careful not to present the Latin “doctrine” as the universal belief of all Christians. Besides, when the Latin position is examined critically, it reveals its own complexity. The parties minister to each other in the name of the Church; they are like trustees. It cannot be any other way; the Church is the depository of the sacraments. Also, the ecclesial dimension of marriage has been stressed increasingly ever since the Council of Trent made the canonical form compulsory. The parties are covenantors, but somehow the community surrounding them plays a role in supporting and protecting that covenant. Precisely because through marriage a small *ecclesia* arises, marriage can never be a purely private business in the Church; a cell in a body cannot live or die in isolation.

Again, lofty as this understanding is, it is not unreal. It is no more idealistic and surprising than many other points of Christian belief. God's promise does not bring instant perfection to the couple, no more than the promise to the Hebrews brought perfection to the people. God promises to stand by the couple, to be their strength in their weakness, so that they can initiate a union, grow into it through successes and failures, and consummate it in grace, and bring it to maturity in love.

The foundations laid, let us turn to the disputed questions.

IS FAITH NECESSARY TO RECEIVE THE SACRAMENT?

The question, whether faith is necessary to receive the sacrament, is on the minds of many: of pastors who must decide if a couple is qualified to marry, of judges who must pronounce on the issue of validity, of theologians to whom pastors and judges turn for counsel.⁷ That is, the problem is not merely a theoretical one to be debated in a leisurely way. It has the urgency that concrete life situations alone can create. The fact is that there are many persons who received baptism, hence are Christians to that extent, but who have no faith in the Christian mysteries, hence are unbelievers to that extent. The question is, what should the Church do if they wish to marry in Catholic form? Should the Church grant them the opportunity to give and receive the sacraments mutually? Are they qualified to do so?

Further, petitions for declarations of nullity are filed with ecclesiastical courts on the ground that either or both of the parties did not intend a Christian marriage since, baptized though they were, they had no faith. There are many such persons especially in Europe, Eastern and Western, and in the Americas, North and South. Their numbers may well be increasing.

While theologians can reflect on the issue with no time limit imposed on them, those involved in practical ministry must decide without delay what should be done in an individual case. They must either grant the marital blessing or refuse it, either grant a declaration of nullity or refuse it.

⁷ Faith has been described and defined in many ways. For our purpose, it is not necessary to recount all those investigations and reflections. It should be enough to say that the faith of an adult Christian includes two elements: there is the internal touch of the Spirit and the response of the human person in the form of surrender to a person, and there is the external "hearing" of the Word and the response in the form of a profession of faith. In this article faith is understood as the harmonious unity of the two elements: the internal experience and the external proclamation. This general description does not exclude the classical theories about infused theological virtues; however, it includes the postulate that in a grown-up person the infused virtue must blossom out in a personal act.

Canon Law Has No Answer

The Code of 1917 and the Schema of the new Code published so far do not take notice of this issue. They equate a baptized person with a Christian person. Consequently they regard all those who are baptized as capable of receiving the sacrament. It is a simple solution; it is convenient. Baptism is a public fact; it can be ascertained. Hence, to say that Christians are those who have received baptism brings clarity and precision into the whole structure of matrimonial law. If two baptized persons marry, the law assumes that the sacrament is there.

The identification of a baptized person with a Christian in the full sense (we are speaking of adults, of course) made good sense in the Middle Ages, when the core of our marriage laws developed. In Christendom as it was in the twelfth and thirteenth centuries, there would have been few baptized unbelievers. Or, if there were, they would not have been eager to declare the state of their mind publicly. Had they done so, they might not have lived to see their marriage blessed.

Today's world is different. There are many who have received baptism, yet have never come to know about the Christian mysteries, let alone to believe in them; there are others who have lost their faith. Their relationship to the visible Church can vary from the tenuous to the nonexistent. They belong to it through an invisible bond, because they received the gift of baptism, even if they have never become aware of its meaning. Yet they do not belong to it fully, because they do not share the faith of the community and do not partake in its works. A complex situation, not easily amenable to a neat legal solution. No wonder canon law has not given serious consideration to the issue, or if it did, has not come up with a clear answer.

Theology Has a Firm Answer

There have been developments by leaps and bounds in the theology of faith. The grace to believe is certainly given in baptism, but an infant cannot surrender himself to God personally. As he grows up, he must gradually take possession of his own life, using his intelligence and freedom. To become a true believer, he needs to hear about God's mighty deeds and he needs to accept the truth of the message. At some point, through an act of faith, he must surrender to God. Then, and then only, does he become an adult Christian person. If no such surrender takes place, a grown-up person, baptized though he is, cannot be considered as being fully in communion with the Church. Although the germ of Christian life is in him, that life has not grown and matured.

There is the problem. If he has never accepted the Christian mysteries as real gifts from God, or never accepted God as manifesting Himself in

human history, how can he responsibly and freely give and take the sacrament? To say that he is able to do so on the strength of his baptism is to demean the dignity of the sacrament. If the sacrament could operate through a person who did not know what he was doing and had no desire, implicit or explicit, to do anything for the sake of the kingdom, there would be no sacrament, just magic.

The International Theological Commission faced the issue and solved it in no uncertain terms:

The existence today of "baptized nonbelievers" raises a new theological problem and a grave pastoral dilemma especially when the lack of, or rather the rejection of, the faith seems clear. The intention of carrying out what Christ and the Church desire is the minimum condition required before consent is considered to be a "real human act" on the sacramental plane. The problem of the intention and that of the personal faith of the contracting parties must not be confused, but they must not be totally separated either.

In the last analysis 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 ("Propositions on the Doctrine of Christian Marriage" 2:3).

The answer of the Commission is not surprising. For a long time a consensus has been developing among theologians that faith is a personal response to God's call, an intelligent and free surrender to Him. This is another way of saying that in the case of a grown-up person the acceptance of God's gift of grace must happen on the level of awareness. To be an adult Christian means not only the passive reception of a gift but also the active acceptance of the reality of God's kingdom.

The Commission is right on this point. Its opinion can be summed up in a thesis I willingly accept: a grown-up person cannot be considered a Christian in the full sense of the term unless he has responsibly and freely accepted the reality of Christian mysteries—that is, unless he holds the Christian revelation for true.

Faith Is Necessary but to What Extent?

Christian marriage is a covenant not only between a man and a woman but even more so between God and the couple. This latter covenant is unilateral in the sense that God gives and the couple receives. But no less than in the case of God's covenant with Israel, duties follow for the beneficiaries.

To assume that a covenant between God and the couple could come into existence even if the couple had no faith in God's action is as absurd as to think that a covenant could have arisen between Yahweh and Abraham even if Abraham refused to believe. Thus there is no doubt that a person who has no faith cannot receive the sacrament. So far there is clarity. The obscurity begins when the positive question is raised: Just how intense does someone's faith need to be in order to bring him the capacity to give and receive the sacrament? Further, how far should his beliefs extend? As for intensity, a precise answer is virtually impossible. The internal surrender of a person to God cannot be measured on a human scale, although its absence can be noticed. Beliefs should certainly extend to the principal mysteries of the Christian tradition, such as the Trinity and Incarnation, resurrection and eternal life, and so forth.

If a Christian marriage is more than a purely natural marriage, then it is reasonable to ask that the person committing himself should know about that "more"; otherwise how can his commitment be responsible? And that "more" can be known through faith alone. Hence faith in Christian marriage seems necessary to receive the sacrament. Here I diverge from some theologians who would require only minimal knowledge of the mysteries of salvation.⁸

I must admit, however, that whatever can be said in a general way, it remains difficult to reach a correct judgment in concrete individual cases. When Jack and Jill ask for the sacrament, it may be difficult, nay impossible, for the pastor who interviews them to assess whether they have faith or have it to the required degree. Who but God can read human hearts? Even so, it is possible to choose the right course of action on the basis of the available evidence. If the candidates for marriage are baptized but there is doubt about their faith, they are entitled to the benefit of the doubt; therefore their marriage should be blessed. God does not expect more from His Church than what is humanly possible. If, later on, the marriage breaks up and one (or both) wishes to obtain a declaration of nullity on the ground of lack of faith, the burden of proof should be on the petitioner—as always. If the evidence amounts to "moral certainty" that one (or both) never believed in the reality of Christian

⁸ At this point a comparison with other sacraments may help. If someone asked for the sacrament of the Eucharist and admitted at the same time that, while he loves to partake in the meal, he does not share the Christian belief in its sacred character, all would agree that such a person should not be admitted to the Eucharist—not even if he is baptized. Why should Christian marriage form an exception, and why should a person be admitted to the sacrament if he does not believe in it? This is not to say, of course, that he should not marry, as I shall show later.—The argument could be extended to the other sacraments. Could an adult be incorporated into the Church through baptism if he had no faith? Could he receive forgiveness in the Church if he rejected the sacrament of penance? And so forth.

mysteries or never accepted the responsibility which flows from a Christian marriage, surely there was no specifically Christian marriage. Law has its own pragmatic ways of overcoming uncertainties.

Conflict between Theology and Law Remains

Presently there is an imbalance between the theological understanding and the canonical norms concerning the requirement of faith for the sacrament of matrimony. Theological reflection has concluded that faith is required. The Code of 1917 and the Schema of 1980 simply say that baptism is required and ignore the issue of faith. The law's attitude is understandable: it aims at clarity; it also likes to document what is clear. It is easy to find evidence for the fact of baptism; it is nearly impossible to demonstrate the presence or absence of faith in a human person.

In the application and interpretation of the law the coming years will be years of development. The theological insight about the requirement of faith is now solidly established. It will not change; if anything, it will be reinforced. It will have a strong impact on canon law. Either new norms will be forthcoming, or the canons will undergo a gradual reinterpretation. Custom may prove itself again as the best interpreter of the law.

Such prediction assumes, of course, that there is a dimension in Christian marriage which is unique to it, that it is a saving and sanctifying event in the life of the couple, that it is the founding of a small *ecclesia*, a gathering of Christians, with an intrinsic power to expand and grow. How could anyone found an *ecclesia* without faith?

Let us turn to the second question. It is organically connected with the first.

CAN CONTRACT BE SEPARATED FROM SACRAMENT?

The question whether the contract can be separated from the sacrament sounds abstract, nor is its meaning strikingly evident. But once it is put in concrete terms, it becomes clearer, and topical as well. Can baptized persons marry without receiving the sacrament? More precisely, can baptized persons make the marital promises on merely human terms, without the covenant "being raised to the dignity of a sacrament"?⁹

⁹ I am using the term "contract" in place of "covenant" because this has been the traditional way of formulating the question for a long time. Besides, the difference between "contract" and "covenant" should not be exaggerated, as often happens in present-day literature. Contract or covenant, they belong to the same legal model; there must always be an agreement. The agreement can have a sacred dimension, and "covenant" certainly has that; but the agreement also has a legal content, and "contract" says that well enough, even after Vatican II. For a critical analysis of the statement "Marriage is not a contract but a covenant," see my article "Christian Marriage: Doctrine and Law," *Jurist* 40 (1980) 282-348, esp. 291-94.

Two issues hide in that one question: (a) What kind of reality, if any, does the exchange of promises bring into existence if a merely human union is intended? (b) What should the position of the Church be if such an exchange of promises has taken place? Should the Church recognize the existence of a marriage? The answers must be gathered from far and wide. Sound philosophy, Christian anthropology, ecclesiology, moral theology, and canon law all have a contribution to make. The danger is that when so many lines of reasoning based on abstract principles converge, they may cloud the issue to the point that no well-grounded solution emerges—as has happened many times. I shall try a different approach. I propose to handle the issues through two typical cases. In this way I hope to reach well-grounded answers.¹⁰

Case 1: Baptized Believer Marries Baptized Believer

It is logical to begin with the case where the situation is virtually faultless. Both are baptized, both are believers, both intend the fulness of Christian marriage. In real life can they achieve anything less than sacrament? Clearly not.

¹⁰ The issue of the relationship of contract to sacrament in marriages between baptized persons is raised here in a context radically different from the debates at Trent or in the Gallican and Josephinist controversies. At Trent the theological context was the medieval conception: to be baptized was equivalent to being Christian in the full sense. The highly refined and personalistic theology of faith is mostly the fruit of twentieth-century reflections. The Gallican and Josephinist writers (and politicians) were more interested in justifying the jurisdiction of the state over the marriages of Christians than in searching for the truth of the matter. The Church rightly resisted and condemned their efforts. Today the nature of Christian faith is much better understood among theologians. It must include a personal acceptance of the revelation. Besides, we are more aware of the evolving nature of a human person, even of a Christian person. We accept the fact that there are many who have received baptism but have not come to the personal acceptance of the truth of the Christian revelation. For us there is nothing unusual in meeting a baptized person who is searching but as yet cannot believe. Such persons must not be branded apostates nor called "lapsed." They must be accepted and respected for what they are, seekers of the truth. While they might be on the way to some better things, they should not be denied that benefit of human nature which is the capacity to marry. If they do what they can, that is, marry "naturally," the worst policy toward them would be to call them public sinners and thus alienate them for good. We have a typical case here where the ancient theological and legal categories are unsatisfactory because the world has changed around us and made our earlier approach obsolete.—For background information and bibliographical references, see, e.g., Pierre Adnes, *Le mariage* (Tournai: Desclée, 1963) 104–10, 144–46. Adnes himself shows no awareness of the new context in which the old problem must be handled today. For the recent periodical literature on the issue of "contract and sacrament," see Ulrich Mosiek and Hartmut Zapp, *Kirchliches Eherecht* (Freiburg: Rombach, 1981) 28–29. For a detailed historical survey of the problem of "contract and sacrament," see James Novak, "Inseparability of Sacrament and Contract in Marriages of the Baptized," *Studia canonica* 14 (1980) 315–64. The merit of the article is in its gathering of a large amount of historical information, not in the evaluation of the official documents and pronouncements. The lack of critical method leaves the conclusions unsupported.

Abstracting from real life, is it conceivable notionally that they could do anything less than give and take the sacrament? Assuredly not. It would be a contradiction in terms. Thus, in this perfect situation, to speak of separating the contract from the sacrament does not make sense—no more than, if a believer asked for baptism, it would make sense to speak of separating the washing from the sacrament.

But still another question lurks in the background. Assuming that the aforesaid separation is impossible in this case, should we say that the very concept of marital contract is the same as the concept of sacrament? Certainly not. When marriage is celebrated in the Christian community, the contract becomes a saving event. It receives a new dimension. The sacrament is more than the exchange of promises. It is more through the intervention of the Spirit. In formal philosophical language, even in the case of a marriage celebrated between two Christians in the fullest sense, a distinction remains between the natural contract and the supernatural sacrament, between the human promises and the same promises as grace-filled instruments. In scholastic language this would be called a real though inadequate distinction. Such a distinction speaks of the internal structure of the event; it does not necessarily imply a potential for fragmentation. It speaks of a unity composed of two elements, but it does not say that the elements, logically distinct though they are, could be wrenched apart. If they were, there would be no saving event any more, simply disintegration of the whole.¹¹

Case 2: Baptized Unbeliever Marries Baptized Unbeliever

Here we have two human persons, Christians in that they have been baptized, not Christians in that they lack faith. Because they are human persons, they have a natural right to marry—no shadow of doubt about that. Because they have no faith, they have no capacity to receive the sacrament—a position theologically certain, to say the least.

Apparently the Church tells them that the only way for them to marry is by receiving the sacrament. But little reflection is needed to see that the very same Church should tell them not to ask for the sacrament, since they have no internal capacity to receive it.¹²

¹¹ The marital contract is not naturally the sacrament (an absurd proposition), but it becomes the sacrament by receiving a new significance. The washing at baptism is not naturally the sacrament, but the washing receives a new significance. Therefore the expression "the contract is the sacrament" should be used with caution. It really means, and critically cannot mean anything else than, the fact that a transcendental significance and efficacy has been added to the natural reality. More of this later, especially in the footnotes.

¹² To set the problem in its proper context, it is necessary to recall the Declaration on Religious Freedom of Vatican II, *Dignitatis humanae personae*. The principles stated there are supremely relevant here. By way of example, just one passage: "On his part, man perceives and acknowledges the imperatives of the divine law through the mediation of

What should they do if they want to stay honest? Not marry? But that is absurd. Why should they give away their natural right? Marry? But they could do that only by passing themselves off as believers, which they are not. There is only one way out of the clutches of this dilemma: they should marry as they can, that is, in plain, honest, human terms. If they do so, their union is marriage; it cannot be anything else. Their baptism has not taken away their capacity to make a covenant. After all, it is a human capacity that baptism cannot cancel out.

But their union will not be a sacrament; that much is theologically certain. In other terms, the contract will be there, not the sacrament. The separation of the two would have come about quite "naturally," due to their internal disposition. They would have gone as far as any non-Christian of the right disposition; they would have created a natural marital bond. They would have to live by it as the majority of the inhabitants of this planet do.

Assuming that in real life there is such a couple, in their case is the contract separated from the sacrament? There is no other answer than "Yes, it is." In abstract reasoning can such a separation be conceived? Surely it can be conceived logically, since it can happen really. Such a conclusion is drawn on the basis of two principles: (1) baptism does not take away the human capacity and right to marry, and (2) if there is no faith, there cannot be a sacrament.

An overall conclusion is inevitable. Baptized Christians can indeed marry without receiving the sacrament. To state such a conclusion is not to say that what happens is an ideal event; it is not. Baptism should be the beginning of Christian life, should blossom out in faith, hope, and love. But if it does not, we have a less than ideal situation and the fruit of it is a contractual, nonsacramental marriage.

Position of the Church

The second case continues to hold our attention and leads us to another question. Assuming that a natural marriage has taken place between two baptized unbelievers, how should the Church look at their situation?

The response can be no other than the one based on the truth: the

conscience. In all his activity a man is bound to follow his conscience faithfully, in order that he may come to God, for whom he was created. It follows that he is not to be forced to act in a manner contrary to his conscience. Nor, on the other hand, is he to be restrained from acting in accordance with his conscience, especially in matters religious. For, of its very nature, the exercise of religion consists before all else in those internal, voluntary, and free acts whereby man sets the course of his life directly toward God. No merely human power can either command or prohibit acts of this kind" (3). There are many more similar passages relevant for our reflections.

presence of the marital covenant should be recognized, the absence of the sacrament admitted. To deny the presence of a marital covenant would be to consign all baptized unbelievers to a limbo. They would be the only ones in the immense human family who would have no right to marry: not naturally, because they are baptized; not sacramentally, because they have no faith. Such a response does not make sense. The Church should speak the truth: they are married, but not sacramentally.

I am aware that at this point my reasoning comes into conflict with present practice. The more or less official documents of the Church state repeatedly that the nonsacramental unions of baptized persons cannot be recognized as marriages. The propositions of the International Theological Commission echo this nonrecognition.

Theological Commission Speaks

The relevant propositions of the Commission begin with the assumption that the lack of faith in baptized Christians is either "a step backwards" or a state of "being content with the shadow" of a reality, due perhaps to the fact that "their conscience is deformed by ignorance or error."

It would thus be contradictory to say that Christians, baptized in the Catholic Church, might really and truly take a step backward by being content with a nonsacramental marital state. This would mean that they could be content with the "shadow" when Christ offers them the "reality" of his spousal love. Still we cannot exclude cases where the conscience of even some Christians is deformed by ignorance or invincible error. They come to believe sincerely that they are able to contract marriage without receiving the sacrament (3:5, par. 1).

But what of a person who has received baptism but no instruction in Christian faith? This is not a rare occurrence in our Western materialistic society and a frequent event behind the Iron Curtain. If such a person happens to be searching in good faith but as yet not believing, none of the descriptions of the Commission applies, except perhaps that of invincible ignorance, but even that must be understood in the sense of "light not received"—as yet.

The Commission continues:

In such a situation, on the one hand, they are unable to contract a valid sacramental marriage because they lack any faith and lack the intention of doing what the Church wishes. On the other hand, they still have the natural right to contract marriage. In such circumstances they are capable of giving and accepting one another as spouses because they intend to contract an irrevocable commitment. This mutual and irrevocable self-giving creates a psychological relationship between them which by its internal structure is different from a transitory relationship (3:5, par. 2).

I cannot but agree; but let us read further: "Still this relationship, even if it resembles marriage, cannot in any way be recognized by the Church as a nonsacramental conjugal society" (3:5, par. 3). But if "they still have the natural right to contract marriage" and if "they are capable of giving and accepting one another as spouses," why cannot the Church tell the truth and call the union what it is: a "nonsacramental conjugal society"? How can such people have the *right* without being able to exercise it? How can they have the *capacity* without being able to produce something by it?

The reason adduced by the Commission is far from convincing: "For the Church, no natural marriage separated from the sacrament exists for baptized persons, but only natural marriage elevated to the dignity of a sacrament" (3:5, par. 3). The clue to understanding this sentence is again in the identification of a baptized person with a Christian in the full sense. Perhaps without adverting to it, the Commission fell back into the classical medieval conception of who a Christian person is and reached a conclusion which contradicts its own premises.

Perhaps the Commission had in mind persons of bad faith who indeed have "chosen to take a step backward" and considered the lack of recognition as a kind of punishment. But what about persons growing into their faith? Why should the Church deny them what is due to their dignity, that is, the recognition of their natural union as a true marriage? After all, given the state of their enlightenment, this is the only marriage they can make; nothing else is available to them.

The concept of persons evolving, growing in faith is clearly absent in the inspiration of the text. This becomes even clearer in the following paragraph:

It is therefore wrong and very dangerous to introduce within the Christian community the practice of permitting the couple to celebrate successively various wedding ceremonies on different levels, even though they be connected, or to allow a priest or deacon to assist at or read prayers on the occasion of a nonsacramental marriage which baptized persons wish to celebrate (3:6).

The condemnation of all "progressive marriages" as wrong may be a shade hasty. The problem is that in real life people do progress according to their perception of the truth. There is no other honest course of action for people than to act according to their own light, imperfect as it may be at a given point in their development. They could not be counseled, not even by the Church, to act differently, that is, to become hypocrites and profess what they do not believe or pretend to be what they are not.¹³

¹³ Potential danger for a community can indeed be a legitimate ground for policy. To announce boldly that from now on Christians may enter into "progressive" marriages could undermine the sound beliefs or practices of the community. But to recognize an existing situation and to assist those who are not capable of reaching out for the fullness of the

As we meet such people who are searching but as yet not finding, our reaction cannot be to reject them but to help them do what they can, then stand by them and help them further. God in His own good time may give them more light. We cannot give faith to anyone; we can only pray and wait for such a gift.¹⁴

sacrament is an entirely different matter. Clearly, danger can never be fully avoided; yet wisdom and prudence can mitigate it. While to avoid danger is important, danger should never be made a factor in determining doctrine. The criteria of security are not the criteria of truth. If a statement is critically well grounded, it should be recognized as such, whether or not it causes danger. In the practical order measures should be taken to find the right balance between fidelity to truth and wisdom in its application.

¹⁴ For some years now, the diocese of Autun in France has pursued a practical policy toward those who are baptized but not ready to profess the truth of Christian faith. James Schmeiser, in his article "Welcome Civil Marriage—Canonical Statement," *Studia canonica* 14 (1980) 49–87, describes this practice. Since the issue is so delicate, and its handling is so unusual and so easily misunderstood, I feel a longer quotation is indispensable (49–50):

"In the diocese of Autun, France, a pamphlet is given to couples who are considering marriage. Therein, 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. The basic pastoral position is that the couple's decision will be respected.

"The first form of marriage is *civil marriage*, which takes place at city hall and is registered with the State. The Church recognizes the value of the human commitment of this marriage, and even if the State permits divorce, the Church recognizes the possibility of a definite commitment. The Church is also ready to welcome the parties as a couple if they plan to affirm another dimension of their married life.

"The second form of marriage is *welcomed civil marriage* ("mariage avec accueil"), which, in France, follows the civil marriage. These couples are Christian by baptism, believe in God, but are very distant from the Church and are not receptive to celebrating the sacrament of marriage which has little or no meaning for them. However, they desire to indicate in a religious manner their commitment to each other. They also wish to manifest their new relationship to their family and friends and to embody their own personal beliefs and their faith in God. The Church in turn, in an attitude of love and hospitality, desires to open itself to them, helps them to discover the realities of love, and testifies to its faith, particularly through the Christian couples who participate in the celebration. A willingness to continue, in as much as it is possible, a reflection of their faith which may develop into a request for the sacrament of marriage is part of the responsibility of both the couple and the Christian community. The couple is asked to declare their intentions before the community. . . .

"The third form of marriage is *sacramental marriage*, celebrated by those who have deepened their Christian faith and who wish to symbolize the covenant of Christ and His people in their relationship. Their married life will be guided by the Gospel. It will be a sacrament, that is, a sign of the love of Christ. These couples will state, in the presence of the community, their desire to live a Christian life in their marriage and the community will commit itself to supporting them."

To appreciate such new initiatives, Schmeiser's entire article should be read. It contains (1) statements from the diocese of Autun, (2) documents from the French hierarchy, (3) major statements of scholars in the analysis of this program. The author points out in his conclusion that "Many of the difficulties experienced in France are similar to those faced by pastors in North America." He asks: "In what way are we responding to these difficulties in North America?"

The inevitable conclusion follows. There are concrete cases when the wise advice to a couple, baptized and unbelieving as they are, is to tell them to contract a nonsacramental marriage. This is no more than to respect the state of their mind and heart, to honor their honesty. We have no right to refuse to recognize the genuine human value of their commitment. If one day they are given the fulness of faith, become believers, and ask for the sacrament, it should be given to them in joyful celebration.

A Nuanced Answer

The overall answer to the question whether the contract can be separated from the sacrament is neither a plain yes nor an unqualified no. In the perfection of Christian marriage such a separation is both concretely impossible and theoretically inconceivable. But to be Christian is not given all at once to everyone. There are persons who have received baptism but as yet have not come to believe; in their case the separation is a practical reality, well sustainable theoretically. Such variation is possible because the contract and the sacrament are not notionally identical. If they were, no marital contract would ever be possible, not even among nonbaptized, without being a sacrament—a patently absurd position. The often repeated statement, especially in manuals of canon law, that “the contract is the sacrament” should be understood in the sense that the contract receives a new dimension through the Spirit, not in the sense of total identity. There is a real distinction between the two. They come together in harmony only in the wholeness of Christian marriage.¹⁵

¹⁵ Cf. canon 1012: “Christus dominus ad sacramenti dignitatem evexit ipsum contractum matrimoniale inter baptizatos” (“Christ the Lord raised the matrimonial contract between baptized persons to the dignity of a sacrament”). This canon, the first on the sacrament of marriage in the Code of 1917, although it has its textual roots in the pronouncements of Trent, has been widely criticized as an inadequate representation of Catholic doctrine. Today few theologians, if any, would defend the position that the sacrament of marriage was directly instituted by Christ. Most of them, if not all, would be of the opinion that the apostolic Church, inspired by Christ and guided by the Spirit, had the capacity to shape and structure the sanctifying institutions of the community. Moreover, the canonical conception of marriage *as contract* did not crystallize until the twelfth century; hence to say that Christ raised “the contract” to the dignity of a sacrament is patently incorrect. The Latin Church has chosen the contractual model as the sacramental sign. The Orthodox Church has not; that role is played rather by the liturgical blessing in the form of the crowning of the bride and the bridegroom.—The introduction of the Roman contract as the legal model for the sacrament brought with it the result that the validity of the sacrament turns on the moment of the exchange of promises. A badly initiated marriage can never heal (not in canon law, anyway) unless the initial problem is explicitly attended to again. Thus the paradox (but not the pride) of our law: if the contract is invalid for a technical fault, no matter how much the partners love each other and God, no matter how many

Some Unresolved Issues

Some unresolved issues remain, and they too can be best stated in the form of cases.

1) There is the case of baptized believers who intend a natural marriage but not a sacramental one. Are such persons capable of concluding a permanent natural union *cum effectu maritali*, and if so, can the Church recognize it?¹⁶ They are doing wrong, no doubt; they are not living up to the Christian ideals they profess. But the question still remains: Do they have the capacity to create a "natural" marriage? Or has baptism rendered them totally incapable of intending a permanent union unless it is a sacrament?

I can only think of two possible answers. (1) If we assume that to intend less than the sacrament is to intend nothing, the Church should handle the apparent union as nonexistent, that is, as null and void from the start. There is no need to respect a natural bond which never came into existence. (2) If we assume that to intend a merely natural marriage is effective, rights and duties arise on both sides. The parties are bound to fidelity, and the Church is bound to accept the reality of that union, to recognize it for what it is. It must not declare it null and void without further ado; rather it should tell the parties to continue what they have initiated and, as grace permits, to move from natural to sacramental union. Such an attitude may contribute significantly to the stability of the marriage and the welfare of the children.

But my intention here is rather to indicate unresolved issues than to solve them. Yet let me say this much: I know of no convincing theological reason to support the opinion that baptism cancels out the capacity to conclude a natural union. If this is the case, our couple can conclude a contract without receiving the sacrament.

2) There are the cases of Christians marrying non-Christians. Such marriages are potentially subject to the application of the "privilege of faith" in one of its various forms. In theological and canonical textbooks such marriages are steadily spoken of as "nonsacramental." The reason given is that the Church dissolves them. Since sacramental marriages

children they bring into this world, their marriage remains invalid until death do them part. The sacrament itself should have the power to heal the situation, but apparently it does not. Fortunately, our ways are not God's ways.—It is unlikely that anything else will be substituted for the contractual model in the Latin Church; the Schema of 1980 introduces no significant change (cf. its canon 1008). However, the needs of the young churches in Africa and Asia may compel us to reflect anew; in their cultures contract may not be the most suitable model for the sacrament.

¹⁶ Note that this question assumes that the person has faith but acts against his belief. This is a radically different situation from another in which the person has never come to believe or, if he did, has lost his faith.

cannot be dissolved, clearly they cannot be sacramental, not even for the Christian party, because *sacramentum non potest claudicare*, "the sacrament cannot limp." If that reasoning is correct, it follows that the Christian party makes a contract without achieving the sacrament. Hence the contract can be separated from the sacrament.

It seems to me, however, that the issue is more complex than that. It is not immediately evident why the sign could not be sacramental for the Christian party and nonsacramental for the other. The saying that "the sacrament cannot limp" is a gratuitous assumption; it proves nothing.¹⁷ The statement of Paul in 1 Cor 7:14 is more relevant, besides being more intelligent and articulate: "For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband. Otherwise your children would be unclean, but as it is they are holy." As I pointed out earlier, Paul describes with astounding precision what we call a sacramental effect.

But is the Church, then, dissolving sacramental marriages? An easy answer is "not marriages which are sacramental for both sides." Thus the traditional doctrine that sacramental and consummated marriages are not dissolved is safeguarded.

Admittedly, this is no more than a hint toward a solution. Let us leave it at that.

¹⁷ Credit should be given where it is due. The first person to draw my attention to the need to examine with greater critical accuracy the nature of marriages between Christians and non-Christians was Pierre Charles, my professor of theology at Eegenhoven-Louvain, Belgium. His specific argument was rooted in his general theology of marriage: the sacrament is a gift from God given when it is needed to support a Christian in his or her state of life. Now, he went on, such help is most needed when a Christian is married to a non-Christian. Hence it must be given. To assume that the sacramental grace is not granted is to restrict God's action when it is most needed. *Sacramenta sunt propter homines*. This argument may not convince everyone, but it certainly points to a problem: Christians do marry non-Christians, and such an ordinary event should not be put outside the realm of sacramental graces. For my part, I would add that the argument from "the sacrament cannot limp" is entirely based on the assumption that the contractual model is the only one possible—which is not the case. It is one of several possible legal models; it is used by the Latin Church to provide a sacramental sign. If we Latins used the model of consecration for a state of life in the Church (as the Orthodox do), there is absolutely no reason why the rite of consecration could not be the sacramental sign. Similarly, if the model of vow were used, it could be the sacramental sign. If in the case of such models the Christian party could receive the sacrament, he should be able to receive it when the model is that of a Roman contract. But surely the presence of the sacrament should not be determined on the basis of the nature of a Roman contract.—The argument that the marriage between a baptized person and a nonbaptized person cannot be a sacrament because it can be dispensed by the Church is vitiated by the fact that the argument for dispensation is based on the opinion that the marriage is not a sacrament. . . . *Idem per idem*.

CONCLUDING REMARKS

Our two disputed questions will remain disputed for some time to come. In these concluding remarks, therefore, it is more profitable to reflect on the need to search further than to come up with hard and fast propositions. I see an urgent need for new insights, and another need for broader horizons of mind and new categories of thought.

1) *There is a need for new insights.* There is an overall need for much-better-grounded critical interpretation of the known historical facts and documents than has been achieved to date. The best acquisitions of the science of hermeneutics ought to be brought to bear on the otherwise well-known historical facts and texts that are used regularly as evidence to construe a systematic understanding of Christian marriage. Often enough we hear the statement that we need more historical investigation to gain a clearer and more conclusive picture of the tradition. Granted, the more history we know, the better. Yet frequently this well-meant statement hides the fallacy that history contains clear and distinct ideas which eventually will emerge, provided we are looking for them. At the origin of such an approach there is a romantic imagining of what the Christian community must have been in earlier times: they knew it all. In truth, they were like us. They too were struggling to achieve some understanding of God's mighty deeds, but while they were closer in time to our origins, in general their horizons were narrower and their categories of thought more restricted than ours. By all means, let the historical inquiry go on, but let the art of interpretation be fully applied to the data already discovered.¹⁸

2) *There is a need for broader horizons and new categories.* To make progress in the theology of marriage, we need to expand our horizons and categories to handle newly discovered realities. In our times, too many new problems have arisen which cannot be solved with the help of the

¹⁸ Often enough, the cry for more investigation and the fear of interpreting what is already there has its origin in an uncritically assumed epistemological position. The "naive realist" approaches this world with the attitude that, in order to know it, all he has to do is look; he believes (that is the right word) that as his "looking" covers more and more data, his understanding will expand. He shies away from creative insights, because he has never come to appreciate the capacity of the mind to conceive new meanings on the basis of objective information. If such a "realist" happens to work in the field of history, he may try to dig relentlessly deeper and deeper, thinking that eventually he will find the full truth, nothing less. But if our knowledge is a synthesis of information coming from the outside through our senses *and* of insights conceived in our innermost minds, then the right process in acquiring knowledge postulates that, once we have reached the limit in gathering the data, we should pause and reflect critically and creatively. To find the right moment for this pause requires wisdom. A long pause for critical reflection and interpretation of historical data in the field of the theology and the law of marriage is overdue.

conceptual tools elaborated in earlier ages. This should have become manifest already in connection with our two questions, but there are other issues where, if anything, the need may be even greater. They concern the capacity of a badly started Christian marriage to heal itself, the priority of theological substance over legal formalities, the meaning of "mutual help," especially in the juridical order, the interpretation of indissolubility, the issue of admitting to the sacraments persons living in canonically invalid marriages. This list is by no means complete.

All counted, a fairly simple conclusion can be drawn from the present situation, a conclusion which may serve as a program for the future. It is this: about the doctrine and law of Christian marriage, we ought to think afresh.