

THE MARRIAGE OF BAPTIZED NONBELIEVERS: FAITH, CONTRACT, AND SACRAMENT

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OUR SECULAR age is witness to a relatively new phenomenon within the sacramental life of the Church. With most of the Western world Christian by baptism, many of these baptized are now approaching the Church to witness their marriages at the same time that they profess no faith in Jesus Christ, the Church, or the sacramental nature of marriage. This phenomenon prompts theological questions regarding the requirement of faith for the valid reception of the sacrament of marriage, as well as the relationship between the contract and the sacrament.¹

The questions are not merely theoretical, since they are prompted by pressing pastoral problems. When a pastor is approached by a baptized couple asking for a religious marriage at the same time that each party is without faith, the first question is whether these nonbelieving Christians are capable of receiving a sacrament. If they are not, there is the further problem of whether they can marry at all. Canon 1055, par. 2, states that "a valid marriage contract cannot exist between baptized persons without its being by the very fact a sacrament." Thus, by definition, if this same couple were to attempt to contract a civil marriage, their relationship would not be a marriage because it would not be sacramental. Yet it is then asked whether this would constitute the denial of a basic human right, the right to marry. If this is granted, and a marriage other than a sacramental marriage is permitted and recognized as a marriage, the principle of the inseparability of sacrament and contract is compromised.

Since the question of the interrelation of faith, contract, and sacrament

¹ Thomas Boyle, in "The Theology of Marriage: Where We Are Today," *Studia canonica* 19 (1983) 81-98, states that "the relationship of faith to the sacrament poses one of the more pressing theological, canonical and pastoral problems today" (95). In this essay I am prescinding from the question whether the bond of marriage should be considered as a contract or a covenant. Although I consider that the concept of covenant describes more accurately the nature of marriage, since most of the literature dealing with the separability or nonseparability of contract and sacrament uses the language of contract, I will use the more traditional terminology. In either case what is meant is the human act which constitutes marriage. See Paul F. Palmer, "Christian Marriage: Contract or Covenant?" *TS* 33 (1972) 617-65; Francis Morrissey, "Revising Church Legislation on Marriage," *Origins* 9 (1979) 209, 211-18.

has been a topic of much theological discussion during the last decade, it is important to respond to the arguments in the literature as a prelude to furthering the discussion. In this essay I will first review the principal pastoral and theological solutions in the literature that are ultimately founded on the separability of contract and sacrament. I have isolated seven such positions. These are attempts to meet the present dilemma and are offered in a context of open theological discussion in a professional forum that invites criticism and subsequent refinement of the theological principles involved. The problem of faith and sacrament is described by many of these theologians as "unsolved" and "open" for further theological reflection. After my summary of these positions, I will analyze their presuppositions and then respond by suggesting some further principles.

SOLUTIONS IMPLYING SEPARABILITY OF CONTRACT AND SACRAMENT

The most famous attempt to solve the pastoral problems involved is that of the diocese of Autun, France, where three forms of marriage are presented to the couple, who then decide which form of marriage they wish to contract.² The first form is a civil marriage, which takes place at the city hall. The second is a "welcomed civil marriage." This is designed for those who wish to be married in a religious context but for whom the sacrament of marriage has little or no meaning. The attitude of the Church toward this couple is one of openness and hospitality, in the hope that with further reflection on the faith the couple may be led to request the sacrament of marriage at a later date. The third form of marriage is a sacramental marriage to be celebrated by those couples possessing a living faith and desirous of symbolizing the covenant of Christ and his people.

The diocese developed this marriage program as a result of the frequent request for a church wedding by nominal Catholics or by those who were unable to fully accept the Church's teaching. The ecclesiology behind the program is based on the notion of the Church as "catechumenal" or as a place of "welcome and freedom." It is felt that the Church should give each person the possibility of contracting a marriage within their present experience with a celebration in accordance with the type of commitment that the individual couples are prepared to make. The emphasis is on the

² The booklet given those preparing for marriage is "A ceux qui envisagent le mariage," 1975, p. 99. This booklet was prepared with the permission of Bishop Le Bourgeois of Autun for the pastoral region of Lugny-la Roche Vineuse for the exclusive use of this region on an experimental basis. This program and its development are described in some detail by James A. Schmeiser, "Welcomed Civil Marriage," *Studia canonica* 14 (1980) 49-87. For developments in the program, see "Marriage—New Developments in the Diocese of Autun, France," in *Eglise et théologie* 10 (1979) 369-85.

true choice and true freedom of the individuals involved.

This experimental marriage program obviously requires new marriage legislation, since it is based on the separability of contract and sacrament. Fr. Lucien Ray, episcopal vicar of the Diocese of Autun, pointed out in 1974 that it would be necessary to modify canon 1012 so that the Church could acknowledge a marriage which is licit without necessarily being sacramental.³ In 1975 the diocesan journal *Eglise d'Autun* interpreted canon 1012, par. 2, as affirming that it is not the sacrament which establishes the validity of the contract, but the validity of the contract which establishes the sacrament. Thus it would be an invalid interpretation to invert this and say that the absence of the sacrament renders the contract invalid.⁴ It further argued that the Code is based on the basic identity between "baptized" and "faithful" and did not foresee the current pastoral dilemma. Thus the present situation can be interpreted not as "against the law" (*contra legem*) but as "beyond the law" (*praeter legem*).⁵

I have isolated seven arguments for the separability of contract and sacrament. Authors combine these arguments in varying ways as they develop their positions.

1. *The sacrament of marriage is essentially a mystery of faith and as such requires a certain faith for its reception.*

The starting point for most of the current discussion is the necessity of faith in order to contract a sacrament. If this is absent, recourse is then made to a combination of the following arguments in order to demonstrate that even though an unbelieving person cannot receive the sacrament of marriage, this person can still marry.

The text most often cited in support of the requirement of faith is from *Sacrosanctum concilium*: "They [the sacraments] not only presuppose faith but by words and objects they also nourish, strengthen, and express it."⁶ Likewise, the International Theological Commission, a consultative body to the Vatican's Sacred Congregation for the Doctrine of the Faith, reaffirms the need for faith for the fruitful effect of the sacrament. This commission states that where there is no trace of faith and no desire for grace or salvation is found, then there is doubt concerning a truly sacramental intention and a sacramentally contracted marriage.⁷

³ Schmeiser, "Welcomed Civil Marriage" 53.

⁴ *Eglise d'Autun, Calan et Mâcon* 6 (1975) 13; cited by Schmeiser, "Welcomed Civil Marriage" 55.

⁵ *Ibid.*

⁶ *Sacrosanctum concilium*, Dec. 4, 1963, no. 59.

⁷ "Propositions on the Doctrine of Christian Marriage," sect. 2.3, in *Official Catholic Teaching Update 1978* (Wilmington, N.C.: McGrath, 1980) 150.

This requirement of faith, however, is often translated into maximalist terms. One such description which, the author admits, is an ideal formulation of what is meant by a living faith is the following:

As an act of faith, then, the sacrament of marriage effects a personal encounter with Christ in which a man and a woman consciously and responsibly accept God's gift of grace. Moreover, since the sacrament of marriage is a lively act of faith, it is more than just an intellectual acceptance of God and His revelation. It is also a vibrant, full, relational commitment of person to person to Person. Marriage is the living confession of the fact, initially demonstrated at Baptism, that Jesus is Lord.⁸

Such definitions or descriptions of faith presuppose a very high level of religious consciousness and include an awareness that the couple's union and marital love reflect and actualize the relationship of Christ and the Church.⁹

Suggestions as to how to determine the presence of this living faith vary. Cunningham thinks that a Catholic adult should at least believe the truths of the Creed and the Ten Commandments, perhaps even the precepts of the Church and the obligations of one's state in life, the Lord's Prayer and some of the sacraments, especially baptism, penance, Eucharist, and marriage. He adds that the Trinity, Incarnation, and redemption should be believed at least implicitly.¹⁰ Finally, he concedes that such a list grows to unrealistic proportions and that there is the danger of confusing the presence or absence of a particular belief with living faith or the lack of it.

Walter Cuenin would ascertain the presence of such a faith by the willingness to participate in catechesis, to share the faith with children, to share in some worship, and to share moral values. He thus plans to avoid arbitrary or rigid judgment in the refusal of the sacrament to a couple. Furthermore, he sees such criteria as forming the basis for a process of discernment whereby the couple are led to realize the lack of integrity in their being married in the Church.¹¹

Much of the discussion of the role of faith in the sacrament has taken place simultaneously with the work on the new Code of Canon Law. In

⁸ R. Cunningham, "Marriage and the Nescient Catholic: Questions of Faith and Sacrament," *Studia canonica* 15 (1981) 264. In this same article, however, he argues that saying "no" to the nonbelieving Catholic who requests matrimony does not solve the fundamental problem of lack of belief and may penalize the inculpable.

⁹ See Walter Cuenin, "Marriage and Baptized Non-Believers—Questions: Faith, Sacrament and Law," *Origins* 8 (1978) 326; also Edward J. Kilmartin, "When Is Marriage a Sacrament?" *TS* 34 (1973) 281.

¹⁰ Cunningham, "Marriage and the Nescient Catholic" 278.

¹¹ Cuenin, "Marriage" 326.

addition to several theologians and canonists speaking for the suppression of canon 1012, par. 1, which identified the contract and sacrament, several, including Cuenin, have expressed the desire that the new canons explicitly state the necessity of a lived faith.¹² Now that the new Code has been promulgated, it is a fact that canon 1012, par. 2, was not deleted. Regarding the requirement of faith, canon 1071 states that no one is to assist without the permission of the local ordinary at the marriage of a person who has notoriously rejected the Catholic faith unless the norms of canon 1125 have been observed. Canon 1125 requires that the purposes and essential properties of marriage not be excluded and that the children be baptized and brought up in the Catholic Church. Canons making a living faith a basic *sine qua non* for Christian marriage are absent from the Code. The fact that the new Code has been promulgated undoubtedly changes the tenor of the present theological discussion of the issue. On the one hand, the absence of legislation regarding faith may indicate the difficulty of defining faith in a juridical context. On the other hand, it remains the work of the theologian to further explicate the connection between faith and sacrament, contract and sacramental bond.

2. *Nonsacramental marriages have an existential reality different from mere concubinage.*

A second argument holds for the existence of a natural reality in the contract of a marriage that is nonsacramental. This argument appeals to Vatican II and its proclamation of the autonomy of earthly realities.¹³ This interpretation distinguishes between institutions of creation and institutions of redemption. This distinction places marriage on the side of creation and therefore to some extent autonomous of the Church, the primary institution of redemption.¹⁴

An example of this type of argumentation is found in Jacques Denis, who holds that a welcomed civil marriage, in essence the same as a purely civil marriage, even though not considered a valid marriage in the canonical sense, should not be dismissed as concubinage. Although not sacramental, it has an existential, psychological, and juridical reality. The process of *sanatio in radice*, the validation of a conjugal union without the renewal of vows, is an indication of this reality in his opinion, because the retroactivity extends to the moment of marital consent rather

¹² Ibid. 328.

¹³ Ibid. 324; cf. Raymond Didier, "Sacrement de mariage, baptême et foi," *Maison-Dieu* 127 (1976) 121; *Gaudium et spes*, nos. 36-39, 42, 52, 73, 75-76, and *Dignitatis humanae*, nos. 4, 9-10.

¹⁴ This also follows the thesis underlying E. Schillebeeckx' history of marriage, *Marriage: Human Reality and Saving Mystery* (New York: Sheed and Ward, 1965).

than to the moment when the *sanatio in radice* is accorded.¹⁵ Thus Denis argues for the ecclesial recognition of the natural and civil obligations of the civil marriage.

3. *Every person has a right to marriage and religious freedom.*

The argument for the separability of contract and sacrament based on the human right to marriage and religious freedom reasons that to deny the presence of a marital covenant would be to consign all baptized nonbelievers to a limbo, since they would be the only ones in the human family without the right to marry. They could not marry naturally because they are baptized, and they could not marry sacramentally because they have no faith.¹⁶

One representative of this position is Jean Passicos, a canon lawyer, who refers to the statements of Pius XII, the Universal Declaration of Human Rights, the encyclical *Pacem in terris*, and the drafts of *Lex ecclesiae fundamentalis* and *De populo Dei* of the new Code. His basic position is that the bishops in the French Episcopal Conference statement (1969) limit the right to marriage when they question the validity of a celebration of marriage when there is a lack of faith.¹⁷

4. *Sacramental theology must avoid an automatic sacramentality.*

Proponents of this argument see a "ceremonialism" and "automatism" in the inseparability of contract and sacrament, and both baptism and marriage are seen to automatically achieve their effect with minimal reference to the dispositions of the recipient of the sacrament.¹⁸ Theologically, this argument reduces to a discussion of the interrelationship between the effect of a sacrament *ex opere operato* and *ex opere operantis*. A common way of working with these two aspects of sacramentality has been to distinguish between a valid and a fruitful reception of a sacrament. If the consent were integral, the sacrament was validly received, but the fruitfulness would depend on the disposition of the recipient. Some theologians, however, are finding this distinction insufficient and

¹⁵ Jacques Denis, "Consistence du mariage purement civil des catholiques," *Etudes de droit et d'histoire*, 1976, p. 487. Cited by Schmeiser, "Welcomed" 65. See also Ladislav Ōrsy, *Marriage in Canon Law* (Wilmington, Delaware: Michael Glazier, 1986) 269-70.

¹⁶ Ladislav Ōrsy, "Faith, Sacrament, Contract, and Christian Marriage: Disputed Questions," *TS* 43 (1982) 391. Ōrsy repeats this position in *Marriage in Canon Law* 269.

¹⁷ Jean Passicos, "Le droit au mariage dans certaines orientations pastorales franaises," in *Année canonique* 23 (1979) 241-59. Cited by Schmeiser, "Welcomed" 70.

¹⁸ Cuenin, "Marriage and Baptized Non-Believers" 323-24; Cunningham, "Marriage and the Nescient Catholic" 266-67; J. Manzanares, *Rélation entre mariage des baptisés et sacrement: Tout mariage de deux baptisés est-il nécessairement sacrement?* (unpublished document, Gregorian Univ., Rome, Feb. 1977, translated from the Latin by J. Morin) 7-10; cited by Schmeiser, "Welcomed" 84.

argue that the faithful disposition of the recipient is necessary not only for the fruitful reception of the sacrament but for its validity as well.

The language of the International Theological Commission reflects the closeness with which fruitfulness and validity are being associated. It does, however, retain the distinction:

Just like the other sacraments, matrimony confers grace in the final analysis by virtue of the action performed by Christ and not only through the faith of the one receiving it. That, however, does not mean that grace is conferred in the sacrament of matrimony outside of faith or in the absence of faith. It follows from this—according to classical principles—that faith is presupposed as a “disposing cause” for receiving the fruitful effect of the sacrament. The validity of marriage, however, does not imply that this effect is necessarily fruitful.

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.¹⁹

In this section of the ITC document, the first paragraph discusses the relationship between the fruitful reception of the sacrament and the faith of the one receiving it. It also indicates the separability of validity and fruitfulness. The second paragraph, while noting that it is the intention to carry out what Christ and the Church desire that is the minimum condition required for a sacrament, states that intention and faith are neither identical nor separable. The third paragraph places faith at the origin of a genuine sacramental intention sufficient for validity. Some ambiguity remains, however, in that personal faith does not constitute the sacramentality of matrimony, although its absence compromises its validity. Thus in these three paragraphs there is an intensive progression of the role of faith in the reception of the sacrament from its necessity for fruitfulness, to its distinction from and connection with intention, to

¹⁹ International Theological Commission, “Propositions,” sect. 2.3, in *Official Catholic Teaching Update* 150–51; also in *Origins* 8 (1977–78) 235 ff.

making sufficient intention dependent on faith to such an extent that it finally determines the validity of the sacrament. Yet it is important to note that the personal faith of the contracting parties does not constitute the sacramentality of matrimony.

The argument against an automatic sacramentality necessarily emphasizes the dispositions of the recipient. Both the effect of the sacrament *ex opere operato* and the disposition *ex opere operantis* are consistently within the tradition, although recent theology is retrieving elements of the latter.²⁰ However, it is possible that some of the concern over an automatic sacramentality may have deeper roots than a renewed emphasis on the dispositions of the recipient. These deeper roots may lie in the larger theological question of whether sacraments are fundamentally viewed as Christ's free act on us and thus as primarily a theocentric activity even though they are only efficacious to the extent that they encounter the *opus operantis* of the believer, or whether the emphasis on subjective disposition reflects the anthropocentric turn in theology. Of course, both elements are present in sacramental theology, because sacraments are mediatory, human signs mediating divine grace. Yet the question remains of how sacramental theology parallels other theological trends.

5. *The ecclesial dimension of the sacrament of matrimony is best manifested during the liturgical celebration of the sacrament.*

The explicit ecclesial dimension of living faith leads some authors to hold the position that the difference between the *sacramentum naturae* and the *sacramentum novae legis* implies a specifically new act marking a relationship with the Church.²¹ The sacramental symbolism of Christ and the Church expressed in the union of man and wife is best manifested in a celebration before the community. Where the Council of Trent required the presence of a priest and two witnesses in order to avoid clandestine marriages, the requirement is interpreted today as the expression of the necessary relation between marriage and the Church, one symbolizing the other. The question remains, however, whether the requirement of *Tametsi* is to be interpreted as intrinsic to the nature of sacramental marriage or whether it is in fact a juridical requirement

²⁰ Cf. DS 797 f., 819, 849; Karl Rahner, *Foundations of Christian Faith: An Introduction to the Idea of Christianity* (New York: Seabury, 1978) 429; E. Schillebeeckx, *Christ the Sacrament of the Encounter with God* (Kansas City: Sheed Andrews and McNeel, 1963) 82-88.

²¹ Didier, "Sacrement de mariage" 138.

designed to prevent the abuses of a certain period in history.²² Its positive value lies in its emphasis on the public character of marriage. Consequently, although the public celebration of marriage in an ecclesial context is fitting, it would seem that the historical background of *Tametsi* does not permit one to limit the sacramental character of marriage to its celebration in such a context.

Again, the issue within the present discussion is whether the ecclesial dimension of the sacrament requires explicit expression within an ecclesial celebration. The implication would then be that marriages which do not have this explicit liturgical dimension are nonsacramental. This then contributes to an argument for the separability of contract and sacrament.

6. *The historical context of the development of the doctrine concerning marriage does not permit an interpretation of contract and sacrament as inseparable.*

Another argument concerning the separability of contract and sacrament is based on the historical context in which the doctrine was first formulated. For example, Raymond Didier argues that the history of marriage indicates that the consent of the couple creates the contract, which becomes a sacrament by the mediation of baptism and faith.²³ This is essentially the same position as the one which starts with the historical presupposition that marriage is a secular reality that is then raised to the dignity of a sacrament within the Church.²⁴ Such a historical interpretation then sees in canon 1055, par. 2, a reversal of the historical development. Formerly the direction of development was from the consent-contract to the sacrament, and the consent was the "matter" of the sacrament and the faith was the "form." Now it is the sacrament which seems to give the consent its identity to the point where the baptized are obliged to receive the sacrament in order to validly contract a marriage.²⁵

Didier wishes to reaffirm the unity of the contract and sacrament, but

²² Clement IV (1342-52) in his letter *Super quibusdam* (Sept. 29, 1352) wrote that the Church could not tamper with the "integrity and necessity" of the sacraments (DS 1061). Furthermore, the Council of Trent in regard to extreme unction (session 14, Nov. 25, 1551) and the Eucharist (session 21, July 16, 1562) had stated that it was not in the Church's power to change the substance of the sacraments. When the Council corrected the problem of clandestine marriages, it introduced the decree by strongly stressing the intrinsic validity of these marriages in themselves (DS 1813). James Novak gives this historical information in "Inseparability of Sacrament and Contract in Marriages of the Baptized," *Studia canonica* 12 (1978) 327.

²³ Didier, "Sacrement de mariage" 116.

²⁴ Schillebeeckx, *Marriage: Human Reality and Saving Mystery*.

²⁵ Didier, "Sacrement de mariage" 118.

by reintroducing the mediation of baptismal faith. By this faith the sacrament is not extrinsic to the contract but presupposes it and sanctifies it. However, in his thought it is one thing to say that the sacrament assumes the human reality of marriage by placing it within the New Covenant, but it is quite another thing to affirm that the matrimonial contract is invalid if it is not a sacrament.²⁶ Thus, even though he tries to avoid an extrinsicism between contract and sacrament, Didier still separates the two. It is not possible to have a sacrament without a contract, but it is still possible to have a contract without a sacrament.

A second historical argument for the separability of contract and sacrament is based on the intentions of the Council of Trent and its subsequent interpreters. Canon 1 on marriage states that Christ instituted marriage as a true and proper sacrament. It does not explicitly state that he instituted the matrimonial contract as a sacrament, although this can be argued since the fathers do refer to marriage as a contract. This leads James Novak to the conclusion that "to say that the Council declared the inseparability of sacrament and contract seems to weight the texts with a burden they are incapable of bearing logically or historically."²⁷

What, then, is the historical connection between the Tridentine decree and canons and the later teaching on inseparability? According to André Duval, the dominant problem for the Catholic Church was not the affirmation of its power in relation to civil power, but the extent of its power in relation to a sacrament instituted by Christ. Faced with a situation created by the multiplication of clandestine marriages, the question was whether the Church had the power to juridically determine what would constitute the validity of the sacrament over and above the consent of the two baptized persons. The difficulty and reservation with which the fathers of the Council promulgated *Tametsi* are evident from the fact that more than a quarter of them (56 out of 192 voting members) formally expressed their disagreement—a unique event in the history of the Council of Trent.²⁸

In contrast to the vigorous discussion and protest occasioned by *Tametsi*, canon 1 did not provoke much response. Duval concludes that the intention of the Council was to affirm that marriage is a sacrament and, like the other sacraments, is instituted by Christ and productive of grace.²⁹ Duval, however, also concludes that the Council did not wish to

²⁶ Ibid. 120.

²⁷ Novak, "Inseparability" 329.

²⁸ André Duval, "Contrat et sacrement de mariage au Concile de Trente," *Maison-Dieu* 127 (1976) 47.

²⁹ Ibid. 48.

make a statement whether there can be a valid marriage for Christians without a sacrament.³⁰ He bases his conclusion on the fact that when the bishop of Paris, Eustache du Bellay, proposed to qualify *matrimonium* by *christianorum*, the Council did not adopt the change.

Consequently, canon 1 of Trent on marriage simply says *matrimonium* and not *matrimonium fidelium*. Duval interprets this to mean that the Council did not say that the marriages of the faithful are sacraments, but that marriage is a sacrament among other sacraments. In other words, the Council, in his opinion, did not specify which marriages are in fact sacraments. Consequently, he does not view the new Code's canon 1012, par. 2, as a simple explication of the teaching of Trent.³¹

Duval then asks the question whether the decree *Tametsi* makes a statement about the sacramentality of the clandestine marriages anterior to Trent. The Council states that clandestine marriages contracted freely were truly valid marriages, *rata et vera*.³² Bellarmine and Santori held that *rata et vera matrimonia* signified a sacramental validity. G.-T. Tosa disagreed on the basis of what was not included in canon 1. Duval interprets the introductory section of *Tametsi* in the light of the paragraphs that follow and thus holds that the question conditioning the statement is the question of the type of power that the Church possesses concerning marriage. Since the canons are directed against clandestine marriages, he concludes that *rata et vera* does not refer to a sacramental validity, but refers to those marriages for which Luther, against whom Canon 3 is directed, demanded the authorization of parents for their validity. It is not a question of sacramentality, but of validity of contract since Luther did not consider marriage to be sacramental.

Duval concludes that although a sacramental interpretation of *rata et vera matrimonia* is probably not excluded from the intentions of Trent, it is certainly not necessary.³³ Furthermore, the absolute inseparability of contract and sacrament in the marriages of the baptized can only be considered as implicitly contained in the dogmatic definitions of the Council.³⁴

Although no document on marriage was promulgated by Vatican I, the theological and doctrinal commission charged with the preparation of doctrinal schemas did have on its agenda the preparation of a document on Christian marriage. Camillo Santori (1823–83), secretary of the commission, held in his interpretation of Trent's session 24 that one could

³⁰ Ibid.

³¹ Ibid. 50.

³² Ibid. 56.

³³ Ibid. 61.

³⁴ Ibid.

either reject all separability of contract and sacrament or, in opposition to Trent, deny that the contract is really a sacrament.³⁵ That is, if two things are separable, that means that they are not identical and the contract cannot be the sacrament. Santori's interpretation was refuted by Tosa, and the work on marriage never left the preparatory commission, but Duval finds the basis for the 1917 Code of Canon Law, canon 1012, in Santori's interpretation of Trent.³⁶ This, then, is the connection between the Tridentine decrees and canons and the later teaching on inseparability.

7. The inseparability of contract and sacrament compromises the gratuity of grace.

J. Manzanares thinks that the position of inseparability removes the gratuity of the supernatural order because it is then necessary and independent of the voluntary acceptance of the individual.³⁷ In other words, an individual has no choice other than to receive the sacrament when he or she contracts a marriage. However, Manzanares' position then makes gratuity dependent on human response or initiative rather than on God's creative freedom. This compromises the gratuity of the supernatural more than does the position that God freely gives His grace to all those who enter a permanent, exclusive, and potentially procreative relationship with another person and that those who do this thus image Christ's relationship with his Church. Gratuity is placed on the side of human acceptance rather than on the side of God's free gift, and is then judged from the perspective of the person who receives grace rather than from a theocentric perspective.

PRESUPPOSITIONS SUPPORTING SEPARABILITY OF CONTRACT AND SACRAMENT

Before suggesting some further theological principles that support the inseparability of contract and sacrament, I will briefly indicate what I think are some underlying presuppositions of the seven arguments just listed.

1. *The requirement of faith for the reception of a sacrament.* The presupposition of much of the discussion regarding the living faith required for the reception of a sacrament is that this faith be articulated,

³⁵ Ibid. 38.

³⁶ Ibid. 62-63.

³⁷ Schmeiser, "Welcomed" 84.

explicit, and categorical, that is, with a clearly defined object.³⁸ This demands a developed religious consciousness and presumes that a significant amount of catechesis has occurred. There seems to be a significant amount of theological content included in the faith.

2. *The existential reality of nonsacramental marriages.* This argument holds that there are two realities: a natural reality which exists in a nonsacramental contract of marriage, and the sacramental marriage. Thus, in effect, there are two types of marriage for the baptized: natural marriages and sacramental marriages. This argument seems easily susceptible to making the sacrament extrinsic to whatever this existential reality, in fact presupposed to be a natural marriage, is that precedes the *sanatio in radice*. Thus a sacrament is superimposed on or added to a natural marriage. In other words, the marriage or contract is not identical to the sacrament, and the notion of sacramentality assumes an objectification apart from the reality which is the sacrament. This objectification is fostered by the current language whereby sacraments are "dispensed" and "received." What is needed in our understanding of the sacrament of marriage as well as the other sacraments is a more dynamic and intrinsic concept whereby sacramentality is a quality found within certain ecclesial actions on the fulfilment of specified conditions or in the presence of certain elements which actually constitute the sacramentality of the action.

This argument concerning the *sanatio in radice* further presupposes the validity of arguing from a juridical practice to theology rather than the contrary.

3. *The right to marriage and religious freedom.* The type of freedom presupposed here is the freedom of choice, that is, the freedom to choose this or that regardless of the content of the choice. That is like saying we have the freedom to choose a lesser good or not to choose a lesser good. Yet to choose a lesser good is to be in bondage to a state of unfreedom. True freedom is a self-actualization for the good rather than the ability to choose a lesser good. Therefore, to choose not to participate in God's grace in a sacramental marriage is not a choice in freedom but symptomatic of the distance from true freedom.³⁹

³⁸ I am using "categorical" here and elsewhere in Karl Rahner's sense of the term. He uses it to refer to the thematic, objectified object of our knowledge and belief, in contrast to the knowledge of God which is unthematic and anonymous present to a knowing subject in the experience of transcendence. See Rahner, *Foundations of Christian Faith* 20-23; also his *Hearers of the Word* (New York: Seabury, 1961) chap. 5.

³⁹ For a theological discussion of the nature of freedom, see Johannes B. Metz, "Freedom As a Threshold Problem between Philosophy and Theology," *Philosophy Today* 10 (1966) 264-79; also Karl Rahner, "The Dignity and Freedom of Man," *Theological Investigations* 2 (Baltimore: Helicon, 1963) 235-63.

4. *Automatic sacramentality.* The argument against an automatic sacramentality presupposes that to intend to receive a sacrament is the same thing as explicitly choosing sacramentality. I suggest, however, that there is a subtle distinction to be retained here. To intend to receive a sacrament, it is sufficient to intend by that action what the Church intends by its sacrament. Thus the religious marriage is valid when the prevailing will is to marry, and this will includes those characteristics of marriage intended by the Church: indissolubility, exclusivity, and openness to procreation. When a couple intend such a marriage, they intend to receive what the Church intends as the sacrament. Because the will of the couple is actively involved in this intention, the sacrament is not in any way "ceremonial" or "automatic." On the other hand, to explicitly choose sacramentality is certainly possible for those people who have sufficient knowledge and explicit faith, but in the case of marriage this involves a second level of reflection that is not absolutely essential for the valid reception of the sacrament.⁴⁰

A second presupposition of the argument against automatic sacramentality is that the final and determining factor for the reception of the sacrament is the choice or will of the individual. This represents an extrinsic sacramentality. The question is whether creation does not have a fundamental sacramental structure and whether sacraments are not first and foremost Christ's free offer of grace. As such, they are gifts before they are choices.

5. *The explicit ecclesial dimension of the sacrament of matrimony.* The presupposition here is that sacramentality has a visible, explicitly ecclesial dimension. Since sacraments are signs, it is true that they contain a visible dimension, but I suggest that the quality that visibly manifests the character of Christ's relationship with his Church is the fidelity and the indissolubility of the marital relationship. The ecclesial dimension of the sacrament is found in the intrinsic nature of marriage rather than in its external celebration, even though such a celebration is certainly fitting and ideal.

There is a further creeping presupposition in some of the discussion that the couple request the sacrament of the Church and then receive it from the Church as a response to the request. This presupposition is particularly evident in the marriage program in the Diocese of Autun. This subtly displaces the minister of the sacrament. If the Church

⁴⁰ I concur with Louis de Naurio's assessment of the necessary intention to contract marriage: "Le mariage des baptisés qui n'ont pas la foi: Aspects canoniques et soubassements théologiques du problème," in *Foi et sacrement de mariage* (Lyon: Chalet, 1974) 70 ff. The religious marriage is valid when the prevailing will is to marry. I will discuss this further in my conclusion.

“bestows” the sacrament in response to a request, this presupposes that the sacrament is given by the minister of the Church. In fact, however, it is the baptized persons contracting the marriage who minister the sacrament to each other. The role of the Church is to witness the marriage.

6. *Historical arguments.* The presupposition here is that theology is determined by historical precedents. The primary problem with this is that it does not sufficiently take revelation into account. Thus, if a precedent is set by a practice in the Church at some particular period in history, this is presumed to reflect the order of redemption. Would it not be more accurate to take the position that the changing practice in the Church represents adaptation according to a growing awareness, an awareness gained from reflection on the primary data of revelation, of the implications and consequences of that revelation? Examples of this type of progressive understanding include the present understanding of the necessity for monogamous marriage and the awareness of the evils of slavery. Is it not possible that similar reflection is now leading us to an awareness of the basic sacramentality and sacredness of marriage, so that arguments based on the primarily secular character of marriage no longer represent our best understanding of the relation between the order of creation and the order of redemption? A theology based on historical precedent does not lead us to such an understanding.

PRINCIPLES SUPPORTING INSEPARABILITY OF CONTRACT AND SACRAMENT

Since the question of the validity of sacraments received by baptized nonbelievers centers on the faith necessary to receive a sacrament, and since the possibility of these nonbelieving baptized persons contracting a marriage at all then centers on the relation between the created order and secular realities and the order of redemption, the two areas needing further clarification are the nature of faith and the relatedness of the created and redemptive orders.

Faith and Sacrament

There is general agreement among canonists and theologians that it is difficult to determine when sufficient faith is present for the valid reception of a sacrament. Even minimal faith would appear to suffice and, when it is at all possible, presumption is made in favor of faith. Moreover, it would be a very serious mistake to equate nonpractice with nonbelief. However, a few distinctions may help to clarify the present discussion. The first is the distinction between the act of faith and the habit of faith. The second is the distinction between explicit and implicit theism and atheism.

In most of the present discussion of the faith necessary to contract a marriage, this faith is identified with an explicit and conscious act of faith. Faith, however, cannot be reduced to this explicit act. A person can possess the habit of faith both through the moral order and, most especially, through baptism.

Baptism is the "sacrament of faith" par excellence. Not only is the reception of this sacrament the occasion of the public confession of faith by the individual or, in the case of infant baptism, by the believing community on behalf of the individual, but the indelible "character" received at baptism comprises an ordination of the baptized to worship, the expression and public witness of faith. According to Thomas Aquinas, the baptismal character has the effect of definitively sealing the new Christian's condition as "believer."⁴¹

Thomas distinguishes a double effect of the sacraments: the valid reception of the sacraments and the fruitful reception, that is, the reception of sacramental grace.⁴² The reception of the sacramental character, the *res et sacramentum*, does not depend on the faith of the recipient. The *res et sacramentum* is the sign of the real existence of the sacrament, which has an objective reality and whose existence depends on an act of the Church and its ministers, not on the act of the one who receives it. Only a direct intention against the reception of a sacrament negates its reception. The absence of faith does not have a similar negative effect on the reception of a sacrament.⁴³

An example of the independence of the *res et sacramentum* in regard to the personal faith of the recipient is evident in the sacrament of the Eucharist. The real presence of Christ under the Eucharistic species exists outside of the subject and independently of the use made of it. The sacrament is truly received by both nonbelievers and believers.⁴⁴

The same is true of marriage. Villette notes that "it does not at all require, in order to be validly received, the faith in act of the persons contracting marriage, but only *the state of believers that baptism confers on them.*" He cites Thomas that what is required for the sacrament is baptism, the sacrament of faith, rather than interior faith. Here Thomas gives the example that a believer contracts a true marriage with a baptized heretic, but a catechumen, having correct faith but not yet baptized, cannot contract a valid marriage with a baptized believer.⁴⁵ Thus, along

⁴¹ Louis Villette, *Foi et sacrement de saint Thomas à Karl Barth* (Paris: Bloud & Gay, 1964) 33.

⁴² In 4 *Sent.*, d. 6, q. 1, a. 3, sol. 1 and 3; q. 68, a. 8.

⁴³ Villette, "Foi et sacrement" 37.

⁴⁴ *Summa theologiae* 3, q. 80, a. 3; Villette, *Foi et sacrement* 38.

⁴⁵ In 4 *Sent.*, d. 39, q. 1, a. 1, ad 5.

with the correct intention, the necessary disposition for the valid reception of the sacraments received after baptism is not personal faith but the baptismal character.

This does not mean, however, that there is not an inchoate or implicit faith that is somehow present in the recipient for the valid reception of a sacrament. This inchoate and implicit faith resides in the intention of the recipient. For Thomas, even though the intention of receiving the sacrament can exist without either faith or charity,⁴⁶ normally intention is born of faith: "Faith directs intention and without it there cannot be a right intention . . . charity next renders intention meritorious."⁴⁷ Indirectly, then, a certain faith is necessary for the valid reception of a sacrament, even though this faith is included within the intention.⁴⁸

In the case of marriage, the necessary intention for the valid reception of the sacrament includes an intention for indissolubility, fidelity, exclusivity, and openness to children. This ultimate kind of promise and love cannot be explained apart from a transcendence that is oriented to God. Rahner offers a theological explication of this orientation in his reflections on the unity which exists between love of God and love of neighbor.⁴⁹ A marriage contracted with this kind of commitment represents the most explicit instance of this unity, a unity so evident that marriage is a sacrament of the union of Christ with his Church. Just as the transcendental reference which a person has towards God can be realized categorically, that is, with a thematized, apprehendable object, in the love of the neighbor, so, in a reciprocal fashion, does the quality of the love of the spouse reflect the orientation to God even if this is but implicit. Thus Rahner says that even the atheist who truly loves responds to God whether or not he can express this to himself in conscious thoughts or words. Thus even the atheist in the "absolute quality of personal love for the 'thou' of his fellow man utters a silent 'yes' to God."⁵⁰ Rahner's explanation is that this kind of love is based in its ultimate and connatural depths precisely upon this orientation to God.⁵¹

One inconsistency in the arguments of those who see the possibility for a validly contracted marriage that is nonsacramental is that they insist that even though the state permits divorce, this nonsacramental

⁴⁶ *Summa theologiae* 3, q. 68, a. 8, ad 2 & 3.

⁴⁷ *In 4 Sent.*, d. 6, q. 1, a. 3, sol. 1, ad 5. Practical application to marriage, d. 39, q. 1, a. 1.

⁴⁸ Villette, "Foi et sacrement" 39.

⁴⁹ Karl Rahner, "Reflections on the Unity of the Love of Neighbor and the Love of God," *Theological Investigations* 6 (Baltimore: Helicon, 1969) 231-49; also his book *The Love of Jesus and the Love of Neighbor* (New York: Crossroad, 1983).

⁵⁰ Karl Rahner, "Marriage As a Sacrament," *Theological Investigations* 10 (New York: Seabury, 1977) 204.

⁵¹ *Ibid.*

marriage should also be entered into as indissoluble and permanent.⁵² Yet this is the very quality that comprises the *sacramentum*. Moreover, if indissolubility requires transcendence for its motivation or actualization, we have seen that this transcendence is only possible within a horizon of love and faith that is ultimately oriented to God. It is thus incongruent to speak of a natural secular reality and a requirement of indissolubility.

In addition to explicit acts of faith and the implicit habit of faith of the baptized person, one can argue that there is an implicit faith operative in every moral action. The starting point for such an argument is Rahner's principle that "in the present order of salvation a moral act that is truly positive (*actus honestus*) is in fact also a salvific act (*actus salutaris*) in virtue of the grace which always exalts it and which is offered always to every man by the universal salvific will of God."⁵³ Although Rahner acknowledges that this principle is not universally accepted in Catholic theology, he considers it to be an extension of what the Second Vatican Council teaches with regard to the possibility of salvation for the non-Christian and the inculpable atheist.⁵⁴

Jacques Maritain likewise states that the first act of freedom, an act that necessarily involves a nonconscious knowledge of God, is only possible if grace perfects and heals nature:

For the natural movement through which the will tends toward God and ordains itself to Him as the ultimate end of life can be fulfilled in a real and decisive manner only if God is loved efficaciously above all things, and all I have said really amounts to asserting that in his first act of freedom, when it is good, man loves God efficaciously above all things. But this presupposes that grace and charity are operating within the soul.⁵⁵

If this is true for the first act of freedom, it is certainly necessary for all acts of freedom, which is to say all moral acts.

Since salvific grace is not given without supernatural faith, the first act of freedom, if morally good, is done in faith as well as in grace.⁵⁶

⁵² Cuenin, "Marriage and Baptized" 327, lists three statements of intention according to the kind of faith the person is able to profess. Both Statement Two, for baptized persons of "Catholic Tradition," and Statement Three, for baptized Catholics who have a marginal adherence to Christ or the Church, indicate the indissoluble nature of the bond.

⁵³ Rahner, "Marriage As a Sacrament" 205.

⁵⁴ Pastoral Constitution on the Church in the Modern World, nos. 19-21, and the next-to-last paragraph of no. 22; Dogmatic Constitution on the Church, chap. 2; Decree on the Church's Missionary Activity, no. 7.

⁵⁵ Jacques Maritain, "The Immanent Dialectic of the First Act of Freedom," in *The Range of Reason* (New York: Scribner's, 1952) 71.

⁵⁶ *Ibid.* 76.

Maritain speaks of this faith as neither explicit nor implicit, but as a connatural knowledge of God *per conformitatem ad appetitum rectum*. In Maritain's analysis, the Separate Good is intuitively grasped as being the means of salvation. This intuitive knowledge is no longer a practical knowledge reaching God as the Separate Good reached by an *élan* of the will, but is a knowledge of God as Savior and thus is a speculative knowledge. Although this knowledge escapes formulation and reflective consciousness and remains preconscious, nevertheless this knowledge is the knowledge of faith inherent in the first act of freedom and suffices as salvific faith.⁵⁷

Rahner arrives at a similar conclusion but through an analysis of transcendence. His thesis is that because the universal and supernatural will of God is working for human salvation, the unlimited transcendence of man, itself necessarily directed toward God, is raised up consciously by grace, although possibly without explicit thematic reflection, in such a way that the possibility of faith in revelation is thereby made available.⁵⁸ For if a person by a free act in which he accepts himself unconditionally in his radical reference to God raised up by grace, also accepts the basic finality of this movement of his spirit, even if without reflection, then this person makes a genuine act of faith. This transcendence does not have to be mediated through an explicitly religious act, but can be mediated by a particular moral decision. This anonymous faith is a faith necessary and effective for salvation, which occurs without an explicit and conscious relationship to the revelation of Jesus Christ contained in the Scriptures and without any explicit reference to God through an objective idea of God. Rahner distinguishes between implicit and explicit theism and atheism and gives four possible stances:

1. God is given in man's transcendentality and this givenness is objectified in a sufficiently correct explicit and conceptual theism. When freely accepted in a moral assent of faith, we have a theism which is absolutely correct, which is both a transcendental and categorical theism, and it expresses a correct relationship of man to God.

2. Transcendental and categorical theism is given, but the person rejects this knowledge in his moral freedom.

3. The transcendental experience of God is given and accepted in a free and positive decision of fidelity to conscience. However it is not correctly objectified and interpreted. This inadequate, false, or missing concept of God can be the object of a free assent or rejection. Here we have an atheism which is without guilt in the sense of the Second Vatican Council. It is an atheism on the level of

⁵⁷ Ibid. 77-78.

⁵⁸ Karl Rahner, "Anonymous and Explicit Faith," *Theological Investigations* 16 (New York: Crossroad, 1979) 52-59.

categorical reflection which coexists simultaneously in the subject with a freely affirmed transcendental theism.

4. The transcendental openness to God is given, and it is objectively interpreted falsely, or at least not correctly enough, into a categorical atheism. At the same time and in a free act this transcendental openness to God is itself rejected through seriously guilty infidelity to one's own conscience or through some other false and guilty interpretation of existence. In this case we have guilty atheism of a transcendental kind, that atheism which, so long as it exists, excludes any possibility of salvation.⁵⁹

Rahner then concludes that the atheism which is guiltless is always only a categorical atheism, an atheism on the level of objectified concepts and propositions. A really possible transcendental atheism is always and necessarily a guilty atheism. God, given in man's transcendentality, is rejected by freedom, not by knowledge.

The analysis of the possibility of a connatural, implicit, or anonymous faith by Maritain and Rahner demonstrates that the absence of faith is not easily presupposed when a categorical or propositional expression of that faith is missing. This analysis, especially when combined with the teaching on the baptismal character, should make it evident that the nonvalidity of the marriages of baptized nonbelievers cannot be taken for granted. It is true that grave pastoral problems remain, but they cannot be solved without a thorough examination of the theological principles involved. An additional principle which yet remains is the relationship between the order of creation and the order of redemption.

Order of Creation and Order of Redemption

When the order of creation is separated from the order of redemption, marriage is considered as a secular reality that within the order of redemption is raised to the dignity of a sacrament. However, are these two orders really separate? In the final analysis, the inseparability of contract and sacrament will rest on the inseparability of these two orders. The consent of the spouses which constitutes the marriage will at the same time constitute the sacramental sign of the sacramental marriage.

The principle which grounds all subsequent theological reflection is the revelation that all things are created in Christ, by Christ, and for Christ (Jn 1:3; Col 1:16; Eph 1:10; Heb 1:2).⁶⁰ Jesus Christ is the

⁵⁹ Karl Rahner, "Atheism and Implicit Christianity," *Theology Digest* (sesquicentennial issue) 16 (1968) 43-56.

⁶⁰ C. Caffarra, "Création et rédemption," in *Problèmes doctrinaux du mariage chrétien* (Louvain-la-Neuve: Centre Cerfaux-Lefort, 1979) 79, 269. This is published in English as "Marriage As a Reality in the Order of Creation and Marriage As a Sacrament," in *Contemporary Perspectives on Christian Marriage*, eds. Richard Malone and John R. Connery (Chicago: Loyola Univ., 1984) 117-80.

revelation of the meaning of creation.⁶¹ That is, creation exists because of the free decision of God to communicate Himself to it in Christ through the Spirit. Thus in this existential order God creates in order to share the life of the Trinity with the human person. The ultimate meaning and end of human life is therefore only found in this orientation to the beatific vision. Consequently, the redemptive order is not an accidental modification of the created order but rather represents its finalization.⁶²

C. Caffarra develops the conclusions for the sacrament of marriage that necessarily result from the inherent unity of the created and redemptive orders. The covenant with God in Christ through the Spirit reveals the meaning of marriage. That is, marriage is one of the possible places within creation where the communication of the Trinity *ad extra* manifests itself. Conjugal love between man and wife, by virtue of their baptism and the grace of Christ, is a participation in Trinitarian love. Because the Trinitarian life is the only end of the only real order that exists, this is the only ultimate meaning that conjugal love can have. Marriage as a reality within the covenant is not located alongside marriage as a reality within creation or added to it; it is this marriage itself.

In order to affirm the gratuity of the graced creative/redemptive order, Caffarra admits the *possibility* of a creation that is not oriented to the covenant. However, just as this possible creation does not exist in fact, neither does the possibility of marriage exist which is not a participation in grace. For the baptized, this participation assumes the value of a sacramental sign. Just as redemption is not an accidental modification of creation, so the sacrament is not an accidental, extrinsic modification of a natural reality.

Even in the case of the unbaptized, the personal love which creates the state of marriage is in the present order of salvation graced and salvific.⁶³ Marriage does not become an event of grace only when it becomes a sacrament. Thus, just as faith can exist before baptism, so is marriage graced before it becomes a sacramental event of grace.⁶⁴ Within this theological perspective, marriage cannot be considered a secular reality.

⁶¹ Caffarra, "Création" 270.

⁶² *Ibid.* 270-74. For the relationship between nature and grace, see Henri de Lubac, *The Mystery of the Supernatural* (New York: Herder and Herder, 1967) chap. 4; also his *A Brief Catechesis on Nature and Grace* (San Francisco: Ignatius, 1984); Karl Rahner, *Nature and Grace* (New York: Sheed and Ward, 1964) chap. 5.

⁶³ Rahner, "Marriage As a Sacrament" 205.

⁶⁴ *Ibid.* 274-68.

The present discussion presupposes that there are two ways to marry, but in fact there is only one—marriage as a participation in the covenant. If a baptized person refuses to ratify his or her baptism and wishes to return to a natural order, this person simply cannot do so, because such an order does not exist.⁶⁵ If this were not the case, sacramentality would be an accidental modification left to the decision of the subject; but we have seen that this is not possible within the economy of salvation as it has been revealed to us. A person can explicitly reject the sacramental order, but this is also to reject the economy of salvation. Thus it is an ecclesial impossibility to offer an alternative form of marriage to the baptized in spite of the pastoral solution attempted in Autun.

CONCLUSION

I believe that the key to the solution of the problem raised by the baptized nonbeliever 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. A marriage entered into with an intention to indissolubility, fidelity, and openness to children comprises a sacramental marriage for the baptized person. Thus I agree with Louis de Nauroi, who affirms that the religious marriage is valid when the prevailing will is to marry, even if the couple would wish to exclude the sacrament (rather a sacramental marriage than no marriage at all). It is null if the prevailing will is to exclude the sacrament (rather no marriage than a sacramental marriage). It is also null when the nonbelieving person simulates the desire to have the canonical status of a married person.⁶⁶ De Nauroi holds that when two baptized persons request religious marriage, the Church cannot refuse it to them, and account does not have to be made of their faith. A couple do not choose between sacramentality and something else. The choice of marriage includes the choice of sacramentality.

The problem of the validity of marriages attempted by baptized persons without faith with defect of form remains. The decree *Tametsi* (1563) declares these marriages to be invalid. One pastoral solution to the problem of the marriage of nonbelievers would be to dispense from the canonical form or to reduce it to its minimum of the exchange of vows

⁶⁵ Caffarra, "Création" 280.

⁶⁶ De Nauroi, "Le mariage des baptisés" 70–71.

before a priest and two witnesses.⁶⁷ This is admittedly a minimal solution, but it provides for a valid marriage while avoiding the anomaly of a liturgical ceremony that has no meaning for those participating in it. Sacramentality would not be something perhaps later assumed when a more explicit faith is realized, but would exist on the initiative of Christ. The sacrament of marriage should ideally be an explicit manifestation of the relationship of Christ and his Church in the context of a professed faith. It is a mistake, however, to insist on this at the expense of the inseparability of contract and sacrament.

⁶⁷ In this discussion concerning whether the law should continue to impose the canonical form for validity, Ladislav Órsy (*Marriage in Canon Law* 282) suggests that it may be prudent to find a canonical way of recognizing the marriages of baptized unbelievers as valid unions without trying to compel them to go through the canonical form. His position, however, differs from the one presented here, since he would not consider these marriages to be sacramental.