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Matrimony between Christians: Historical Dynamics and Canonical Perspective

Abstract: Firstly, the article provides basic information on the biblical teaching on marriage. While the Old Testament sees marriages with numerous offspring as a high value, the New Testament shows a tendency towards celibacy, be it on account of imitating Christ or for the expectation of imminent *parousia*. The most important author amongst the Fathers of the Church, St. Augustine, made a significant contribution towards forming the Catholic doctrine on marriage upon which drew even the medieval scholastics. In the modern age, the Church complained about the countries which forced their concept of marriage on the Catholic faithful. Even today, the Catholic Church is against the breakdown of marriage by means of divorce. Since the Second Vatican Council, however, there has been a development, for example, as regards contracting marriages between Christians of Catholic and non-Catholic confessions. Prior to the publication of the 1983 Code of Canon Law, this was expressed in the *motu proprio* of Paul VI *Matrimonia mixta*, whose regulation did not have to be changed substantially in the Code.

Keywords: marriage, celibacy, Christianity, Church, Gospels, epistles, offspring, Reformation, Eastern Orthodox Church, council, sacrament, contract, partner, Code of Canon Law

1. Matrimony in the perspective of the Old and New Testaments

“Marriage should be honoured by all, and the marriage bed kept pure, for God will judge the adulterer and all the sexually immoral.”¹ In

¹ Heb 13:4.

this verse, the author of the Epistle to the Hebrews expresses the high respect that the institution of marriage has enjoyed in the Church since the beginning. Clearly, Christianity was not an ascetic spiritual movement which would oppose marriage or the procreation of offspring. However, unlike the Old Testament concept, marriage in the Christian perspective did not represent an indispensable value for achieving a genuinely fulfilled life and thus realizing God's intentions by procreating abundant offspring. This extraordinary value of offspring and the integration of family life into salvation history of the chosen people is aptly expressed in the promise found in one of the psalms: "Your wife will be like a fruitful vine within your house; your children will be like olive shoots around your table. Yes, this will be the blessing for the man who fears the Lord. May the Lord bless you from Zion; may you see the prosperity of Jerusalem all the days of your life. May you live to see your children's children — peace be on Israel."²

Marriage thus became a unique means to circumvent one's own death since a man goes on living in his — that is, especially male — descendants. With the emergence of the faith in the resurrection of the dead, values of earthly life are relativized, including those related to numerous offspring.³ This is testified by the martyrdom of the seven brothers and their mother in the second book of the Maccabees. The mother regrets neither the loss of her sons tortured to death, nor her own life. The sons are admonished with the following words: "I do not know how you came into being in my womb. It was not I who gave you life and breath, nor I who set in order the elements within each of you. Therefore the Creator of the world, who shaped the beginning of man and devised the origin of all things, will in his mercy give life and breath back to you again, since you now forget yourselves for the sake of his laws."⁴

The Evangelists testify that in his doctrine and practice Jesus himself disregards or even demands breaking natural bonds in the family. The disciples called in this way immediately leave their father: "And immediately he called them; and they left their father Zeb'edee in the boat with the hired servants, and followed him."⁵ Nevertheless, Jesus with his disciples also do not shun being present at a wedding: "On the third day

² Ps 128(127):3—6.

³ "The hope in afterlife existence slowly germinates in the post-exile period: it grows from the very faith in Yahwe, and is thus no heterogeneous complement to it. Explicitly, the idea of bodily resurrection, however, appears in apocalyptic literature (around 250 BC)." G. L. MÜLLER: *Katholische Dogmatik für Studium und Praxis der Theologie*. Freiburg im Breisgau 1996, p. 537.

⁴ 2 Macc 7:22—23.

⁵ Mk 1:20.

there was a marriage at Cana in Galilee, and the mother of Jesus was there, Jesus also was invited to the marriage, with his disciples.”⁶ Jesus teaches the indissolubility of marriage: the preserved *logion* “What therefore God has joined together, let not man put asunder”⁷ is an extraordinary testimony of his very radical and totally autonomous interpretation of the Torah.⁸ However, the absence of family bonding means a more radical discipleship linked to an imperishable reward: “And every one who has left houses or brothers or sisters or father or mother or children or lands, for my name’s sake, will receive a hundredfold, and inherit eternal life.”⁹

A free decision to live without a woman is the most radical choice: “For there are eunuchs who have been so from birth, and there are eunuchs who have been made eunuchs by men, and there are eunuchs who have made themselves eunuchs for the sake of the kingdom of heaven. He who is able to receive this, let him receive it.”¹⁰ On the one hand, we are surprised by the radicalism of Jesus’s interpretation of the Torah’s provision on the indissolubility of marriage, on the other hand, the same Jesus seems to have a profound appreciation for celibacy/wifelessness or eunuchism, which tended to be rather despised at that time.

Paul expands on this teaching of Jesus and calls wifelessness a spiritual gift, that is, a *charisma*. In the First Epistle to the Corinthians the apostle first presents the ideal¹¹: “Now concerning the matters about which you wrote. It is well for a man not to touch a woman.”¹² He himself follows this lifestyle and is grateful for it: “I wish that all were as I myself am. But each has his own special gift from God, one of one kind and one of another.”¹³ Especially, the expectation of the imminent *parousia* leads to relativising the need for marriage and offspring: “I mean, brethren, the appointed time has grown very short; from now on, let those who have wives live as though they had none, [...] for the form of this world is pass-

⁶ Jn 2:1b—2.

⁷ Mk 10:9; Mt 19:6.

⁸ “Thus he comes out as a unique teacher of Law, yes, as a companion and lawgiver articulating the intention of the law which is more than its written form. What matters is not just the prohibitions but, indeed, the very meaning of marriage as the fundamental element of humanity.” P. POKORNÝ: *Evangelium podle Marka*. Praha 2016, p. 179.

⁹ Mt 19:29; Lc 14:26.

¹⁰ Mt 19:12.

¹¹ “Jesus calls spiritual wifelessness a mystery which defies ordinary conceptualisation. In Cor 7:7, 1.7 Paul understands it as a charisma, a non-deserved gift, which — as a gift — should orient people towards heaven in a state of awe.” K. BERGER: *Kommentar zum Neuen Testament*. Gütersloh 2011, p. 96.

¹² 1 Cor 7:1b.

¹³ 1 Cor 7:7.

ing away.”¹⁴ Nevertheless, Paul makes clear the path of marriage is not just acceptable, it is desirable in relation to the natural need to satisfy the sexual urge¹⁵: “But because of the temptation to immorality, each man should have his own wife and each woman her own husband.”¹⁶

2. Testimony from the Patristic Period

In the beginning of the 2nd century, we find bishop and martyr Ignatius of Antiochia defending marriage which was still the form of life of numerous representatives of the Church at that time. He defends it against wifelessness which he holds dear, however, not at the expense of the unity of the Church: “If anyone can remain chaste in honour of the Saviour’s flesh, then let him do so without boasting. For if he boasts of it, he is lost; and if he thinks himself for this reason better than the bishop, he is lost.”¹⁷ Whenever marriage is contracted, the intervention of the bishop is sought for: “Those who marry should be united with the bishop’s approval, so that the marriage may follow God’s will and not merely the prompting of the flesh. Let everything be done for God’s honour.”¹⁸ However, Ignatius mentions no further details as to why the bishop had only expressed his approval for the marriage being contracted according to the then valid civil law, or whether such an approval took the form of a specifically Christian nuptial ceremony.

It is also evident that Ignatius writes his epistle at a time in which the life of Christian communities started to be endangered by the increasing propaganda of the docetic form of gnosis. The infiltration of the gnostic movements became apparent in both doctrine and practice. The denial of Jesus’s real bodily suffering led to rejecting the Eucharistic community and to despising all things corporal, including the institution of marriage. This had two, seemingly totally opposite consequences. Marriage was either rejected as a lifestyle oriented towards carnal intercourse, or despis-

¹⁴ 1 Cor 7:29b, 31b.

¹⁵ “Paul neither defines marriage as an economic unity, nor does he refer to the strategic link between family and the procreation of offspring. In fact, he focuses on the right placing of sexuality: in marriage, sexuality finds its direction, which — as a consequence — makes it possible to avoid fornication and prostitution.” H. LEPPIN: *Die frühen Christen. Von den Anfängen bis Konstantin*. München 2018, p. 265.

¹⁶ 1 Cor 7:2.

¹⁷ IgnPol 5,2a.

¹⁸ Ibidem.

ing corporeality resulted in a complete lack of restraint and led to orgies. The Epistle of Jude warns against this tendency¹⁹: “But you must remember, beloved, the predictions of the apostles of our Lord Jesus Christ; they said to you, ‘In the last time there will be scoffers, following their own ungodly passions. It is these who set up divisions, worldly people, devoid of the Spirit’.”²⁰

However, Paul’s First Epistle to the Thesallonians, apparently the oldest piece of Christian literature, presents a normative form of marriage amongst Christians: “For this is the will of God, your sanctification: that you abstain from immorality; that each one of you know how to control his own body in holiness and honour, not in the passion of lust like heathen who do not know God.”²¹ Succumbing to physical lust means relapsing into pagan animality, even when containing various speculative doctrines which seem compatible with Christianity, or, indeed, seem a higher form thereof.²² The apostle gives a clear warning against non-marital sexual intercourse, since it completely contradicts the faith Christians received: “Shun immorality. Every other sin which a man commits is outside the body but the immoral man sins against his own body. Do you not know that your body is a temple of the Holy Spirit within you, which you have from God? You are not your own; you were bought with a price. So glorify God in your body.”²³

Ignatius of Antioch insists that marriage must not be contracted without the consent of the bishop; in the beginning of the 3rd century, Tertullian — in a letter addressed to his wife — discusses the benefits of a marriage in which the spouses share the faith: “How shall we ever be able adequately to describe the happiness of that marriage which the Church arranges, the Sacrifice strengthens, upon which the blessing sets a seal, at which angels are present as witnesses, and to which the Father gives His consent? For not even on earth do children marry properly and legally without their fathers’ permission. How beautiful, then, the marriage of two Christians, two who are one in hope, one in desire, one in the way of life they follow, one in the religion they practice. They are as brother and sister, both servants of the same Master. Nothing divides them, either

¹⁹ “The theomaniacs are rebuked for three forms of destruction. They defile the body, disrespect the authority and despise supernatural powers.” P.-A. SEETHALER: *První a druhý list Petrušv. List Judův*. Kostelní Vydří 2001, p. 117.

²⁰ Jude 17—18.

²¹ 1 Thess 4:4—5.

²² “The founders of various gnostic sects wanted to raise Christianity from the level of faith to the level of science and thus managed to acquire an existential right for it in the Hellenistic world.” J. QUASTEN: *Patrologia. I primi due secoli (II-III)*. Casale Monferato 2000, p. 226.

²³ 1 Cor 6:18—20.

in flesh or in spirit. They are, in very truth, two in one flesh; and where there is but one flesh there is also but one spirit. They pray together, they worship together, they fast together; instructing one another, encouraging one another, strengthening one another. Side by side they visit God's church and partake of God's Banquet; side by side they face difficulties and persecution, share their consolations. They have no secrets from one another; they never shun each other's company; they never bring sorrow to each other's hearts. Unembarrassed they visit the sick and assist the needy. They give alms without anxiety; they attend the Sacrifice without difficulty; they perform their daily exercises of piety without hindrance. They need not be furtive about making the Sign of the Cross, nor timorous in greeting the brethren, nor silent in asking a blessing of God. Psalms and hymns they sing to one another, striving to see which one of them will chant more beautifully the praises of their Lord. Hearing and seeing this, Christ rejoices. To such as these He gives His peace. Where there are two together, there also He is present; and where He is, there evil is not."²⁴

While Paul in the First Epistle to the Corinthians seems to suggest that marriage for the "avoidance of fornication" serves primarily for satisfying bodily desire (*remedium concupiscentiae*), Tertullian provides an amazing account and a complex description of a real bodily and spiritual unity of the spouses. The ecclesiastical ceremony represents the beginning of marriage (*matrimonium in fieri*) and the prerequisite of their intimate and an all-round experience of the marriage bond (*matrimonium in facto esse*). Sharing the Christian faith finds its demonstration also in the mutual loving relationship of the spouses, that is, a man and a woman, who at that time still had an inferior position.

Although the position of the woman in patriarchal Roman family fell very short of the contemporary concept of the equality of the spouses, Christianity indisputably taught considerateness of men towards women: "As for the man for we can apply this example to him, also: lay aside the inordinate emotions of your heart and the rudeness of your manners when you meet your patient wife. Get rid of your obstinacy when your gentle consort offers you her love. You are not a master, but a husband. You have not acquired perchance a handmaid, but a wife. God designed you to be a guide to the weaker sex, not a dictator. Be a sharer in her activities. Be a sharer in her love."²⁵ Mutual equality in marriage was already aptly

²⁴ TERTULLIANUS: *Ad Uxorem* 7,84, http://www.tertullian.org/works/ad_uxorem.htm [accessed 4.10.2023].

²⁵ AMBROSIUS: *Hexameron* V,7,18—19, https://archive.org/stream/fathersofthechur027571mbp/fathersofthechur027571mbp_djvu.txt [accessed 4.10.2023].

expressed by Paul²⁶: “The husband should give to his wife her conjugal rights, and likewise the wife to her husband. For the wife does not rule over her own body, but the husband does; likewise the husband does not rule over his own body, but the wife does.”²⁷

An important contribution for further formation of the Christian doctrine on marriage came with Augustine: his work “Of the Good of Marriage” has had a profound impact on the Western church (*Wirkungsgeschichte*): “Therefore the good of marriage throughout all nations and all men stands in the occasion of begetting, and faith of chastity: but, so far as pertains unto the People of God, also in the sanctity of the Sacrament (*in sanctitate sacramenti*), by reason of which it is unlawful for one who leaves her husband, even when she has been put away, to be married to another, so long as her husband lives, no not even for the sake of bearing children: and, whereas this is the alone cause, wherefore marriage takes place, not even where that very thing, wherefore it takes place, follows not, is the marriage bond loosed, save by the death of the husband or wife.”²⁸

3. The Middle Ages and the Reformation

Augustine’s teachings on the three goods of marriage (*tria bona*), namely, the good of offspring (*bonum prolis*), the good of fidelity (*bonum fidei*) and the good of the sacrament (*bonum sacramenti*) was adopted by scholastic theology and in this way it became part of the official church doctrine in the High Middle Ages. In fact, it was especially important for defining the sacramentality of marriage. The key terminological incentive for this theological development was undoubtedly the term “mystery” (*mystérion*) in the Epistle to the Ephesians, which was rendered into biblical Latin with the word *sacramentum*, which was, indeed, the same word used for the sacraments: “This is a great mystery, and I mean in reference to Christ and the church.”²⁹ Moreover, Augustine himself evidently

²⁶ “Paul demands strict equality and justice in male-female relations (*iustitia distributiva*). [...] Even at the expense of repeating himself, Paul keeps emphasising that requirements for men and women are the same.” K. BERGER: *Kommentar zum Neuen Testament...*, p. 585.

²⁷ 1 Cor 7:3—4.

²⁸ AUGUSTINUS: *De bono coniugali* 24,32, <https://www.newadvent.org/fathers/1309.htm> [accessed: 4.10.2023].

²⁹ Eph 5:32.

used the term *sanctitas sacramenti* to express the indissolubility of the marriage bond.

In 1439, at the late medieval Council of Florence, whose goal was to re-establish the unity of the See of Peter with the oriental churches, the Armenian church was presented with an obligatory schema on the sacrament of marriage³⁰: “The seventh is the sacrament of matrimony, which is a sign of the union of Christ and the church according to the words of the apostle: This sacrament is a great one, but I speak in Christ and in the church. The efficient cause of matrimony is usually mutual consent expressed in words about the present. A threefold good is attributed to matrimony. The first is the procreation and bringing up of children for the worship of God. The second is the mutual faithfulness of the spouses towards each other. The third is the indissolubility of marriage, since it signifies the indivisible union of Christ and the church. Although separation of bed is lawful on account of fornication, it is not lawful to contract another marriage, since the bond of a legitimately contracted marriage is perpetual.”³¹

The Protestant Reformation was gaining ground at a time in which the Church had already been holding the doctrine on the seven sacraments of the New Testament. However, the Reformers kept essentially only two of them, namely baptism and the Lord’s Supper. Using the arguments from the Bible, they attacked the Church doctrine. For instance, Luther declared the following: “Because matrimony has existed since the beginning of the world and still exists also at the infidels, there is no reason to call matrimony a sacrament of the New Testament. Since the marriages of the forefathers were no less holy than ours, the marriages of the infidels are no less real than those concluded by the faithful, and yet the marriages of the infidels are not considered sacramental. Moreover, there are godless people amongst the faithful who are even more godless than the pagans.”³²

For the Council of Trent thus the denial of the sacramental nature of marriage accounts for disrespecting the doctrine of the Church: “If anyone says that matrimony is not truly and properly one of the seven sacraments of the evangelical law, instituted by Christ the Lord, but has been devised by men in the Church and does not confer grace, let him

³⁰ “Since this was just the work of the theologians, which — apart from other things — also lacked the psychological bond with the clergy, the monks and the Christian faithful of the East, this union failed.” K. SCHATZ: *Všeobecné koncily. Ohniska církevních dějin* [The Universal Councils: the Focal Points of Church History]. Brno 2014, p. 148.

³¹ G. ALBERIGO et al.: *Conciliarum oecumenicorum decreta*. Bologna 2013, p. 550.

³² M. LUTHER: “Die Ehe als Schöpfungswirklichkeit — weder Zeichen noch Verheißung.” In: G. KOCH: *Sakramentenlehre II*. Graz 1991, p. 278.

be anathema (*anathema sit*).”³³ While the Council of Trent has special importance for canon law because of the ground-breaking regulation on the compulsory canonical form of marriage, for the fathers of the council the prerequisite of all the introduced disciplinary regulations was doctrinal clarity. Although the churches emerging from the Reformation do not use the terminology of the sacraments or sacramentality, however, that does not mean that the supernatural character of the marital cohabitation blessed by God is dismissed.³⁴

The Reformers, however, did not just deny the sacramentality of marriage, they also attacked consecrated life: for them, it was just a “human invention.” The Augsburg Confession, for instance, declares the following: “That is what true perfection and true worship consists of, not in begging or in a black or gray cowl, etc. But the common people get many pernicious ideas from the false praise of the monastic life, when they hear people praising the single life without any restraint. For it follows that one cannot get married without a burdened conscience. When the common man hears that only mendicants can be perfect, how is he supposed to know that he may have property and do business without sin? When the people hear that it is only a ‘counsel’ not to take revenge, it follows that some will mistakenly imagine it is not sin to exercise vengeance outside of its exercise by officials [...] A person can also read plenty of examples where some have abandoned wife and children and their administrative office and hidden themselves away in a cloister. They did it, they said, to flee from the world and to seek the kind of life that would please God more than other kinds of lives. They were not even able to recognize that one should serve God in the commands that he has given and not in the commands that are of human invention.”³⁵ Nevertheless, the Council of Trent confirmed the paradox that those who follow evangelical counsels aim for higher goals, although the actual consecration — unlike marriage —

³³ CONCILIIUM TRIDENTINUM: *Matrimonii perpetuum*, Canon 1. In: I. A. HRDINA: *Dokumenty Tridentského koncilu. Latinský text a překlad do češtiny* [The Documents of the Council of Trent: Latin text and Czech Translation]. Praha 2015, p. 204.

³⁴ “Marriage is a God-given cohabitation of a man and a woman [...] An evangelical marriage is part of the church: it belongs to the community of the saints and is called to build up spiritual home and strengthen the faith via the Word of God, the sacraments and prayers.” V. VOLNÝ: “Obřady uzavírání manželství v evangelických-luterských církvích.” In: W. BUGEL et al.: *Obřady manželství v různých liturgických tradicích* [The Rites of Marriage in Various Liturgical Traditions]. Olomouc 2013, pp. 151—156.

³⁵ “Augsburské vyznání.” In: *Čtyři vyznání. Vyznání augsburské, bratrské, helvetské a české se čtyřmi vyznáními staré církve a se čtyřmi články pražskými* [Four Confessions: the Augsburg Confession, the Confession of the Brethern, the Helvetian Confession and the Czech Confession, including the Four Articles of Prague]. Ed. R. ŘÍČAN. Praha 1951, p. 110.

does not constitute a sacrament: “If anyone says that the married state excels the state of virginity or celibacy, and that it is better and happier to be united in matrimony than to remain in virginity or celibacy, let him be anathema.”³⁶ It may be suitable here to point out that Catholicism shares this high esteem for consecrated life with the Eastern Orthodox Church.³⁷

For the Eastern Orthodox Church, the concept of the seven sacraments elaborated by scholastic philosophy is alien; however, its liturgical books show they understand the sacramentality of all the seven sacraments taught in the Catholic Church. Thus the Eastern Orthodox Church is ready to accept the sacramentality of marriage as well as other six sacraments (or holy *mysteria*); however, it also recognizes the fact that this doctrine was not dogmatized in the first millennium of the undivided Church.³⁸ Clearly, the scholastic doctrine needed to come to terms with numerous objections to the sacramentality of marriage. In his *Summa Theologiae*, St. Thomas Aquinas deals with the objection of the external natural element — as it is the case with other sacraments in relation to bread, wine, water or oil: “The sacrament of Matrimony, like that of Penance, is perfected (*perficitur*) by the act of the recipient. Wherefore just as Penance has no other matter than the sensible acts themselves, which take the place of the material element, so it is in Matrimony.”³⁹

³⁶ CONCILIUM TRIDENTINUM: *Matrimonii perpetuum*, Canon 10. In: I. A. HRDINA: *Dokumenty Tridentského koncilu...*, p. 206.

³⁷ “Monastic life has always been and still is a crucial force in the spiritual life of the Church and the society. There have always been centres of education where great personalities were raised; centres of culture and the arts, centres of charity and social assistance. Many authors claim monastic life bloomed in times of civilization crises and deteriorated thereafter. In fact, one may claim such a life was a means of protest against the decline of the spiritual civilisation of the given age.” P. I. BOUMIS: *Kanonické právo Pravoslávnej Cirkvi* [The Canon Law of the Eastern Orthodox Church]. Prešov 1997, p. 137.

³⁸ “In the Eastern Orthodox Church, there is a tradition to talk about seven mysteries: baptism, chrismation, holy communion (Eucharist), repentance (confession), marriage, holy orders and unction (anointing the sick). This tradition is not original and cannot be traced back to the early Christian tradition. In fact, it was adopted from the Catholic Church in the 13th century.” P. KORMANÍK: *Základné sväté tajiny pravoslávnej Cirkvi* [The Fundamental Holy Mysteries of the Eastern Orthodox Church]. Prešov 1996, pp. 7—8.

³⁹ THOMAS AQUINAS: *Summa Theologica*, Supplement, q. 42a, 1c; ad I; ad II, <https://www.newadvent.org/summa/5042.htm> [accessed 4.10.2023].

4. The development in the modern age

Another major question is the relation between the sacrament of marriage and the rite used to conclude the marriage contract. The effort to sever these two things and to grant the state the sole competence in relation to concluding the contract; or to see the Church as just providing supernatural grace was most succinctly expressed by Pope Leo XIII. This problem area became topical at a time in which a great number of countries had already introduced civil marriage, either obligatory or facultative. The encyclical *Arcanum* of Leo XIII (1880) teaches the reason to conclude the marriage contract (*ratio contractus*) is the same as the reason to accept the sacrament (*ratio sacramenti*): “Christ, therefore, having renewed marriage to such and so great excellence, commended and entrusted *all the discipline bearing upon these matters* to His Church. The Church, always and everywhere, has so used her power with reference to the marriages of Christians that men have seen clearly how it belongs to her as of native right; not being made hers by any human grant, but given divinely to her by the will of her Founder. [...] Let no one, then, be deceived by the distinction which some civil jurists have so strongly insisted upon — the distinction, namely, by virtue of which they sever the matrimonial contract from the sacrament, with intent to hand over the contract to the power and will of the rulers of the State, while reserving questions concerning the sacrament of the Church. A distinction, or rather severance, of this kind cannot be approved; for certain it is that in Christian marriage the *contract is inseparable from the sacrament*, and that, for this reason, the contract cannot be true and legitimate without being a sacrament as well. For Christ our Lord added to marriage the dignity of a sacrament; but marriage is the contract itself, whenever that contract is lawfully concluded.”⁴⁰ Although this concept was disputed in the Catholic Church in the modern age, the valid Code of Canon Law keeps it: “For this reason, a valid matrimonial contract cannot exist between the baptized without it being by that fact a sacrament.”⁴¹

In the 19th century, various countries gradually started to tolerate divorces. Paul himself concedes that some marriages can be separated, while still emphasizing that it is a mere concession which does not come from the mouth of the Lord of the Church: “To the rest I say, not the Lord, that if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her. If any woman has a hus-

⁴⁰ LEO XIII: “*Arcanum divinae sapientiae.*” *Acta Sanctae Sedis* 12 (1879), p. 394.

⁴¹ CIC/1983, Canon 1055 § 2.

band who is an unbeliever, and he consents to live with her, she should not divorce him. 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. But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace. Wife, how do you know whether you will save your husband? Husband, how do you know whether you will save your wife?"⁴² The historical impact of this text has direct bearing on the valid canon law.⁴³ For instance, the canonical requirement of the interrogations fully corresponds to the meaning of Paul's text: "For the baptized party to contract a new marriage validly, the non-baptized party must always be interrogated whether: 1) he or she also wishes to receive baptism; 2) he or she at least wishes to cohabit peacefully with the baptized party without affront to the Creator (*sine contumelia Creatoris*)."⁴⁴ In the Catholic Church, the absolute indissolubility of sacramental and consummated marriage of two baptized faithful⁴⁵ is not just an ideal, it is also a legal norm. Its content is reflected in the canonical impediment of an existing marriage bond (*impedimentum vinculi*): "A person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage."⁴⁶

While the Eastern Orthodox Church tolerates divorce and allows a remarriage under stricter rules, the Eastern churches united with the Catholic Church accept the Catholic doctrine on indissolubility. The Catholic Church insists on the indissolubility, however, it respects the liturgical or theological concept of the sacrament of matrimony as it exists in the united Eastern churches. The comparison of the Code of Canon Law of the Latin Church and the Code of Canons of Oriental Churches shows that there co-exist two quite different concepts of the sacrament of matrimony. In the Latin Church, the sacrament is administered by the baptized prospective spouses, while the one assistant is understood as someone who is "present, asks for the manifestation of the consent of the contract-

⁴² 1 Cor 7:12—16.

⁴³ "Here Paul shows great tolerance and a big heart: he respects the freedom of the pagan partner. It is his or her decision whether to continue the marriage or not. In the latter case, the Christian partner has the right to contract another marriage. In today's ecclesiastical law, this regulation still exists (*privilegium paulinum*). The Christian partner should not be pressing on the continuation of marriage, especially with the false hope that the other one may be converted or even saved." F.-J. ORTKEMPER: *První list Korintánům* [The First Epistle to the Corinthians]. Kostelní Vydří 1999, p. 69.

⁴⁴ CIC/1983, Canon 1144 § 1, 1° and 2°.

⁴⁵ Cf. CIC/1983, Canon 1061.

⁴⁶ CIC/1983, Canon 1085 § 1.

ing parties, and receives it in the name of the Church.”⁴⁷ The assisting person does not necessarily have to be a priest, it may also be a deacon or a lay person.⁴⁸ The oriental churches, however, understand the role of the assisting person as someone blessing the marriage through epiclesis, that is, by invoking the Holy Spirit. Epiclesis is, however, an act reserved for priests.⁴⁹ Thus the officiating person is indisputably also the real administrator of marriage. Therefore, such a blessing can only be performed by a cleric with priestly ordination: “Only those marriages are valid which are celebrated with a sacred rite, in the presence of the local hierarch, local pastor, or a priest who has been given the faculty of blessing the marriage by either of them, and at least two witnesses.”⁵⁰

The Catholic canon law went as far as to refer to the canon law of the non-Catholic party: “Even if only one party is Catholic, the marriage of Catholics is regulated not only by divine law but also by canon law with due regard for the competence of civil authority concerning the merely civil effects of such a marriage. 2. In addition to divine law, marriage between a Catholic and a baptized non-Catholic is also regulated by: (1) the law proper to the Church or ecclesial community to which the non-Catholic belongs, if that community has its own matrimonial law; (2) the law that binds the non-Catholic, if it is an ecclesial community, if proper matrimonial law is lacking.”⁵¹ The reference to the divine right, represented especially by the indissolubility of marriage is the crucial one, since such a strict legal norm is applied only in the Catholic Church. Other legal requirements may be applied flexibly: “If the Church must judge the validity of a marriage between baptized non-Catholics [...] with regard to the form of the celebration, the Church recognizes any form prescribed or admitted by the law to which the parties were subject at the time of the celebration of the marriage, provided that the consent be expressed in a public form and, when at least one of the parties is a baptized member of an Eastern non-Catholic Church, the marriage celebrated with a sacred rite.”⁵² Ecumenical openness and theological integrity are

⁴⁷ Cf. CIC/1983, Canon 1108 § 2.

⁴⁸ Cf. CIC/1983, Canon 1108 § 1, Canon 1112.

⁴⁹ “The expression of this concept of marriage we may call pneumatological is the necessity of the presence of a priest or a bishop who not only assist during the sacramental rite of marriage (by taking the matrimonial consent), but also invoke the Holy Spirit on the married couple. On the contrary, the valid Latin code sees the priest as a *qualified witness* who takes the matrimonial consent administered by the spouses themselves.” J. DVOŘÁČEK: *Východní kanonické právo* [The Canon Law in the Oriental Churches]. Praha 2014, pp. 104–105.

⁵⁰ Cf. CCEO, Canon 828 § 1.

⁵¹ CCEO, Canon 780 § 2, 1° and 2°.

⁵² CCEO, Canon 781 2°.

thus intertwined. If the Eastern churches, both Catholic and non-Catholic, to which this regulation may be applied, know no other form of contracting marriage than the one with a priestly blessing; the Catholic Church, however, respects the necessity of the sacred rite and requires it.

The churches emerging from the Reformation have no obligatory canonical form of marriage and some of them do not even have their own legal regulations as regards solemnizing marriages; thus, they presuppose their faithful to contract only civil marriages. In these cases, the Catholic Church respects the internal regulations or traditions of these churches when making judgements about such marriages. However, since the adoption of the decree *Tametsi* of the Council of Trent, the Church has required their faithful to keep the solemn form of contracting their marriages: “Those who shall attempt to contract marriage otherwise than in the presence of the parish priest or of another priest authorized by the parish priest or by the ordinary and in the presence of two or three witnesses, the holy council renders absolutely incapable of thus contracting marriage and declares such contracts invalid and null, as by the present decree it invalidates and annuls them.”⁵³ The valid Code transforms this obligation of Catholic Christians into a canonical formulation: “Only those marriages are valid which are contracted before the local ordinary, pastor, or a priest or deacon delegated by either of them, who assist, and before two witnesses according to the rules expressed in the following canons and without prejudice to the exceptions mentioned [...]”⁵⁴

When contracting a marriage of a Catholic party with a non-Catholic party of an Eastern rite, the Catholic Church requires a priestly blessing, which would not be necessary for a Catholic party of the Western rite: “The prescripts of can. 1108 are to be observed for the form to be used in a mixed marriage. Nevertheless, if a Catholic party contracts marriage with a non-Catholic party of an Eastern rite, the canonical form of the celebration must be observed for liceity only; for validity, however, the presence of a sacred minister is required and the other requirements of law are to be observed.”⁵⁵ In the case of a marriage between a Catholic party and a party from one of the reformation churches, there can also be issues based on the church affiliation of one of the prospective spouses to some of the reformation churches, which allow to apply dispensation in the case of grave difficulties⁵⁶: “If grave difficulties hinder the observance

⁵³ CONCILIIUM TRIDENTINUM: *Tametsi*, caput 1. In: I. A. HRDINA: *Dokumenty Tridentinského koncilu...*, p. 208.

⁵⁴ CIC/1983, Canon 1108 § 1.

⁵⁵ CIC/1983, Canon 1127 § 1.

⁵⁶ “The legislator does not specify what these grave difficulties are; however, they must either concern situations in which the non-Catholic party or his/her family has

of canonical form, the local ordinary of the Catholic party has the right of dispensing from the form in individual cases, after having consulted the ordinary of the place in which the marriage is celebrated and with some public form of celebration for validity [...].”⁵⁷

5. The outcome of the legal regulations of mixed marriages

If the legislator admits the very canonical form prescribed by the Catholic Church may be a problem in contracting a marriage (*matrimonium in fieri*), it proves that confessionally mixed marriages also bring along various difficulties. Evidently, confessional differences may become a risk element for marital cohabitation (*matrimonium in facto esse*).⁵⁸ In the post-exile period of the People of God, the Israelites ran the risk of mixed marriages with women from different nations that do not respect the Lord God: “In those days also I saw the Jews who had married women of Ashdod, Ammon, and Moab; and half of their children spoke the language of Ashdod, and they could not speak the language of Judah, but the language of each people. And I contended with them and cursed them and beat some of them and pulled out their hair; and I made them take oath in the name of God, saying, ‘You shall not give your daughters to their sons, or take their daughters for your sons or for yourselves. Did not Solomon king of Israel sin on account of such women?’”⁵⁹

For the Catholic Church (unlike for Israel), ethnic identity has never been a decisive issue; the real issue was belonging to a concrete confession. The 1917 Code of Canon Law summed up the attitude of the Catholic Church towards the risk for the Catholic party in marriage as in a severe formulation of the matrimonial impediment of mixed religion (*mixta religio*): “The Church most severely forbids everywhere marriages

grave objection towards the form required by the Catholic Church, or one of the prospective spouses experiences a grave conflict in his/her conscience which cannot be solved otherwise.” L. SABBARESE: *Il matrimonio nell’ordine della natura e della grazia. Commento al Codice di Diritto Canonico Libro IV, Parte I, Titolo VII*. Città del Vaticano 2016, p. 345.

⁵⁷ CIC/1983, Canon 1127 § 2.

⁵⁸ “It should be openly admitted that the Church does not favour such marriages because the drama of division amongst Christians is thus transposed into the family founded on such a marriage. Practical experience shows such marriages suffer from frequent conflicts between the spouses on the issues of religion and faith which sometimes leads into expressions of lovelessness, or even religious indifference.” J. DUDA: *Katolícke manželské právo* [The Catholic Marriage Law]. Spišská Kapitula 1996, pp. 227—228.

⁵⁹ Neh 13:23—26a.

between two persons, one of whom is a Catholic and the other a member of a heretical or schismatic sect; if there is a danger of perversion for the Catholic party or the offspring, such a union is also forbidden by divine law.”⁶⁰ Evidently, this impediment was to be dispensed from only as long as there was a well-founded hope to keep the faith by the Catholic party.⁶¹ However, the guarantee for this was to be — paradoxically, the non-Catholic party: “the non-Catholic party guarantees to remove the danger of perversion from the Catholic party and both promise to baptize and educate their children in the Catholic faith.”⁶² The Code also imposed an automatic penal sanction (*latae sententiae*) on those who would dare to contract a mixed marriage without a prior dispensation: “Catholics who dare to contract a mixed marriage without ecclesiastical dispensation, are in fact barred from legal ecclesiastical acts and from the Sacraments, until they have obtained a dispensation from the Ordinary.”⁶³

A ground-breaking change in assessing confessionally different mixed marriages came only with the Second Vatican Council (1962—1965), which set the goal of restoring the unity of all Christians: “The restoration of unity among all Christians is one of the principal concerns of the Second Vatican Council. Christ the Lord founded one Church and one Church only. However, many Christian communions present themselves to men as the true inheritors of Jesus Christ; all indeed profess to be followers of the Lord but differ in mind and go their different ways, as if Christ Himself were divided. Such division openly contradicts the will of Christ, scandalizes the world, and damages the holy cause of preaching the Gospel to every creature.”⁶⁴

The post-conciliar legislation thus gradually derogated many of the norms of the earlier 1917 Code. In the field of confessionally mixed marriages, the process went from broadening the dispensational authority of

⁶⁰ CIC/1917, Canon 1060.

⁶¹ “The impediment *mixtae religionis* is *iusuris humani*, if there is not the danger of perverting the Catholic party or their offspring from the Catholic faith. If such a danger exists, the *ban* on marriage is given by divine law (can. 1060; cf. can. 1038, § 1), however, this does not lead to invalidity of such a marriage. As regards the dispensation of the impediment, the following needs to be said: if there is certainty that such perversion does not take place, a dispensation is possible and such marriage is permissible; if no guarantees have been given, such a marriage is valid but not legitimate.” K. HENNER: *Základy práva kanonického. Část druhá. Právo platné* [The Foundations of Canon Law: Part Two — the Valid Law]. Praha 1921, p. 240.

⁶² CIC/1917, Canon 1061 § 1, 2°.

⁶³ CIC/1917, Canon 2375.

⁶⁴ CONCILIIUM VATICANUM II: “Unitatis reintegratio,” 1,1. *Acta Apostolicae Sedis* [hereinafter: AAS] 57 (1965), p. 90.

the bishops towards the legislation of Paul VI, issued as a *motu proprio*.⁶⁵ In the introductory part, the pope expresses a balanced position of the Church between keeping faith on the side of their faithful and the right of every Catholic to choose the married state (*ius connubii*): “The Church is indeed aware that mixed marriages, precisely because they admit differences of religion and are a consequence of the division among Christians, do not, except in some cases, help in re-establishing unity among Christians. There are many difficulties inherent in a mixed marriage, since a certain division is introduced into the living cell of the Church, as the Christian family is rightly called. And in the family itself the fulfilment of the Gospel teachings is more difficult because of diversities in matters of religion, especially with regard to those matters which concern Christian worship and the education of the children. For these reasons the Church, conscious of her duty, discourages the contracting of mixed marriages, for she is the most desirous that Catholics be able in matrimony to attain to perfect union of mind and full communion of life. However, since man has the natural right to marry and beget children, the Church, by her laws, which clearly show her pastoral concern, makes such arrangements that on the one hand the principles of divine law be scrupulously observed and that on the other the said right to contract marriages be respected.”⁶⁶

The final and still valid regulation of mixed marriages came with the Code of Canon Law of 1983. As with Paul VI, John Paul II does not qualify mixed marriages as an impediment, but instead uses the construction of a ban, even though such a mild form can be a subject of criticism.⁶⁷

⁶⁵ PAULUS VI: “Matrimonia mixta.” AAS 62 (1970), pp. 257—263.

⁶⁶ Ibidem, p. 257.

⁶⁷ “If further difficulties and dangers in a marriage between partners of different confessions cannot be removed with a legal regulation, there are in principle two options to deal with such difficulties and dangers. For instance, if there is snow or ice which makes it dangerous to drive on the given road, one can ban the use of this road by putting in a prohibiting road sign. However, if the road is still being used, for example, because otherwise one would have to take a long and difficult bypass, one must look for other options. The prohibiting road sign may be replaced with a commanding one: this road may be used if further safety measures are taken, for example, by using anti-skid chains for driving in snow. However, instead of stressing special attention of those concerned, others should provide help by removing the snow or ice or alleviate the danger by using gritting substances for winter. Analogically, one may ask how to replace the ban on contracting marriage between a Catholic and a partner of a different confession with an appeal to those who are concerned to take preventive measures or — in conjunction with this — by imposing obligations to others, namely, the clerics and the ecclesiastical community to provide appropriate help to those concerned.” M. KAISER: “Ehe zwischen konfessionsverschiedenen Partnern.” In: *Ministerium iustitiae. Festschrift für Heribert Heinemann zur Vollendung des 60. Lebensjahres*. Eds. A. GABRIELS, H. J. F. REINHARDT. Essen 1985, pp. 316—317.

The obligation to keep the Catholic faith rest with the Catholic party (as in the *motu proprio*), the non-Catholic party does not need to provide any guarantees anymore: “the other party is to be informed at an appropriate time about the promises which the Catholic party is to make, in such a way that it is certain that he or she is truly aware of the promise and obligation of the Catholic party.”⁶⁸

6. Conclusions

While the indissolubility of the marital bond is still a firm constant of the Catholic canonical regulation of marriage, in many other aspects matrimonial law in the Church has been simplified and the disciplines loosened. Perhaps the most conspicuous example is the issue of mixed marriages. We only have to compare the code regulation on mixed marriages with the canonical regulation of the Trullan Council, “Fifth-Sixth Council” (*concilium quinisextum*): “An orthodox man is not permitted to marry a heretical woman, nor a orthodox woman to be joined to an heretical man. But if anything of this kind appear to have been done by any [we require them] to consider the marriage null and void, and that the marriage be dissolved. For it is not fitting to mingle together what should not be mingled, nor is it right that the sheep be joined with the wolf, nor the lot of sinners with the portion of Christ.”⁶⁹ Today, the legislator becomes progressively more aware of the fact that it is impossible to weigh down the consciences of the faithful with the burden of the ancient divisions in the Church for which they cannot be blamed.

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⁶⁸ CIC/1983, Canon 1125, 2°.

⁶⁹ “Pravidla šestého svatého všeobecného sněmu, cařihradského, jinak trullského, konaného ve sloupové síni císařského paláce,” rule 72. In: *Pravidla všeobecných a místních sněmů i sv. otců pravoslavné církve*. Praha 1955, p. 58.

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STANISLAV PŘIBYL

Mariage entre chrétiens: Dynamique historique et perspective canonique

Résumé

L'article présente des informations fondamentales sur l'enseignement biblique concernant le mariage. Alors que l'Ancien Testament considère les mariages avec une descendance nombreuse comme une grande valeur, le Nouveau Testament suggère davantage le célibat, que ce soit en raison de l'imitation du Christ ou de l'attente de la *parousie* imminente. Augustin, le plus important auteur parmi les Pères de l'Église, a apporté une contribution significative à la formation de la doctrine catholique sur le mariage, dont se sont inspirés les scolastiques médiévaux. À l'époque moderne, l'Église se plaignait des pays qui imposaient leur conception du mariage même aux fidèles catholiques.

Même aujourd'hui, l'Église catholique s'oppose à la dissolution du mariage par le divorce. Cependant, depuis le concile Vatican II, il y a eu des développements, par exemple en ce qui concerne les mariages entre chrétiens de confessions catholique et non-catholique. Avant la publication du Code de droit canonique de 1983, cela a été exprimé dans le *motu proprio* de Paul VI *Matrimonia mixta*, dont la réglementation n'a pas dû être significativement modifiée dans le Code.

Mots-clés: mariage, célibat, christianisme, Église, Évangiles, Épîtres, descendance, Réforme, Église orthodoxe orientale, concile, sacrement, contrat, partenaire, Code de droit canonique

STANISLAV PŘIBYL

Matrimonio tra cristiani: Dinamica storica e prospettiva canonica

Sommario

L'articolo presenta le informazioni di base sull'insegnamento biblico che riguarda il matrimonio. Mentre l'Antico Testamento considera i matrimoni con numerosa prole come un grande valore, il Nuovo Testamento suggerisce in misura maggiore il celibato, sia per l'imitazione di Cristo sia per l'attesa della prossima *parusia*. Sant'Agostino, il più importante autore tra i Padri della Chiesa, diede un contributo significativo alla formazione della dottrina cattolica sul matrimonio, da cui successivamente attinsero gli scolastici medievali. In epoca moderna, la Chiesa lamentò i paesi che imponevano la propria concezione del matrimonio anche ai fedeli cattolici.

Anche oggi la Chiesa cattolica si oppone alla dissoluzione del matrimonio tramite il divorzio. Tuttavia, a partire dal Concilio Vaticano II, c'è stato un progresso, ad esempio, nel campo dei matrimoni tra cristiani di confessione cattolica e non cattolica. Prima della pubblicazione del Codice di Diritto Canonico nel 1983, ciò è stato espresso nel *motu proprio* di Paolo VI *Matrimonia mixta*, la cui regolamentazione non ha dovuto essere significativamente modificata nel Codice.

Parole chiave: matrimonio, celibato, cristianesimo, Chiesa, Vangeli, Lettere, prole, riforma, Chiesa Ortodossa Orientale, concilio, sacramento, contratto, partner, Codice di Diritto Canonico