THE MEANING OF THE CANONICAL FORM OF THE CELEBRATION OF MARRIAGE SINCE THE SECOND VATICAN COUNCIL AND *CIC* 1983

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Abstract: The matrimonial agreement is the form through which the institution of marriage and family is born. Both, the Church and the state are called to contribute to the elaboration of those specific conditions by which the notion of the marriage covenant is consolidated and clarified. The form of the marriage celebration is one of the aspects that generated and generates deep analyses and positions in front of what is and represents the way of manifesting the agreement, as well as its role. The crisis of the institution of marriage, the diversity of forms of conjugal union as well as the effects that derive from them, create the specific environment for an analysis and debate that questions the role and function of the canonical form in achieving that conjugal union that is based on the free act, the consent of the bride and groom as the will of the spouses to live together with the requirement to be transformed into a formal act, a legal expression by which the accord of the spouses fulfils all the normative aspects with a view to legal validity and implicitly with a view to the birth of the marriage. In this sense, the pre-conciliar, conciliar and post-conciliar debates reach a unitary expression in the vision of the 1983 Code of Canon Law.

Keyword: Church, valid marriage, canonical form, civil marriage, sacrament, faith.

Introduction

The commitment to celebrate the marriage respecting a certain norm, in the presence and through a public authority, through a public act, belongs to the natural law to which the provisions of the positive law are added. Marriage, being a form of public legal contract, in order for it to exist, the intervention of the public authority that represents the respective community is required. The canonical form is made up of a series of legal elements that regulate the manifestation of consent and consequently the realization of a valid marriage. This legal solemnity is not specific only to the legal system of the Church, it is found in different ways in any form of legal organization.

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1. The power of the church to establish conditions for a valid marriage

Based on the positive law of the Church, in addition to the absence of impediments and the existence of an untainted consent, for the realization of a valid marriage, a celebration that follows a certain form indicated by church law is necessary. Canon 841 of the 1983 Code of Canon Law specifies the power of the Church to set the necessary conditions for the valid and licit celebration of the sacraments. This happens in any public society that has to determine the conditions for making agreements, without which they would have no value both before third parties and before the law. Even if the substance of the sacrament is constituted by the external matrimonial agreement, the Church has the power to establish the way in which that settlement can be realized. Moreover, because of the immediate characteristics of this settlement, it might think that it has only an individual value. However, it is carried out in a community framework and, even if it is carried out privately, it has a public and community value.

If we consider natural law, there would be no need for a specific regulated form to condition the validity of a matrimonial act. This is why the church has not always given the same value to the canonical form. Even if from the first centuries of Christianity there is talk f a certain public form and in front of the Church of celebrating marriage, it is only since the 16th century that we can speak of a form through which the Church publicly exercises its power regarding the celebration of marriage. The Council of Trent will impose the canonical form to put an end to serious inconveniences generated by clandestine marriages, which gave rise to insecurities regarding the existence and validity of some marriages, the legitimacy of sons and the limitation of the power of parents to decide the characteristics of their sons' marriage[1].

Even in our times, the marriage agreement continues to be realized within the legal framework established by the canonical form, motivated by religious, social and family aspects. A particular reason why the canonical form is current also has to do with the mission that the Church has, to provide a spiritual training, and not only that, adequate for an authentic matrimonial life. „It is therefore the Church's mission to check whether the disposition of the future spouses corresponds to the baptism received; in the same way, the mission of persuading them, if necessary, not to carry out an act that would constitute an offence against the One to whom she is a witness, falls to her"[2].

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[1] Cf. F. Bersini, *Il diritto canonico matrimoniale*, Elledici, Torino 1993[4], 144-145.

[2] G. Martelet, „Sedici tesi cristologiche…" , 398.

However, there were not a few theological and canonical disputes regarding the value and character of the canonical form. In what follows, we mention the aspects touched in the debates theological and canonical that took place during the period of the council, immediately following it and even in more recent times.

2. A succinct pre-conciliar theological-canonical synthesis on the form of marriage celebration

The canonical dimension of the celebration of Christian marriage was often considered during the 20th century, giving birth to some theories, following some theological and legal reflections. We propose here to make a presentation of these ideas, starting from the period preceding the Second Vatican Council until the changes brought by the Code of Canon Law from 1983. The point where it starts from and reference, most of the time, as is normal, is the *Tametsi* decree of the Tridentine Council, by which the Church introduces as a condition for the validity of the sacramental matrimonial covenant a form established by it.

1.1. Unity of form in the legal vision of K. Mörsdorf

The legal vision proposed by Mörsdorf wants to avoid both jusnaturalismo and voluntarism. Although he is a supporter of the vision of the Church as the *People of God,* in order to justify the value of canon law he avoids referring to a direct causal relationship between the structure of the People of God as a society and the legal dimension of the Church. At the same time, it also avoids the voluntarism solution based on which the legal dimension of the church has its origin in the will of Christ. In this way, he links the legal value of the Church to the constituent elements of the Church: the Word of God and the Sacraments.

The Church, in his vision, is created by the Word of God, The *Kerygma*, through which salvation is proclaimed, and by the Sacraments, through which one participates in the mystery of salvation. They oblige not only by virtue of their moral-individual content, but give rise to a community structure, the Church, which necessarily carries a law. Through the Sacraments the transmission of divine life in and through the Church is guaranteed, and through the Word this transmission is regulated and controlled[3].

Starting from this theological-legal framework, it gives rise to some theories regarding the value of the canonical form and liturgical celebration in the sacrament of marriage.

[3] Cf. P. Barberi, *La celebrazione del matrimonio cristiano*, C.L.V., Roma 1982, 233-234.

In his fundamental thesis he claims that, both in the West and in the East, the theological consciousness of the Church is moving towards a unification of the liturgical form with the legal one, since the latter is only a concentration of essential elements of the liturgical one[4].

He reaches these conclusions following a comparative study of the liturgical and canonical forms. Given the fact that they are clearly not entirely distinct, he can find some limits in determining the characteristics of the canonical form, but he also reaches observations such as the one according to which the liturgical celebration becomes fully relevant also through the legal value it has. While the legal form is limited only to the strict observance of validity, the liturgical one is characterized by richness and creativity.

According to Mt 19.6, God receives the consent of the spouses and unites them in such a way that, once the agreement is made, the union between the two is removed from their power to deliberate on it. In this way, Christian marriage is constituted by two elements: the free will of the parties and the intervention of God, who unites. This view is present in all Christian denominations. In the Latin liturgy, the two elements are visible in the act of will of the parties, which gives rise to the marriage, and in the word of the sacred assistant, which is meant to confirm the covenant concluded. In the Eastern liturgy, the emphasis is not on the act of will of the parties, but on the union achieved by God through the liturgical act performed by the priest. Within marriage, a mystery is realized in which God acts through the priest. The act of will of the spouses, in this case, is the one by which they wish to be united and recognize this union before God and the Church. The thought that God is the one who unites in marriage is so important that an explicit manifestation of consent no longer takes place in the nuptial liturgy.

According to Mörsdorf's view, only in the Latin Church, the canonical form is different from the liturgical rite. In all others, the liturgical and canonical forms are amalgamated. Influenced by the Roman principle *consensus facit nuptias*, the Latin Church developed the legal character of marriage, oriented more towards the importance of the covenant of the contracting parties, detaching itself from the importance of the sacred minister and his blessing within the sacrament. However, in the course of time, a sensitive approach of the matrimonial covenant to the liturgical rite was achieved until the Council of Trent, through the *Tametsi* Decree, and later by taking up and proposing the same vision in The *Ne Temere* Decree.

We could say that through this last document the closeness of the canonical form to the liturgical one is concluded, whereby the priest is not only a

[4] *Ibidem*, 235.

witness but the *persona agens* of the sacred action who must ask for and receive the consent of the spouses in the name of the Church[5]. Therefore, even in the Latin canonical form, the sacred rite is inserted not so much in the framework and in view of a matrimonial blessing, as by a sacred sacerdotal action intended to be the guarantee of a consent given and legally received.

The full identification of the two forms can be found in the Eastern canonical matrimonial law[6], in which the Latin canonical form is proposed with a characteristic specific to the Eastern Church. The ordinary canonical form invokes the sacred rite, that is, the presence of the priest who *assists* and *blesses*[7]. This would be the first pontifical law in which the nuptial blessing would be a constitutive element of the ordinary legal form of marriage. Thus, within the canonical form, we find the liturgical structure inserted.

1.2. Contract inseparability – sacrament in Corecco's view

E. Corecco shares the general idea of law supported by Mörsdorf and the one according to which, after the Council of Trent, a closeness is observed between the legal and the liturgical form to the point of being identified. However, he verifies and deepens the consistency of these theories, considering that the identification of the two forms entails well-defined pastoral consequences, involving two essential doctrinal problems: the separability or identity between the contract and the sacrament as well with the ministerial function of the priest celebrating the sacrament.

According to his vision, a progressive approach or identification of the canonical form with the liturgical one is also accompanied by a progressive awareness of the inseparability between the contractual aspect of marriage and the sacramental one. He reaches these conclusions by analysing the relationship between the contractual and the sacramental aspect in

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[5] *Ibidem*, 237.

[6] The first part of the canon law of the Eastern Churches was partially completed and published during the pontificate of Pope Pius XII, between the years 1949-1957. Pope John XXIII suspended the publication of the second part due to the reforms of the Second Vatican Council, whose regulations had to be implemented. Finally, the Codex Canonum Ecclesiarum Orientalium (Code of Canons of the Eastern Churches, CCEO) was promulgated in November 1990, during the pontificate of Pope John Paul II. Cf. C.C. Salvador – V. De Paolis – G. Ghirlanda, *Nuovo dizionario di diritto canonico*, San Paolo, Milano 19962, 402-403.

[7] The document to which this norm refers is the Motu Proprio of Pope Pius XII, *Crebrae allatae* of February 22, 1949, can 58 § 1. Ea tantum matrimonia valida sunt quae contrahuntur ritu sacro, coram parocho, vel loci Hierarcha, vel sacerdote cui ab alterutro facta sit facultas matrimonio assistendi et duobus saltemtestibus, secundum tamenpraescripta canonum qui sequuntur, et salvis exceptionibus de quibus in cann. 89, 90.; § 2. Sacer censetur ritus, ad effectum de quo in § 1, ipso interventu sacerdotis assistanttis ac benedicentis.

the magisterium of Pope Pius IX[8], Leon XIII[9] and CIC 1917. According to this magisterial doctrine, marriages concluded between Christians, without an intention to receive the sacrament, not only are not considered sacramental marriages, but have no legal value with reference to natural law. Thus, as a reaction to an immanent conception of man that refused to recognize the supernatural dimension, the magisterium gives a first global answer to the problem of the secularization of marriage. With Vatican II, the value of earthly realities was recognized, a fact that will allow the re-examination of the issue of state power over Christian marriage[10].

Corecco does not accept the possibility of a natural validity of the marriage contract that is not also a sacrament between the baptized. Referring especially to those who, either through lack of faith or through lack of sacramental intention, in some way could achieve a true natural matrimonial covenant, this necessarily cannot but be a sacrament. He argues that the question of this validity must be solved independently of that of the necessity of faith, due to the fact that if it did not exist, the marriage, even if it could not have a sacramental value, could still be thought to have been a valid natural contract. It is the same with the intention required to receive the sacrament. In the ministry of the sacrament, this can be minimal: doing what the Church itself wants to do. In the recipient of the sacrament, there must be an implicit habitual intention or an explicit virtual intention. However, other characteristics must fulfil the intention when it aims at the exclusion of sacramentality: it must give rise to a positive act of the will. Only those who exclude the sacrament through a positive act of the will aim at a bond that is not also a sacrament, thus realizing a null act[11].

Its theological foundation lies precisely in the relationship between nature and grace. By divine grace, the contract was given a higher value. Since, for Christians, creation is found in the economy of salvation, so marriage itself belongs to the economy of salvation, it receives a salvific value. The principle of the elevation of the natural contract therefore postulates the identity that exists between the contract and the sacrament, and their inseparability. A regression from the sacramental to the natural stage is not possible for a Christian.

The Christian who, therefore, excludes the sacrament by a positive act of the will, has no alternative to a natural marriage. His marriage would

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[8] *Sillabo*, (DS 2973);

[9] Enc. *Arcanum divinae sapientiae*, February 10, 1880 (DS 3145);

[10] Cf. E. Corecco, „Il sacerdote ministro del matrimonio? Analisi del problema in relazione alla dottrina dell'inseparabilità tra contratto e sacramento, nei lavori preparatori del Concilio Vaticano I", in *La scuola cattolica* 98 (1970) 464-465.

[11] Cf. P. Barberi, *o.c.,* 241.

be legally non-existent. It is invalid because the law of the church is found in a substantial relationship with the economy of salvation, of which the baptized also partakes[12].

Thus, it is understandable the position of Corecco, to support the Tridentine canonical form, against the canonization of the civil form. The canonical form allows the Church, and in the current context, a control and a position towards the sacrament of marriage as a value in society, different from that of the state. „The abolition of the canonical form would mean a step back in the effort that the Church has made to emphasize more coherently its mission as mediator and saviour in the celebration of marriage"[13].

Based on the principle of absolute inseparability, Corecco sees no difficulty in recognizing the value of the matrimonial blessing as a constitutive element of sacramentality. He argues that this does not call into question either the principle of *consensus facit nuptias*, nor at the identity between contract and sacrament. The consent of the parties is the only effective cause of the contract, but it is an instrumental cause of the sacrament, and nothing prevents an instrumental cause from being performed by other persons, who are not the spouses themselves. We could therefore define the sacrament of marriage as: „an institution that arises through the involvement of the will of the spouses and the mediating and instrumental will of the Church, which is expressed through the priest"[14].

1.2.1. The socio-eclesiastical dimension in Letman's view

Against the background of the debates related to the canonical form within the Council of Trent, in favour or against its obligation, there was the conviction that the Christian matrimonial bond depends on the free will of the spouses, independent of the action of the Church, or on this free will of the parties, to which adds the possibility that the Church can exercise some influence. Although both positions were vehemently supported, without entering into dogmatic aspects, but concerned with the good of the Christian community (the issue of clandestine marriages), the decision will be made on the obligation of the canonical form, still convinced that both theses can be fully supported.

The question arises as to the nature of this influence that the Church exercises within marriage.

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[12] *Ibidem*, 242.

[13] E. Corecco, „L'inseparabilità tra contratto matrimoniale e sacramento alla luce del principio scolastico «Gratia perficit non destruit naturam», în *Communio* 16 (1974) 28-41.

[14] E. Corecco, „Il sacerdote ministro del matrimonio?", 472.

Lettmann claims that from the various options through which the Church could exercise an influence on marriage (the power to declare persons incapable or the power over the sacrament) in that context, the parents will end up prescribing a form by observing which the validity of the marriage contract will be reached. However, marriage, as a covenant between the baptized, is subject to ecclesiastical authority. In this sense, according to his vision, the constitutive element of marriage is and remains the will of the spouses, but the canonical form represents the condition that makes a marriage valid in socio-ecclesiastical life[15].

Lettmann proposes this view, making reference to the theory of the two structures, (inner and outer), of marriage, of Bertrams, whose disciple he was. According to this view, through the valid natural covenant, a true marriage always arises. But, as long as there is an obstacle, the marriage *in facto esse* is not realized from a legal point of view, due to the lack of an essential element represented precisely by this external structure. With this obstacle removed (he mentions here, *sanatio in radice*), the marriage automatically becomes effective. In this sense, the canonical form represents that external structure necessary for the validity of the marital covenant complex.

For both Lettmann and Bertrams, the canonical form places the marriage covenant in its specific environment of ecclesial and social act.

1.3. Canonical form and sacramentality in Peter Huizing view

Peter Huizing's vision has a particular character due to its originality and the systematic way in which it gives rise to a theory, in relation to many of the situations that are quite present in contemporaneity. The theory by which he proposes a reconsideration and a reinterpretation of the canonical form and sacramentality starts from the situation of Catholics who wish to have a religious marriage but predict that the union will not last long, or do not value the religious celebration, or irresponsibly and hastily give birth to matrimonial ties, they cannot avoid the great dilemma: or they refrain from performing a religious marriage, in which case they do not perform a valid marriage; or the religious marriage is celebrated, so with canonical validity, in which case it is sacramental and indissoluble; or trough the dispensation, the canonical form is renounced, a fact that makes the marriage in question a sacrament[16].

By introducing the canonical form, according to Huizing's theory, *The Tametsi* decree did not want to uphold only the ecclesiastical form of celebrating marriage between the baptized. The decree was intended exclusively to

[15] Cf. P. Barberi, *o.c.,* 249.
[16] Cf. P. Barberi, *o.c.,* 251.

prevent clandestine marriages. At that historical moment, the parish priest was the most suitable person to assume the role of public official who could guarantee publicity. The conflict between religious and civil marriage would arise much later, following the French Revolution, when the state considered it its right to guarantee the publicity and registration of marriage. Since history does not clearly attest to the existence of the belief that Catholics must necessarily perform a religious marriage, the problem could be solved by recognizing the validity of civil marriage. However, this would not be a solution to the problem, but only to the cases mentioned above. Huizing wonders, in this case, what would be the situation of Catholics who are not allowed a civil marriage, or of those couples who, on the basis of religious freedom, want to perform a marriage of a religious nature, in the Church, which also has the recognition of the state[17].

Huizing, referring to the two structures of marriage that Bertrams talks about, states that he does not understand how marriage could exist only on the basis of the internal structure, without considering the external or public reality. For him, a couple cannot desire a matrimonial bond that has only a personal value, without its public value. „The requirement of social recognition is necessarily intrinsic to any matrimonial contract; where this exigency of social value will not be recognized, for just reasons, there will be no true matrimonial will"[18].

The social nature of marriage requires that the competent authority, either ecclesiastical or civil, be represented in the celebration of the marriage. This gives more security and leads to the avoidance of abuse.

However, we cannot say that a clear answer has been given to the problem of identification by the Tridentine canonical form or the liturgical one of the public aspect of marriage. Huizing claims that the original function of the canonical form is no longer relevant. Through civil marriage and registration in public registers, the main function of the Tridentine canonical form came to an end.

The Church must insist in this sense and in this context, in the new historical situation, not so much on the juridical value of the marriage but above all on its profoundly sacred, sacramental value[19].

Regarding the sacramentality of marriage, Huizing speaks of the identity between contract and sacrament intrinsically. He specifies this, starting from the character of sacramentality, in the Tridentine doctrine, which does not concern a choice of the spouses but the inner character of the marriage

[17] Cf. P. Barberi, *o.c.,* 252.

[18] P. Huizing, *De trentse huwelijksvorm*, Hilversum Antwerpen 1966, cit. în P. Barberi, *o.c.,* 253.

[19] Cf. P. Barberi, *o.c.,* 254.

that the spouses perform, independently of their will. This should also be seen in the context in which the Church takes a stand against the Protestant doctrine that denies the sacramentality of any matrimonial bond.

For him, a sacramental marriage is one in which, in the mutual personal relationship between the spouses, the salvation brought by Christ is accepted and becomes effective, helping to experience matrimonial love unconditionally. That is why the sacramental marriage cannot be experienced automatically, without the cooperation and availability of the spouses or even against their will. Spouses are the ones who, in a certain way, actualize it as a sacramental sign, living in love, fidelity and indissolubility the salvific event of which they became partakers.

Therefore, if the Church were to recognize the validity of a civil marriage of two spouses who deny its religious value, or are not sufficiently prepared, such a marriage will not have sacred characteristics, it will be like a natural marriage, like a marriage between the unbaptized[20].

When marriage is seen as a deep relationship with a Christian character, then this faith will be expressed in a liturgical celebration, especially linked to the Eucharistic celebration. For those who live marriage as a Christian event and state of the life of faith, within the ecclesial community, the identity between the marriage covenant and the sacramental reality is visible and convincing through the liturgical celebration itself.

On the contrary, for those who do not believe, there must be the possibility of a purely canonical marriage, without a liturgical form or rather a civil marriage. These spouses can reach a more mature life of faith that will also lead to a sacramental celebration. It is about that stage of marriage that we are going to talk about. The conclusions reached by Huizing regarding the value of the canonical form on the basis of the sacramentality of marriage are the following: If it is unacceptable to renounce canonical sacramental marriage for Catholics who want this kind of marriage, a valid non-sacramental marriage must be possible for those who do not believe or do not want it. For the former, the canonical form expresses both the social dimension of the covenant and the sacramental intention. For the others, missing the sacramentality, but having to remain the social aspect, a solution could be found in civil marriage[21].

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[20] Cf. P. Barberi, *o.c.,* 256.

[21] Starting from the theory according to which the canonical form was desired by the College of Bishops at the Council of Trent, and later confirmed by the Code of Canon Law, so that the sacraments come from Christ through the College of Bishops, Huizing rejects the idea of this mediation and claims that, because of the social and ecclesial value of marriage, it is the spouses themselves who represent the community. The participation of witnesses

2. Debtes and conciliar vision

The aspects that required greater attention following the theories that preceded the conciliar period were: the relationship between the canonical matrimonial form and the civil form of marriage celebration; the nature of the power of the sacred assistant; the opportunity to make the canonical form mandatory only for the legality of civil marriage, canonizing the civil form of marriage celebration. In the stage before the start of the council, within the indications of the Congregations of the Roman Curia, of the Universities and Faculties of Theology, as well as in those coming from the bishops, we notice the following crucial points: the current significance of the canonical form in terms of validity or licentiousness; the need to simplify the legal conditions related to the jurisdiction of the celebrant priest; the extraordinary canonical form.

2.1. The text of the preparatory commission

The preparatory commission *De disciplina Sacramentorum*, prepared the scheme *De forma celebrationis Matrimonii*, which was approved in the general session of March 12-17, 1962.

The document mentions, among others, the following aspects: the Tridentine form of the marriage celebration must be maintained and observed in its entirety; the legislator must see that this form achieves its goal, that is, publicity, legal certainty and bestows sacramental grace for the salvation of the soul. Related to the value of the canonical form, he points out that it cannot be imposed only for the sake of legality, as it would thus diminish the power that the Church exercises over marriage and great difficulties would be created in the ecclesiastical framework[22].

In the works, regarding the relationship with the state law, the importance of a more or less unified vision on matrimonial impediments is emphasized, precisely in view of an easier recognition of the civil effects as well[23].

The central commission will approve this text after lengthy comments, in particular the aspect related to the canonical form ad validitatem and the legal value of the assistant priest in marriage will be emphasized[24].

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and the sacred assistant gives greater security and guarantee to the existence of consent and an acceptance of the new conjugal status in society and in the Church.

[22] Commissio de Disciplina Sacramentorum, VII *De forma celebrationis Matrimonii*, Acta et Documenta, ser. III, vol. III, pars I, 534.

[23] Cf. P. Barberi, *o.c.,* 267.

[24] Commissio Centralis Preparatoria, *Disceptatio De forma celebrationis Matrimonii*, Acta et Documenta, ser. II, vol. II, pars III, 1249.

2.2. The synodal stage

After the first part of the Council, it was decided to reduce the various schemes about marriage to only one. This scheme, *De matrimonii sacramento* was examined in the plenary session from 22 March to 1 April 1963 and approved on 3 July of the same year. That scheme will emphasize the power that the Church exercises over the celebration of Christian marriage, broadly preserving the position that the previous scheme presented regarding the canonical form.

In the observations made either by the conciliar fathers or by the members of the central commission between July 1963 and February 1964, regarding the issue dealt with here, there are those that specify the possibility of assisting the marriage by the laity as qualified assistants, especially in the areas where there is a lack of priests or deacons. Then, with reference to the matrimonial impediments, it is proposed to canonize the civil law regarding the impediments of consanguinity and age, an accepted fact, but with other criteria than the civil ones[25].

Regarding the Church's own and exclusive right to determine the conditions for the validity and legality of marriage, there were opinions[26] which claimed that it could not be exercised arbitrarily, without taking into account the natural right of the spouses and the social or civil ties. He points out that it would be better to specify that a marriage contract between two people has a special value for society as well, and for the Church it was designated by Christ to be a sacrament of holiness[27].

During the synodal discussions of November 19, 1964, in addition to those mentioned above, which were part of the suggestions and observations made to the *De matrimonii sacramento* scheme, the need to present and explain natural marriage that also takes into account other, different cultures will be specified from the western ones.

In this direction, the emphasis will no longer be on the contract or pact[28] but, on the permanent communion of life. As for the ministers of marriage, the fundamental role of the parties must be emphasized, who in the celebration are the ministers who, by means of an act of will, give birth to the marriage.

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[25] Cf. P. Barberi, *o.c.*, 271.

[26] These views were expressed by the representatives of the Episcopal Conference of Indonesia. Cf. Ibidem.

[27] Through this position, it is emphasized that both society in general and the Church must take responsibility for what marriage is and must set certain norms that support the definition of the identity of marriage and its characteristics.

[28] As the originally proposed scheme did.

Regarding the canonical form, the debate was more vehement, opinions differed depending on how the sacramentality of Christian marriage was conceived, and the power exercised by the Church and the state. Some believe that the canonical form affirms the exclusive competence of the Church, as Christians cannot accept any other valid marriage than the one assisted by the Church. Others see in the Tridentine form a situation in which society is totally absent, a fact that is no longer verified in today's society. That is why two autonomous legal forms are presented that give rise to misunderstandings at the level of the couple and in the relationship between the Church and the State. These misunderstandings could be solved either by the imposition of the canonical form and the recognition of the validity of the civil form achieved without impediments of divine right[29] or, better, by the assumption by the canonical law of the civil legislation, based on the principle of human coexistence which has a natural character [30]. The canonization of civil laws could be a solution in reduction the antinomy between the state and the Church regarding marriage[31].

Regarding the persons who are subject to the law of the Church regarding marriage, there was also the proposal that those who, although baptized Catholic but without a Catholic education, should not be obliged to observe the canonical form, and the situation of those who do not believe should be examined more carefully. Analogous to the rulings on mixed marriages, dispensation from the canonical form could be granted.

Based on the debates, it turned out that the major problem encountered and unresolved would be the one regarding the specifics of Christian marriage as a human, social and ecclesial reality. The solution of this problem, it is specified, requires a development and deepening of the theology of the sacrament of marriage[32].

3. Religious and civil celebration in post-conciliar period

We have already mentioned the positions of Corecco, Lettman and Huizing which, although they have their origins in pre-conciliar theories, they are present and influence the theological-juridical vision of the post-conciliar period. These theories can also be included in the debates on the relationship between civil marriage and religious marriage.

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[29] Bishops from Spain and Malaysia support this position. Cf. P. Barberi, *o.c.*, 277.

[30] Representatives from Ghana are of this opinion. Cf. *Ibidem*.

[31] There were opinions that supported the replacement of the canonical form with a form of marriage based on customary law or positive law within each people, or even their introduction within the canonical form. Cf. *Ibidem*.

[32] Cf. *Ibidem*, 278.

Within the framework of the canonical-pastoral debates carried out in parallel with the theological ones, the desire of the Church to self-realize itself at the moment of marriage in the current historical and social situation is highlighted[33].

In the framework of proposals for the revision of the canonical celebration of marriage, attention is increasingly focused on the connection between canonical and civil marriage in the case of Christians, with reference to the theological significance of civil marriage. In this sense, we have the proposal of a partial revision and that of a total revision.

3.1. Partial review

This proposal aims to maintain the fundamental structure of canonical marriage, but provides a greater possibility to dispense or greater elasticity in the use of the extraordinary form.

For some representative[34] of this proposal, a total reconciliation of the canonical and civil form is not possible due to the fact that the two legislations are quite different regarding the characteristics of consent, indissolubility and sacramentality. And the canonization of a civil marriage cannot remedy the lack already existing in it, when only an *ad experimentum* marriage is considered, with a view to a successive religious marriage. In this case, the covenant itself is compromised by excluding indissolubility. Then, the celebration of a marriage in a totally profane context, in the absence of a sacred rite, would eliminate the belief in the sacramental dignity of marriage, the secularization of the institution and its desacralization. The canonical form, however, allows the integration of the new family into the sacramental and spiritual life of the Church.

As for the situation of the baptized who no longer believe and publicly declare this, they must be exempted from the canonical form[35].

Others argue that it is inopportune to return to the situation of the ancient church by abandoning the form prescribed by church law, even though the public consent required by state law makes a clandestine marriage impossible.

In a secular and secularized age, the sacred value of marriage can only be preserved if it is performed in a sacred celebration. It is also mentioned the importance of the witnesses and in particular of the sacred assistant who not only has a social value, but offers guarantees to the Christian com-

[33] Cf. *Ibidem*, 286.

[34] H. Wagnon is of this opinion in two of his articles on the ordinary and extraordinary canonical form: Idem, *La forme ordinaire du mariage canonique*, ACIC, 702-718; Idem, *La forme extraordinaire du mariage canonique,* ACIC, 557-575.

[35] Cf. *Ibidem*, 287.

munity that the two are prepared, and to the parties support and assistance. The refusal of religious marriage can be reflected in the refusal of the religious content of marriage, of what is the essence of marriage, of its characteristics and properties[36].

Speaking about the problems left open by the Council of Trent, De Cock[37] notes three main reasons why the Church must preserve the canonical form: a) the publicity of the contract and their record in the parish registers; b) the possibility of examining the parties regarding matrimonial impediments; c) pastoral preparation and sacred and even Eucharistic celebration.

3.2. Full review[38]

At the origin of Bernhard's proposal to carry out a total revision is the motivation that a religious marriage following a civil marriage, in the states where it is obligatory, is against the law of the Church which condemned clandestine marriages, but recognizes consensual ones. The Church cannot totally ignore civil marriage, celebrating a new sacramental marriage, especially since the goal of the canonical form is achieved through civil marriage.

He rejects the idea of a staged marriage, in which a baptized person achieves through civil marriage a stage of preparation for a sacramental marriage. By this he wishes to save the value of sacramental marriage and the competence of the Church, as well as the identity between contract and sacrament.

According to his vision, for the realization of a valid marriage in the ordinary form, the parties, in the presence of two witnesses and in front of the competent public official or parish priest, express their consent and the marriage takes place. Validly married, the baptized will be able to receive the blessing in the presence of witnesses, a celebration that also has a public value of formalizing the new status before the Christian community. In the case of a civil agreement invalid before the Church, the blessing will be preceded by the fulfilment of the covenant.

However, this reform also has its shortcomings and in some way the sacramental aspect would be imposed on those who do not want it, this being an inevitable consequence of the identity between marriage and sacrament[39].

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[36] Cf. G.B. Guzzetti, *Matrimonio, familia, verginità*, Marietti, Torino 1971[3], 272-289.

[37] He presents these reasons in the article: J. de Cock «Le concile du Trente et le mariage», in *Le mariage chretien en Afrique*, Mayidi, 1971, 107-127.

[38] The post-conciliar authors to whom we refer and who promote such a position are: J. Bernhard, G. Cereti, G. Di Mattia..

[39] Cf. P. Barberi, *o.c.*, 291.

Cereti pays special attention to the form of the celebration. He starts from two premises. On the one hand, it considers the freedom of the woman and the man to create a connection through love, to give birth to a matrimonial relationship, fundamental in marriage. On the other hand, society in view of the common good has the obligation to give birth to an institutional form in order to protect and support this relationship. Moreover, marriage itself as a sacrament is linked to this fundamental reality which is conjugal love; no external sacralisation is needed for God to transform a matrimonial act into a mystery of salvation.

The Christian is part of two distinct structures, the Church and the State. Nothing can prevent a true marriage from being realized through the civil celebration if it requires only conjugal love, by which the whole marriage is sanctified. As was the case in the early Christian centuries, sacramentality can subsist even if consent is only achieved in civil form. But the sacred celebration can be requested both for legality and to remember the sanctity of the matrimonial pact and that it is part of the mystery of salvation.

Di Mattia, referring to the intention with which the Council of Trent gave birth to the canonical form, claims that, if the conditions that made that form necessary are no longer verified, it can be abandoned and another adopted. According to his vision, if the contract is a sacrament, then the essential elements that are found in one also belong to the other, then realizing the covenant in an established form, even in the civil environment, existing both the matter and the prescribed form and having in mind what the Church intends then when they celebrate a sacrament, then a true and valid marriage is achieved, both for the parties and for the whole community. When the marriage will be brought to the knowledge of the community, contextually, through the celebration of the agreement itself or later through the celebration of the rite of blessing, it will assume the responsibilities it has to protect and guarantee within the ecclesial community the effects that arise through the respective covenant[40].

In this way, the canonical form will have relevance only ad liceitatem, a fact that will favour an ecumenical openness, making possible a collaboration with the state law and through the concordantly formula. Where, however, there is no certain connection with the state norm, the validity of the civil marriage can be recognized, while the sacred celebration remains mandatory *ad liceitatem* in order to highlight its sacred value[41].

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[40] Cf. G. Di Mattia, *La forma canonica del matrimonio. Revisione radicale*, Paoline, Roma 1972, 70-71.

[41] Cf. P. Barberi, *o.c.*, 299.

3.3. Marriage in stages[42]

One of the people who support this vision and promote it since the conciliar period is the Latin American theologian A. Dequien. He advocates a revision of the entire doctrine of marriage, particularly of its relation to the Church and civil law, and of the value of the sacred minister in the celebration of the sacrament. He argues, a declericalization of marriage giving the human reality of marriage its due value even in the case of Catholics, independent of the sacrament. In this way, the sacrament is given the superior value it has, like the other sacraments, which is meant to sanctify the human reality of natural marriage. According to this position, marriage would be constituted on two planes, in two different stages: the human plane which will belong to the competence of the state and the supernatural, sacred one which purified by legal aspects remains the competence of the Church.

Following this proposal, according to Dequien's vision, a possible rivalry between civil and religious marriage will be removed, and they will become complementary. The consequences of this return to the pre-Constantinian era are multiple: a)a double validity, civil and Christian; b)a double validity involves a double indissolubility; c)The Church can impose on Catholics the religious marriage through which they sanctify their marriage; d)if two spouses receive the sacrament of baptism after marriage, they will also have to celebrate the marriage; e)ministers of the sacrament will no longer be spouses[43].

We cannot ignore that this position does not take into account an essential aspect of marriage, fundamental to everything that the 20th century conjugal spirituality movement meant, namely, the identity between the sacramental and contractual aspects of marriage. Moreover, regarding the return to the pre-Constantinian period, it should be emphasized that, from always, marriage was an institution that arose and was administered based on customs, and the state intervened only when social interests were at stake.

The Church was the first to give importance to this institution, being concerned with the value of the marriage covenant because for her this is a true sacrament[44].

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[42] By "stage" we understand, in particular, the relationship between the legal and contractual reality of marriage and the sacramental one. In the Western environment, according to tradition, both refer to that covenant that gives birth to marriage in its entirety, but in various other environments it is carried out in different stages, a fact that gives rise to problems of a theological, pastoral and even legal nature that cannot be neglected.

[43] Cf. P. Barberi, *o.c.*, 304-305.

[44] This is the position adopted officially and immediately on Dequien's theories by J. Leclercq in the volume: *Mariage naturel et mariage chretien*, Casterman, Tournai 1965.

3.4. Reform of sacramental matrimonial law

The pontifical commission for the revision of the Code of Canon Law of 1917 concluded in 1973 and sent the *De Matrimon*io scheme to the Holy Father to be analysed in the following consultative stages. The study group that had the mission to review and propose the reform changes broadly preserved the aspects related to divine law and those of ecclesiastical law that, due to their rooting in the Church's tradition, have overcome the weather of the centuries. Many other norms were modified, drawing inspiration from the vision of the council, jurisprudence and new anthropological advances. The adaptation of the norms to the new characteristics and pastoral needs was also considered. Among the comments made to the new scheme, we can mention the one in which it is specified that there are no great innovations but also that the time is not yet ripe for a new matrimonial legislation. Other shortcomings mentioned are those regarding the fact that only the European reality is taken into account, neglecting the situations in the mission countries. There were also objections regarding the fact that the scheme does not deal with the issue of the connection between faith and the sacrament of marriage, which would solve the problem of those who, although baptized, no longer have faith.

Marriage, in the new project, is presented following the conciliar teaching as an intimate union of the whole life between a man and a woman, with the purpose of procreation. This marriage, between the baptized, has a sacramental dignity, being a complete identity between the contractual and the sacramental reality.

Regarding the competence of canonical and civil law over marriage, the old view remains valid, to which is added the fact that, as it is a human reality, marriage also concerns civil society, but, since it is a sacrament of the new law, the responsibility of disciplining the sacrament rests with the Church in its entirety. The marriage of the baptized, even if only one party is baptized, is organized both on the basis of divine and canonical law, the specifically civil effects belonging to the state[45]. Regarding the canonical matrimonial form, the model already existing in the Code of Canon Law from 1917 is substantially preserved.

The canon that limits the parish priest's competence to assist the marriages of those who have notoriously abandoned the faith or those who belong to societies prohibited by the Church is also preserved[46]. The new scheme, at the insistence of many consultative bodies, insists a lot on the

[45] Cf. P. Barberi, *o.c.,* 317-318.
[46] Cf. *CIC* 1917, can. 1065 § 1.

importance of catechetical and pastoral training regarding the value of Christian marriage with a view to a fruitful and effective matrimonial bond.

4. Canonical form in *CIC* 1983

Starting with canon 1108, the Code of Canon Law deals with the form of marriage celebration. In the religious celebration we talk about three forms that are the basis of a valid and licit marriage: *the canonical form*, *the sacramental form* or the *sacramental sign* and the *liturgical form*.

While the canonical form deals with the external aspects of the celebration of marriage which, some may be accidental, others substantial, depending on the value they have in terms of validity or legality, the sacramental form consists in the very conjugal pact through which the spouses exercise their baptismal mission, and they become imitators and sharers of Christ's love for his Church. By the liturgical form we understand that rite that accompanies the manifestation of the covenant or the canonical form and that is required *ad liceitatem*.

According to the rules provided in the code, only that marriage is valid that is concluded in front of the local Ordinary or the local parish priest or a delegated priest or deacon, in the presence of two witnesses. The minister, according to the common doctrine, does not attend the celebration of the marriage by exercising an act of jurisdiction but the function of a qualified or public witness, on behalf of the Church. The novelty present in the code provides that deacons can also celebrate the marriage by delegation[47]. Moreover, taking up the content of the instruction *Sacramentalem indolem*, in accordance with the teaching of the Second Vatican Council that increasingly involves the laity in the apostolic activity of the Church, in cases of lack of sacred ministers, qualified lay people can receive the faculty to assist and receive on behalf To the Church the covenant of spouses. They can prepare the parties for the celebration of the marriage and must take care of all the canonical formalities[48].

The Code does not deal with the situation of those who are imperfectly willing to perform the sacrament of marriage. That is why the position adopted by the Holy Father John Paul II in *Familiaris consortio* remains as a guiding line for the entire Church, where he states:

> The faith that the Church requires from those who marry can be of different degrees and the primary duty of pastors is that of rediscovering it, nurturing it and making it mature. But they are also obliged to understand the reasons that

[47] Cf. *LG*, 29.
[48] *CIC* 1983, can. 1112

the Church has for admitting to the matrimonial celebration, even those who are imperfectly willing[49].

In the same context, he also emphasizes the fact that the shepherds of souls must not take into account the degree of faith of the betrothed, a fact that is very difficult, if not impossible to verify, involving great risks, but the positive act of their will to accept or it explicitly and formally refuses what the Church herself intends to do when she celebrates marriage[50].

Conclusions

The issue of the canonical form for a valid marriage celebration belongs to the relatively recent period of the Church's history. In the different stages of the pre-conciliar and post-conciliar debates, with reference to the conclusions and guidelines found in the conciliar interventions, in the context of the reform of the Code of Canon Law, a radical innovation was not considered opportune, especially the need for an in-depth analysis and analysis of the legal significance and religious aspects of marriage as contract and sacrament. In the context of increasing indifference and the deep secularization of society, the importance of the responsibility that the Church has towards its own believers is emphasized at a moment of such great importance for their lives. Therefore, the obligation of the canonical form is reaffirmed as a requirement of an act that gives responsibility at the level of the Church, at the community, social and interpersonal level.

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[50] Cf. F. Bersini, *o.c.*, 168-169.

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