

# A GLOSSA ON C.1055.2: THE INSEPARABILITY OF CONTRACT AND SACRAMENT IN THE MARRIAGES OF THE BAPTIZED\*

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## 2. PRACTICAL CONSEQUENCES OF THE DOCTRINE

This second paragraph of the first canon on marriage, affirming as it does the traditional doctrine pacifically held in the Church certainly since Innocent III (1198-1216)<sup>57</sup> and possibly even from the time of Gratian,<sup>58</sup> was highly controverted during the revision of the Code.<sup>59</sup> This doctrine of inseparability of contract and sacrament is not a mere abstract principle as it has very concrete implications. These implications are not always easy to

\*See the first part of this article in *Landas* 9 (1995) 237-61.

57. Nam etsi matrimonium verum inter infideles existat, non est tamen ratum; inter fideles autem verum et ratum existit, quia sacramentum fidei quod semel est admissum nunquam amittitur, sed ratum efficit conjugii sacramentum ut ipsum in conjugibus illo durante perduret. X, 4, 19, 7 "Quanto"; Session VII of Trent, on the sacraments in general, canon 1; Pius IX, *Ad apostolicæ* (22 Aug. 1851); allocutions by the same pontiff, *Acerbissimum* (27 Sept. 1852) and *Multis gravibusque* (17 Dec. 1860); *Syllabus Errorum*, Propositions 66 and 73; Leo XIII, *Arcanum* (10 Feb. 1880); instructions from the Holy Office (6 July 1817), from the Propaganda Fide (1858), and from the Sacred Penitentiary (15 Jan. 1866).

58. The text does not unambiguously affirm the doctrine, but the text could be understood to imply it. Item illud Augustini (non est ratum conjugium quod sine Deo est) non negat conjugium esse inter infideles. Conjugium enim aliud est legitimum et non ratum, aliud non legitimum et ratum, aliud legitimum et ratum. Legitimum conjugium est quod legali institutione vel provinciae moribus contrahitur. Hoc inter infideles ratum non est quia non est firmum et inviolabile conjugium. Dato enim libello repudii, licet eis recedere ab invicem et aliis copulari lege fori, non lege poli quam non sequuntur. Inter vero fideles ratum conjugium est quia conjugia semel inita inter eos ulterius solvi non possunt . . . C.28, Q.1, dpC.17.

59. Cf. for example: Jose Manuel F. Castaño, "De Quibusdam Difficultatibus contra Formulam Canonis 1012 par. 2. Scilicet quin sit eo ipso sacramentum." *Periodica* 67 (1978) 269-81.

defend, in many cases they may be impossible to enforce, and in certain cases, they even raise some ecumenical difficulties. Three such consequences can be mentioned here. (a) The marriage between two baptized non-catholics, even if they should belong to sects and denominations which do not recognize marriage as one of the seven sacraments, is asserted to be sacramental by the Catholic Church (C.1055.2). (b) The marriage between non-practising catholics, even those who may have become so-called "born-again" or moslem or in some other way apostasized from the faith, if they are valid are also said to be sacramental. This is true even if they may have already turned away from the faith during the time of the contracting of the marriage. *A fortiori*, this is certainly true if, at the time of the marriage, they were practising catholics, and only turned away from the faith subsequently. (c) Marriage becomes *ratum* if both convert even after they have separated. Some comments about each of these implications.

2.1 The marriage between two baptized non-catholics, even if they should belong to sects and denominations which do not recognize marriage as one of the seven sacraments, is asserted to be sacramental by the Catholic Church. This assertion follows naturally and with logical necessity from the position of the Church as described *supra* that the sacramentality of the marriage arises from valid baptism. By virtue of this incorporation into the body of Christ, the entire life of the person is assumed into the economy of salvation, empowered as Thomas Aquinas says to participate in the ministry of Christ entrusted to the Church. This means, among other things, that the marriage so contracted is absolutely indissoluble after it has been consummated.

There is no way of course that the Church can enforce this juridical implication of a theological principle until the non-catholic baptized party desires to marry a catholic, a situation that is becoming increasingly frequent in the Philippines today, especially in the so-called mail-bride circumstances. An older male, usually American or German, comes to the Philippines to claim his bride. The bride and her family would of course insist on a catholic wedding, to which the man usually has no objection. The difficulties arise when it is discovered that the

man, baptized and member of a mainline protestant church, was previously married to another baptized, although now divorced. Unless the previous wife is already deceased, there is just no way by which another marriage can be celebrated. The previous marriage is sacramental and presumably consummated, and therefore absolutely indissoluble except by death of one of the spouses. Otherwise, the only other option open to them is to go through the protracted process of a declaration of nullity of the previous marriage. In the Philippines, should it be processed here, it would take a minimum of two years. And even then, there is obviously no assurance that the petition will be granted.

2.2 The marriage between non-practising catholics, even those who may have become so-called "born-again" or moslem or in some other way apostasized from the faith, if they are valid are also said to be sacramental. Again, this would follow with logical necessity from the doctrinal principle enunciated above. This implication of the doctrinal principle as we have explained involves yet another difficulty from another theological principle, namely, the necessity of faith for the celebration of the sacrament.

2.2.1 The Magisterium has clarified a number of points as regards this question.<sup>60</sup>

a) It is entirely conceivable that the faith of the person asking the Church for marriage can exist in different degrees, and the Church admits to the celebration of marriage even those who are imperfectly disposed (from the point of view of faith, that is, rather than from their intention to contract marriage).

b) The sacrament of matrimony has this specific element that distinguishes it from all other sacraments: it is the sacrament of something that is part of the very economy of creation, instituted by the creator "in the very beginning." Therefore the decision of man and woman to marry in accordance with this divine plan, that is to say, the decision to commit by their irrevocable conjugal consent their whole lives in indissoluble love and unconditional fidelity, really involves, even if not in a fully conscious way, an attitude of profound reverence to the will of

60. John Paul II, *Familiaris consortio* (Apostolic Exhortation regarding the Role of the Family in the Modern World), cf. no. 68.

God, an attitude which cannot exist without God's grace.

c) It is true that in some cases, engaged couples ask to be married in church for motives which are social rather than genuinely religious. But it is also true that these engaged couples, by virtue of their baptism, are already sharers in Christ's marriage covenant with the Church, and that by their right intention, they have accepted God's plan regarding marriage and therefore, at least implicitly, consent to what the Church intends to do when she celebrates marriage. The fact then that motives of a social nature enter into the request is not sufficient to justify refusal on the part of the pastor. In other words, that there may be social reasons for asking marriage from the Church does not necessarily exclude their acceptance of God's plan regarding marriage.

d) To lay down criteria that would concern the level of the faith of those to be married would be extremely risky, involving as it does among other things: making unfounded and discriminatory judgements; raising doubts about the validity of marriages already celebrated, with grave harm to the christian community, and new and unjustified anxieties to the consciences of married couples; one could also fall into the danger of calling into question the sacramental nature of many marriages of brethren separated from full communion with the Catholic Church, thus contradicting ecclesial tradition.

e) If, however, in spite of all efforts, the engaged couple show that they reject explicitly and formally what the Church intends to do when the marriage of baptized persons is celebrated, then the pastor of souls cannot admit them to the celebration of the marriage.

2.2.2 A recent study has identified three positions as regards the theological debate with respect to the degree and the nature of the faith required for the celebration of marriage.<sup>61</sup>

2.2.2.1 The first group affirms that explicit faith is necessary for the existence of the sacrament. The contracting parties must be aware in some manner, of the meaning of the sacrament of marriage and of its insertion into the ministry of Christ and therefore of the Church. This explicit faith, manifested in some

61. Francisco Alarcón, *El Matrimonio Celebrado sin Fe* (Almería, Spain, 1988) esp. 120-34, 134-45, 146-66 and 190-95.

manner, is a constitutive element of the sacrament. Among the authors included in the school some would hold, as a logical consequence of their position, the separability of contract and sacrament. In the case of a defective personal faith, the marriage of such baptized persons could conceivably be valid without it, and by that very fact also a sacrament. In other words, this first position would allow the separability of contract and sacrament. Perhaps it should be adverted to here that such a position also weakens the meaning of baptism as a fundamental consecration of the whole person to God and the elevation of his entire life and everything that he does into the economy of salvation. By admitting the separability of contract and sacrament, one is admitting the possibility that certain aspects of a man's life are actually not consecrated to God and thus not assumed into the economy of salvation.

On the other hand, Alarcon admits that it is not very clear whether all these theologians hold the necessity of explicit personal faith for the fruitfulness of the sacrament or its validity, that is to say for its existence. But if they say that explicit personal faith is a constitutive element of the sacrament, one would have to say that it is for the validity and the very existence of the sacrament rather than its fruitfulness.

2.2.2.2 The second school considers personal faith necessary for the validity of the sacrament, although it only has to be at least on a minimal level or implicit.<sup>62</sup> The argument is that this is required for the very existence of the sacrament. Some degree of faith, even if only minimal, is required to constitute the intention necessary for the validity of the sacrament. This seems to be the position of the International Theological Commission (ITC), as formulated in Proposition 2.3 on the Doctrine of Christian Marriage.

Just like the other sacraments, marriage confers grace in the final analysis by virtue of the action performed by Jesus Christ and not only through the faith of the person receiving it. However, this does not mean that grace is conferred in the sacrament outside of faith or in the absence of faith. It follows from this, according to classical principles, that faith is presupposed as a dispositive cause of the

62. Ibid. 134-45.

fruitful effect of the sacrament. The validity of marriage however, does not necessarily depend on whether or not it has the fruit of the sacrament.<sup>63</sup>

It is true, as the cited text makes abundantly clear, that the question of validity is distinct from the question of fruitfulness. In another context *supra*, this distinction was the basis of the explanation that the sacramental character is received but not the full effects of the sacrament in the case of the *ficta baptizatus*. A sacrament can be valid without being fruitful.

The ITC makes a further doctrinal point that while the intention of the contracting parties must not be confused with their faith, they must not be totally separated either. The marriage that is the object of natural consent is the very same marriage that is the object of the faith of the contracting parties. This is to say if it is true marriage that is intended, there is no way that this could go contrary to what the Church intends to do. To state the matter conversely, the validity of the marriage would be doubtful if the marriage intended by the parties is different radically from the marriage that is the object of faith. If the parties intend to reserve to themselves the option of dissolving the marriage should it not work out, then the marriage is not only not sacramental, but it is also invalid. In other words therefore, this school requires some minimum level of faith not only for the sacramentality of the marriage but for its very existence. The second position differs from the first, at least in that the first requires explicit and conscious faith of the parties while the second considers implicit, even if minimum, faith sufficient. The minimum faith would almost seem to mean an intention that excludes any intention contrary to marriage.

The position proposed by *Familiaris consortio* would seem to fall under this second group. According to the apostolic exhortation, the decision of a man and woman to marry in accordance with the divine plan, that is to say the decision to commit by their irrevocable conjugal consent their whole lives in indissoluble love and unconditional fidelity, really involves, even if not

63. R. Malone and J. R. Connery, eds., *Contemporary Perspectives on Christian Marriage* (Propositions and Papers from the International Theological Commission) (Chicago: Loyola University Press, 1984) 14-15.

in a fully conscious way, an attitude of profound obedience to the will of God, an attitude which cannot exist without God's grace.<sup>64</sup> In other words, therefore, the faith does not have to be explicit and conscious.

*Familiaris consortio* also explains, if somewhat tangentially only, what this implicit and not fully conscious faith consists in, when it affirms that the decision of a man and a woman to commit by their irrevocable conjugal consent their whole lives in indissoluble love and unconditional fidelity is an attitude of profound obedience to the will of God. If such a consent is, in the most basic and fundamental sense, in accordance with the will of God, then such an attitude constitutes the minimum faith required for the establishment of a sacramental marriage. In other words, provided there is no explicit intention contrary to this commitment by the spouses to live their whole lives in indissoluble love and unconditional fidelity, the faith of the contracting parties may be considered adequate to constitute the sacrament, and the intention adequate to establish marriage. The question may be raised: what if a person has this naturally adequate consent but excludes sacramentality from the marriage that he intends to contract? But what does such a party mean in the concrete by the sacramentality which he claims he is excluding from his intention? Sacramentality is a theological quality of the marriage, a practical implication of which is absolute indissolubility after it has been consummated. If such a person excludes indissolubility then his intention would not be adequate to contract marriage.

2.2.2.3 In the study by Alarcón, the third school is formed by those authors who hold that the lack of personal faith and explicitly sacramental intention does not invalidate the sacrament.<sup>65</sup> The argument is that it is marriage as a natural reality that is elevated by Christ into a sacrament. It is natural marriage that is a sacrament. Thus, whoever intends to contract a valid marriage has, by that very fact, the intention sufficient and necessary for the sacrament. The conditions for the validity of the sacrament are the very same conditions for the validity of

64. *Familiaris consortio*, no. 68.

65. Alarcón, *El Matrimonio*, 146-66.

the contract, precisely because the contract is the sacrament.<sup>66</sup> The fact of baptism, united with the intention to contract a valid marriage, is sufficient and necessary for the sacrament as well.

Although, this position may seem rigid, and seems to imply an automatic operation of the sacrament, it is not really so upon closer inspection. With respect to which, three comments should be made.

a) The argument that leads to this conclusion of the third position is the conviction as regards the objective effect of baptism on the person — the character imprinted on the baptized which can never be lost as was made clear by the classical authors on canon law whom we have cited *supra*. In other words, baptism brings about the incorporation of the person into the body of Christ. And by virtue of this incorporation, his whole being as well as his activities, are now collocated within an entirely different horizon, assumed and elevated as they are now into the economy of salvation. All his activities, his marriage included, are not simply his acts as an individual. They have an ecclesial dimension. They are his as well as of the Church. From this point of view, his marriage is inexorably an act of the Church, and for that reason sacramental.

b) This third position is necessitated by the long standing tradition in the Church that the sacrament is the contract. It is the natural reality of marriage that is elevated by Christ into a sacrament. It was on this same principle (the identity of the contract and sacrament) that the controversy regarding the minister of the sacrament of marriage was resolved in favor of the position that it is the spouses themselves who are the ministers.<sup>67</sup> The sacramentality of the marriage — as was made clear by the decretists, decretalists, and the commentators on

66. U. Navarrete, "Matrimonio Cristiano e Sacramento," in *Amore e Stabilità nel Matrimonio* (Roma: Pontificia Università Gregoriana, 1976) 73.

67. Ad secundum, quod actus noster in poenitentia quamvis sit de essentia sacramenti non est tamen sufficiens ad inducendum proximum effectum sacramenti, scilicet absolutionem a peccatis; et ideo oportet quod ad perfectionem sacramenti interveniat actus sacerdotis. Sed in matrimonio actus nostri sunt causa sufficiens ad inducendum proximum sacramenti effectum qui est obligatio; quia quicumque est sui juris potest se alteri obligare; et ideo sacerdotis benedictio in matrimonio non requiritur quasi de essentia sacramenti. Aquinas, *In IV Libros Sententiarum*, L.4, D.28, Q.1, Art. 3, ad 2.



them — is not a quality that is superimposed on the natural marriage, as it were. It is not an optional characteristic that proceeds from the intention of the contracting parties, or from their personal faith for that matter. If it is affirmed, as it is affirmed, that baptism, on an ontological level, incorporates into the body of Christ the person as well as all his acts, and if it is further affirmed that the natural reality of marriage is the sacrament, then between two baptized persons a valid marriage cannot be contracted without its being, by that very fact, also sacramental.

c) Perhaps the second and the third schools of thought are really not all that far from each other. The second school requires some minimum level of personal faith as necessary not only for the existence of the sacrament but also for the integrity of the intention to contract marriage. In an indirect manner, the apostolic exhortation, *Familiaris consortio*, clarifies this minimum level when it says that the decision of man and woman to marry in accordance with the divine plan, that is to say, the decision to commit by their irrevocable conjugal consent their whole lives in indissoluble union and unconditional fidelity, really involves, even if not in a fully conscious way, an attitude of profound obedience to the will of God. The minimum level of faith required by the second school is really the intention to contract an indissoluble and exclusive relationship, which is the necessary and sufficient intention to contract a valid marriage and therefore a sacrament according to the third school.

On the basis of the affirmations of *Familiaris consortio* 68, the propositions of doctrine by the International Theological Commission (2.3), and the similarities of the positions of the second and third schools, a consensus regarding the question of faith necessary for the celebration of the marriage can be established. The minimum requirement is the intention to contract an indissoluble and exclusive marriage, which intention is necessary both for the existence of the sacrament as well as the conjugal consent. This intention, according to *Familiaris consortio*, involves even if not in a fully conscious way an attitude of profound obedience to the will of God.

2.3 A third practical consequence of the principle of the inseparability of contract and sacrament is that the marriage

contracted between two persons, having married when they were yet non-baptized, becomes a sacrament upon the reception of baptism by the two parties. This was already an established principle in the decretal *Gaudemus* (cf. 1.2 supra). This is so even if they may have already been separated by the time they received the sacrament of baptism.

Again, one with an excessively psychological point of view might possibly raise the objection that this is pure objectivism and automatic operations of the divine dynamics. It is neither objectivist nor automatic. This position takes very seriously the fact that baptism does bring about ontological changes in man. It is not merely some social affair the effects of which are negligible. In the baptismal instruction of the adult who is to receive the sacrament, he should be properly appraised of the serious consequences of the step he is about to take. To be baptized means that he and everything that he does is now not simply his act as an individual but that of the Church into which he is incorporated. The decision to receive the sacrament of baptism is certainly not automatic.

### 3. SUMMARY AND CONCLUSION

It is a pacifically established principle in canonical tradition, certainly from the 12th century onwards, that baptism is the one requirement that is both necessary and sufficient for the constitution of a sacramental marriage. The theological reflection by the major medieval thinkers have focused on the sacramental character imprinted on the person by a direct act of God. This sacramental character which cannot be erased even in the event that the person may perhaps lose his personal faith, has been understood as a fundamental consecration of the person to God. Having been consecrated to God and incorporated into the Church, his entire being and his acts are now assumed and elevated into the economy of salvation. For which reason, the marriage that he contracts is now not simply a human and natural reality but a sacrament of the new dispensation. This human reality is interiorly transformed by baptism as a new *ratio* according to Hostiensis. The question raised by the contemporary phenomenon of baptized persons who may have lost their

personal faith is addressed by *Familiaris consortio* precisely from the point of view that the contract is the sacrament. The intention necessary and sufficient to contract marriage is likewise necessary and sufficient to constitute sacramental marriage if the parties are baptized. A disposition contrary to indissolubility, for example, will not only militate against sacramentality but against the very existence of the contract itself.