PONTIFICIA UNIVERSITAS SANCTAE CRUCIS

FACULTAS IURIS CANONICI

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The Juridical and Christian Anthropological Study of the Indissolubility of Canonical Marriage in the light of Canon 1056

Thesis ad Doctoratum in Iure Canonico

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TO THE LOVING MEMORY:

OF MY BELOVED MUM JULIA BIH WANKI WHOM THE LORD CALLED FROM THIS LIFE ON MAY 14, 2006,

OF MY DEAR BROTHER AUGUSTINE AGANGU WANKI WHO TRANSITED BEYOND ON NOVEMBER 11, 2007.
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<td>Fides et Ratio, Encyclical Letter of John Paul II (September 14, 1998)</td>
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<td>Gal</td>
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<td><em>Pastor Bonus</em>, Apostolic Constitution of John Paul II (June 28, 1988)</td>
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PCF Pontifical Council for the Family
PCJP Pontifical Council for Justice and Peace
PCILT Pontifical Council for the Interpretation of Legislative Texts
Phil Philippians
PM *Pastorale Munus*, Motu Proprio of Paul VI (November 30, 1963)
PT *Pacem in Terris*, Encyclical letter of John XXIII (April 1, 1963)
Ps Psalm
Q Question
QDEc *Quaderni di diritto ecclesiale*
QTM *Quaderni di Teologia Morale*
Rsc *Recherches de science religieuse*
RH *Redemptor Hominis*, Encyclical Letter of John Paul II (March 4, 1979)
RN *Rerum Novarum*, Encyclical Letter of Leo XIII (May 15, 1891)
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GENERAL INTRODUCTION

Marriage is a union in nature of the spouses for the whole life, which of its own nature is ordained to the well being of the spouses and to the procreation and the upbringing of children. It is an alliance protected by law, it is a union that transform persons ontologically. Man and woman are created for one another, for love: to give themselves conjugally in a union that is total as male and female, in one flesh. This is affirmed by the Second Vatican Council in *Gaudium et Spes* in the following words:

The intimate partnership of married life and love has been established by the Creator and qualified by His laws, and is rooted in the conjugal covenant of irrevocable personal consent. Hence by that human act whereby spouses mutually bestow and accept each other a relationship arises which by divine will and in the eyes of society too is a lasting one. For the good of the spouses and their off-springs as well as of society, the existence of the sacred bond no longer depends on human decisions alone. For, God Himself is the author of matrimony, endowed as it is with various benefits and purposes (*GS*, no. 48).

In fact, «being rooted in the personal and total self-giving of the couple, and being required by the good of the children, the indissolubility of marriage finds its ultimate truth in the plan that God has manifested in his revelation: he wills and he communicates the indissolubility of marriage as a fruit, a sign and a requirement of the absolutely faithful love that God has for man and that the Lord Jesus has for the Church» (*FC*, n. 20). In this regard, John Paul II in his allocution to the Rota of 2000 clearly states that the Church’s fundamental
duty is to reaffirm strongly the doctrine of the absolute indissolubility of ratified and consummated marriage as *definitive truth*.¹

In the course of the centuries, the Church has tried in many ways through her magisterium to reflect on the meaning of marriage, and has continued to grow in her teaching and understanding of it. The Church has in this light distinguished certain elements of marriage which she considers as essential, changeless and universal. The focus regarding the essential properties of marriage is a metaphysical approach which at the same time examines the essential qualities of marriage. In this sense the focus on the purpose of marriage is a dynamic approach which examines the natural ordering of marriage to the attainment of determined ends. The essential properties of marriage: unity and indissolubility (cf. CIC can. 1056; CCEO can. 776§3) are considered as a good for the spouses, for children, for the Church and for the whole of humanity.

Marriage is one both spatially and temporally. Marriage is one and indissoluble. The law identifies the essence of marriage in terms of the intimate union of the spouses, and expressly specifies its essential properties and elements. We should note that it is difficult to close one’s eyes to the impact of culture on people’s understanding of marriage. In our present day materialistic, individualistic, hedonistic culture, the values which are intrinsic to the Christian notion of marriage do not have so much appeal and, hence, younger minds which are formed within such cultural contexts seem to have very little appreciation of them. As a result, in the absence of counter-culture forces, the young minds are likely to be infested with errors which are contrary to the nature of marriage. This would include the values of unity, conjugal fidelity and above all indissolubility as well. It is an obligation to remember that the doctrine of the indissolubility of marriage belongs to the patrimony of the Church right from the origins of Christianity, from when the first Christian communities succeeded to evangelize the matrimonial union changing it and adapting the institutes of matrimonial law of the cultures with which they were in contact, first the Roman law, then the law of the barbaric people. Juridical

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unity in the matrimonial sphere which seem to have created some difficulties in Western Europe at the beginning of the first and present millennium was broken by the protestant reform. It does not seem daring therefore to recall that crisis to recognize the indissolubility of marriage as a value to defend also through juridical institutes.

John Paul II, in his address to the Rota of 2002, asserts that indissolubility is a good for spouses, for children, for the Church and for the whole of humanity. A positive presentation of the indissoluble union is important, in order to rediscover its goodness and beauty. First of all, one must overcome the view of indissolubility as a restriction of the freedom of the contracting parties, and so as a burden that at times can become unbearable. Indissolubility, in this conception, is seen as a law that is extrinsic to marriage, as an imposition of a norm against the legitimate expectations of the further fulfilment of the person. Add to this the widespread notion that indissoluble marriage is only for believers, who cannot try to impose it on the rest of civil society.²

To give a valid and complete response to this problem one must begin with the word of God. Concretely, the passage of the Gospel of Matthew recounts Jesus’ conversation about divorce with some Pharisees and then with his disciples (cf. Mt 19:3-12). Jesus goes radically beyond the debates of his day concerning the factors that could justify divorce asserting: «For your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so (Mt 19:8)».³

According to the teaching of Jesus, it is God who has joined man and woman together in the marital bond. Certainly this union takes place with the free consent of both parties, but this human consent concerns a plan that is divine. In other words, it is the natural dimension of the union and, more concretely, the nature of man created by God himself that provides the indispensable key for interpreting the essential properties of marriage. The

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³ Ibid., no. 3
further reinforcement that the properties obtain in Christian marriage by virtue of the sacrament (cf. can. 1056) are based on natural law and, if removed, would make incomprehensible the very work of salvation and elevation of the conjugal reality that Christ effected once and for all (cf. Ibid). In this light, the indissolubility of marriage is the profound meaning of all the discourses of John Paul II to the Rota. John Paul II puts it in relation with the secularized cultural context, individualistic and cultural relativism, the “pastoral” praxis of judicial decisions which sometimes forgets indissolubility.

According to Canon Law, indissolubility is a non negotiable property of marriage. It may be possible to envisage situations which crop up between spouses after a valid marriage has been ratified and consummated. At the same time husband and wife may, through no fault of theirs, find themselves in a socio-cultural context where infertility becomes a genuine threat to the well-being of the spouses and the real good of marriage life. These situations, together with the changing socio-cultural climate in the world, seem to challenge canonical indissolubility, but each of them deserves a separate and deeper study. And this lies beyond the competence of this work, whose interest is to critically examine and analyze marital indissolubility as necessary for the stability of both the family and society.

The topic is wide but we want to deepen the foundation of the indissolubility of marriage from different points of view: exegetical, magisterial, anthropological, canonical doctrine and in a minor way jurisprudential. In tackling the topic from the different perspectives, different reflections are necessarily reposed and sometimes also citations which offers – as we think – a sort of variation on the same topic. We feel that these repetitions (sometimes sort for explicitly) put better in evidence the central point offering a more complete vision of the whole.

The objectives or goal of this thesis are clearly evident from its title «The Juridical and Christian Anthropological Study of the Indissolubility of Canonical Marriage in the light of Canon 1056». The reason for the undertaking of this scientific endeavor is explained in our attempt to present a survey of the common canonical doctrine on indissolubility. This thesis will be an attempt to examine the long history of the anthropological and doctrinal deposits of indissolubility, a critical and thorough exposition of the ecclesial tradition of the Church on this theme will be embarked on. We have centered
our attention on Canon 1056, though other canons (1099 and 1101) mention indissolubility implicitly or explicitly. In the mentality of the contemporary world, however, we can discern a widespread deterioration of the natural and religious meaning of marriage, with troubling repercussions in both the personal and the public sphere. As we all know, not only are the properties and ends of marriage called into question today, but even the value and the very usefulness of the institution. While avoiding undue generalizations, we cannot ignore, in this regard, the growing phenomenon of mere de facto unions (cf. FC, no. 81), and the unrelenting public opinion campaigns to gain the dignity of marriage even for unions between persons of the same sex.

Our aim is to effect a canonical-juridical study of the doctrine of indissolubility. The indissolubility of marriage is one of the elements of Catholic doctrine which seems to contrast a lot with today’s culture. The specific interest which pushes us to tackle this topic is to discover what can be for man today the authentic sense of the indissolubility of marriage despite the above mentioned problems; the tendency of divorce and remarriage which seems to plague our society today. Our aim is to defend the inseparability of the matrimonial bond and to affirm the doctrine regarding the indissolubility of marriage through the various teachings of the Church right from the beginning till today. I have no doubts that this thesis will be useful for many parts of the world where indissolubility no longer seem to have meaning especially in marriages between baptized Christians.

The content of this thesis will be based on the considerations of Canon 1056 and in particular on the juridical and Christian anthropological study of the indissolubility of canonical marriage. The understanding of this canon will be highlighted through the study and analysis of ecclesiastical doctrine beginning from the Biblical origins of the indissolubility of marriage in creation and the Tradition of the Church, the history of the Church, the Second Vatican Council and the various teachings and encyclicals of recent Popes beginning from Leo III right up to Benedict XVI and finally the relationship between indissolubility and sacramentality. Our major concern here will regard the

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4 «Essentiales matrimonii proprietates sunt unita set indissolubilitas, quae in matrimonio christiano ratione sacramenti peculiarem obtinent firmitatem». 

Clothilde Wanki  btcagn
preoccupations which the Church has had concerning the indissolubility of marriage and the solutions offered so that marriage as an institution can remain an indissoluble union.

The methodology of this thesis is canonical. Not only as intended by the Legislator but also as juridical anthropology. Other approaches applied in this dissertation are historical, since the indissolubility of marriage is examined and this regards the present, past and future. It is investigative and descriptive since it looks into issues which the doctrine of the Church has dealt with so that there is unity and consistency in this ecclesial praxis. The thesis examines the juridical and Christian anthropological, doctrinal and jurisprudential concept of the indissolubility of canonical marriage. This method shall be used to distinguish the different chapters of the study. The first chapter deals with the origin and foundations of indissolubility of canonical marriage. The second chapter deals with the anthropological study of indissolubility of marriage. The third chapter is based on the juridical doctrine regarding the indissolubility of marriage and in the fourth chapter we shall study the relationship which exists between indissolubility and the sacramentality of marriage.

The sources we shall use in this thesis cover important teachings of the magisterium of the Church, important manuals in theology and Canon Law in general and in particular regarding the indissolubility of marriage. Besides the classical magisterial documents (in particular those of the Councils of Florence and Trent), we paid attention to the magisterium of the XIX-XX centuries, which had to defend the indissolubility of marriage in a cultural context that is less Christian. This can be seen for example in Pope Leo XIII’s dogmatic approach to the subject of Christian marriage with his encyclical *Arcanum Divinae Sapientiae* (1880). In this sense, it is significant that in the preparatory works of the Council of Vatican I, the second fascicle of envelope 149 contained the “voto” of the consultant Rosi-Bernadini entitled «utrum expediat patribus future concilii proponere, ut nova definitione confirment doctrinam Catholicam de indissolubilitate matrimonii». The Code of Canon Law of 1917, the encyclical of Pope Pius XI *Casti Connubii*, the Second Vatican Council

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document *Gaudium et Spes*, the Code of Canon law of 1983, the Apostolic exhortation of John Paul II, *Familiaris Consortio* and the *Letter to the Family*, the doctrine of Pope Benedict XVI, other papal encyclicals which have not been mentioned, Papal allocutions to the Roman Rota, Rotal Jurisprudence, other texts, manuals, and monographs make up the different sources used in this dissertation.

Regarding the scheme of work, after this initial succinct introduction, the first chapter of this dissertation examines the scriptural, theological and canonical sources of the Church’s magisterium regarding the indissolubility of canonical marriage. In this first part we examine the sources and foundations of indissolubility in creation and the tradition of the Church. This part is an attempt to examine the creation of man and woman at the beginning of the book of Genesis and the Church’s teaching on the indissolubility of marriage. We shall also in this first part examine the Church’s teaching on the indissolubility of marriage. One of the main concerns of the Second Vatican Council was to address herself to the urgent problems which are deeply affecting humanity as a whole. The council then aimed at seeking solutions to these pressing problems in the light of the gospel and human experiences. Thus, in the preface of part II of *Gaudium et Spes* it says: «... the council now draws the attention of men to the consideration of some urgent problems deeply affecting the human race at the present day in the light of the Gospel and of human experiences» (GS 46a). The Pastoral Constitution on the Church in the Modern World of the second Vatican Council *Gaudium et Spes*, has dedicated a full chapter to the dignity of marriage and the family. Its aim is to present certain key points of the Church’s teachings in a clearer light, and it hopes to guide and to encourage Christians and all men who are trying to preserve and to foster the dignity and supremely sacred value of the married state (GS 47c). Then, the teaching on the indissolubility of marriage taught by the Church’s magisterium shall be examined in this first part of the work. This will certainly serve as an overview before we enter into the core of this study. In this light we shall examine them starting from Vatican II to Pope Benedict XVI.

The second chapter of this study is an attempt to present an anthropological study of the indissolubility of marriage. The indissolubility of marriage is seen together with unity as a consequence of the totality of conjugal
donation. We shall analyse the anthropological significance of some declarations of Pope John Paul II, the Congregation for the Doctrine of the Faith and the writings of some canonists (Juan Ignacio Bañares, Javier Hervada, Cormac Burke, Pedro-Juan Viladrich etc). We shall also attempt in this section to look at the important role which conjugal love plays in marriage and in particular in relation to our topic. We believe that this preliminary section is very important in order to fully understand the theme in question.

In the third chapter of this study based on the juridical doctrine of indissolubility, we shall begin by examining the concept of indissolubility and all that it entails as an essential property of marriage. Indissolubility qualifies the conjugal relationship in the temporal sense, making it perpetual. Indissolubility is opposed to divorce, intended as the dissolution, as resolution of the conjugal bond. To say that marriage is indissoluble means that it is a perpetual relationship which not only should be terminated but cannot be terminated, even if the couple’s existential relationship is irretrievably broken. Substantiating on this doctrine, it is important to note that, Indissolubility is not only an essential property but a necessity for a covenant marriage. Christians believed in marital indissolubility from the beginning of the Church. This was in opposition to Roman marriage which was intrinsically dissoluble simply by the withdrawal of consent by a spouse. In this context the radical nature of indissolubility is obvious. It is based on Gospel teaching and is not merely an ideal but a norm of life (Lk 16:18; Mk 10: 9-12; Mt 5:32, 19:9). This doctrine on indissolubility will also in some part study the concept of indissolubility and marriage “in fieri”, indissolubility and marriage “in facto esse”, indissolubility and unity etc. Another important aspect of the development of this doctrine shall be based on the exclusion of indissolubility. This is because a positive act of the will that excludes indissolubility renders marriage null (cf. cann. 1056 and 1101).

The fourth chapter which is the last section of this work regards the relationship between indissolubility and sacramentality. This study substantially constitutes an in-depth research of those aspects of sacramentality that are related to indissolubility. In Christian marriage, the indissolubility of marriage must be understood in the context of sacramental marriage. This sacramental character gives a special firmness to the indissolubility of marriage among Christians. This is to say that a Christian marriage is indissoluble not only by its nature but also by its essential symbolic function to represent the indissoluble
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union of Christ and the Church. And this indissoluble sacramental marriage even becomes the spring of grace which enables the spouses to live their marital relationship for life (FC, no. 13). Thus, there is no doubt to affirm that indissolubility is essential and it is at the same time necessary for every valid marriage. It is a principal norm and has to be an absolute condition which favours marriage and its goods. We shall also embark on examining the dissolution of the matrimonial bond in favour of the Faith. We believe that this last chapter is important in order to blend and complete our study on indissolubility.

We shall end with some logical conclusions reaffirming the indissolubility of marriage drawn from Sacred Scripture, the magisterial teachings of the Church, canonical doctrine and jurisprudence.

I wish to use these last lines to express my deepest gratitude and sincere thanks to the Rector, to Rev. Prof. Luis Navarro and all the Professors of the Faculty of Canon Law, other members of Staff of the Pontifical University of the Holy Cross Rome for the knowledge imparted to me and their untiring assistance during my period of studies. I wish to convey my heartfelt thanks and profound esteem to my moderator Rev. Prof. Miguel Ángel Ortiz under whose kind guidance this thesis has been written. He has guided me always with lively interest, readiness, availability and has given me useful indications and suggestions for this thesis. I feel deeply indebted to Rev. Prof. Pablo Gefaell for his punctual and kind observations, contributions and who guided me towards bringing this work to its realization. To the other members of this commission, I wish to say thank you exordine for your solicitous attention and disponibility. My sincere thanks also go to all the members of the prelature of the Opus Dei for their wonderful initiative of making available to the Church and to the world at large this prestigious University which provides quality formation to Priests, Seminarians, Religious Men and Women not forgetting the Laity.

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CHAPTER I: THE ORIGIN AND FOUNDATIONS OF THE INDISSOLUBILITY OF CANONICAL MARRIAGE

1.1. The origins of indissolubility in the Bible and in the traditions of the Church

The Christian doctrine regarding marriage is based essentially on some texts of Sacred Scripture. Due to this the canon law of marriage is not uniquely human. Part of it depends on divine law and therefore unchangeable and no Legislator should go against this. The fundamental scriptural texts in this field come from three sources: Genesis, the synoptic Gospels and the Letters of St. Paul. The story of these documents and their exegesis does not constitute the historical task of law. We shall not engage ourselves in this thesis in the many literature inspired by these texts but, it is worth noting that, they constitute the foundation of the canon law of marriage.¹ Two passages of Genesis (2:18 and 22-24) present marriage as being instituted by God, in order to realize the monogamic union of two persons who will become “only one flesh.”² This first institution of marriage in paradise by God was confirmed and renewed by Christ in the wedding at Cana. His participation at the wedding and the solemnity with which he conferred it to them was an accomplishment of his

² This expression does not refer to sexual union but to the community of life, in the broad sense, which is instaured among the spouses. Cf. M. GILBERT, Une seule chair, in Nouvelle Revue Théologique, 6 (1978), pp. 66-89.
first miracle (Jn 2:11). This is often remembered by the medieval doctrine which sees this as the second divine institution of marriage.³

Concerning the indissolubility of marriage, we can say that, during the period of Christ, both the Hebrews and Roman use of this term is clear evidence that they were in favor of monogamy, but the same cannot be asserted of indissolubility. Not only in the biblical narrations are found examples of divorce, but also the Hebrew law permits repudiation (Dt 24:1-4). It prohibits only the husband from taking again the divorced wife after having married to a second husband who at the same time has divorced her.⁴ Divorce was admitted in all the old legislations, in the East, in Egypt, in Greece or in Rome. Therefore if the maintenance of the bond right to the death of one of the spouses has been presented repeatedly as being in conformity with the same spirit of marriage, these ruptures in marriage were very frequent.⁵ The three Synoptic Gospels affirm the idea that marriage comes to an end with the death of one of the spouses: “man should not separate what God has united.” The Gospel of Matthew mentions this twice in (5:32; 19:9). He then [Matthew] underlines the revolution introduced by this prohibition, when he shows Christ responding to the objections of the Pharisees appealing to the Law of Moses (Mc 10:2-9)

But the presentation of this new law in the three synoptic gospels does not seem identical. The Gospel of Mark declares adulterous anyone who repudiates his wife and gets married to another wife (Mk 10:11-12). In a second affirmation, he formulates this same role for the woman who abandons her husband and contracts a new wedding.⁶ Mark seems to be the only one who formulates this reciprocity and at times the second affirmation was considered

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³ Cf. J. GAUDEMEN, Il matrimonio in Occidente, cit., p. 32.
⁴ Cf. Ibid., p. 33.
⁵ Cf. J. GAUDEMEN, Il matrimonio in Occidente, cit., p. 33; «To condemn divorce and repudiation signified to upset the family customs. On the other hand this is the only relative problem tackled with insistence by the synoptic gospels».
⁶ «Anyone who divorces his proper wife and gets married to another commits adultery against her; and if the woman divorces her husband and gets married to another man, she commits adultery».
Chapter I: The Origin and Foundations of Indissolubility

in reference to a noted practice by the Romans, but contrary to the Jewish customs.\(^7\) Luke takes only the repudiation of the wife into consideration (Lk 16:1).\(^8\) Matthew 19:9 does the same, but adds the clause \textit{mè epi porneia},\(^9\) which confirms another passage of the same gospel (cf. Mt 5:32) where this clause becomes \textit{parektos logoi porneias}.\(^10\) We can say that, it is not our duty to deepen the problem of the relationship which exists in the texts of the synoptic Gospels.\(^11\) These are questions which deal more with biblical exegesis and these text are then to be considered more as disciplinary affirmations on which doctrine and legislation will be build on.\(^12\)

The Letters of St. Paul also make reference to the union of the spouses and the indissolubility of marriage. Both the first letter to the Corinthians (55 A.C.) and that to the Ephesians (at the end of the first century) talk of the union of the spouses in the moral pact dedicated to the duties of the state. Quoting Genesis (2:24), the letter to the Ephesians recaptures the \textit{duo erunt} (5:31) while at the same time making explicit the duties which such a community requires

\(^7\) Cf. J. GAUDEMET, \textit{Il matrimonio in Occidente}, cit., p. 33.

\(^8\) «Anyone who divorces his proper wife and gets married to another commits adultery; anyone who gets married to a divorced wife, commits adultery».

\(^9\) «Anyone who divorces his wife if not in the case of \textit{porneia} and gets married to another, commits adultery». The word \textit{porneia} is translated in Latin as \textit{fornicatio (nisi fornicationis causa)}. Exegetes gave different interpretations to this word: adultery, indecency, fornication, concubinage. Cottiaux translate this as: «except if the marriage was concluded uniquely in order to satisfy passion». Cf. J. COTTIAUX, \textit{La sacralisation du mariage. De la Genèse aux incises matthéennes}, Paris 1981; Bonsirven intended \textit{porneia} already as a definition of the first irregular union (false matrimony, concubinage); this is also the interpretation of the publishers of the Jerusalem bible. Cf. P. J. BONSIRVEN, \textit{Nisi fornicationis causa. Comment résoudre cette ‘crux interpretum’?}, in \textit{Recherches de science religieuse}, 35 (1948), pp. 442-464.

\(^10\) «Anyone who divorces his wife except in the case of \textit{porneia}, exposes her to adultery and anyone who marries a divorced wife, commits adultery». Cf. J. GAUDEMET, \textit{Il matrimonio in Occidente}, cit., p. 33.

\(^11\) Concerning this point we could Cf. S. GIET, \textit{Aux sources du droit canonicum du mariage}, Études ...Le Bras, II, Parigi 1965, pp. 1237-1242. Regarding a more strict tendency which opposes the admission of divorce by the law of Moses, Cf. A. TOSATO; \textit{Il matrimonio nel giudaismo antico e nel Nuovo Testamento}, Roma 1976, pp. 28ff.

\(^12\) Cf. J. GAUDEMET, \textit{Il matrimonio in Occidente}, cit., p. 33.
for the spouses: the submission of the woman (Ef 5: 22-24), the love and help of the husband (Ef 5:25-30). In the first letter to the Corinthians indissolubility is recalled twice (1Cr 7: 10-39) and in the letter to the Romans 7: 2-3. Another important passage concerning the story of Christian marriage is that of Eph (5:32) which in its Latin translation, makes reference to matrimony and cites for the very first time the word *sacramentum*. Marriage in this context symbolizes that of Christ and his Church. In the conclusion comes the fundamental phrase: «This mystery (*mystèrion*, in Greek and *sacramentum*, in Latin) is great (5:32)».\(^{13}\) We shall not enter into exegesis which this text could evoke, but it is vital to note that, the word mystèrion used even till today by Greek theology in order to indicate sacrament, evokes something secret and mysterious which cannot be understood by reason but only by faith. Sacramentum designates in the language of Tertullian\(^{14}\) mystery or symbol. The mystery of the conjugal union is seen as the symbol of the union of Christ with his Church.\(^{15}\)

From the above analysis, we can affirm that, the unity of the human couple (male and female) in marriage has its foundation in the narration of the book of Genesis regarding the creation of man. «In this plan the relationship of man – woman, foundation of the society, is described in its highest and intense form, – that is the love of man for his wife».\(^{16}\) The originality of this narration and the respect it has for the religion of the people at the time guarantees that it reflects the thinking and the intention of the Creator concerning marriage.\(^{17}\) Certainly it is not in a way exaggerated to say that, in the first two chapters of


\(^{15}\) Cf. J. Gaudemet, *Il matrimonio in Occidente*, cit., p. 35.


the book of Genesis, the divine idea of marriage is revealed in its fundamental components. In it is found the clear intuition of the ideal human couple.\footnote{Cf. P. GRELOT, \textit{Le couple humain dans l’Écriture}, in \textit{Foi Vivante} 118, (1969), p. 32; P. ADNES, \textit{Il matrimonio}, cit., p. 11. Here after \textit{Foi Vivante} will be cited as \textit{Foi Viv}.}

While chapter 2 of Genesis narrates and concentrates on the creation of the first female human person, it also introduces us vividly to the attraction of the senses, and to conjugal love.\footnote{Cf. P. D’ACQUINO, \textit{Storia del matrimonio Cristiano alla luce della Bibbia}, Torino 1984, pp. 563-573.} This suggests the original reason for the creation of man and woman. Jesus Christ himself reiterated this when he appealed to the “truth of the beginning” in order to respond to the question addressed to him by the Pharisees (cf. Mt 19:3-8) on the sufficient reason of divorce.\footnote{Cf. A. MIRALLES, \textit{Il matrimonio, Teologia e vita}, Milano 1996, p. 15.} Twice during the dialogue with the Pharisees who questioned him about the indissolubility of marriage, Jesus Christ appealed to the “beginning”. The dialogue took place in the following way. Some Pharisees came to Him with the intention of testing him and asked him, «Is it lawful for a man to divorce his wife for any reason?» And he answered them, «Have you not read that from the beginning the Creator created them male and female and said, ‘for this reason a man will leave his father and his mother and unite with his wife, and the two will be one flesh.’? So it is that they are no longer two, but one flesh. Therefore, what God has joined let man not separate». They objected, «Why then did Moses order to her a certificate of divorce and send her away?» Jesus answered, «Because of the hardness of your heart Moses allowed you to divorce your wives, but from the beginning it was not so» (Mt 19: 3-8).\footnote{Cf. JOHN PAUL II, \textit{General Audience}, (September 5, 1979), in \textit{Man and Woman be Created Them, A theology of the body}, Boston U.S.A. 2006, pp. 131-132.}

This biblical origin explains the fact that, God the Creator has created man and woman and has put within their nature the capacity to realize and execute an indissoluble marriage. Thus the principle of indissolubility has its foundation in the natural law. Rèmy asserts that: «in effect, the Almighty God, Creator of all things, is the author of the institution of marriage. He created the
essential properties: unity, indissolubility, fecundity. This is what can be drawn from the narration of creation in chapter 2 of Genesis».  

1.1.1. Creation of the couple

The book of Genesis brings to light two narrations of the creation of man and woman. This is understood in the context of progression in Revelation. According to Sabbarese, this context is proper to revelation and all that was created is qualified as good (Gen 1:10.12.18.21.25.31). The marriage union is part of all that God created and found that it was “very good.”

In the second place, though divine Revelation came in a progressive mode, real succession does not always correspond to the material. Therefore, from the point of view of biblical exegesis of the New Testament (cf. Mt 19: 3-6), it is indisputed that the narration of creation in Gen 2:18-24 is more ancient than that found in Gen 1:26-28. For this reason, it seems obvious to examine ancient story: «they are no longer two, therefore, but one flesh». (cf. Mt 19). However the word “beginning” is of vital importance in this context. According to Pope John Paul II,

“Beginning” signifies therefore what Genesis speaks about. It is thus Gen 1:27 that Christ quotes in summary form. “From the beginning the Creator created them male and female,” while the complete original passage reads as follows: “God created man in his image; in the image of God he created him; male and female he created them.”

It is important at this juncture to examine the chronologically older text of narration: “the two shall be one flesh”, as seen in Gen 1:18-24 in the following words:

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24 JOHN PAUL II, General Audience, (September 5, 1979), in Man and Woman He Created Them, A theology of the body, cit., p. 132.
«[18]Yahweh God, ‘it is not good that the man should be alone. I shall make him a helper.’

[19] So from the soil Yahweh God fashioned all the wild animals and all the birds in heaven. These he brought to the man to see what he would call them; each one was to bear the name the man would give it.

[20] The man gave names to all the cattle, all the birds of heaven and all the wild animals. But no helper suitable for the man was found for him.

[21] Then, Yahweh God made the man fall into a deep sleep. And, while he was asleep, he took one of his ribs and closed the flesh up again forthwith.

[22] Yahweh God fashioned the rib he had taken from the man into a woman, and brought her to the man.

[23] And the man said: This one at last is bone of my bones and flesh of my flesh. She is to be called woman, because she was taken from man.

[24] This is why a man leaves his father and mother and becomes attached to his wife, and they become one flesh».

According to John Paul II, the level of this first account of creation, even if it is chronologically later, has above all a theological character. An indication of this is the definition of man based on his relationship with God (“in the image of God he created him”), which includes at the same time an affirmation of the absolute impossibility of reducing man to the “world.”

Gen 1:27 establishes that this essential truth about man refers to the male as much as to the female: «God created man in his image…, male and female he created them». To the mystery of his creation (“in the image of God he created him”) corresponds the prospective of procreation (“be fruitful and...

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multiply”), of coming to be in the world and in time, of “fieri,” which is necessarily tied to the metaphysical situation of creation: of contingent being (“contingens”).\(^\text{27}\)

On the other hand, Gen 2 constitutes the most ancient narration of the creation of man and woman. This narration in effect, comes from the Yahwist tradition\(^\text{28}\) which in a way uses the literary narrative form with a sensible and happy style.\(^\text{29}\) The sacred author, in narrating the modality with which God proceeds to the creation of man, reveals that they were created from clay and the creator discovered the solitude in which man found himself, he decided to give him “a helper similar to him” (vs. 18), that is a being proportionate to him, with which they could live dialoguing and working together. In this scope God created different animals but «man does not find a helper which is similar to him» (vs. 20). Therefore Adam fell into a deep sleep and- he took from him a rib and formed the first woman.\(^\text{30}\) Again according to Sabbarese, the creation of the woman, a helper similar to the man, formed from the rib of man himself, explains not only the complementariness man-woman, but also the identity and the equal dignity of nature between man and woman.\(^\text{31}\) In this very light, the Teacher appeals to Gen 2:24:

For this reason a man will leave his father and his mother and unite with his wife, and the two will be one flesh.” Quoting these words almost “\textit{in extenso},” as a whole, Christ gives them an even more explicit normative meaning (given that in Gen they sound like statements of fact, “will leave… will unite…they will be one flesh”). The normative meaning is plausible, because Christ does not limit himself only to the quote itself, but adds, “So it is that they are no longer two, but one

\(^\text{27}\) Ibid., p. 136.

\(^\text{28}\) It is the name given by the author of the most ancient written font (source) of the Pentateuch. Right from the beginning of the creation Gen 2: 4b uses the name of Jahwé, from which tetragamma Hebrew –JHWH- derives the name of the font.


\(^\text{30}\) Ibid.

\(^\text{31}\) Ibid.
flesh. Therefore what God has joined “let man not separate,” is
decisive.32

It is important to note here that, in the light of this word of Christ,
Gen 2:24 states the principle of unity and indissolubility of marriage as the very
content of the word of God expressed in the most ancient revelation. It is
significant that in his response to the Pharisees, in which he appeals to the
“beginning”, Christ indicates in the first place the creation of man with
reference to Gen 1:27, «from the beginning, the Creator created them male and
female»; it is only after this that he quotes the text of Gen 2:24. In this context,
the words that directly describe the unity and indissolubility of marriage are
found in the immediate context of the second creation story, the characteristic
feature of which is the separate creation of woman33 while the account of the
creation of the first man (male) is found in Gen 2:5-7.34 John Paul II stresses
that Genesis, revealing to man his identity as a human being, specifies that he

Cannot exist “alone” (Gen 2:18); they can only exist as «unity of two»,
and therefore in relation to another human person. This is a reciprocal
relationship: of the man towards the woman and the woman towards
the man. To be a person in the image and likeness of God consists,
therefore, in an existence also in relationship, in relation to the other
“T”.35

32 JOHN PAUL II, General Audience, (September 12, 1979), in Man and Woman He Hreated Them,

33 Genesis 2:18-23, from now own, Genesis will be quoted as Gen.

34 Cf. JOHN PAUL II, General Audience, (September 19, 1979), in Man and Woman He Created
Them, cit., p. 139.

This aspect of relation of reciprocity, that the Holy Father considers important regarding the
biblical passage, indicates a deep sensibility concerning the relationships between man and
woman today and makes in a certain sense justice of the prejudices that weighed on the
condition of the woman. A Holland theologian lady, C. J. M. HALKES, noted that: «regarding
the submission of the woman to the man, the story of the influence of Gen 2 has acted in a
disastrous way! But if an exegesis of this text is made in a critical manner and according new
scientific approaches, it does not arrive at an andocentric result. […] Only in the narrative
presentation of what is called “the fall following original sin”, is spoken of the domination
of the man on the woman. This has to be seen therefore as a consequence of “sin”. The author of
In this regard, the complete union between man and woman fulfills and perfects the human being that was not created exclusively masculine or feminine, but exist in the union between the two.\textsuperscript{36} This union constitutes a fundamental element in the plan of God for humanity that cannot be suppressed without touching the essence.\textsuperscript{37} Adnès specifies that: «it is uniquely a personal relationship in the distinction, proper to the Trinity, that he believes to find in the unity of the human couple, that could consequently be the same image of God».\textsuperscript{38} To sum up, the relationship of the couple becomes the \textit{locus theologicus} of the revelation of the Trinity. This conception is in line with the tradition of the Church that considers the creation of the human couple on the model of the Divine Persons.\textsuperscript{39}

The body which through its own masculinity or femininity right from the beginning helps both spouses to be able to find themselves in a communion of persons, becomes, in a particular way, the constituent element of their union, when they become husband and wife. This takes place through a mutual choice. This choice therefore, establishes a conjugal pact between persons,\textsuperscript{40} who become one flesh only on this basis. As an expression of self-determination, a human choice rests on the foundation of human self-consciousness. On the basis of the structure peculiar to man he has “a body”, and, through the body, he is male and female. When both spouses unite so closely so as to become one flesh, their conjugal union at this point presupposes a mature consciousness of the body. In fact, it bears within it a


\textsuperscript{38} P. ADNÈS, \textit{Matrimonio e mistero trinitario} in \textit{Amore e stabilità nel matrimonio}, Roma 1976, p. 10.


\textsuperscript{40} Cf. JOHN PAUL II, Encyclical letter \textit{Redemptor Hominis}, (March 4, 1979), in AAS 71 (1979), p. 274.

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particular consciousness of the meaning of that body in the mutual self-giving of the persons.\textsuperscript{41} Again Pope John Paul II, tries to explained that:

Man and woman, created as unity of the two in the common humanity, are called to live a communion of love so that it should reflect in the world the communion of love that is in God, for which the three Persons are loved in the intimate mystery of the unique divine life. [...] The image and likeness of God in man, created as man and woman (in the analogy that can be presumed between Creator and creature), thus also expresses the "unity of the two" in a common humanity. This "unity of the two", which is a sign of interpersonal communion, shows that the creation of man is also marked by a certain likeness to the divine communion ("communio").\textsuperscript{42}

In the "unity of the two", man and woman are called from the beginning not only to exist "side by side" or "together", but they are also called to exist mutually "one for the other".\textsuperscript{43} In order to explain better the indissolubility of the marriage bond, St Paul recalls the fact that, due to the force of a law, the woman is bound or joined to the husband. He does not explicitly say this, but from the context itself it can easily be deduced that, it deals with the divine law which regulates marriage, otherwise his simile will not have the effectiveness which he wants to donate to them. The law of marriage can neither be changed nor raised ineffective by the human will, but only by the Legislator, which in this case is no other person but God. It ceases only with the death of one of the spouses.\textsuperscript{44}

\textsuperscript{41} Cf. JOHN PAUL II, General audience, (December 12, 1979), in Man and Woman He Created Them, A theology of the body, cit., p. 169; This same taught is expressed in JOHN PAUL II, The theology of the Body, Human Love in the Divine plan, Boston U.S.A. 1997, p. 50.


\textsuperscript{43} Ibid.

\textsuperscript{44} Cf. R. CORNELY, Epistola ad Romanos, Paris 1896, p. 346: «Verum a Paulo hic, sicut plus quam semel a rabbinis, ad veterem Legem divinitus datam applicator, quipped de qua (uti lege naturali) stritore sensu valeat. Namque humanis legibus, quae in certa dumtaxat terra vigent atque a legislatoribus pro libitum mutantur vel ad tempus solvuntur aut removentur etc., homines ante mortem suam facile se subtrahunt; Lex autem vetus, utpote divina, quum ab hominibus neque ullo modo ad tempus dissolvit vel irrita reddi posset, omnes eos, qui semel ei
Here fecundity is in fact a gift of God, the fruit of his benediction and to it the spouses are invited together: they become the object of a true and proper vocation and the same end for which the two sexes were created.\textsuperscript{45} To summarize all that has been said, the fecund love of the original couple, as the prototype of all conjugal unions, is therefore analogically the image of the love of God, based on interpersonal relationships: its function is to incarnate and show the deep reality of divine love.\textsuperscript{46} In order to defend the permanence of the bond, the juridical order shows how this experience of love, this way of life, this fullness of living, should be sought not outside of the experience of conjugal love but in this same love.\textsuperscript{47} Only in this light can it be possible to overcome in conjugal love, the tension between the relative and the absolute, between that which is temporal and eternal, which has been clearly and evidently highlighted by Hans Urs Von Balthasar. «Human love is the participation of that love which lovers vow in the solemn moments which signifies something which is lasting [...]».\textsuperscript{48}

That «intimate community of life and of conjugal love is therefore established by the Creator himself».\textsuperscript{49} It can be said that, in these text of Genesis, the Fathers of the Church and exegetes found a link with monogamy

\begin{footnotes}
\footnotetext[45]{Cf. P. GRELOT, \textit{Le couple humain dans l’Écriture}, cit., p. 30.}
\footnotetext[46]{Cf. M. C. FORCONI, \textit{Antropologia cristiana come fondamento dell’unità e dell’indissolubilità del patto matrimoniale}, cit., p. 15.}
\end{footnotes}
and the indissolubility of marriage. At the same time it is true that, for the primordial Church they were expressions of the law of marriage. In them are found the essential elements of marriage as intrinsic to the relation man-woman according to the plan revealed by God. These elements are: a) a community of life; b) in which is realized the reciprocal gift of bodies; c) and a fusion of love, of sentiments and of will. These three elements bring about a new being, a new person that is called spouse. It is important to note that Jesus Christ also commented on Gen 2:18-25 in the sense of unity and indissolubility (Mt 19:4-6), giving the possible authoritative interpretation.

1.2. The teaching of the Church’s Magisterium regarding indissolubility before Vatican Council II

At the beginning of the Church, the sources of Sacred Scripture do not really show with certitude a particular Christian form in which marriage was celebrated. People got married according to their rites and secular local cultures corresponding to that period and context which was social and cultural. Gradually, the doctrine of Christian marriage developed and gave

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50 This was contrasted to the laws of the roman state that permitted divorce, calling them «laws of those outside», as Chrysostom express (died in 407) and Antanagora (II sec.): Cf. H. Crouzel, Divorce et remariage dans l’Église primitive: rééxions de méthodologie historique, in NRTb, 108 (1976), pp. 891-917 [or in Mariage et divorce, célibat et caractère sacerdotaux dans l’Église ancienne. Études diverse EHCIC 2, Torino 1982, p. 171].


birth to norms and decrees which are very precise. The bases of this procedure were the Gospels and the Epistles of St. Paul. From the 5th century, «St. Augustine (the Christian doctrine of marriage) gave the form which has been followed right to the 20th century. Being what God wanted and confirmed by Christ, marriage was then inscribed in the plan of God».\(^{56}\) The difference between the Patristic concept of the indissolubility of marriage and that which was affirmed in the Church between the XII and XIII century could be summarized in the following words: «According to the Fathers of the Church, marriage in its quality of sacramentum in the ancient ‘sense of commitment for life’ or of ‘vow of fidelity’ was not to be dissolved, because this implied a personal obligation of living the conjugal life in a way of conserving intact the matrimonial bond».\(^{57}\) The indissolubility of marriage was a task which needed to be realized personally.\(^{58}\)

The teaching of the Church’s Magisterium concerning the indissolubility of marriage before Vatican II has been of vital importance. The doctrine of the Church establishes and constantly repeats that marriage is indissoluble. Christian marriage made legally valid (sacramental marriage) and consummated by the conjugal act humano modo and open for generation of offspring cannot be dissolved. Because what God has joined together, man must not divide (Mt 10:9). The very nature of marital love demands permanence: and the children produced by this love need the permanence of their parents’ marriage. It is a love that springs from the divine source of charity. It is an intimate partnership...

\(^{56}\) A. Le Bourgeois, Chrétiens divorcés remariés, Paris 1990, p. 117.


\(^{58}\) Ibid., p. 154; «From this according to the scholastic concept of Sacramentum, a concept which was developed in the XII and XIII century from the idea of the ontological participation of the alliance of Christ with his Church. In this context it is affirmed that marriage cannot be dissolved because there as an objective bond in it, which once contracted, was exempted from every action or human interference. These two concepts in which the first considers marriage as a moral obligation and the second as an ontological bond, do not exclude each other, above all, they complement each other. The patristic doctrine as much as that of the scholastic are solidly founded on sacred scripture since at the moment the Catholic Church defend and practices these two complimentary concepts of marriage. It is important to accept with much precision the biblical point of view as well as the recognition of the sacramental aspect of marriage which is intimately linked to the affirmation of its indissolubility.»
of married life. It is rooted in the conjugal covenant of irrevocable consent. Authentic marriage is caught up into divine love and enriched by Christ’s redeeming power. The perpetuity of marriage refers to its indissolubility. It has been called the “bonum sacramenti” because of that special perpetuity enjoyed by the consummated sacramental marriage. Nevertheless, it is a property of all marriages, even non sacramental ones, since perpetuity belongs to the very essence of marriage.\textsuperscript{59}

We are going to look at the various developments of this doctrine in reference to the theory of St. Augustine, Decretum of Gratian and the Decretists, indissolubility of marriage in the books of the decretales followed by the Councils of Florence and Trent which reaffirmed the ideas of St. Augustine. In this light, the obligatory teaching of the Church about the indissolubility of marriage was defined by the Council of Trent (1545-1563). This decision was preceded by the decision of the “union” Council of Florence (1439-1445).

1.2.1. The theology of St. Augustine on the indissolubility of marriage

St. Augustine (354-430)\textsuperscript{60} lived during the declining years of the Roman Empire. Augustine’s teaching on marriage and divorce has been enormously influential in the history of Christian thought. In this, as in many others, his thinking underwent significant development as he grappled with successive opponents regarding marriage as we see in the course of the development of


\textsuperscript{60} P. J. ELLIOTT, \textit{What God has joined}, New York 1997, p. 78. «While St. Augustine was working as a bishop in Northern Africa from 395 until his death in 430, he faced many practical pastoral problems in caring for his flock at Hippo. In that unstable era, marriage was always an important part of the work of a bishop. The Roman Empire was collapsing. The certainties and stability of family life were less secure. The Church was challenged, not only by barbarian invasions, but by heresies in the East and West. In that era, the basis of St. Augustine’s writing on marriage was Christ’s gift of stability to Christian marriage, indissolubility».
this part (e.g., the Manichees, Jovinian and the Pelagians).\textsuperscript{61} His doctrine on marriage made him a major exponent due to it richness. A new phase in Augustine’s reflections on marriage began around the year 401, when he composed \textit{De bono conjugali} and \textit{De sancta virginitate}. In these writings Augustine began to engage a new opponent, the monk Jovinian (see retr. 2.22.1) had been condemned during the early 390s at Rome and Milan because he taught that, Christian marriage and celibacy were equally pleasing to God. Augustine responded by arguing that celibacy is superior to marriage. But since some of Jovinian’s previous opponents (e.g., Jerome) had radically devalued marriage in their defense of celibacy, Augustine felt it necessary to insist on the genuine goodness of the marital relationship. In the course of doing so he developed the idea of the “three goods” of marriage that became classic in Catholic Theology.\textsuperscript{62} We shall not expand so much on the three goods of marriage here since it constitutes part of what we shall be discussing in chapter three of this work.

His doctrine based on \textit{De bono conjugali}\textsuperscript{63}, which was written in the year 401 was an important reference for many canonical writers. In his writings, St. Augustine continually insisted on the fact that, marriage is good because of three fundamental values or "goods". This he affirms in the following words: «Let these nuptial goods be the objects of our love: offspring, fidelity, the unbreakable bond... Let these nuptial goods be praised in marriage by him who wishes to extol the nuptial institution».\textsuperscript{64} According to him, each of the essential properties of the conjugal society that is: its exclusiveness, its permanence, its procreativity is something good, that gives dignity to matrimony and shows its deep correspondence to the innate aspirations of human nature, which can therefore take glory in this goodness: «This is the


\textsuperscript{62} Ibid., p. 535.

\textsuperscript{63} In \textit{De bono conjugali}. Augustine regards marriage as “the first natural bond of human society” (1.1).

\textsuperscript{64} \textit{De nuptiis et concupiscendia} I, c. 17, n. 19.
goodness ["bonum"] of marriage, from which it takes its glory: offspring, chaste fidelity, unbreakable bond».\(^{65}\)

So he saw these values as main features of a true marital bond that underline the natural goodness of marriage and make it something admirable and attractive to human consideration. One of the principal sources of Augustine’s theory is the fact that marriage cannot be dissolved. This premise itself is derived from Jesus’ rejection of divorce in the synoptic Gospels.\(^{66}\) In *De bono coniugale* Augustine himself stresses the fact that the marriage bond cannot be dissolved.\(^ {67}\) He developed what the fathers and other Christian writers had always assumed and defended, the Lord’s definite teaching which raised marriage to the status of an unbreakable, permanent and life-long union. In Augustine, we find emphasis not so much on the grace-imparting mutual consent of marriage in the making, “*in fieri*”, but on what consent in itself establishes, that is, the unbreakable union caused by sacred sanctification, the sacrament as it may describe marriage “*in facto esse*”, the lived sacrament.\(^{68}\)

Against the anti-mariage views of the Manichaeans, St. Augustine defended marriage as a created reality. For him, even before Jesus Christ raised it to a new dignity, marriage enjoyed three intrinsic goods.\(^ {69}\) The three "bona" are essential elements which distinguish the marital covenant from any other

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\(^{65}\) *De peccato originali*, c. 37, n. 42.


\(^{67}\) Cf. *De bono coniugale* 17, p. 209, line 20 (*Vinculum nuptiarum*); 32, p. 227, line 6 (*Vinculum nuptial*), p. 197, line 13.

\(^{68}\) Cf. P. J. ELLIOTT, *What God has joined... The Sacramentality of marriage*, New York 1997, p. 79. Here after this text will be quoted as *What God has joined*.

\(^{69}\) *Ibid.*; «St. Augustine repeatedly referred to these goods of marriage. Significantly, in his commentary on Genesis, he shows what he meant by ‘sacramentum’ in this context of marriage as a created reality: « ...the sacrament means that a marriage is not to be broken apart, not even so that the party who abandons, or the abandoned party, may marry again in order to have children» Cf. ST. AUGUSTINE, *De Genesis ad litteram*, 9.7.12 (PL, 34, 397): «...in sacramento autem (attenditur), ut coniugium non separetur, et dimissus aut dimissa nec causa prolis alteri coniugatur». This was cited by PIUS XI, CC., 101.
type of relationship between two persons. These three goods or "bona" are: the exclusive fidelity of the marital relationship (one man with one woman: the "bonum fidei"); the permanence of the relationship (the unbreakable character or indissolubility of the marital bond: the "bonum sacramenti"); the (potential) fruitfulness of the union (procreativity or the openness to having children: the "bonum prolis", or the "good" of offspring). St. Augustine stressed on the importance and upbringing of the children both spiritually as well as morally. He was not in accord with the error that marriage is essentially evil, but he believed firmly that:

Marriage has got the following goods and it cannot be evil by itself. This is threefold: fidelity, offspring, Sacrament. Fidelity means that one refrain from sexual contact outside the marriage bond; Offspring, that [the child] is lovingly received, tenderly nurtured, religiously brought up; the Sacrament, that the marriage is not broken and the abandoned spouse marry another, not even for the sake of having children.70

It should be noted that "sacramentum" ("bonum sacramenti") does not refer to the sacrament of matrimony in its theological sense. Augustine used the word "sacramentum" in its original Latin sense of something with a "hidden" or "deeper" meaning. The Church has always sustained the fact that, the unbreakable character of the marriage bond is a sign (sacramentum) of God's unalterable love for each human being. The "bonum sacramenti" here does not refer to the supernatural means of grace which is also proper to Christian marriage, but refers to the indissolubility of the marital bond which is an essential character of each and every marriage. St. Augustine therefore quoting the words of St. Paul affirmed:

Marriage therefore is a good in all the three things which are proper to the marriage state. And there are three: It is the ordained means of

procreation, it is the guarantee of chastity, it is the bond of union. In respect of its ordination for generation the scripture says, “I will therefore that the young woman marry, bear children, guide the house,” as regards its guaranteeing chastity, it is said of it, “the wife has not power of her own body, but the husband; and likewise also the husband has not power of his body, but the wife,” and considered as the bond of the union: “what God hath joined together, let not put asunder.”

It is very clear in this context that his meaning of “sacrament” is the standard understanding of his own time and culture, viz. a religious commitment or a binding sacred oath. In that sense, even pagans ought to remain married to one another until death since the Creator instituted marriage and even the absence of the first “good” of marriage, offspring, cannot then justify the idea of abandoning a sterile spouse. But this is not the only meaning of “sacrament” in his writing on marriage. As a binding, sacred commitment, causing indissolubility, it therefore provides the ground for his more developed, and specifically Christian, use of the word. We must be careful, however, not to equate it with the second of the goods of marriage, fides, as may happen if we apply our modern subjective understanding of “commitment” to “sacrament,” a defect in Schillebeecks’ analysis of Augustine’s use of the term. For him “this bond is not to be broken for any reason, even when the spouse commits adultery.” In Christian marriage, St.


72 Cf. E. SCHILLEBEECKX, Marriage: Human Reality and Saving Mystery, London 1976, pp. 285-287. Failing to take account of Augustine’s philosophical background, Schillebeeckx wished to reduce the objectivity and mystery of “sacramentum” in line with his own non-ontological sacramentalism, evident even before his Eucharistic phenomenology and denial of indelible character. Cf. P. J. ELLIOTT, What God has joined, note. no. 24, cit., p. 244.

73 P. J. ELLIOTT, What God has joined, cit., p. 79.
Augustine saw the human, religious commitment raised to a sacred signification of Christ’s love for his spouse the Church, the great mystery. This signification brought about an indissoluble life-long bond, which is more binding than the natural bond of pagan marriage.\textsuperscript{74}

Regarding the \textit{bonum fidei} (the good of fidelity) again St. Augustine affirmed in the following words: The good, therefore, of marriage among all nations and all men is in the cause of generation and in the fidelity of chastity; in the case of the people of God, however, the good is also in the sanctity of the sacrament. Because of this sanctity it is wrong for a woman, leaving because of divorce, to marry another man while the husband still lives, even if she does this for the sake of having children. Although that is the sole reason why the marriage takes place, even if this for which marriage takes place does not follow, the marriage bond remains indissoluble except by death of a spouse.\textsuperscript{75}

We can illustrate briefly why each of this goods or blessings of marriage is truly a \textit{value}, in close correspondence with the nature of genuine conjugal love between man and woman. To appreciate this is all the more important today when people’s natural desire for a true married relationship is threatened by a false idea of self-sufficiency and a growing suspicion of any form of binding commitment.\textsuperscript{76}

From the viewpoint of anthropology, which studies the natural character of marriage, the "\textit{bond}" can be said to express the main aspects of the

\textsuperscript{74} Cf. P. J. ELLIOTT, \textit{What God has joined}, cit., p. 80, See, ST. AUGUSTINE, \textit{De bono coniugali}, 44.32. (PL, 40.394).


Chapter I: The Origin and Foundations of Indissolubility

marital commitment which two people in love naturally seek. It falls to legal science to study the juridical aspects of marriage, where the interplay of rights and obligations can give rise to questions of justice. It is logical therefore that the law of the Church has considered the "bona" from the viewpoint of the fundamental rights and obligations they involve, and the canonical consequences if they are not accepted or respected.\(^77\)

St. Augustine is conscious not only of the procreative ordering of marriage, but also of its unitive value. Augustine's doctrine of the triple "bona" of marriage – "prole", "fides", "sacramentum"\(^78\) – should be read not merely in an institutional context (as is normally done), but also precisely in personalistic terms. The penetrating analysis of the three-fold matrimonial "bona" has never lost relevance over 1500 years.\(^79\) It is not Augustine's fault if the "bona" have subsequently been inserted into (and appropriated by) a rather narrow canonical and institutional understanding of matrimony, which laid special emphasis on the aspect of obligation involved in each "bonum" and concerned itself mainly with the juridical consequences of their exclusion. I think it is beyond question that this dwelling on the obligatory nature of the "bona" has tended to obscure their actual goodness. Now Augustine did not present the "bona" mainly as obligations, but as values, as blessings. «Let these nuptial blessings be the objects of our love: offspring, fidelity, the unbreakable bond. Let these nuptial blessings be praised in marriage by him who wishes to extol the nuptial institution».\(^80\) For him, each of the essential properties of the conjugal society – its exclusiveness, its permanence, its procreativity – is a good thing, that gives dignity to matrimony and shows its deep correspondence to the innate aspirations of human nature,

\(^{77}\) Ibid.

\(^{78}\) Cf. St. Augustine, De bono conc. C. 24, n. 32 (PL 40, 394); IDEM, De nupt. et conc. I. c. 17, n. 19 (PL 44, 424); IDEM, De Gen.ad Litt. Lib.IX, cap.7, n.12 (PL 34, 397); IDEM, De Pec. Orig., c. 34, n.39 (PL 44, 404); IDEM, De Sancta Virginitate, c. 12, n. 12 (PL 40. 401).


\(^{80}\) De nuptiis et concupiscentia I, c. 17, n. 19 (PL 44, 424-425); cf. c. 21, n. 23. «In nuptiis tamen bona nuptialis diligentur, proles, fides, sacramentum... Hace bona nuptialis laudet in nuptiis, qui laudare vult nuptias»; Cf. C. Burke, St. Augustine and conjugal sexuality, in Communio, 4 (1990), pp. 545-565, in www.cormacburke.org.ke.
which can therefore take glory in this goodness: «This is the goodness of marriage, from which it takes its glory: offspring, chaste fidelity, unbreakable bond».

In order to expose the doctrine of the indissolubility of marriage, Augustine intentionally wrote a book entitled “De conjugiis adulterinis ad pollentium.” In this work, he brings out clearly the idea that, during his time, there were two theories on divorce. According to one which was strictly based on the evangelic test of Matthew, divorce was permitted to a man if his wife committed adultery, but not to the woman if the husband committed adultery. According to another extensive text, the rights of the spouses were equal, although it was advised to a woman who divorced her husband because of adultery, not to remarry. This last theory was based on the argument that, the adulterous spouse was considered as death. This argument was justified by an ingenuous and subtle reasoning; since the Mosaic Law condemned to death the adulterer wife and she was to be considered as dead in the world. St. Augustine reacted very strongly against this doctrine although it was quite difficult to arrive at a conclusion. The diversity of the text of Sacred Scripture, the privilege established by St. Paul, the perplexity of the doctrine of other Fathers of the Church compelled them to recognize that, this point is one of the most difficult concerning the doctrine of marriage.

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82 Cf. MIGNE, PATROLOGIA LATINA, XL, 451-456. Here after Migne, patrologia Latina will be cited as ML; This same thought is presented by CONDE in his explanations concerning De coniugiis adulterinis, Cf. J. C. CONDE CID, L’Origine del “privilegio Paolino” I Cor 7, 12-17a: Esegesi, Storia dell’interpretazione e ricezione nel diritto della Chiesa, Roma 2009, p. 196.

83 Cf. F. DELPHINI, Indissolubilità matrimoniale e divorzio dal I° al XII° secolo, Milano 1979, p. 61.


85 Cf. P. B. ALVES PEREIRA, La doctrine du mariage selon S. Augustin, Paris 1930, p. 117.
St. Augustine affirms that marriage between Christians is inalienable in its rights, since Christian marriage is not only a contract, but also a sacrament. «The rupture of the matrimonial bond in a Christian marriage is not only illicit but also impossible. Neither separation, divorce due to adultery, sterility, neither the vow of continence, nothing other than death can break the bond that binds two spouses». In *De sermone Domini in monte* (394), Augustine comments at large on Mt 5:31-32: «It has also been said, anyone who divorces his wife must give her a writ of dismissal. But I say this to you, everyone who divorces his wife, except for the case of an illicit marriage, makes her an adulteress; and anyone who marries a divorced woman commits adultery». The question which Augustine asked interests us here: which is the fornication that permits separation? This fornication is to be intended in the strict sense (sexual sin) or it refers also to spiritual fornication, that is, idolatry and every corruption that is moral (omnia illicita corruptionem). For Augustine, Christian marriage is the figure of the mystical union of Christ with the Church, and has to produce quality in any possible way. Christ and his Church, living eternally, cannot be separated by divorce in any way. According to this model, St. Paul said to Christians: «Virī,
diligite uxores vestras, sicut et Christus dilexit Ecclesiam.⁹² In this way, therefore, the Christian spouses remain united with an indissoluble bond.⁹³

According to Reynolds, Jesus by insisting on the indissolubility of marriage and by his presence at the marriage at Cana- «reaffirmed that there is goodness in marriage. But this good Augustine argues, consist not only in procreation but also in the natural association between partners of the opposite sex».⁹⁴ «The binding indissolubility is what was really interesting to Augustine, that which he termed, in the different context of explaining Christian marriage and the problem of concupiscence, as something belonging to the conjugal state».⁹⁵ In Augustine’s preaching on St. John’s Gospel, we find him describing succinctly how the Church was formed from the pierced side of Christ, just as Eve was formed from the side of Adam: «Adam slept that eve might be; Christ died that the Church might be».⁹⁶ Furthermore, preaching on the first epistle of Saint John, Augustine saw the “great mystery” of “one flesh” in the espousal of the Church in the Incarnation: «The spouse of Christ is the whole Church, whose principle and first fruit is the flesh of Christ: there the bridegroom is joined to the bride in bodily union».⁹⁷ An important question we need to ask ourselves at this point is, whether Augustine related this “great mystery” to Christian marriage in a casual way? This is an invitation to return to the passage in the De nuptiis et concupiscentia, where Augustine compared indissolubility to the

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⁹² Eph 5:32: «There is a deep secret truth revealed in this scripture, which I understand as applying to Christ and the Church».

⁹³ Cf. F. Delphini, Indissolubilità matrimoniale e divorzio dal I° al XII° secolo, cit., p. 62.


⁹⁵ St Augustine, De nuptiis et concupiscentia, 1.11.12. (P.L., 44, 420, 421) where he speaks of “binding indissolubility” as a “quiddam coniugale.”; See P. T. Elliott, What God has joined, cit., p. 79.


⁹⁷ Saint Augustine, In epistola Ioannis ad Parthos, 2.2 (P.L., 35, 1990); P. J. Elliott, What God has joined, cit., p. 81.
baptismal character. According to Elliott, Augustine points to the causality of the “great mystery” in three ways:

1) He cites Eph 5:25, “husbands, love your wives as Christ loved the Church,” and then goes on to affirm that the “effect of this sacred symbol (sacramenti res)” is indissolubility. 2) He adds that this indissolubility “is safe guarded in Christ and the Church which, living with Christ who lives forever, may never be divorced from him.” In Christ he saw the eternity of the resurrection of the “great mystery” imparting divine indissolubility to the union of Christ and his Church, and hence to Christian marriage. 3) He goes on: «The observance of this sacred symbol is such ‘in the city of our God, even in his holy mountain’ (Ps 47:2), that is the Church of Christ, by the married faithful, who without doubt are members of Christ...» that they cannot separate and remarry even in order to have children. He sees the participation in the “great mystery” by married Christians as being based on their being “members of Christ” (Cf. Eph 5:30).

From the above citation, it is clear that, Saint Augustine saw the “great mystery” encompassing the Incarnation, passion and Resurrection as the cause of Christian marriage. All we can say is that, Augustine’s emphasis on indissolubility, on the sacred symbol of the “great mystery” as the source of indissoluble Christian marriage, implies some divine grace granted to spouses to persevere in the three “goods” of marriage. Lastly, St. Augustine’s doctrine

98 P. J. ELLIOTT, What God has joined, cit., p. 82; See ST. AUGUSTINE, De nuptiis et conubiscencia, 1.10.11. (PL, 44, 420): «...ut vivens cum vivente in aeternum nullo divorcio separetur.»

99 Cf. P. J. ELLIOTT, What God has joined, cit., p. 83; Elliott affirms that, «To summarize Augustine’s development of the sacramentality of marriage, we must return to the “great mystery” of Saint Paul and the Gospels. Whether or not the old Latin text of Ephesians 5:32, which St. Augustine used, translated mysterion as “sacramentum”, he was well aware of the mystical symbolism of marriage in Ephesians. Guided by his own platonic philosophical formation, he could take the “great mystery” in St. Paul and the Gospels that step further. It became the celestial archetype for the earthly “sacrament”, hence the cause of indissolubility in the lived marriage of Christian spouses. In Platonic terms, Christ’s union with his Church could be the divine “form” for the earthly, created and redeemed, reality of marriage between Christians. Guided by the practical categories of Aristotle, later theologians would be able to analyze and systemize what Augustine had achieved: the natural “sacrament” of marriage as its third good, indissolubility, is raised by the “great sacrament” to become a “sacrament” for Christians, a sacred symbol which signifies that mystery of Christ’s deathless love for his
contrasted that of the Gnostics and Manicheans, in the fact that, he affirmed the fundamental goodness of marriage due to the fact that it was created by God and because there are three objective benefits which are found in marriage: Fidelity (fides), offspring (proles) and persevering commitment (sacramentum). He did not explicitly state that a hierarchy exists between these benefits, but it is clear from his thought that offspring is primary. Thus, for Augustine the bond is not to be broken for any reason, even when a spouse commits adultery.

spouse the Church, a sacred symbol which, therefore, causes what it signifies, an indissoluble bond between Christian husband and wife. Ibid., pp. 83-84.

100 Cf. SAINT AUGUSTINE, De bono coniugali 20, 24 in CSEL 41, 218: «Bonum, inquam, sunt nuptiae et contra omnes calumnias possunt sana ratione defendi». «Marriage is good indeed, and can be defended against every false accusation by healthy reason».

Also De Bono coniugali 24, 32 in CSEL 41, 227: «Haec omnia bona sunt, propter quae nuptiae bonum sunt: proles, fides, sacramentum». «All these things are good, on account of which marriage is good: fidelity, offspring, persevering commitment».

The content of these three benefits was described by Saint Augustine himself in De Genesi ad litteram 9, 7, 12 in PL 34, 398: «Hoc autem [bonum] tripartitum est; fides, proles, sacramentum. In fide attenditur ne praeter vinculum coniugale, cum altera vel altero concumbatur; in prole, ut amanter suscipiatur, benigne nutriatur, religiose educetur; in sacramentum autem, ut coniugum non separetur, et dimissus aut dimissa nec causa prolis alteri coniungatur. Hace est tamquam regula nuptiarum, qua vel naturae decoratur fecunditas, vel incontinentiae regitur gravitas».

English trans. In J. H. TAYLOR, The literal meaning of Genesis, Volume II, Books 7-12, New York 1982, p. 78: «Now this good is three fold: fidelity, offspring and sacrament. Fidelity means that there must be no relations with any other person outside the marriage bond. Offspring means that children are to be lovingly received, brought up with tender care, and given a religious education. Sacrament means that the marriage bond is not to be broken, and that if one partner in a marriage should be abandoned by the other, neither may enter a new marriage even for the sake of having children. This is what may be called the rule of marriage: by it the fertility of nature is made honorable and the disorder of concupiscence is regulated».

101 Cf. P. ADNÈS, Le mariage, Mystère Chrétien, Tournai 1961, p. 56: «These different goods should not be placed on the same level. Without doubt, Augustine gave first place to the good of the procreation and education of the child». 
Chapter I: The Origin and Foundations of Indissolubility

1.2.2. The Decretum of Gratian and the Decretists

During the period of the Gregorian reform, in the last ten years of the 11th century, the doctrine on the indissolubility of marriage seemed deep-rooted in the customs. The western Church has practically jurisdictional monopoly on cases regarding the matrimonial bond and this fact rendered more easy and agreeable the practice with the doctrine. The cultural reawakening during the 12th century, theology and canon law acquired a solid legislation and doctrine in the matrimonial sphere with a certain advantage of defending the indissolubility of marriage. By the middle of the twelfth century, the debate which was between the Roman and European traditions had been taken over and championed respectively by the theologians of the University of Paris and canonist at the University of Bologna. The master at Bologna during this period was Gratian.

The whole study on the thinking of Gratian is enriched by the reading of the First Masters of the Medieval period. It is understood that, shortly after the composition of the Decretum, they began to realize Glosse and Summe through which they interpreted in different passages. In fact, the development of canonical science, the use of philosophical reasoning and the


104 Cf. T. MACKIN, What is marriage? New York 1982, p. 158. Here after this text will be cited as what is marriage?


stimulating example of the commentators of Justinian corpus created an intellectual climate for this work.\textsuperscript{107} The contribution of the Decretists is varied and important because from the multiplicity or variety of its exegetical task, they enlightened controversial passages, they resolved eventual gaps (lacune), or they reproposed a thinking stemming from a job done well with the ancient auctoritates,\textsuperscript{108} and were able sometimes to modify the conclusion of the magister or to propose directly their proper thinking.\textsuperscript{109} In some way, they began to fix in a stable manner the canonical discipline, and noted themselves the influence of canon law in theology.\textsuperscript{110}

Thus, the Decree of Gratian (1140) was composed during the 12\textsuperscript{th} century by Gratian and it was counted among the most important texts of ecclesiastical law.\textsuperscript{111} When he had completed this work of research, he himself named the work “A Concordance of Discordant Canons” (\textit{Concordantia Discordantium Canonum}) and Innocent III later called it “The Corpus of Decrees” (\textit{Corpus Decretorum}). It has then come through the history of Church law known by its abbreviated title, the \textit{Decretum}. «Gratian’s Decretum took its place in the long line of those medieval collections that sought to bring scattered ecclesiastical and learned opinions into manageable order».\textsuperscript{112} In this Decretum Gratian included a collection of attempted harmonization of all the


major texts on marriage which were available to him.\textsuperscript{113} «By means of his dicta, Gratian demonstrated that the canon law of the Church was a harmonized complete unity».\textsuperscript{114}

This work was a kind of counterpart to the \textit{Summae Sententiarum}, the summaries of patristic texts which were being gathered and edited at Paris at the same time.\textsuperscript{115} Causae 27 to 36 are dedicated to legal matters regarding laymen and the primary subject of this \textit{causae} is the law of marriage. «This \textit{causae} 27-36 marks an essential step in the history of this period. Through the attitude which he adopts regarding the matrimonial bond, he contributes a new base to the doctrine of canon law. It is the point of departure of the classical doctrine of canonical marriage».\textsuperscript{116} He presented a very detailed analysis of impediments to marriage that also became the foundation of canonical marriage law.\textsuperscript{117} Therefore, «the decree of Gratian marks a very important moment during this period».\textsuperscript{118} It was with Gratian the father of the science of canon law that, the

\textsuperscript{113} Cf. T. MACKIN, \textit{What is marriage?}, p. 158; This same thought is expressed by Gaudemet. Cf. J. GAUDEMET, \textit{Il matrimonio in Occident}, cit., p. 180.

\textsuperscript{114} \textit{The History of Medieval Canon Law in the Classical period, 1140-1234}, (ed. W. HARTMANN and K. PENNINGTON), Washington D. C. 2008, p. 22.

\textsuperscript{115} Cf. T. MACKIN, \textit{What is marriage?}, pp. 158-159; He mentions the following brief biography of Graziano in note 16 of p. 174. «Graziano de Clusio was a Camaldolese monk of the monastery of St. Felix in Bologna. He began the gathering and arranging of extant canons in 1127, during the papacy of Eugene III. The synthesis that became the \textit{Decretum} he divided into 101 Distinctions, each of which is subdivided into its own chapters; and into 36 Causes, each of which is subdivided into its own questions and chapters. The entire work is divided into parts I and II; the canons on marriage are in Causes 27-36 of part II. (The entire work is in PL 187, the causes on marriage in columns 1371 through 1520)». Here after columns will be cited as cols.


term *matrimonium ratum*, a juridical term in canon law, became definite by accepting it into his Decretum.\textsuperscript{119} Mackin asserts that,

Out of this effort Gratian produced his own answer to the questions making up the substance of the current debate between the canonists of Bologna and the theologians of Paris. To his mind the questions came to a point in this: Are a man and a woman who have declared their intention to marry – declared whether by consent *de futuro* or consent *de presenti* – truly married before their first act of intercourse? He acknowledged the consequences of the two possible contradictory answers: if a man and a woman thus promised are not married before their first intercourse, Mary and Joseph were never truly married. But if they are, then a brother and sister can marry and do so innocently provided that they never have intercourse.\textsuperscript{120}

It was then in his attempt to preparing for his own answer to this question, that he assembled in a dialectical manner the pertinent texts answering one way or the other (in Causa 27, *Quaestio* 2).\textsuperscript{121} In order to reconcile as far as possible the disagreeing texts among those which he had gathered, and to propose his own solution, he borrowed a distinction that his adversaries at the University of Paris had already made. This distinction was between *matrimonium initiatum* (the inchoate marriage) and the *matrimonium ratum* (the ratified or completed marriage).\textsuperscript{122} In c. 27, q. 2. Gratian talks of *matrimonium initiatum* and *matrimonium perfectum*. For him a marriage which is merely *initiatum* is soluble, while a marriage which is *perfectum* is indissoluble.


\textsuperscript{120} T. Mackin, *What is marriage?*, cit., p. 159.


\textsuperscript{122} Ibid., p. 159; this same thinking is reflected in the work of, Cf. J. Dauvillier, *Le Mariage dans le Droit Classique de l’Église*, Paris, 1933, p. 10. «Gratian affirmed that a marriage is begun by the *desponsatio* and completed by intercourse». 
And the reason for this indissolubility is that, the matrimonium perfectum possesses the sacrament of the union of Christ and the Church.\footnote{Cf. J. MúZAS, *The concept of matrimonium ratum in Gratian and the early Decretists (1140-1215)*, cit., p. 23; «The word sacrament is taken here in the meaning of mystical symbol, not in its present symbol of ‘efficacious sign of grace’».

Gratian gave a larger place to the three Augustinian goods in defining marriage than did Hugh of St. Victor. The reason may not be obvious but we can guess that as a canonist, he was more concerned with a problem which showed up frequently in the ecclesiastical courts.\footnote{Cf. T. MACKIN, *What is Marriage?*, cit., p. 161.} Concerning Gratian’s definition of marriage, in the introductory *dictum* to *Causa 27, Quaestio 2*, he simply repeated Ulpianos’ definition from Justinian’s institutes: «Marriage, or matrimony, is the union of a man and woman maintaining a single sharing of life».\footnote{This is found in PL 187: 1392; T. MACKIN, *What is Marriage?*, cit., p. 164.} This he then repeated in *Causa 29, Quaestio 1*.\footnote{Cf. PL 187: 1430, Cf. T. MACKIN, *What is marriage?*, cit., p. 164.} During this period, the definition of marriage from the *Digest* appeared in the *Summa* of Paucapalea, one of Gratian’s first disciples at Bologna. Paucapalia accompanied this definition with that of the Institutes, and he also explained the phrase from the *Digest*, “*divini et humani iuris communication*” (marriage as a sharing in divine and human law) which implies that, the spouses share “one Church, one chorus, one home and so forth.”\footnote{D. FELLHAUER, *The consortium Omnis Vitae as a Juridical Element of Marriage*, in *Studia Canonica*, 13 (1979), p. 39.} The *Decretum* of Gratian\footnote{«Gratian’s *Decretum* was one of the cornerstones of canon law. Its definitions of concepts and terminology as well as its actual solutions to legal problems have in many cases been definitive and survive in the most recent compilation of the law of the Catholic Church, the *Codex iuris canonici* of 1983». Cf. A. WINROTH, *The making of Gratian’s Decretum*, Cambridge UK 2000, p. 2.} adopted the main teaching of St. Augustine regarding the essential properties of marriage. It is worth mentioning here that absolute indissolubility of Christian marriage was considered as a result of its sacramental symbolism. Such, as we have seen, was...
the teaching of St. Augustine and was equally universally accepted.\textsuperscript{129} Gratian also quoted \textit{solet quaeri} but there were some few minor changes in the terminologies.\textsuperscript{130} These changes in effect appeared in Gratian’s quotation of the \textit{Usque adeo} which was an indication to the definite notion of the bond of marriage.\textsuperscript{131} Indissolubility was not considered here as an exclusive property of marriage. It was clear that, the words of our Lord rendered marriage indissoluble for all without difference.\textsuperscript{132}

They were directed not to baptized persons, but to non baptized Jews. St Augustine made it clear that, this was the primitive law from God which he imposed on Adam and all his progenies at the moment in which marriage was constituted. The particular bond of Christian marriage did not indicate that other marriages could admit divorce. Gratian being the leader of the School of Bologna; reflected anew on the realistic theory being inspired by the law of the Germanic people, which considered the conjugal act as an important element for marriage to be constituted.\textsuperscript{133} This doctrine is already found clearly in Ivo of Chartres.\textsuperscript{134} Gratian in speaking of the difference between Christian

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\textsuperscript{131} C. 28, C. XXXII, q. 7; Cf. \textit{Glosa Ordinaria} s. v. Usque adeo...casus: «dicitur his quod manet...vinculum coniugale, etiamsi divorium interveniat sicut manet character Baptismatis, etsi apostatando o charitate recedat».

\textsuperscript{132} \textit{Ibid}.


\textsuperscript{134} Cf. \textit{IVO DI CHARTRES}, Ep.155. «ita nam ab ipsa mundi creatione naturale et inviolabile manet coniugii sacramentum, ut nec praevaticio originalis illud abstulerit, nec diluvii sententia crimina diluens mutaverit. Quod ergo divina sententia sanxit et immutabile fieri voluit, non debet humano interdico disjungii» (PL 162. 159).
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marriage and pagan marriage, said these practice divorce, but they do it «due to a state law, and not for the law of heaven». Also in this period that we are considering, theologians said, when God instituted marriage he gave it three goods: fides, proles, inseparabilitas. In this same light,

Scholastic theologians discussed the revealed truth in relation to reason and they asked the question, if natural law prescribed that marriage was indissoluble, or if the divine command established something which went beyond what was said about natural reason. It was manifested that the natural law demanded that, the union of man and woman, in general, be permanent: otherwise it will fail in its essential scope. In fact, the principal end of marriage is not the advantage of the wedded couple, but the procreation and the physical, intellectual and moral education of the children: this will be impossible if the marriage could be dissolved easily.

At the end of the twelfth century, the end of the period of the Decretists, one important development in the canonical treatment of the matter of indissolubility can be noted in the teaching of Huguccio (+1210), the most influential canonical writer of his time. Huguccio taught that any condition against the substantial elements of the matrimonial contract rendered

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135 Gratiano, Dictum ad c. 17, C. XXVIII, I. «Legitimum conjugium est quod legali institutione vel provinciae morbus contrahitur. Hoc inter infedele ratum non est, quia non est firmum et inviolabile conjugium eorum. Dato enim libello repudii licet eis recessere ab invicem, et alis copulati lege fori, non lege poli, quam non sequuntur».


137 Ibid., p. 350.

138 The Canonists that commented the work of Gratian are called Decretists. Usually their work is a fruit of the teaching activity at the principal universities. Hence the decretists are those who commented on the decrets. They are divided in decretists who commented on the Decree of Gratian and the decetlists who commented on the decrets of the Popes in the Liber Extra, Liber Sextus, Epistolae Clementine and the Extravagantes. The fundamental text of the Decretists is the Gratian Decree.

139 In his Summa super Decretis (1188-90) Huguccio treated the Decretum of Gratian so thoroughly that he is considered to have left no question on Gratian unanswered. Cf. S. Kuttner, Bernardus Compostellanus Antiquus, in Traditio: Studies in Ancient and Medieval History, Thought and Religion, New York 1943, pp. 283-284.
The Decretists and commentators of sentences proclaimed the indissolubility of marriage.

Duns Scotus (1265-1308) brought out three definitions regarding marriage as a contract and as a sacrament in the following words:

Marriage is an indissoluble bond between man and wife arising from the mutual transferral of power over each other’s body for the procreation and right education of offspring. The contract of marriage is the mutual transferral by man and wife of their bodies for perpetual use in the procreation and right education of offspring. The sacrament of marriage is the expression of certain words of man and wife, signifying the mutual handling over of power over each other’s body for the right procreation of offspring, efficaciously signifying by divine institution the conferral of a grace which is beneficial to each of the contractants for their mutual joining of souls.

For him these three definitions were very important in the sense that, they stressed a lot on the indissolubility of marriage and procreation. Duns Scotus, based the indissolubility of marriage on surer grounds. Not only on the

140 «Quid si neuter hoc exprimat, scilicet quod velit ad tempus contrahere vel quamdiu voluerit…numquid est matrimonium? Respondet Huguccio: Notavit C. XXXII, q. 2, c. solet quaeri…quod quidam dicunt advectionem temporis tunc demum matrimonium impedire, si exprimatur, in ipso contractu, alter non: sed ipse dicit, quod sive exprimatur, sive non, non est matrimonium, licet probari non posit quando non est expressum a contrahentibus, sicut dicitur quod non est matrimonium, ubi non est consensus animorum, licet verbo dicunt simul se consentire». – *Summa Sancti Raymundi* (Veronae, 1744), Lib. IV, c. VII, *Quae Bona Matrimonii*.


142 DUNS SCOTUS, *Quaestiones in quartum librum Sententiarum*, dist, 26, q. unica (Omnia opera, Vol. 19, p. 186): «Matrimonium est vinculum indissolubile inter marem et foeminam, ex mutua translatione potestatis corporum suorum in se invicem facta ad procreandam prolem debite educandam».

«Contractus matrimonii est maris et foeminae mutual translation corporum suorum, pro usu perpetuo ad procreandam prolem debite educandam».

«Sacramentum matrimonii est expressio certorum verborum maris et foeminae, ad se invicem significantium traditionem mutuae potestatis corporum ad prolem debite procreandam, ex institutione divina efficaciter significans gratiam conferandam, mutuo contrahentibus ad conjunctionem mutuum animarum gratiosam». 
education of children he noted, but also on the same good of the family and of
the state which demands that the bond of marriage should have a long
duration: and in all the cases the advantage that results is more if the bond is
not only lasting but indissoluble. The nature therefore demands indissolubility.
He admitted that the proof adopted, does not have the character of an
apodictic demonstration. Therefore the duty (obligation) of the law is not
that of imposing the approval of all. But God has provided that which was
missing, confirming the natural law with a positive law to the same effects.

From all that has been said above, we can say that, from the days of
Gratian until the opening of the sixteenth century, the doctrine of the
indissolubility of marriage was undisputed in the Western Church. Theologians
and canonists treated this as a dogmatic truth admitted by all. Thus, Peter
Lombard in a section on the separation of man and wife says:

Separation is of two kinds, corporal and sacramental. Corporal
separation is possible on account of fornication, or by mutual consent
in order to enter religious life: and it may be either temporally or
perpetual. But in regard to the sacrament the parties cannot be
separated as long as they live, provided that the law of the Church
allowed their marriage. For the bond of wedlock between them
continues to exist, even should they depart the one from the other and
form unions with other persons.

143 Cf. SCOTUS, IV Sent., d. XXXIII, q. I, conclusione I. «Sequitur alia circumstantia scilicet
quod personas istas sibi invicem ad istum finem vinculo indissolubili obligari honestum est.
Hoc probatori ex precedenti, quia si determinatio ad commorandum et mutuo serviendum
valet ad debitam prolis educationem, et ad bonum familieae et civitatis, multo magis ad hoc
valet perpetua adhaesio ad invicem…Et ex hoc patet solutio cujusdam quaestionis, an talis
obligatio sit de lege naturae, quia…proprissime de lege naturae est principio: secundario autem
de lege naturae est verum evidentur consonum talibus principiis et conclusionibus, licet non
necessario sequens: et hoc modo marem et feminam obligari ad finem praedictum est de lege
naturae», t. XIX Parigi 1894, p. 149.

144 Cf. G. H. JOYCE, Christian marriage: An historical and doctrinal study, London &New York 1933,
p. 382. Here after this document will be quoted as Christian marriage.

145 IV sent., d. 31. «Separatio autem gemina est: corporalis scilicet et sacramentalis. Corporaliter
possunt separi causa fornicationis, et ex communi consensus causa religionis, sive usque ad
This text glaringly brings out the fact that once marriage has been entered as a sacrament the parties cannot separate from one another as long as they live.

1.2.3. *Indissolubility of marriage in the books of the Decretals.*

In the years which followed after the Decree of Gratian there was a good number of production of Papal decretals. Some of these were those of popes who were teachers of canon law such as Alexander III and Innocent III which were gradually added to the Decree of Gratian. These decretals took the name of *decratales extravagantes* (called like this because *extra decretum Gratiani vagabantur*). The manner in which often these materials were gathered tempus, sive usque ad finem. Sacramentaliter autem separari non possunt, dum vivant, si legitimae personae sint*. (PL 192.918); G. H. Joyce, *Christian marriage*, cit., p. 378.


147 Amongst all these decretals only five were widespread and these were knowns as the *Quinque compilationes antiquae*, called in this way because, when St. Raymond of Peñafort was in charge of preparing the collection of Gregory IX (A.D. 1234), this raised “antiquae” all the other ones. Cf. Ibid., p. 99. These five collections follow in this order:

1) *Breviarium extravagnantium* (*Compilatio prima*, 1190-1191): this was composed towards 1191 by Bernardo da Pavia with the intention of completing Gratian. This work merits particular attention because for the first time was effected a systematic division in five books following a well noted order: *Index, Judicium, Clerus, Connubia* (or *Sponsalia*), *Crimen*, a methodology which was followed afterwards for all the other compilations;

2) *Compilatio secunda* (between 1210-1215): this is due to John of Galles who put together the decretals of Popes Clement III (1187-1191) and Celestine III (1191-1198);

3) *Compilatio tertia* (1209): carefully prepared by Pietro Beneventano and promulgated by Innocent III through which he wanted to gather his proper decretals emanated by 1198 to 1210. Quite different from the others they had an official character and were being sent to the University of Bologna so that they could be studied and used *tam in iudiciis quam in scholis*;

4) *Compilatio quarta* (1216): Composed by Giovanni Teutonico. They included the decretals of Innocent III (1210-1216) and the canons of the Lateran Council IV (1215);

5) *Compilatio quinta* (1226): composed by Tancred arch deacon of Bologna, for the order of Onorio III in which he gathered or grouped the decretals of this Pope from the year 1216. They had an official character and were then sent to the University of Bologna and Paris accompanied by the same formula which was used for the third compilation. Cf. A.
pushed Pope Gregory IX to think of a compilation which was totally new, elaborating again on all the juridical material of Gratian and those that followed later with the aim of rendering more certain and simple the understanding of canon law that was in force. The work that came to light in 1234 constituted an official and well defined collection which was then called *Decretals* and the fourth book dedicated on marriage.

It is well noted that the books of the decretals and in particular those of Gregory IX constituted a concrete and perfect work of the ecclesiastical legislation due to the successful explanations of the legal system in vigor surpassing the dispersion of norms which were operating in the Church law due to so many emanations of decretals which were not resolved by the different *compilationes* after the decree of Gratian. The *Liber Extra* of the decretals of Gregory IX which was the greatest work of Raimond of Peñafort was successful also due to the Pontiff’s great interest and its successful promulgation as the Universal law of the Church.\(^{148}\) It had an exclusive character in order to constitute together with the decree of Gratian and the successive collections of decretals which were added, the *Corpus Iuris Canonici* of the Church practically right to the codification of 1917. The collections after *liber Extra* which were included in the *Corpus Iuris canonici* were: *Liber Sextus decretalium*, of 1928 (called in this way because they intended to complete the *Liber Extra* of Gregory IX made of five books), compiled according to the wish of Boniface VIII which intended to gather the decretals after Gregory IX; the *Clementinae*, gathering of the decretrals of Clement V and the decisions of the Council of Vienna desired by the same pope, despite the fact that this was

\(^{148}\text{Ibid.}, \text{p. 102 note 6.} \text{Liber Extra was promulgated by the Bull *Rex Pacifius* of September 6, 1234 and it became in this way the universal law of the Church, deviating all laws at least the general ones promulgated after the decree of Gratian. This is the cause of the oblivion in which the *Compilationes* fell into after the promulgation of the *Liber Extra*. We are using the “critical” edition of AEmLius FRIEDBERG, *Corpus Iuris Canonici*, vol. II, Graz 1879 (Editio Lipsiensis secunda 1959 post Aemilii Ludovici Richteri).}
clear to him only in 1317 through the work of the successor of John XXII; the *Extravagantes Iohannis XXII*, collection of decretals done by John XXII; the *Extravagantes communes*, gathering of 74 decretals promulgated by Papa Urbano IV right to Sisto IV. In 1580, Gregory XIII sanctioned the publication of the different collections that had official character with the denomination of *Corpus Iuris canonici*: the *Decretum Graziani*, the *Liber Extra* of Gregory IX; and *Liber Sextus decretalium*, the *Clementinae*, the *Extravagantes Iohannis XXII*, and the *Extravagantes communes*.  

Marriage system is presented here as a response from the part of the authority to the demands of specification, defense of marriage and the right for one to choose a proper state in the Church. This right is seen as a principle that stands at the base of the matrimonial system as demonstrated in the decretals of Gregory IX and in other books of the decretals which constituted the *Corpus Iuris Canonici*. It is important to note at this juncture that in this understanding of the *ius connubii* as a right for all, there exist also a decretal in which is made the affirmation of the principle regarding the right to celebrate marriage by all, but always if there is no prohibition expressed by the law. In this light, the aim of the ecclesiastical law is to defend monogamy as expressed in the book of Genesis which affirms that: «et adhaerebit uxori suae, et erunt duo in carne una; non dixit tres vel plures, sed duo, nec dixit: adhaerebit uxoribus, sed uxori». Polygamy and successive unions are not admitted. They are seen as contrary to the nature of marriage. One of the essential elements of the canonical matrimonial system without which it will be difficult the efficacious defense of the right of marriage, is the clear determination of the efficient cause of the indissoluble matrimonial bond and its elements. Thus, the Decree of Gratianus signified a big step forward in the explanation of the matter but still left so many points in doubts with consequent difficulty regarding the solution of concrete cases. Among the points which needed

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149 *Cf. H. Franceschi, P. Erdö, Storia della scienza del diritto canonico: una introduzione*, Roma 1999, p. 34.


151 *X 4. 19.8 (Innocentius III. Tiberiadensi Episcopis [1201]).*
clarification clearly stands out the following: the distinction between weddings \((sponsalia)\) and marriage \((matrimonio)\), between bride and wife, the difference between marriage just initiated and ratified marriage, the determination of the requisite of capacity for consent, the role of consummation in the constitution of the bond. These made the defense of the \(ius connubii\) in many cases difficult especially from the point of view of free marriage choice. On the other hand, the \(Liber Extra\), succeeded to distinguish clearly between weddings and true consent, rendering more easy the defense of the liberty of consent in single cases. These essential precisions in the decretals were advantageous to the defense of the free exercise of the right to marriage, beginning from the necessity to concretize personal consent as the cause of the indissoluble bond.\(^\text{152}\)

The centrality of present consent as the cause of the indissoluble bond was so strong that a marriage celebrated afterwards and consummated, the first although not consummated always prevailed revoking therefore any contrary decratal custom.\(^\text{153}\) Innocent sustains that only from present consent is born an indissoluble matrimonial bond. It is noted then that present consent is the efficient cause of indissoluble marriage. Matrimonial consent which has to be identified with present weddings is the cause of the indissoluble bond, independently of consummation or less of the relation. Therefore, those who have celebrated present weddings, cannot celebrate new marriages.\(^\text{154}\) Future weddings do not cause the indissoluble bond, neither when they are made through an oath or vow. There is the moral obligation to fulfill the oath and

\(^{152}\) \textit{Ibid.}, p. 111. The decretals confirms that the matrimonial bond is born only from personal consent, manifested by legitimate persons with words of present. X 4.1.25: «Solo consensu legitimo contrahitur matrimonium, sed verba requiruntur quoad probationem, et intellige: vel alia signa aequipolentia (Innocentius III. Brixiensi Episcopo [1206]). {\(\ldots\)} matrimonium in veritate contrahitur per legitimum viri et mulieris consensum; sed necessaria sunt, quantum ad ecclesiam, verba consensus experimentia de praesenti».\(^{153}\) X. 4.45: «Qui duas per verba de praesenti desponsat, primam desponsatam habebit in uxorem, etiamsi prius secundam cognoverit: nec valet contraria consuetudo. Et hoc ultimum additur ad cap. Licet supra codem (Innocentius III. Mutinensis Episcopo [1200])».\(^{154}\) X.4.1.31: «Sponsalia de praesenti non solvuntur per sequens matrominium, etiam carnali copula consummatum; sed sponsalia de futuro etiam iurata solvuntur per sequentia de praesenti (Gregorius IX).
the possibility to impose a penance due to non-fulfillment\textsuperscript{155}, but this is totally different from the existence of a matrimonial bond: «Sponsalia de futuro dissolvuntur, si sponsi se dissolvunt, etiamsi fuerint iurata (Innocentius III. Exonensi Episcopo (1198-1216))».\textsuperscript{156} Finally, summarizing the doctrine of the decretals regarding the relation between present weddings or matrimonial consent and future weddings, we could distinguish between the different situations some of which are a promise of marriage and others are real marriages and therefore indissoluble:

- **Future wedding**: is a promise of future marriage and cannot be dissolved by the celebration of other future weddings but certainly with the celebration of present wedding.

- **Future wedding with an oath**: it is not a marriage. Non-fulfillment implies a sanction due to the faith lacking but the celebration of the marriage with another person will not be effective. In this case, the weddings even those confirmed with an oath, is dissolved. There are different punishment and penance for anyone who violates this oath.

- **Future weddings with non-consummated copula**: they will not become marriage and could be dissolved by successive present weddings.

- **Future weddings with successive copula**: according to decretals, the marriage will be authentic and cannot be dissolved. This is *matrimonium praesumptum*, with a presumption which does not admit contrary prove.

- **Present weddings**: they are marriages and it is the matrimonial consent. They cannot be dissolved with successive consent given to another person, although this second marriage was consummated and the first did not. In these cases, the second wife has to be abandoned and returned to the first.\textsuperscript{157}

\textsuperscript{155} Cf. X 4.1.5: «Si sponsus de futuro ante copulam ad remota se transfert, sponsa libere cum alio contrahit: si tamen per cam stetit, quo minus matrimonium perficeretur, sibi poenitentia imponitur. Alexander III. Panormitano Archiepiscopo (1159-81)».

\textsuperscript{156} X. 4.1.2.

\textsuperscript{157} Cf. H. FRANCESCHI, _Riconoscimento e tutela dello «Ius connubii» nel sistema matrimoniale canonico_, pp. 121-122.
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Looking at these titles of the decretals one notices the effort in which reference is made regarding the decree in order to determine the moment and the efficient cause of the birth of the indissoluble matrimonial bond. The principle motive of this survey is properly to determine the original moment of the bond, with the aim of giving a right and just response to the different situations so that the authority does not determine the existence of marriage, but what it does is simply to verify before responding to the concrete case. Thus, from all that we have explained we can then conclude that present weddings are the same matrimonial consent from which arises the indissoluble bond.

1.2.4. The Council of Florence

The Council of Florence which took place in 1439, in regard to indissolubility, based its ideas on the three goods of St. Augustine. The focal point of the Council of Florence, was based on the Decree pro Armenis, which established the following on the indissolubility of marriage:

The three blessings are assigned to matrimony. The first is the procreation and education of children for the worship of God. The second is the fidelity that each of the spouses must observe towards the other. The third is the indissolubility of matrimony, indissolubility because it signifies the indivisible union between Christ and the Church. Although a separation from bed may be permitted by reason of marital infidelity, nevertheless it is not permitted to contract another marriage since the bond of marriage lawfully contracted is perpetual.\footnote{COUNCIL OF FLORENCE, Exultate, November 22, 1439. «Assignatur autem triplex bonum matrimonii. Primum est proles suscipienda et educanda ad cultum Dei. Secundum est fides, quam unus coniugum alteri servare debet. Tertium indivisibilitas matrimonii, propter hoc quod significant indivisibilem coniunctionem Christi et Ecclesiae. Quamvis autem ex causa fornicationis liceat tori separationem facere, non tamen aliud matrimonium contrahere fas est, cum matrimonii vinculum legitime contracti perpetuum sit». Trans. JOHN F. CLARKSON – JOHN H. EDWARDS – WILLIAMS J. KELLY, in The Church Teacher: The Documents of the Church in English Translation, Rockford 1973, p. 335. This same thinking is affirmed The Church Speaks of Marriage & Celibacy, cit., p. 18; DS no. 1327.}

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The council taught that the sacrament of matrimony – is the sign of the union of Christ and the Church following what the Apostle says: «This is a great mystery (sacramentum) – I mean in reference to Christ and to the Church» (Eph 5:32).\textsuperscript{159} The Council also emphasized that the efficient cause of marriage is the mutual consent of the spouses.

Marriage was also listed by the Council as one of the seven sacraments by stating that, it also brings grace to the married couple. The Council affirmed that, marriage as a sacrament is a sign of the joining of Christ and the Church according to the Apostle who says: «this is a great sacrament; but I speak in Christ and in the Church» (Eph 5:32). The efficient cause of marriage is the mutual consent which is expressed by the words of the person. There is allotted a threefold good on the part of marriage. The first regards the progeny which has to be accepted and brought up for the worship of God. The second refers to the faith which one of the spouses ought to keep for the other and lastly, the indivisibility of marriage, which signifies the indivisible union of Christ and the Church. Despite the fact that, there may be separation of the marriage couch due to reasons of fornication, it is not permitted to contract another marriage, since the bond of a marriage legitimately contracted is perpetual (no. 702).\textsuperscript{160}

1.2.5. The teaching of the Council of Trent

In the sixteenth century, the long supremacy of the law regarding the indissolubility of marriage was fiercely challenged and the Church found herself under the necessity of making a more formal and express declaration of Catholic belief than she had ever yet delivered. The leading Reformers agreed


to reject the doctrine as hitherto held. The reformation therefore, in one at least of its aspects, was a revolt against the constraint of the arduous moral code of the Catholic Church – a repudiation of its standards of perfection.\(^{161}\)

We shall dwell on this point in the course of our study of the Council of Trent. The Council of Trent (1545-1563) treated the sacrament of marriage during the Twenty-fourth session on November 11, 1563.\(^{162}\) The Council therefore began its treatment of marriage by summarizing the doctrine concerning the sacrament of marriage. It recalls the Yahwist account of creation in Gen, chapter 2: «The first parent of the human race, under the inspiration of the Divine Spirit, proclaimed the perpetual and indissoluble bond of matrimony when he said, ‘this now is bone of my bones, and flesh of my flesh…wherefore a man shall leave father and mother, and cleave to his wife: and they shall be two in one flesh’» (Gen 2:23ff; Eph 5: 31).\(^{163}\)

But also stresses that by this bond the two only are united and joined together, […] he said: “therefore now they are two, but one flesh” (Mt 19:16), and immediately ratified the strength of this same bond, which was pronounced by Adam before in these words: «what therefore God has joined together, let not man put asunder (Mat 19:6; Mk 10:9)».

The doctrine regarding marriage as held by the Council of Trent became definite. Progressively the prescriptions of the Council were received in the universal Church. Trent affirmed the power of the Church on the sacrament of marriage: it is a contract which is at the same time a sacrament.\(^{165}\)


The modalities and manner of celebrating marriage, as we know it today dates from the year 1564.\textsuperscript{166} The decree \textit{Doctrina de sacramenti matrimonii};\textsuperscript{167} expresses the divine institution of marriage, at the very beginning of the human race, established as a unique and indissoluble bond between two persons:

> The first parent of the human race, under the inspiration of the Divine Spirit, proclaimed the perpetual and indissoluble bond of matrimony when he said, “this is bond of my bonds, and flesh of my flesh. Therefore a man shall leave father and mother and cleave to his wife: and they shall be two in one flesh” (Gen 2:23; See Eph 5:31).\textsuperscript{168}

The Council defined marriage as, «the conjugal union of man and woman, contracted between two qualified persons, which obliges them to live together throughout life».\textsuperscript{169} It stressed the fact that although a perfect marriage has the following conditions, namely, internal consent, external contract expressed by words, the obligation and tie which arise from the contract, and the marriage debt by which it is consummated; yet the obligation and tie expressed by the word \textit{union} alone have the force and nature of marriage.\textsuperscript{170}

\begin{quote}

\textsuperscript{167} Cf. \textsc{Council of Trent}, \textit{Doctrina de sacramento matrimonii}, cit., DS., 1799.

\textsuperscript{168} S. \textsc{Ehses}, \textit{Concilii Tridentini Actorum pars sexta}, Fribourg 1924, cit., p. 642.

\textsuperscript{169} J. M. \textsc{De Torre}, \textit{The Church Speaks on Marriage & Celibacy}, cit., p. 22.

\textsuperscript{170} \textit{Ibid.}, p. 23; Here it is stressed that, «The special character of this union is marked by the word \textit{conjugal}. This word is added because other contracts, by which men and women bind themselves to help each other in consideration of money received or other reason, differ essentially from matrimony»; «Next follow the words between qualified persons; for persons excluded by law cannot contract marriage, and if they do their marriage is invalid. Persons, for instance, within the fourth degree of kindred, a boy before his fourteenth year, and a female before her twelfth, the ages established by law, cannot contract marriage.»; These same words regarding the definition of marriage were pronounced in 1566, three years after the adjourning of Trent, in the Catechism of the Council of Trent which Pope Pius V published. Chapter 8 based on the “sacrament of matrimony” shows inclusiveness and flexibility on defining marriage. Cf. T. \textsc{Mackin}, \textit{what is Marriage?}, cit., p. 198.

We should note here that, according to the new Code of Canon law, the impediment of consanguinity extends to the fourth degree of the collateral line (can. 1076), the ages required
«Therefore the words which obliges them to live together throughout life, express the indissolubility of the tie which binds husband and wife.»\textsuperscript{171} The Council also spoke of marriage as a natural contract which has at the same time natural duties and was instituted by God.\textsuperscript{172} Notably, the Council of Trent and the Roman Catechism made specific mention of the place of love in their teachings on marriage. Thus, the Council saw the grace of Christ as designed to perfect natural love, to confirm the indissoluble union between the spouses and to also sanctify both spouses.\textsuperscript{173} In this context, the Roman catechism sees the principal object of marriage as parenthood, but considers marriage strictly as a life-long obligation and bond between the partners in a society which is distinguished from business and other groupings precisely by being a conjugal society.\textsuperscript{174} This association is the first reason given why men and women get married. Christ then revealed the mystery of his close union with the Church and of his immense love for human kind.

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for valid marriage in the husband and the wife are the sixteenth (for the male) and fourteenth (for the female) years.

\textsuperscript{171} Ibid., p. 23; Regarding the names and definition of matrimony see ST ALPHONSUS, \textit{Theologia Morale VI}, p. 879.

\textsuperscript{172} Ibid., p. 27; This is clearly stated in the following words: «The faithful therefore, are to be taught in the first place that marriage was instituted by God. We read in Genesis that God created them male and female, and blessed them, saying: ‘Increase and multiply’; and also: ‘it is not good for the man to be alone: let us make him a help like unto himself.’ And a little further on: But for Adam there was not found a helper like himself. Then the Lord God cast a deep sleep upon Adam; and when he was fast asleep, he took one of his ribs, and filled up flesh for it. And the Lord God built a rib which he took from Adam into a woman, and brought her to Adam; and Adam said: ‘This is now bone of my bones, and flesh of my flesh: she shall be called woman, because she was taken out of man: wherefore a man shall leave father and mother, and shall cleave to his wife; and they shall be two in one flesh’ (Gen 1:27, 28; Gen 2:18, 21-24). These words according to the authority of the Lord himself, as we read in St. Matthew, prove the divine institution of Matrimony» (Mt 19:6).


\textsuperscript{174} Cf. G. J. WOODALL, \textit{The principle of the indissolubility link between the dimensions of unity and fruitfulness in conjugal love: A hermeneutic investigation of its theological basis and of its normative significance}, Roma 1996, p. 21
That this was especially appropriate can be understood from the fact that … nothing binds human beings together more closely than the bond of matrimony and man and wife are bound to one another most of all by charity and kindness.\textsuperscript{175}

This doctrinal text brings out specifically the idea that, the union of man and woman involves an aspect of marriage. In the same way, the Council went on to speak of Christ, who taught more clearly that only two persons are joined and united by this marriage bond. Christ by pointing out simply refers to those closing words of the text of Genesis on marriage which are considered as words spoken by God and then proceeds to say that what God «has joined together, let no man put asunder. In this way, Christ confirmed the stability of that same bond which had been declared by Adam so long before. At this juncture, the bishops at Trent reiterated that Christ instituted the sacraments and brought them to perfection. He, «merited for us by his passion the grace that brings natural love to perfection, and strengthens the indissoluble unity, and sanctifies the spouses».\textsuperscript{176}

Trent also tried to resolve some of the accusations laid by Martin Luther concerning the teaching and practice of the Catholic Church.\textsuperscript{177} According to Kasper, «in his opinion, the Church had no power either to permit or to prohibit divorce. He continued to insist on the dissolubility of marriage».\textsuperscript{178} It is worth noting that the Tridentine answer to these questions

\textsuperscript{175} \textit{Catechismus ex decreto concilii Tridentini ad parochios}, (Tauchnitz, Leipzig, 1587), Part II, ch. VIII, q. II, III, IV, XIII and XV: «…hac potissimum maris et foemina sancta coniunctione (declaravit). Quod quidem aptissime factum est, intelligi ex eo potest, quod …nulla inter homines magis quam matrimonii vinculum constringit, maximaque inter se vir et uxor caritate et benevolentia devincti sunt» (q. xv).


was not simple. On the one hand, the Council rejected Luther’s fundamental attack on the Catholic understanding of the Church. In this case, the grace which was to perfect natural love—confirms also the indissoluble union and sanctifies those united in marriage. St. Paul affirms this when he says: «Husbands should love their wives, just as Christ loved the Church and sanctified himself for her...» (Eph 5:25) and directly adding he said: «this mystery has a great significance, but I am applying it to Christ and the Church» (Eph 5:32). Moreover, the Council Fathers were aware that by defining marriage as the sacrament of the unbreakable union between Christ and his Church, sacramentality itself would be the surest defense against the Protestant denial of the indissolubility of marriage. In the preparation of the decree which was promulgated in the 24th session of the Council of Trent (11.11.1563), the first project aimed at condemning the idea that, adultery dissolved marriage. During this session the Council then proposed 12 canons regarding marriage but we shall only quote those which directly touch our topic in question which are canons 5-8.

[Can 5] states that: «If anyone says that the bond of matrimony can be dissolved because of heresy, or grievous cohabitation, or voluntary absence from the spouses: let him be anathema.»

[Can 6] states: «If any one says that marriage contracted, but not consummated, is not dissolved by a solemn religious profession of either one of the married persons: let him be anathema.»

179 Cf. Jedin, Hubert, and Reinhardt, Klaus, Il matrimonio, una ricerca storica e teologica (Ehe Sakrament in der Kirche des Herrn), trans. F. Meneghini, Morceliana, Brescia 1981: especially Jedin’s historical work, pp. 9-87 and Reinhardt’s theology, pp. 114-124; see P. J. Elliot, What God has joined, cit., p. 103.


In the proemium of the definitive text, reference is made to the Old and New Testaments and the indissolubility of marriage was also discussed. In the various canons that follow, what is stressed is the competence of the Church to lay down a legal order.

Can. 7 is practically important in this context: «whoever says that the Church errs, when she taught and teaches that, according to the evangelical and apostolic doctrine, because of adultery of one spouse, the bond of marriage cannot be dissolved and that both, also the innocent party, who has not given cause for adultery, cannot contract another marriage while the other spouse is still alive: let him be anathema.

Can. 8. If anyone says that the Church is in error when she decides that for many reasons husband and wife may separate from bed and board or from cohabitation for a definite period of time or even indefinitely: let him be anathema. ¹⁸³

¹⁸² Ibid., This form of condemnation was chosen lest the Greeks be offended, who evidently followed a contrary practice, although they did not condemn the opposite practice of the Latin Church. On this canon Pius XI (Casti Connubii, Dec. 31, 1930; AAS 22 [1930] 574) speaks thus; «But if the Church has not erred or does not err, when she taught or is teaching these things, and thus it is quite certain that matrimony can be dissolved not even on account of adultery, it is clear that other much weaker causes which are customarily brought forward and worth much less, and furthermore are to be considered valueless».; Cf. COUNCIL OF TRENT, 1545-1563, Doctrine concerning the sacrament of marriage, in H. DENZINGER, The sources of Catholic Dogma, translated by ROY J DEFERRARI from the thirtieth edition of HENRY DENZINGER’S Enchiridion Symbolorum (1642), cit., p. 297.

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There were so many discussions and disagreements regarding can. 7 among the Council Fathers. The interpretation of the doctrinal value of this canon divided the authors due to its form, since it does not condemn the person who affirms that the bond of marriage could be dissolved due to adultery of one of the spouses, but the person who affirms that the Church errs when it teaches that, the matrimonial bond cannot be dissolved due to adultery. The story of the drafting of this canon clarifies the why of such formulation. In the project which was presented in the first General discussions in July 1563, this canon presented a formulation which was more direct, but some of the Council Fathers made the observation that, this did not only condemn the protestant reformers but also the Orientals and some others (in particular St. Ambrose). They then proceeded without modifying this canon. In the general congregation of August 11th was presented a petition of the ambassadors of the Republic of Venice so that they could avoid hitting with anathema the Greek rule. They then proposed a formula which affected with anathema not the person who denied the doctrine of the indissolubility of marriage but the person who accused the Church of erring by teaching such a doctrine, because the Orientals being different from the Protestants, accepted in the line of principle, the doctrinal authority of the Church. During the long discussions which then followed, the majority of the Council Fathers declared that they were in accord with the Venetian proposal. They then proceeded in rewriting the canon in this sense, adding therefore that, the

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184 Cf. H. JEDIN, L’indissolubilità del matrimonio secondo il Concilio di Trento, cit., pp. 38-64.
186 «If someone will say that marriage can be dissolved due to adultery of one of the spouses...»: Cf. H. JEDIN, L’indissolubilità del matrimonio secondo il concilio di Trento, cit., p. 38.
188 Ibid., p. 241; «If someone would say that the holy Catholic and Apostolic Roman Church, which is the master of the other Churches, erred or err when she teaches that matrimony cannot be dissolved due to adultery of one of the spouses ...»: H. JEDIN, L’indissolubilità del matrimonio secondo il concilio di Trento, cit., pp. 50-52.
189 Some then, adhere to the proposal of the Cardinal of Lorena to specify that the Church has taught or teaches that, “idque per Scripturas sacras ...”, with the scope of removing every insecurity on the doctrine of indissolubility.
Church teaches «according to the evangelical (gospel message) and apostolic doctrine»\textsuperscript{190} and this was then definitively approved.\textsuperscript{191}

The bond of matrimony cannot be dissolved due to adultery of one of the spouses and this was then taught by the Council of Trent as an evangelical and apostolic doctrine founded on divine revelation which according to the same Council, is found in Sacred Scripture and the Apostolic Tradition.\textsuperscript{192} The formulation of this canon was as such to exclude that, a dogma of divine and Catholic faith be defined, but certainly it regarded a doctrinal canon that defined a doctrine\textsuperscript{193} and does not only simply excommunicate the person who denies the legitimacy of canonical order, that is, refuses to the spouses the right to break the matrimonial bond for adultery motive.\textsuperscript{194} Concerning the above mentioned problem, the Council came out with three solid points backing the Catholic doctrine in the following words:

Firstly, the indissolubility of marriage forms part of the obligatory testimony of the New Testament. Secondly, marriage is not simply a matter which only concerns the private and individual sphere of Christian freedom. As a sacrament it is also a matter of the Church.

\textsuperscript{190} The proposal of Cardinal of Lorena was therefore substantially accepted; Cf. H. Jedin, *L’indissolubilità del matrimonio secondo il concilio di Trento*, cit., pp. 62-64.


\textsuperscript{192} Cf. Decreto Sacrosancta, (April 8, 1546); DS no. 1501.

\textsuperscript{193} This was then interpreted by H. Jedin, *L’indissolubilità del matrimonio secondo il concilio di Trento*, pp. 76-87; B. Bruns, *Der tridentinische Kanon über Ehescheidung und Wiederheirat im Fall von Ehebruch*, in Annuarium Historiae Conciliorum, 6 (1974), pp. 376-398; L. Bressan, *De indissolubilitate matrimonii iuxta oncium Tridentinum: Opiniones recentiores, animadversiones et nova documenta*, in Periodica, 69 (1980), pp. 503-554, which offers a good synthesis on the doctrinal value of the canons of Trent.

\textsuperscript{194} This limited interpretation is sustained by P. Huizing, *La dissolution du mariage depuis le Concile de Trente*, in Revue de Droit Caninique, 21 (1972), pp. 127-145, but according to H. Jedin, *L’indissolubilità del matrimonio secondo il concilio di Trento*, cit., p. 87, «it cannot be reconciled with the history of the canons on maternity of the XXIV session». It was proposed anew by J. Bernhard, *L’indissolubilité du mariage au concile de Trente*, in Revue de Droit Canonique, 38 (1988), pp. 78-99, according to which the apostolic and evangelic doctrine will be equivalent to the sacred canons; but it is an unfounded forcing. Cf. A. Miralles, *Il Matrimonio teologia e vita*, cit., note 84, pp. 241-242.
Chapter I: The Origin and Foundations of Indissolubility

The Church therefore has the right to lay down a legal order with regard to marriage that is in accordance with the gospel. Thirdly, the traditional and existing teaching and practice, according to which divorce and remarriage are not possible in the case of adultery is not erroneous, but is, on the contrary, in accordance with the teaching of the New Testament.\textsuperscript{195}

The doctrinal preface to the above canons describes the grace of the sacrament as being derived from the passion of Christ who instituted and perfects the sacraments. At the same time this grace perfects the natural love of marriage and strengthens the indissoluble unity of the couple. Thus Christ himself sanctifies the couple.

Again the above mentioned 24\textsuperscript{th} session of the Council of Trent was spurred significantly by the charge which came from the Lutheran reformers that Catholic authorities had been remiss in permitting the abuse of clandestine marriages. Luther, Melanchthon and others insisted, that marriages attempted without the approval of both sets of parents be null and void. Above all, Luther demanded that, where a marriage had been attempted without the parents’ approval, these should have the authority to declare it null, even after intercourse and children had been born of it.\textsuperscript{196} At this point, the Council debated its proposals regarding marriage during five meetings of its last session in summer and autumn of 1563, on July 20, August 7, September 5; October 13 and November 11. During this last meeting, a doctrinal preamble was then approved, the twelve above mentioned canons and the decree \textit{Tametsi} which sought to end the possibility of clandestine marriages.\textsuperscript{197} The final outcome was

\textsuperscript{195} W. Kas\textit{per, Theology of Christian marriage}, cit., 1980, p. 61.

\textsuperscript{196} Cf. T. M\textit{ackin, What is Marriage?}, cit., p. 196.

\textsuperscript{197} Cf. C\textit{ouncil of Trent}, 1545-1563, Session XXIX, Chapter 1 \textit{Tametsi, Cladestinity invalidating matrimony}, in H. Denzinger, nos. 990-992 (DS 1813-1816). The decree established the following:

1) «Clandestine marriages created by the free consent of the parties are true and ratified marriages as long as the Church does not invalidate them. Hence (in reply to the Reformers) those who say that marriages attempted without parental permission are invalid, or who say that parents can validate such marriages, are wrong.\textsuperscript{btcagn}
the decree Tametsi, which declared past clandestine marriages to be “valid and true,” though deplored and prohibited by the Church. «Henceforth, without the presence of the parish priest (or another delegated by him) and two or three witnesses, the Council rendered those attempting marriage in this way to be ‘unfit’ and decreed that such contracts would be ‘null and void’». The decree of Tametsi definitely ended the abuse of clandestinity, but the debates leading to it were heated. It is clear that, in the decree, the Church exercised her right to determine diriment impediments and also to change the way in which consent is to be manifested. Through the decree of Tametsi, «the simple contract of marriage became a solemn contract ‘in the eyes of the

2) The Church has always condemned and forbidden such marriages. But now it is evident that condemnation and prohibition have not overcome disobedience, and grave sins and harm have come from continued clandestinity.

3) The decree of the Fourth Lateran Council that the banns of marriage be published on three consecutive days of public worship in the parish of the engaged is renewed; and if no legitimate impediment is found, the marriage is to take place, with the man and woman declaring their vows before the pastor.

4) If the announcing of the bans on three consecutive occasions would probably bring harm upon any person, the marital consent could, with the permission of the Ordinary, be witnessed after only one announcement, or the announcements could be made after consent but before consummation.

5) In any case, the council declares and makes incapable of contracting marriage any persons who attempt to do so without having as witnesses the pastor of the place, or some priest delegated by this pastor or by the ordinary, along with two or three other witnesses. The council declares marriages attempted without these witnesses to be null and void». Cf. T. MACKIN, What is Marriage?, cit., pp. 196-197.

198 P. J. ELLIOTT, What God has joined, cit., p. 104; Cf. COUNCIL OF TRENT, “Tametsi”, (November 11, 1563), DS., 1813-1816.

199 Regarding this See W. Z. GOMES, De matrimoniiis clandestinis in Concilio Tridentino, Pontificium Athenaeum Urbanianum de Propaganda Fide, Rome 1950; «Not a few bishops doubted whether the Church had power over the matter and form of the sacraments, even when our Lord had not left us specific matter and form». Cf., P. J. ELLIOTT, What God has joined, cit., p. 104.

Church.’ The Church in the West thus secured control over the public celebration of the sacrament of marriage». 

During this period, indissolubility was not considered as an exclusive property of Christian marriage. It was recognized that the words of Our Lord rendered indissoluble marriage for all, without any exception. Absolute indissolubility was also considered as coming from the sacramental nature of marriage. This was derived from the doctrine of St. Augustine: «and it was universally accepted». The stress was more on the representation of the union of the Son of God with the human nature, which is found in marriage, as that of his union with the Church. 

In conclusion, the Council taught in a complete way, the nucleus of Christian Tradition on marriage:

Its divine institution and elevation to a sacrament of the New Law, the grace it gives to the spouses, the unity and indissolubility and the power of Christ attributed to the Church for protecting marriage and bring it to its fulfillment. The Council of Trent laid down the requirements that Catholics marry according to a specific form; in the presence of a priest and two witnesses. The council strengthened the traditional teaching that marriage is indissoluble.

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201 P. J. ELLIOTT, What God has joined, cit., p. 104; Elliott precised that, «However, on the issue of whether a priestly blessing is essential for the sacrament, Tametsi could be read in two ways. By recognizing clandestine marriage before the decree, the Council Fathers favored consent as essential for the sacrament. But, by requiring the presence of a priest after the decree, they gave some encouragement to those who held to the view of Cano, that the priest is the minister of the sacrament. Taken as a whole, Tametsi assumes the contrary view, that the consenting couple are the ministers of the sacrament. The fact that Tametsi was not universal law (for example, inapplicable in protestant regions), and the fact that canonists allowed exceptions to its solemn contract, cannot be said to make the priest into the minister of sacramental marriage.»; Cf. D. C. JOSEPH, L’Église et le sacrement de mariage d’après les Actes du Concile de Trente, Rome 1966, pp. 70-73.


203 Ibid.

It is very clear that, the Council of Trent, taught unambiguously the indissolubility of marriage, but it did not intend to summarize or systematize the whole of the Church’s tradition or to provide an all-embracing doctrine of the indissolubility of marriage.\textsuperscript{205} The Council affirmed that, not only did God institute marriage; he also rendered it perpetual and indissoluble.\textsuperscript{206} Although it belongs to marriage as a natural contract to be indissoluble, the absolute indissolubility stems principally from its nature as a sacrament, since it is the sacramental character that, in all its natural relations, elevates marriage to the highest perfection. In any event then, dissolubility is at once opposed to the proper education of children, and to other advantages of marriage.

Trent asserts that, the self-same testimony of Christ our Lord easily proves that the marriage-tie cannot be broken by any sort of divorce. For if by a bill of divorce a woman were freed from the law that binds her to the husband, she might marry another husband without being in the least guilty of adultery. But the Lord declared very clearly: «Everyone who divorces his wife and marries another is guilty of adultery, and the man who marries a woman divorced by her husband commits adultery» (Lk 16:18). Hence it is quite clear that, the bond of marriage can be dissolved by death alone, as is confirmed by the Apostle when they said: «A wife is tied as long as her husband is alive. But if the husband dies, she is free to marry anybody she likes, only it must be in the Lord» (1Cor 7: 39); and again «to the married I give this ruling, and this is not mine but the Lord’s: a wife must not separate from her husband – or if she has already left him, she must remain unmarried or else be reconciled to her husband» (1Cor 7: 10). Trent in its teachings, also brings out the advantages of indissolubility.\textsuperscript{207} It affirms that, the first beneficial consequence of marriage is that, men should understand that in entering matrimony, virtue and


\textsuperscript{207} J. M. DE TORRE, \textit{The Church Speaks on Marriage & Celibacy}, cit., p. 32; It states that, «lest, however, the law of matrimony should seem too severe on account of its absolute indissolubility, the advantages of this indissolubility should be pointed out». 
congeniality of disposition are to be preferred to wealth or beauty – a circumstance that cannot but prove of the very highest advantage to the interests of the society at large.\footnote{Ibid., p. 33.} Secondly, if marriage could be dissolved by divorce, married persons would hardly ever be without causes of disunion which would be daily supplied by the old enemy of peace and purity, but on the contrary the faithful must always keep in mind that, though separated, they remain none the less bound by the bond of marriage with no hope of marrying another person and they are by this very fact, rendered less prone to strive and discord.\footnote{Ibid., It further stresses that, «And even if it sometimes happens that husband and wife become separated, and are unable to bear the want of their partnership any longer, they are easily reconciled by friends and return to their common life».} This is a clear indication that Christian marriage is far superior in dignity and perfection to that of the Gentiles and Jews.\footnote{On the unity and indissolubility of marriage see Code of canon law, can. 1056.} The sacrament of marriage was then included among the seven sacraments in the Trinitrate profession of Faith or “Creed of St. Pius V.”\footnote{Cf. Pius V, Professio fidei Tridentina, November 13, 1564, DS., 1864; P. J. Elliott, What God has joined, cit., p. 105.}

Regarding the pastoral sphere, the \textit{Catechism of the Council of Trent}\footnote{Catechism of the Council of Trent, \textit{tr.} J. A. MCHUGH, C. C. CALLAN, Wagner, New York 1962.} proposed the sacramentality of marriage, echoing St. Thomas’ teaching on nature perfected by grace, mutual consent made “in the present” as the external cause of the sacrament and the “three goods” of marriage which make sexual union right and honorable. Marital fidelity requires a love which in itself is “special, holy and pure.”\footnote{Cf. \textit{Catechism of the Council of Trent}, pp. 342, 350-351; P. J. Elliott, \textit{What God has joined}, cit., p. 105.} Lastly, those in preparation for marriage are to be disposed so that they regard it as a sacrament, a work not human but divine.
1.2.6. Leo XIII

Right from the beginning of his pontificate, Leo XIII gave a lot of attention to make known and present the truth about marriage, in order to overcome the moral crises of the society. According to García de Haro, «the encyclical Arcanum divinae sapientiae of February 10, 1880, was the fruit of this concern. In effect this summarized and completed the magisterium of the past few centuries on the subject of marriage and family». Reinforcing the sacramental dignity of marriage, he cited the Tridentine affirmation of the sacramentality of marriage which was taught by the Council Fathers, the Councils of the Church and Tradition

[...] That Christ our Lord raised marriage to the dignity of a sacrament; that to husband and wife, guarded and strengthened by the heavenly grace which his merits gained for them, he gave power to attain holiness in the married state. [...] Through the ‘great mystery’ of Christ’s union with the Church, such sacramental marriage is indissoluble.

At the same time, Leo XIII, opposed and condemned the false distinction between contract and sacrament, describing the sacrament as a “holy sign which gives grace.” The perspective is Christological, even if the institution is natural. In Arcanum Divinae Sapientiae n. 11 opens the scenery of God that creates marriage or matrimony, which is defined in the perspective of the Son, as one of his adumbratio, an image, a draft that God is making on the

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214 Cf. LEON XIII, Encyclical Inscrutabili, (April 21, 1878); nos. 123-124; Enchiridion Familiarum, 1.463-1.465, nos. 14-15. See Encyclical Quod apostolica, (December 28, 1878); nos. 126-127; Enchiridion Familiarum, 1.471-1.472. nos. 1.8.

215 Arcanum Divinae Sapientiae, nos. 5, 17.

216 R. GARCÍA DE HARO, Marriage and the family in the documents of the magisterium, A course in the theology of marriage, San Francisco 1989, p. 93. (from now on as GARCÍA DE HARO, Marriage and the family).


218 P. J. ELLIOTT, What God has joined, cit., p. 110; Elliott states clearly: «But the major emphasis of his teaching was against divorce, a modern problem already evident in his pontificate». 
image of the Word (Verbo) that incarnates. It is an evocative image of the sacred dimension which, Leo XIII says- is being “born in” to constitute itself in the marriage.\(^{219}\) The encyclical begins with the mystery of the incarnation of Christ who came to heal the sins of our ancestors or progenitor and to restore the promise of making the body of man to participate in the immortal glory of God.\(^{220}\) Reference is made to Adam and Eve as the natural beginning of all men, for which

Marriage, for its same institution, has to be only between two, that is between a man and a woman; from the two is formed only one flesh; and the wedding bond by God’s will is so intimately and strongly united that cannot be broken or dissolved by any human being. […] and they were two in one only flesh.\(^{221}\)

The Pontiff repeats many times that indissolubility is not only of natural law, but divine, established with the coming of Christ.\(^{222}\) Finally, it is the great sacrament, honorable, pious chaste, image of the most high realities and to be venerated for its significance.\(^{223}\) The Encyclical is a true and proper hymn to the indissolubility of monogamic marriage for Divine institution and a point of reference that the magisterium of the Church has elaborated or processed to enlighten or make clear «quia est sacrum signum».\(^{224}\) “Arcanum Divinae Sapientiae,”\(^{225}\) mentioned that the Universal Church has always taught that:

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219 «Inest in eo sacrum et religiosum quiddam, non adventitium, sed ingenitum […] natura insignitum» (Arcanum, n. 11).


221 «Matrimonium ex ipsa institutione sui dumtaxat inter duos esse debere, silicet virum et mulierem; ex duobus unam veluti carnem fieri; et nuptiale vinculum sic esse Dei voluntate intime vehementerque nexitum, ut a quopiam inter nomine dissolvi, aut distrahi nequeat. […] et erunt duo in carne una» (Arcanum Divinae Sapientiae, n. 4).

222 Cf. Arcanum Divinae Sapientiae, n. 6; «ad exemplar mystici connubii sui cum Ecclesia», n. 7; also n. 9, 25.

223 Cf. Arcanum Divinae Sapientiae, n. 7.

224 Cf. M. C. Forconi, Antropologia cristiana come fondamento dell’unità e dell’indissolubilità del patto matrimoniale, cit., p. 104.
Christ our Lord raised matrimony to the dignity of a sacrament, and at the same time affirmed that the spouses are strengthened and fortified by heavenly grace which his merits procured, they obtain sanctity in marriage; and that in it, marvelously conformed to the model of the mystical marriage of Himself with the Church, He perfected a love which is befitting to nature [Conc. Trid. Sess. 24, c.1 de reform matr.; cf. N. 969], and cemented the union of man and woman, indivisible by its own nature, more strongly by the bond of divine love.²²⁶

According to the Pope, «the Lord sanctioned once again the ‘unity and perpetual constancy’ of marriage».²²⁷ He rendered the end of marriage more noble by ordering it for the generation not only of human life but for the generation of children of God in the Church (cf. Eph 1:19) and he strengthened and elevated conjugal and family love by means of divine charity, which the sacrament infuses into the spouses.²²⁸ The Pope also stressed on the fact that,

Marriage, thus elevated to the dignity of a sacrament by Christ, was entrusted to the care of the Church, “which has exercised authority over the marriages of Christians at every time and in every place, and has so exercised it as to show that it was her own inherent right, not obtained by the concession of men, but divine, bestowed by the will of her Author.²²⁹

On the other hand, the encyclical also list the benefits that are the results of this care: for example, abuses regarding marriage were promptly corrected (Acts 15:29; 1Cor 5:5); the dignity of women and the equality among the spouses were restored, as St. Jerome himself bears witness: «Among us what is not lawful for women is equally unlawful for men, and the condition of both is

²²⁵ Arcanum diniae sapientiae, no. 970.
²²⁶ DS, no. 1853.
²²⁷ Cf. 1Cor 7:10, 11; 5:39; Eph 5:32; Heb 13:14; no. 7; no. 154; in Enchiridion Familiae, 1,489. Cf. GARCÍA DE HARO, Marriage and the family, cit., p. 93.
²²⁸ Eph 5:23-24; 6:4; no. 8; nos. 156-57; Enchiridion Familiae, 1,489-90; Cf. GARCÍA DE HARO, Marriage and the family, cit., p. 93.
²²⁹ GARCÍA DE HARO, Marriage and the family, p. cit., 94; (no. 9; no. 158; in Enchiridion Familiae, 1,491)
the same».  

In order to ensure the dignity of marriage and check the evils that threaten it, the Pope asked that the Church and the State should have good relationships in order to respond to the Lord’s teachings on the proper task of both. The Pope goes further by affirming that, «the faithful must know and as citizens struggle to defend the truth that marriage, instituted by God and not by men, has been sanctified by Christ and that only through the personal commitment of the faithful will marriage acquire once more the fullness that belongs to it according to God’s plan and will».

It is important to note at this point the importance which the vote of Rosi-Bernardini has on the indissolubility of marriage. The second fascicle of envelope 149 contains his vote regarding the indissolubility of marriage in the following words: «Utrum expediat Patribus futuri Concilii proponere, ut nova definitione confirment doctrinam catholicam de indissolubilitate matrimonii». This was given during the month of January 1869 and it is made up of 55 printed pages (ff. 18r-44v). This vote responded to the interpellation of the theological-dogmatical Commission and in an intimate connection with the document contained in envelope 165 of fascicle 10 and chapter 9 of this

230 Cf. St. Jerom, Letter 77, to Oceanus; PL 22. 691; no. 9; no. 158; in Enchiridion Familiae, 1. 491-92).

231 Cf. García De Haro, Marriage and the family, cit., p. 94; (nos. 20-24; nos. 185-89; in Enchiridion Familiae, 1.509-12)

232 This teaching has been particularly developed in broad outline for the whole life of the Christian by John Paul II in his Apostolic Exhortation Reconciliatio et poenitentia (December 2, 1984), in AAS 77 (1985), 185-275, nos. 16, 18 and 24-27, and his Encyclical Sollicitudo Rei Socialis, (December 30, 1987), 25: AAS 80 (1988), 543-544, nos. 27ff., and 45ff. Here after this text will be cited as SRS. Cf. García De Haro, Marriage and the family, cit., pp. 94-95; nos. 25-27; nos. 190-95; Enchiridion Familiae, 1.512-16

233 Cf. Mansi XLIX, coll. 642A e 1015D; P. Gefaelli, Il Primo Concilio Vaticano e gli orientali voti dei consultori della Commissione preparatoria per le Missioni e le Chiese orientali, cit., p. 96.

234 Envelope 165 fascicle 10: «Instructio Sacrae Congregationis de Propaganda Fide ad Ven. Ac Praestantissimum Archiepiscopum Fogarasiensem et Albae Iuliam, et ad VV. Episcopos provinciae Transilvaniae transmissa. De indissolubilitate matrimonii in casu adulterii et perfidae desertionis». This is made up of 12 printed pages, and regards the same topic of the vote of Rosi-Bernadini, but is centered on the particular circumstances of Transylvania. The protection of the doctrine on the indissolubility of the matrimonial bond was urgent regarding oriental
document is contained in fascicle 16 of envelope 165. This vote of Rosi-Bernadini on the indissolubility of marriage was nominated during the 8th Session of the Commission held on January 22, 1869, in the observations made by the consultant Haneberg to this vote.\textsuperscript{235} This vote was very interesting because it was quite clear that if the Orthodox were going to come the dogma was not going to be proposed but if they were not coming the dogma will be proposed.

\textit{1.2.7. The 1917 Code of Canon Law}

The process that produced the Catholic Church’s Code of Canon Law lasted for centuries. It then reached its goal as far as it could, given the assumptions underlying it, in the work of Cardinal Pietro Gasparri.\textsuperscript{236} The compiling of the first scheme of the first canon on marriage [can 1012 CIC 17] is situated chronologically between May 25\textsuperscript{th} 1905 and June 8\textsuperscript{th} of the same year. The partial consultation of may 25\textsuperscript{th} was the first date which the consultants celebrated relative to the preliminary canons on marriage.\textsuperscript{237} During this first meeting, a concrete text was not discussed or established. The consultants took as the base of this study votes which were given to Lombardi, Deshayes, De

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\textsuperscript{235} Cf. Mansi XLXI, 1019A-1020A.

\textsuperscript{236} Gasparri was a scholar and organizer. He taught at the Institute Catholique in Paris until he was called back in Rome in 1901, and in 1904 he began supervising the codification of the entire \textit{corpus} of Catholic law as the secretary of the commission of Cardinals guiding the work as well as president of the two groups of scholars doing the work. The codifying was expected to take twenty-five years, but Gasparri delivered the completed project to Pope Benedict XV only twelve years later, on December 4, 1916.

\textsuperscript{237} «In this council they examined the preliminary canons of marriage». Cf. ARCHIVO SEGRETO VATICANO, \textit{Fondo CIC}, Box (scatola) 55, f. 12 r. See Apendix 1 n.7. Here after Archivo Segreto Vaticano will be cited as ASV.
Becker and Wernz. They began the debates distancing themselves from the opinions which came up. In this manner, they found points of agreement on the material.238 The result of this partial council was the first scheme which was established. It’s discussions took place in the second partial council celebrated on June 8th, 1905 as it was received in its act: «The first compiling of the preliminary canons were examined».239 Probably, the first author for the material of this scheme was Gasparri. This possibility was enriched by the fact that, he was the president of the council and the central receptor of the votes and suggestions and since this was at the same time acknowledged in the conference which he gave in 1934.

After having explained the functioning of the two commissions of consultants he said: «It has never happened that all are in accord for the approval of the whole scheme, each one had something to add, to cancel or to modify. [...] therefore, to advance, it was necessary that I do a unique compilation, taking into consideration the schemes given back to the consultants, and the discussion but in truth this unique compilation I did my own ways.240 This thesis is being supported by the proper structure of the canon which responds to the position defended by him in the partial consult. The weight of Gasparri could be noted in the iter of this compilation. Not only in the material compilation but also in the powers which he had and exercised.241 The involved schemes approved by the commission of consultants, had a historic and hermeneutic value of first magnitude, because its influence in fact, or the prestige of the members, was really great. They offered the first section of the future can. 1012.242

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239 ASV, *Fondo CIC*, Box 55, consulta parziale 8 giugno 1905, f. 59 r. see. Apendix I n. 12.
Not all the authors of the votes gave a definition for natural marriage. The reason may be based on the fact that, there existed already a concept of natural marriage above which it was not possible to insist, since the code concerned baptized persons or because the interest was in affirming the sacramentality of marriage. It defined natural marriage basing itself on the already existing commented notion of Justinian found in the Roman catechism. After having defined natural marriage, in the project of canon 1012 Gasparri declared the elevation of marriage to the dignity of a sacrament for the baptized. In reality the elevation is of the coniunctio, of that which Lombard understands as natural marriage. Gasparri proposed to Deshayes a list of materials which according to his judgement was to figure among the preliminaries. Amongst this were: to give the notion of matrimony, to say that matrimony was elevated as Sacrament by Christ and between the baptized, and that there is no real distinction between contract and sacrament.

Gasparri was the principal designer and he supervised the Code which was promulgated on Pentecost Sunday, 1917. He also wrote extensively on marriage legislation during the years before and after the Code’s promulgation. In order to understand better the concept of matrimony intended by the Legislator and to appreciate the elements of novelty which it presents, it is important to recall that the Pio-Benedettine Code of 1917, demonstrated that, marriage has a strongly juridical dimension which tried to reduce in very strict juridical terms spiritual and human richness. Marriage was seen essentially as a contract through which man and woman give and accept themselves, a series of rights and duties amongst which is ausplicable as an

243 *Ibid.*, p. 119; The notion of marriage in Lombard was criticised in the partial consultation of May 25th, 1905 while Sebastianelli and Pompilij censored the same idea. Palmieri and Wernz criticised the concept of marriage offered by Lombard.

244 «It seems we should give first the definition of marriage. […] then, precise in one canon that marriage was elevated by our Lord to the dignity of a sacrament, and that in the marriage of Christians there doesn’t exist a real distinction between the contract and the sacrament […]. This is more or less the material which I developed in my “*Tractatus canonicus de Matrimonio*”, 3éme edit. (Chap. 1 Generalis matrimonii notio)». The translation is mine. ASV, *Fondo CIC*, Box 1, Busta IV bis Lettere diverse, carta manoscrita di Gasparri. See Apendix I n. 3; (P. GASPARRI, *Tractatus canonicus de matrimonio*, Paris 1904.)

245 Cf. T. MACKIN, *What is Marriage?*, cit., p. 204.
essential right and characterised by the “ius in corpus”, the personalist right, perpetual and exclusive which each of the spouses gives to one another (and correlative accepted by the other) on his proper body in the fulfillment of sexual acts as the Code expresses, in relation to those acts which are in themselves fit or suitable for the generation of children.\textsuperscript{246}

Amongst the canons which contributed to the definition of marriage there is can 1013 of the 1917 Code. Its first paragraph states: “The primary end of marriage is the procreation and nurture of children; its secondary end is mutual help and the remedying of concupiscence”.\textsuperscript{247} This paragraph expresses what marriage is for, the ends for whose realization God instituted it. It then arranges these ends according to the order of value: the highest is procreation and nurture; the others are secondary to this. Contained in this is the conclusion that if the realizing of the two should come into conflict, the realizing of the primary must by moral necessity override the realizing of the secondary. The lesser value cannot suppress the higher.\textsuperscript{248} The second paragraph of this same canon states two essential properties or characteristics of marriage.\textsuperscript{249} “The essential properties of marriage are unity and indissolubility, which acquire a unique firmness in Christian marriage by reason of its sacramental character”.\textsuperscript{250} Another canon which reflects the Code’s understanding of marriage is can 1081.\textsuperscript{251}

Marriage is created by the consent of the parties lawfully expressed between persons who are capable according to the law; and for this


\textsuperscript{247} «1. Matrimonii finis primarius est procreatio atque educatio prolis; secundarius mutuum adiutorium et remedium concupiscentiae».

\textsuperscript{248} Cf. T. MACKIN, \textit{What is Marriage?}, cit., p. 209.

\textsuperscript{249} \textit{Ibid}. «By naming them distinctly from the ends it means either that the ends are not characteristics of marriage, or, if they are, that unity (meaning monogamy and sexual exclusivity) and indissolubility are characteristics distinct from them».

\textsuperscript{250} «2. Essentials matrimonii proprietates sunt unitas ac indissolubilitas, quae in matrimonio christiano peculiarem obtinent firmitatem ratione sacramenti».

consent no human authority can substitute (1081 §1). Matrimonial consent is an act of the will by which each party gives and accepts a perpetual and exclusive right over the body, for acts which are of themselves suitable for the generation of children (canon 1081). 252

The above cited canon specifies three things: «The act that alone can create a marriage; who are capable of the act; what the nature of this act of consent is. This is done in two senses. The first names which of the human faculties immediately performs the act; the second names to what the consenting persons commit themselves». 253 Basing on these two canons, (1013 and 1081) Bouscaren and Ellis brought out the following definition of marriage: «Marriage is a lawful and exclusive contract by which a man and a woman mutually give and accept a right over the bodies for the purpose of acts which are in themselves suitable for the generation of children». 254

Cans. 1012-1141, of book IV of the code, provide canonical norms on marriage and confirms the unity between the contract and the sacrament: «Christ our Lord raised to the dignity of a sacrament the contract of marriage itself between the baptized» (can. 1012, §1), from which it follows that «among the baptized there can be no valid contract of marriage without its being a sacrament» (can. 1012, §2). It is also important to note how the code formulated the doctrine of the ends of marriage: «The primary end of marriage is the procreation and education of children; the secondary end is mutual help and a remedy for concupiscence» (can. 1013, §1) and the properties of marriage: unity and indissolubility (can. 1013, §2). 255

252 «1. Matrimonium facit partium consensus inter personas iure habiles legitime manifestatus; qui nulla humana potestate suppleri valet».

«2. Consensus matrimonialis est actus voluntatis quo utraque pars tradit et acceptat ius in corpus, perpetuum et exclusivum, in ordine ad actus per se aptos ad prolis generationem».


Chapter I: The Origin and Foundations of Indissolubility

The application of the Pauline privilege is subordinate to precise presuppositions. It has to deal with marriage celebrated between two non-baptized persons.\footnote{P. Moneta, *Il Matrimonio Nel Nuovo Diritto Canonic*, Genova 1985, pp. 192-193.} It takes place when one of the parties to the marriage is baptized and enters a subsequent marriage. The first marriage is dissolved by the second marriage. «A marriage entered by two non-baptized persons is dissolved by means of the Pauline privilege in favour of the faith of a party who has received baptism by the very fact that a new marriage is contracted by the party who has been baptized, provided the non-baptized party departs».\footnote{Can. 1143 §1. «Matrimonium initum a duobus non baptizatis solvitur ex privilegio Paulino in favorem fidei partis quae baptismum recepit ipso facto quo novum matrimonium ab eadem parte contrahitur, dummodo pars non baptizata discedat. Cf. Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, Codex Iuris Canonici, Fontium Annotatione et Indice Analytico-Alphabetico Actu, Città del Vaticana 1989, p. 311.} Absolute indissolubility, therefore, can be predicated only of Christian marriage after it has been consummated.

Since marriage according to its very nature is something sacred as affirmed in *Arcanum divinae sapientiae* by Leo XIII\footnote{Leo XIII, Encyclical Letter *Arcanum Divinae Sapientiae*, nos. 5, 17, (February 10, 1880), in AAS 22 (1930), pp. 539-592.}, there is every reason that it should be regulated and moderated not by the authority of the prince but by the divine authority of the Church, which alone has the magisterium of sacred things regarding laws and the dispositions concerning sacraments. This doctrine was received at the juridical level, in the *Codex Iuris Canonici* of Pius X which was promulgated by Benedict XV in 1917 which affirmed that, marriage between baptized persons is regulated by divine law and canon law, while recognizing civil competence as having only merely civil effects, that is, of having exclusively patrimonial effects (can. 1016 of CIC 1917). It was expressed that, the matrimonial cases among baptized persons, “for their proper and exclusive law” is reserved to the ecclesiastic judge.\footnote{Cf. P. Moneta, *Il matrimonio*, in AA.VV., *Il diritto nel mistero della Chiesa*, (a cura del gruppo Italiano Docenti di diritto Canonico), Roma 1992, p. 171.} This same teaching was then reproposed in the famous encyclical *Casti Connubii* of Pius X.
XI in 1930\textsuperscript{260}, and it will remain a constant teaching in the successive pontifical magisterial teachings right to the new Code of canon law promulgated by John Paul II on January 25, 1983 and entered in vigor on November 27\textsuperscript{th} of the same year.\textsuperscript{261}

1.2.8. The teaching of Pope Pius XI - Casti Connubii

The encyclical \textit{Casti Connubii}\textsuperscript{262} of Pius XI continued in the same line the discourse of Arcanum, with regards to the consequences of civil divorce.\textsuperscript{263} It also made it clear that, it is the will of God that ratified and unconsummated marriage be indissoluble.\textsuperscript{264} The Pope wrote: «We have decided therefore to speak to you... on the nature and dignity of Christian Marriage, on the advantages and benefits which accrue from it to the family and to human society itself, on the errors contrary to this important point of the Gospel teaching, on the vices opposed to conjugal union, and lastly on the principal remedies to be applied».\textsuperscript{265} The encyclical had a logical structure: it is divided

\textsuperscript{260} Pius XI, Lettera encyclical \textit{Casti Connubii}, (December 31, 1930), in AAS 22 (1930), pp. 539-592.


\textsuperscript{262} Pius XI, Encyclical \textit{Casti Connubii}, (December 31, 1930), in AAS 22 (1930), pp. 539-592.


\textsuperscript{264} Cf. \textit{Arcanum Divinae Sapientiae}, it is quoted in different parts: 540, 570-571, 575-577; Cf. M. C. Forconi, \textit{Antropologia cristiana come fondamento dell’unità e dell’indissolubilità del patto matrimoniale}, cit., p. 104.

Chapter I: The Origin and Foundations of Indissolubility

into two sections of three parts. The first developed the fundamental principles of the *Tria bona* or the blessings of marriage which are: children, conjugal fidelity and sacramentality. The second part explained the erroneous theories and vices which are contrary to the three blessings and their impact on the society. The third part focused on principles to bring back the institution of marriage to its true dignity as God wanted it.  

The fundamental doctrine of the encyclical is that, the origin of marriage is derived from “the wisdom of the divine plan.” The Pope affirms that God is the author of marriage.

Let it be repeated as an immutable and inviolable fundamental doctrine that marriage was not instituted or restored by man but by God; not by man were the laws made to strengthen, confirm and elevate it but by God, the Author of nature, and by Christ our Lord by whom nature was redeemed, and hence these laws cannot be subject to any human decrees or to any contrary pact even of the spouses themselves. This is the doctrine of Holy Scripture (Gen 1:27-28; 2:22-23; Mat 19:3ff; Eph 5:23ff), this is the constant tradition of the Universal Church, this is the solemn definition of the sacred Council of Trent, which declares and establishes from the words of the Holy Writer itself that God is the Author of the perpetuity and indissolubility of marriage, its unity and firmness.

Marriage is referred to as the most perfect union (*perfectissima illa coniunctio*) that is found between Christ and the Church and that is indissoluble. Only in marriage that is ratified and consummated is present the symbol and the mystical reason of indissolubility. The intervention of God, perfecting natural human love, confirms the indissolubility and unity of marriage and

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268 O. LIEBARD, *Love and sexuality*, 24, par. 31, «matrimonium non humanitus neque instauratum esse, sed divinitus; non ab hominibus, sed ab ipso auctore naturae Deo atque eiusdem naturae restitutore Christo domino legibus esse communitum elevatum; quae proinde leges possint quae perpetuum indissolubilemque matrimonii nexum eiusdemque unitatem ac firmatatem a Deo auctore manare ipsis Sacrae Scripturae verbis praedicat atque confirmat». AAS 22 (1930), p. 541.
sanctifies the persons of the spouses.  

\[ \text{Casti Connubii,} \] at the base of this analogy between Christian marriage and the union Christ – Church, establishes the supremacy of the *ordo amoris*, from which is brought about all the marriage obligations.\(^{269}\) He, underlined that, from the union of the minds originates or stems the profound unity of the spouses – spiritual and corporal. The Encyclical, making proper reference to the Augustinian doctrine of *tria bona*, attempts to find the relation or connection with the concept of contract and deepens the religious significance, with very significant passages. The *sacramentum* designates either the indissolubility of the matrimonial bond which the elevation and the consecration of the contract as an efficient sign of grace, are acquired for the merits of Christ.\(^{271}\) Pius XI introduces the concept of consecration which shall be taken up by Vatican II, in *Gaudium et Spes*\(^{272}\): «by such a sacrament they are fortified, sanctified and almost consecrated».\(^{273}\) This expression stands to indicate the nobility of the state of Christian spouses and above all the sanctity of such a bond. From it comes the *inviolabilis firmitas*, as well as the *bonum fidei*, origin of unity, chastity, charity, obedience, and honesty.\(^{274}\)

*Casti connubii* teaches that, «marriage comes to be what it is through the consent of the spouses, and it involves a generous surrender of one’s own person to another for the whole span of life», giving rise to a “sacred and

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\(^{269}\) Cf. *Casti connubii*, 554; M. C. Forconi, *Antropologia cristiana come fondamento dell’unità e dell’indissolubilità del patto matrimoniale*, cit., p. 105.


\(^{272}\) The words: «Tanto sacramento roborati et santificati et quasi consecrati» (*Casti Connubii*, 550), in *Gaudium et Spes* becomes: «coniuges cristiani ad sui status officia et dignitatem peculiari sacramentum roborantur et veluti consecratur» (GS, n.48).

\(^{273}\) *Casti Connubii*, 555.

The Pope noted that the marriage has its origin in God and no one can change or alter it. He saw marriage as a reality which has been instituted by God the Creator and restored to its full honor by Christ. He wrote: «from this it is manifestly clear that matrimony, even in the state of nature, and sure long before it was raised to the dignity of a sacrament properly so called, was so established by God that it carries with it a perpetual and indissoluble bond, which accordingly, cannot be dissolved by any civil law».  

From the doctrinal point of view,

Pius XI has made clear that extrinsic indissolubility *Ex iure divino* comes from consummation, which has a fundamental mystical-theological significance to constitute itself of a sacrament. Reaffirms in line with the Tradition, that the Roman Pontiff does not have the faculty to dissolve it. Even if it is not a dogmatic definition, its position is added to all the magisterial teachings, confirming it and enriching it of its theological vision. From the anthropological point of view, *Casti connubii*, puts in evidence the positive valence of the human love, which is the material that God can work to carry it to the perfection of divine love.

The Pope referring to the third blessing of marriage i.e. *sacramentum*, said it means two things: «indissolubility of the conjugal bond and the elevation of marriage to the dignity of a sacrament of the New Law». He also mentioned that, Christ has elevated Christian marriage to the state of sacrament. Thus Christian marriage becomes “the efficacious sign of grace” and «perfects natural love, it confirms an indissoluble union, and sanctifies both man and

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275 *Casti Connubii*, 270-72. Note the profound personalistic thrust of these passages. Cf. GARCÍA DE HARO, *Marriage and the family*, cit., p. 115.
276 DS no. 2235, p. 588.
277 FORCONI, *Antropologia cristiana come fondamento dell’unità e dell’indissolubilità del patto matrimoniale*, cit., p. 106. The translation is mine.
278 A. VERMEERSCH, *What is marriage?*, cit., p. 25. [In classical Latin usage, *sacramentum* is used to designate an obligatory bond, a consecration, a binding promise].

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Therefore, the sacramentality of marriage becomes the foundation for the indissolubility of Christian marriage. In this regard then, the indissoluble union of Christ and the Church does not simply mean a union which signifies the permanence of time, but a union which reveals God’s plan for humanity.

According to García De Haro, *Casti Connubii*, ends up by enumerating the fruits of indissolubility both for the spouses, their children and the society. In fact *Casti Connubii* affirms:

The stable character of the bond, in fact, protects conjugal love, since it stimulates the spouses to the generous and unconditioned gift of their own persons in the exclusive and permanent union of their hearts; in addition, it assures the dignity of the mutual love, because its perpetuity reminds the spouses that their union is contracted rather for eternal goods than for transient interests. On the other hand, indissolubility is a condition and guarantee of the education of the children, since only a full and enduring union of the powers of both spouses can assure this. Finally, it constitutes a splendid good for society, as the foundation of an honesty of life and integrity of morals.

Pius XI stated, appealing to an age-old doctrinal tradition that, the indissolubility of marriage, although not in the same perfect measure in every case, belongs to every true marriage, even when the sacramental element may be absent from marriage, as is the case with the non-baptized. Pius XI adds that if indissolubility «seems to be open to exception, however rare the exception may be, as in the case of certain natural marriages between unbelievers, or among Christians in the case of those marriages which, though valid, have not been consummated, that exception does not depend on the will of men nor on that of any merely human power, but on divine law, of which the only guardian and interpreter is the Church of Christ». The profound

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282 Cf. PIUS XI, *Casti Connubii*, nos. 299-300.

reason for the absolute indissolubility of Christian marriage, in addition to the natural indissolubility of every true marriage, lies in the “mystical signification of Christian marriage, which is fully and perfectly realized in a consummated marriage between the faithful. For as the Apostle says [...] , the marriage of Christians represents that most perfect union which exists between Christ and the Church: ‘This is a great mystery, and I mean in reference to Christ and the Church’ (Eph 5:32); which union can never be dissolved by any separation, as long as Christ shall live for the Church through him”.

Pius XI asserts that, the mutual molding of husband and wife, the determined effort to perfect each other, can in a very real sense, as the Roman Catechism teaches, said to be the chief reason and purpose of matrimony, provided matrimony be looked at not in the restricted sense as instituted for the proper conception and education of the child, but more widely as the blending of life as a whole and the mutual interchange and sharing of that life. By this same love, it is necessary that all the other rights and duties of the marriage state be regulated as the words of the Apostle: «Let the husband render the debt to the wife, and the wife also in like manner to the husband,» (1Cor 7:3) it should express not only a law of justice but of charity. The Pope at this juncture enumerates some elements which make up the blessing of conjugal faith. These, then, are the elements which compose the blessing of conjugal faith: unity, chastity, charity, honorable noble obedience, which is at the same time an enumeration of the benefits which are bestowed on husband and wife in their married state, benefits by which the peace, the dignity and the happiness of matrimony are securely preserved and fostered. With this, it is not surprising that this conjugal faith has always been counted amongst the most

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284 Encycl. Lett. Casti connubii, no. 552.
285 See Roman Catechism, II, c. 8, q. 13.
286 Cf. Casti Connubii, no. 25; The Pope also states that: «Domestic society being confirmed, therefore, by this bond of love, there should flourish in it that "order of love," as St. Augustine calls it». This order includes both the primacy of the husband with regard to the wife and children, the ready subjection of the wife and her willing obedience, which the Apostle commends in these words: «Let women be subject to their husbands as to the Lord, because the husband is the head of the wife, and Christ is the head of the Church», Cf. no. 26.
priceless and special blessings of matrimony.\textsuperscript{287} In the first place Christ Himself lays stress on the indissolubility and firmness of the marriage bond when He says: «What God has united, human beings must not divide» (Mt 19:6) and: «Everyone who divorces his wife and marries another is guilty of adultery» (Lk 16:18).\textsuperscript{288} Pius XI said\textsuperscript{289}, Augustine clearly places what he calls the blessing of matrimony in this indissolubility when he says: «In the sacrament it is provided that the marriage bond should not be broken, and that a husband or wife, if separated, should not be joined to another even for the sake of offspring».\textsuperscript{290}

This inviolable stability, although not in the same perfect measure in every case, belongs to every true marriage.\textsuperscript{291} Pius VI of happy memory, writing to the Bishop of Agria, most wisely said:

\begin{quote}
Hence it is clear that marriage even in the state of nature, and certainly long before it was raised to the dignity of a sacrament, was divinely instituted in such a way that it should carry with it a perpetual and indissoluble bond which cannot therefore be dissolved by any civil law. Therefore although the sacramental element may be absent from a marriage as is the case among unbelievers, still in such a marriage, inasmuch as it is a true marriage there must remain and indeed there
\end{quote}

\textsuperscript{287} Cf. \textit{Casti Connubii}, no. 31; He states that, «But this accumulation of benefits is completed and, as it were, crowned by that blessing of Christian marriage which in the words of St. Augustine we have called the sacrament, by which is denoted both the indissolubility of the bond and the raising and hallowing of the contract by Christ Himself, whereby He made it an efficacious sign of peace».

\textsuperscript{288} \textit{Casti Connubii}, no. 32; See J. M. DE TORRE, \textit{The Church Speaks on Marriage & Celibacy}, cit., p. 94.

\textsuperscript{289} Cf. \textit{Casti Connubii}, no. 33.

\textsuperscript{290} ST. AUGUSTINE, \textit{De Genesi ad litteram}, Bk. 9, c. 7, n. 12 (PL 34, 397). The English translation is mine.

\textsuperscript{291} Cf. \textit{Casti Connubii}, no. 34; He then brings out clearly that: «Therefore although before Christ the sublimeness and the severity of the primeval law was so tempered that Moses permitted to the chosen people of God on account of the hardness of their hearts that a bill of divorce might be given in certain circumstances, nevertheless, Christ, by virtue of His supreme legislative power, recalled this concession of greater liberty and restored the primeval law in its integrity by those words which must never be forgotten, "What God hath joined together let no man put asunder».
does remain that perpetual bond which by divine right is so bound up with matrimony from its first institution that it is not subject to any civil power. And so, whatever marriage is said to be contracted, either it is so contracted that it is really a true marriage, in which case it carries with it that enduring bond which by divine right is inherent in every true marriage; or it is thought to be contracted without that perpetual bond, and in that case there is no marriage, but an illicit union opposed of its very nature to the divine law, which therefore cannot be entered into or maintained.\textsuperscript{292}

At this point, Pius XI states that, if this stability seems to be open to exception, however rare the exception may be, as in the case of certain natural marriages between unbelievers, or amongst Christians in the case of those marriages which though valid have not been consummated, this exception does not depend in any way on the will of men nor on that of any merely human power, but on divine law, of which the only guardian and interpreter is the Church of Christ. However, this power cannot affect for any due cause whatsoever, a Christian marriage which is valid and has been consummated. Since it is quite evident here that the marriage contract has its full completion, therefore, by the will of God, there is also the greatest firmness and indissolubility which may not be destroyed by any human authority.\textsuperscript{293}

\textsuperscript{292} Pius VI, \textit{Rescript to the Bishop of Agria}, July 11, 1789, no. 4 (Jus Pontificium de Propaganda Fide), vol. 4, Rome 1891, p. 336. The English translation is mine.

\textsuperscript{293} Cf. \textit{Casti Connubii}, no. 35; "If we wish with all reverence to inquire into the intimate reason of this divine decree, we shall easily see it in the mystical signification of Christian marriage which is fully and perfectly verified in consummated marriage between Christians. For, as the Apostle says in his Epistle to the Ephesians, the marriage of Christians recalls that most perfect union which exists between Christ and the Church: 'Sacramentum hoc magnum est, ego autem dico, in Christo et in ecclesia;' which union, as long as Christ shall live and the Church through Him, can never be dissolved by any separation. And this St. Augustine clearly declares in these words: 'This is safeguarded in Christ and the Church, which, living with Christ who lives forever may never be divorced from Him. The observance of this sacrament is such in the City of God . . . that is, in the Church of Christ, that when for the sake of begetting children, women marry or are taken to wife, it is wrong to leave a wife that is sterile in order to take another by whom children may be hand. Anyone doing this is guilty of adultery, just as if he married another, guilty not by the law of the day, according to which when one's partner is put away another may be taken, which the Lord allowed in the law of Moses because of the
He then talks of the importance of these benefits which flow from the indissolubility of matrimony asserting that, they cannot escape anyone who gives even a brief consideration either to the good of the married parties and the offspring or to the welfare of human society. First of all, both husband and wife possess a positive guarantee of the endurance of this stability which that generous yielding of their persons and the intimate fellowship of their hearts by their nature strongly require, since true love never falls away. Moreover, the dignity of both man and wife is maintained and mutual aid is most satisfactorily assured, while through the indissoluble bond, always enduring, the spouses are warned continuously that, it is not for the sake of perishable things nor may they serve their passions, but that they may procure one for the other, that high and lasting good which they have entered into the nuptial partnership which can only be dissolved by death. Finally, considering the benefits of the Sacrament, besides the firmness and indissolubility, there are also much higher emoluments as the word "sacrament" itself very aptly indicates; for to Christians this is not a meaningless and empty name. Christ the Lord, the institutor and "perfecter" of the holy sacraments, by raising the matrimony of his faithful to the dignity of a true sacrament of the New Law, made it a sign and source of that peculiar internal grace by which «it perfects natural love, it confirms an indissoluble union, and sanctifies both man and wife». And since the valid matrimonial consent among the faithful was constituted by Christ as a sign of grace, the sacramental nature is so intimately bound up with Christian wedlock that there can be no true marriage between baptized persons «without it being by that very fact a sacrament».

294 1Cor 13:8 «Love never comes to an end, but if there are prophecies, they will be done away with; if tongues, they will fall silent; and if knowledge, it will be done away with».

295 Cf. Casti Connubii, no. 37.

296 Ibid., Cf. Casti Connubii, no. 38.

297 CODEX IURIS CANONICI PHI X PONTIFICIS MAXIMI Iussu digestus, BENEDICTU PAPAE XV autortitate promulgates, Romae, 1917, can 1012 (CIC 1917), See can. 1055 of CIC 1983; Casti Connubii, no. 39; The above affirmation is affirmed by these very words of Pius XI: «By the very fact, therefore, that the faithful with sincere mind give such consent, they open up for
1.2.9. The discourses of Pope Pius XII

Pope Pius XII said a lot concerning the family. Monsignor Montini commented in 1954, «Pius XII has made family questions the preferred theme of his apostolate». According to him, Christian matrimony is modeled according to the famous expression of St. Paul, on the union of Christ with His Church. Del Mazza described the Pope as «the gigantic re-vindicador of the sacred rights of the family». According to Pius XII, marriage was a sacred thing which God instituted. He explained this in his address to the Roman Rota in the following words: «Marriage, is by the will of the Creator, a sacred thing...even between non-baptized persons’ marriages legitimately contracted are in the order of nature a sacred thing». During the period of the Second World War, in his encyclical letter on the Church as the Mystical Body, (Mystici Corporis Christi), Pius XII described the contracting parties of marriage as «ministers of grace to one another». During this period it was noted that themselves a treasure of sacramental grace from which they draw supernatural power for the fulfilling of their rights and duties faithfully, holy, perseveringly even unto death. Hence this sacrament not only increases sanctifying grace, the permanent principle of the supernatural life, in those who, as the expression is, place no obstacle in its way, but also adds particular gifts, dispositions, seeds of grace, by elevating and perfecting the natural powers. By these gifts the parties are assisted not only in understanding, but in knowing intimately, in adhering to firmly, in willing effectively, and in successfully putting into practice, those things which pertain to the marriage state, its aims and duties, giving them finally right to the actual assistance of grace, whenssoever they need it for fulfilling the duties of their state. Cf. Casti Connubii, no. 40.


300 V. DEL MAZZA, La teologia della famiglia nel pensiero di S. S Pio XII, Alba 1955, 11 (hereafter cited in Del Mazza, la teologia della famiglia).

301 POPE PIUS XII, Object of Juridicial Authority in the Church and the State, in AAS 38 (1948), pp. 391-397. English translation: WOESTMAN, Papal Allocutions to the Roman Rota, cit., p. 42.

302 PIUS XII, Mystici Corporis Christi, (June 29, 1943), in AAS 35 (1943), 200-243, no. 20; English Translation, CARLEN, CLAUDIA, The Papal encyclicals 1939-1958, cit., p. 41.
some people took the objective value of the sacrament too far. In this light, in 1954 Pius XII in his encyclical letter on holy virginity, (*Sacra Virginitas*), curbed an exaggeration of the “*ex opera operato*” sacramentality of marriage, which proposed marriage as a “fitter instrument than virginity for uniting souls with God.”

The teaching of Pius XII confirmed the ideas of his predecessors in an explicit manner regarding the extrinsic indissolubility of ratified and consummated marriage. In his allocution to the auditors of the Roman Rota, he said:

> It is superfluous before a juridical college like yours, yet it is not inappropriate, to repeat that a sacramental marriage which has been consummated is indissoluble by the law of God, so that it cannot be dissolved by any human power, while other marriages, although intrinsically indissoluble, still do not have an absolute extrinsic indissolubility, but, under certain necessary conditions, can [...] be dissolved not only by virtue of the Pauline privilege, but also by the Roman Pontiff in virtue of his ministerial power.

Pius XII begins with the positive conviction of the human nature, which according to him is the maximum expression of the creative power of God, since he has received from God the capacity of loving in liberty: «the love of man is personal, that is conscious; free, that is, subjected to the control of his responsibility». Man who is “Spirit united to material”, is called in relationship with his partner in marriage to a union of hearts which «they put

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305 Cf. CIC, Can. 1118; Can. 1141.
together their hearts, so as to form of the two hearts a single heart only.\textsuperscript{309} Deep union which is expressed in the conjugal act, through which, «in its natural structure, is a personal action, a simultaneous and immediate cooperation of the spouses, which […] is the expression of the reciprocal gift, which, according to the words of Scripture, brings about the union \textit{in one heart only}.\textsuperscript{310} This reciprocal gift born from the love of the spouses, is elevated by Christ «to the symbol of the union of Christ with the Church; an indissoluble and inseparable union, nourished by that absolute love and without end that springs from the heart of Christ\textsuperscript{311}, love which through the work of redemption «cannot but affirms itself indissoluble and perpetual\textsuperscript{312}. That perpetuity and indissolubility that the will of Christ and the mystical meaning of Christian marriage demands, is desired also by nature.\textsuperscript{313} «The proper and most profound meaning of the exercise of the conjugal rights would in this: that the union of bodies is the expression and realization of the personal affective union.»\textsuperscript{314}

The pope also stressed the idea that grace fulfills the longings of nature and gives it the power to be what it is led to desire, to be by its best wisdom and willing.\textsuperscript{315} It is enough to ask one’s heart to know that such is truly the voice of nature, when one allows one’s heart to speak without being darkened by egoism:

\begin{itemize}
\item \textsuperscript{309} PIUS XII; \textit{Discorso agli sposi}, (November 12, 1941), in \textit{Discorsi e Radiomessaggi di Sua Santità Pio XII}, Vol. III (1941-1942), p. 260.
\item \textsuperscript{310} PIUS XII, \textit{Discorsi alle Ostetriche}, (October 10, 1951), in AAS 13 (1951), 557-561; See M. C. FORCONI, \textit{Antropologia cristiana come fondamento dell’unità e dell’indissolubilità del patto matrimoniale}, cit., p. 108.
\item \textsuperscript{311} Cf. PIUS XII, \textit{Discorso agli sposi}, (29 gennaio 1941), in \textit{Discorsi e Radiomessaggi di Sua Santità Pio XII}, 2 (1940-1941), p. 384.
\item \textsuperscript{312} PIUS XII; \textit{Discorso agli sposi}, (April 22, 1942), in \textit{Discorsi e Radiomessaggi di Sua Santità Pio XII}, 4 (1942-1943), p. 48.
\item \textsuperscript{313} \textit{Ibid.}, p. 53.
\item \textsuperscript{314} J. M. DE TORRE, \textit{The Church speaks of marriage \\& celibacy}, cit., p. 148.
\item \textsuperscript{315} Cf. PIUS XII, \textit{Address to new spouses}, (April 29, 1942), in \textit{Discorsi e Radiomessaggi di Sua Santità Pio XII}, 4 (1942-1943), p. 54; See Ins. no. 490; \textit{Enchiridion Familiae}, 2.1121.
\end{itemize}
You attribute to your nuptial love, without actually being aware of it, a holy jealousy, that characteristic sign that the Apostle Paul ascribed to charity, when, exalting it, he said: “caritas numquam excedit” (1cor 13:8), “love never fails...the indissolubility of marriage is therefore the satisfaction of a pure and uncorrupted impulse of the heart, of the soul that is naturally Christian.\textsuperscript{316}

In this case unity and indissolubility are not rules which are externally imposed on the spouses and restrictive of conjugal love, but they are the manifestation of its most intimate requirements, which assure its truth and dignity as:

The simultaneous spiritual and disinterested devotion of the spouses to each other, with the consciousness, alive and rooted in each, of willing to belong completely to each other, of willing to remain faithful to each other in all events and circumstances of life, in good days and in bad, in health and in sickness, in youth and in old age, without limits or conditions so that at last God will be pleased to call them to eternity.\textsuperscript{317}

The sacrament of marriage is a yoke of grace which, before the priest and the altar of Christ, unites two lives into one with an indissoluble bond.\textsuperscript{318} Pius emphasizes that, “the conjugal bond is one. In the terrestrial paradise, the first image of the family paradise, the first bond was established by the Creator between man and woman, about which the son of God incarnate will say one day: ‘quod Deus coniuxit, homo non separat’ – what God has joined man should not separate’; because ‘iam non sunt duo, sed una caro – they are not two but one flesh’».\textsuperscript{319} The seal of indissolubility is visibly stamped in the unity of the conjugal bond. It is a bond to which nature turns, but one which is not necessarily caused by the principles of nature, being instead brought about by

\begin{itemize}
\item \textsuperscript{316} Ibid., see No.491; Enchiridion Familiae, 2.1122; See García De Haro, marriage and the family, cit., p. 152.
\item \textsuperscript{317} Ibid., no. 493; Enchiridion Familiae, 2.1123; See García De Haro, marriage and the family, cit., p. 152.
\item \textsuperscript{318} Cf. Pius XII, Address to married couples, (March 11, 1942), in Discorsi e Radiomessaggi di S.S. Pio XII, 3 (2 Marzo 1941-1Marzo 1942), p. 389.
\item \textsuperscript{319} J. M. de Torre, The Church speaks on marriage & celibacy, cit., pp. 154-155.
\end{itemize}
the exercise of free will. In this case, the mere will of the contracting parties, can form the bond but cannot dissolve it. This holds not only for Christian nuptials but for every valid marriage contracted on earth through the mutual consent of the parties.\footnote{Cf. J. M. DE TORRE, The Church speaks on marriage \& celibacy, cit., p. 155; He emphasized that, «The bond of Christian marriage is so strong that, if it has reach full stability by the use of conjugal rights, no power on earth, not even our own, that is, that of the Vicar of Christ, is able to dissolve it».}

1.3. The teaching of the Church’s Magisterium regarding indissolubility during and after Vatican II

From the very beginning, Vatican Council II linked itself to the whole of Tradition and even more explicitly, to the Councils of Trent and Vatican I.\footnote{See ECCUMENICAL COUNCIL OF VATICAN II, Dogmatic Constitution on Divine Revelation, Dei Verbum (November 18, 1965) in AAS 58 (1966), pp. 817-830, no. 1.} The Second Vatican Council wants to continue with these doctrines and also to make it more vivid. It is of vital importance to highlight here that, the Church being the guardian and custodian of the truth, leads us to the discovery of the truth due to the fact that, it is her mission to guide one to the truth so that he may live the truth. In this point of view, one’s effort of going back to the official magisterium of the Church is justified since without faithfully adhering to the magisterium, a true knowledge of the faith does not endure, nor is the full truth about man possessed: Catholic theology disappears together with the Christian conscience.

Hence, the teaching on the indissolubility of marriage taught by the Church’s magisterium shall be discussed in this first part of the work. This will certainly serve as an overview before we enter into the core of this study. We shall start from the second Vatican Council right up to the teachings of Benedict XVI. The Vatican Council has also confirmed the objectivity of moral order in all its content especially in the sense that: the inseparability between love and procreation; the condemnation of abortion and of contraception, the indissolubility of marriage etc. It also reaffirmed the objectivity of Christian morality, stressing on the fact that, this does not belong to conscience to create
values and at the same time it never stopped calling to mind that, only in Christ can these values be fully known (GS, nos. 22, 28). Above all, Vatican II presented the renewed doctrine concerning marriage in the Pastoral Constitution Gaudium et Spes numbers 47-52.

1.3.1. The pastoral Constitution Gaudium et Spes

One of the main concerns of the Second Vatican Council was to address herself to the urgent problems which were deeply affecting humanity as a whole. We do not want to make an extensive study of Gaudium et Spes’ doctrine on marriage. The Council then aimed at seeking solutions to these pressing problems. 

322 Cf. Pastoral Constitution de Ecclesia in mundo huius temporis Gaudium et Spes, (December 7, 1966), in AAS 58 (1966), pp. 1025-1115, no. 16; Dignitatis humanae, no. 3.


324 From now on the Pastoral Constitution Gaudium Et Spes will be cited as GS.

problems in the light of the gospel and human experiences. Thus, in the preface of part II of *Gaudium et Spes* it says: «... the council now draws the attention of men to the consideration of some urgent problems deeply affecting the human race at the present day in the light of the gospel and of human experiences» (GS 46a). This Pastoral Constitution on the Church in the modern world has dedicated a full chapter to the dignity of marriage and the family (GS nos. 47-52). Its aim is to present certain key points of the Church’s teachings in a clearer light, and it hopes to guide and to encourage Christians and all men who are trying to preserve and to foster the dignity and supremely sacred value of the married state (GS 47c).\(^{326}\)

GS presents man and woman as created according to God’s image with same nature, origin and destiny and are redeemed by Christ. All men are vested with the same dignity and calling. This implies that they are all equal and possess the same human rights which must be respected\(^{327}\) and an inherent dignity which is inviolable.\(^{328}\) The Constitution states that: «The biblical word of God several times urges the betrothed and the married to nourish and develop their

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\(^{327}\) GS, no. 29.

wedlock by pure conjugal love and undivided affection. This love is eminently a human one since it is directed from one person to another through an affection of the will. It embraces the good of the whole person». 329 It is this interpersonal element that enables the expressions of both body and mind, and render them dignified. 330 Gaudium et Spes asserts that, the human person is a union of body and soul (corpore et anima unus). 331 Morrisey 332 explains that, the Conciliar teaching brings out clearly four aspects of marriage which are: the notion of foedus (as reference to matrimonium in fieri), the notion of amor coniugalis, the notion of fines matrimonii, and the notion of communitas vitae. 333 We

329 GS, no. 49.


331 Cf. GS, no. 12a. This notion was added in the textus recognitus (November 15, 1965) to satisfy numerous council fathers who desired that the unity between body and soul be mentioned so as to avoid whatever dualism. They also wanted that the dignity of the human body, informed by an immortal and spiritual soul, be shown. Cf. Relatio ad Textum Recognitum, no. 14 A in Acta Synodalia, vol. IV, pars. VI, p. 443.

Nevertheless, when one modus to the textus recognitus – which suggested that the dignity of the human body be linked not only to its creation by God but also to its nexus with the soul – was presented, the commission thought that it was unnecessary and considered that its incorporation might confuse the flow of the text. Acta Synodalia vol. IV, Pars. VII, p. 380.

The Council resisted attempts to describe body and soul separately. Rather, it sees the whole human person as an embodied spirit. As Ratzinger explains: «The whole Art. (14) originally dealt solely with the dignity of the human body, and the following article concerned the dignity of the soul and particularly of the human intellect (text 4). In Text 5 this division was suppressed and the whole constitution of man was included in Article 14 in order to oppose as much as possible any kind of dualism and to emphasize human unity even in this external way. That unity is so complete that man can only be described as simultaneously body and soul, each in the other, not separate from it». J. Ratzinger, The dignity of the human person in H. Vorgrimler, Commentary on the Documents of Vatican II., Pastoral Constitution on the Church in the modern world, vol. 5, New York 1969, p. 26, cited by R. B. Arjonillo Jr., Conjugal love and the Ends of marriage, cit., p. 264.


333 Ibid., p. 211; He writes that: «The Conciliar teaching on marriage has been said to center around three particular poles: marriage as a covenant, the importance of conjugal love, the
shall not enter into substantiating on these four parts as they shall be treated in other parts of this dissertation.

In a bright way, GS formulates in number 48 and under the title “De Sanctitate matrimonii et familiae”, an important exposition of those which appear as the most characteristic elements of the matrimonial institution in the following terms.334 «The intimate partnership of life and love which constitutes the married state has been established by the Creator and endowed by him with its own proper laws: it is rooted in the contract of its partners, that is, in their irrevocable personal consent. It is an institution confirmed by the divine law and receiving its stability, even in the eyes of society, from the human act by which the partners mutually surrender themselves to each other»335 and again this number 48 expresses that: «for the good of the partners, of the children and of the society this sacred bond no longer depends on human decision alone».336 The teaching which GS brings out here is that, the conjugal bond does not in any way depend on human decision. It excludes the will of the spouses who cannot dissolve it and that of any human power.337 Again GS

community of conjugal life. To these three poles, we add the notion of fines matrimonii. We make this addition, not only because many have written about the significance of the conciliar teaching on the ends of marriage, but also because we are aware of the pre- and conciliar discussions on the ends of marriage and because we note that the proposed new codex abandons the ‘ends’ terminology found in the 1917 codex.»

334 Cf. J. R. BASCARAN, Sacramentalidad del matrimonio y amor conyugal en la Costitucion Pastoral Gaudium et Spes, Pamplona 1977, p. 87.


336 «Hoc vinculum sacram intuitu boni tum coniugum et prolis tum societatis non ex humano arbitrio pendet» (GS 48a).

48 says: «thus the man and the woman», who «are no longer two but one» (Mt 19:6), help and serve each other by their marriage partnership; they become conscious of their unity and experience it more deeply from day to day. The intimate union of marriage, as a mutual giving of two persons, and the good of the children demand total fidelity from the spouses and require an unbreakable unity between them. This text brings out two reasons for indissolubility.

The first concerns the mutual giving of the persons while the second talks of the good of the offspring. When parents do break this mutual bond, they are in a way contradicting regarding the relationship of the prole to parents which also affects the core of nature and social beings as well. In GS 48a, the Council takes a theocentric position – God as the author of marriage, and contemplates man’s dependence on God, where marriage is understood from the view point of the plans which God has for man. This sacred affiliation of marriage explains its institutional predetermination or its previous regulation of every conjugal union in concrete. In this case, the mutual giving gives rise to an indissoluble bond and to an institution confirmed by divine law for which reason the sacred bond does not depend on any human decision.

Another point which the Council also teaches on the indissolubility of Christian marriage especially regarding its sacramentality is, Christ our Lord has abundantly blessed this love, which is rich in its various features, coming as it does from the spring of divine love and modeled on Christ own union with the Church. Just as of old, God encountered his people with a covenant of love and fidelity (cf. Hos 2; Jer 3:6-13; Eze 16 and 23; Is 54), so our Savior, the spouse of the Church (cf. Mt 9:15; Mk 2:19-20; Lk 5:34-35; Jn 3:29; 2 Cor 11:2; Eph 5:27; Apoc 19:7-8; 21:2 and 9), now encounters Christian spouses through the sacrament of marriage (GS 48b).

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339 Cf. A. Miralles, Naturaleza, cit., p. 159.


married love is caught up into divine love and is directed and enriched by the redemptive power of Christ and the Salvific action of the Church with the result that the spouses are effectively led to God, are helped and strengthened in their lofty role as fathers and mothers.\footnote{Cf. \textit{VATICAN COUNCIL II}, Dogmatic Constitution on the Church \textit{Lumen Gentium}, (November 21, 1964), in AAS 57 (1965), pp. 15-16; 40-41; 47; See GS, no. 48. Here after it will be cited as LG.} It is important to note here that God has judged this love to be worthy of special gifts of grace and of charity. Such love, merging the human with the divine, leads the spouses to a free and mutual gift of themselves, a gift providing itself by gentle affection and by deed, such love pervades the whole of their lives:(GS 11) indeed by its busy generosity it grows better and grows greater (GS 49)» (Lk 6:37-38; Mat 7:1-2; Rom 2:1-11; 14:10-12). Some commentators on the Conciliar teaching about marriage contained in the Pastoral constitution hold that \textit{amor coniugalis} is presented therein as identical with the state of marriage itself.\footnote{Cf. J. A. \textsc{Renken}, \textit{The Contemporary understanding of marriage. An historical – critical study of \textit{Gaudium et Spes}, 47-52, and its influence upon the revision of the Codex Iuris Canonici}, Roma 1981, p. 411.} In this light, Hastings claims marriage in its deepest meaning to be a community of love:

Marriage in its deepest meaning is a community of love, at its noblest the sacrament and reflection of Christ and the Church; such a community is of its nature fruitful, expansive. It cannot be seen as a closed society between two people alone. It is a giving society, one that grows naturally in size, so that the initial community of marriage, husband and wife, is somehow ordained to a wider community, of both with their children.\footnote{A. \textsc{Hastings}, \textit{A Concise Guide to the Documents of the second Vatican Council}, 2 vols., London 1968-1969, v. 2, pp. 48-49; GS no. 44 §1 expressly calls marriage a \textit{communitas amoris}.}

O’Callaghan, moreover, says that \textit{Gaudium et Spes} does not only define marriage as a community of love, but also in so doing endorsed the doctrines of theologians which said that \textit{amor coniugalis} is not a secondary end of marriage: «When Vatican II defined marriage as a community of love it effectively endorsed the view of those theologians (particularly Herbert Doms) who claimed that love was not something to be forced in among the so-called
secondary purposes of marriage». Many writers believe conjugal love is the same as the institution of marriage itself, such that the institution may properly be termed a *communitas amoris coniugalis*. At the same time other authors are of the contrary opinion. They do not believe amor coniugalis to be the same as marriage. Walter, for instance, warns that marriage must not be understood solely as a love relationship.

The corporal nature of the human person and of community of marriage as such means, however, that it is never possible to speak purely personally of marriage. It is obvious from everyday experience that at least a minimum of physical (health), social and economic requirements are needed if marriage is to be successful. To express this in a more abstract way, we may say that love includes justice – the justice that gives to the other his or her due and thus restores an equality in the relationship between the external matter and the person. The love that accepts and consents to the other as a person also gives to the other his or her due. Without this justice, it would be dishonest and empty. An all-embracing personal view of marriage also includes both objective and institutional elements. A renewed theology of marriage must therefore be on its guard not only against a one-sided objectivization and a tendency to overemphasize the institutional aspect of the reality, but also against a too individualistic and romantic or idealistic understanding of the part played by the person in marriage. *Marriage, in other words, should not be seen purely as a love relationship*. It must also be seen within the framework of the actual social and economic conditions of human freedom.

Navarrete, moreover, affirms that love cannot be identified with marriage seen in the unity of man and woman. In an article which was

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347 Cf. U. NAVARRETE, *Consenso matrimoniale e amore coniugale con particolare riferimento alla Cost. ‘Gaudium et Spes’*, in *L’Amore coniugale*, (ed. V. FAGILO), Città del Vaticano, 1971, p. 205. «Love does not identify with marriage as seen in the light of the unity of the two subjects. Marriage seen in the unity of the two subjects, on the juridical plan, is the complex of rights and duties created by consent, which certainly binds the two subjects together in a very close juridical and existential unity. Once created it exist in itself independently of love. The unity of the two

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written shortly after the close of Vatican II, Fuchs observed that: «Vatican II insists on the value of love in marriage, but it does not consider the fundamental question: whether love is the essence of marriage or whether love at least belongs to the essence of marriage». In this sense, Häring, commenting on GS, 48, claims that love belongs to the essence of marriage: «Art. 48. Before dealing with the sanctification and salvation, the text states what it is that is regarded as holy: ‘the intimate partnership of married life and love’. The objective meaning of matrimonial consent is an acceptance of love». We shall not dwell so much on this since this shall be studied more detailly in chapter 2 of this dissertation. Number 50 of GS underlines that:

Marriage and conjugal love are by their nature ordained toward the begetting and educating of children. Children are really the supreme gift of marriage and contribute very substantially to the welfare of their parents. God Himself Who said, "it is not good for man to be alone" (Gen. 2:18) and "Who made man from the beginning male and female" (Matt. 19:4), wishing to share with man a certain special participation in His own creative work, blessed male and female, saying: "Increase and multiply" (Gen. 1:28).

The pastoral Constitution also sustained that: «The biblical Word of God several times urges the betrothed and the married to nourish and develop their wedlock by pure conjugal love and undivided affection». In fact this passage indirectly reconfirms the indissolubility of the bond of Christian marriage.

subjects in the juridical plan, persist even if love is not more there. They cannot therefore identify themselves. The English translation is mine.


1.3.2. The teachings of Pope Paul VI

During Vatican II so much was discussed which concerned marriage. During his pontificate, Pope Paul VI continued with the theme on marriage in his magisterial teaching. At the anthropological level, Pope Paul VI gave an explicit response to the question regarding what is marriage. In his famous encyclical *Humanae vitae*, he expressed his line of thought concerning the official teaching of the Church on birth control, marriage etc. We shall develop this part by examining his encyclicals, speeches and allocutions to the Roman Rota. The Pope in his very first address at the beginning of the judicial year of the Sacred Roman Rota said:

Because of that vigilance of the Universal Pastor of the Church, from which we must not flee and also because of symptoms relating to the spiritual life of the faithful, we have asked our self whether the increase in marriage cases dealt with by the Sacred Rota in recent years may not perhaps be related – in some cases – to the decline in sensitivity to the moral awareness that should always guide mankind, particularly, Christians, in their life and especially in serious decisions; whether this might not be an indication that, with many others, could explain the often superficial, trivial, if not altogether irreverent, attitude toward marriage, an indissoluble contract raised to the dignity of a sacrament by Jesus Christ for the good of the human family.\footnote{352 PAUL VI, (December 12, 1963), in Insegnamenti di Paolo VI, Vatican City, 1 (1963), pp. 396-400; partial English trans. In The Pope Speaks, 9 (1964), pp. 257-259.}

The Pope then presented the nature of marriage as a response to the opinion which some theologians and philosophers had developed through which contraceptive methods could be allowed on the bases of their understanding of conjugal love and responsible parenthood.\footnote{353 Cf. MACKIN, What is marriage?, 274. See R. HOGAN, Finality and marriage, Milwaukee 1993, p. 44.} He therefore said the following on marriage:

Conjugal love reveals its true nature and nobility when it is considered in its supreme origin, God, who is love...Marriage is not, then, the effect of chance or the product of evolution of unconscious natural forces; it is the wise institution of the Creator to realize in mankind

\[\text{btcagn}\]
His design of love. By means of the reciprocal personal gift of self, proper and exclusive to them, husband and wife tend towards the communion of their beings in view of mutual personal perfection, to collaborate with God in the generation and education of new lives.\(^{354}\)

The importance of the above quoted paragraph is that, it brings out the nature of marriage while stressing on the importance of conjugal love and responsible parenthood. He then refers also to the teaching of Vatican II and some other teachings of the Magisterium so as to back up this teaching on marriage based on natural law and enlightened by divine revelation.\(^{355}\) The pope in his very first words underlined indissolubility as found in a theological-anthropological vision which sees or understands man in all its psycho-physical integrity.\(^{356}\) In his encyclical *Humanae Vitae*, the Pope said:

Conjugal love is fully human, that is to say, of the senses and of the Spirit at the same time [...] this love is total, that is to say, it is a very special form of personal friendship, in which husband and wife generously share everything. Without undue reservations or selfish calculations [...] this love is faithful and exclusive until death [...] finally this love is fecund for it is not exhausted by the communion between husband and wife, but is destined to continue, raising up new lives (no. 9).\(^{357}\)

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354 PAUL VI, Encyclical Letter *Humane Vitae* (June 25, 1968), in AAS 60 (1968), pp. 481-503, no. 8 (from now hence for the it will take the abbreviation HV).


356 HV, no 8.

357 «Est ante omnia amor plane humanus, hoc est sensibilis et spiritualis. ... Agitur deinde de amore pleno, id est de peculiari illa personalis amicitiae forma, in qua coniuges omnia magno
The above paragraph gives an assertion of the indissolubility of marriage. But it should be noted that this reference is indirect because the citation itself refers to fidelity.\footnote{Cf. O. J. Florencio, \textit{The anthropological and sacramental foundation}, cit., Rome 2000, p. 18.} In another text the Pope presents marriage as a special vocation for Christians.

Christian married couples, then, docile to her voice, must render their Christian vocation, which began at baptism, and is further specified and reinforced by the sacrament of matrimony. By it husband and wife are strengthened and as it were consecrated for the faithful accomplishment of their proper duties, for the carrying out of their proper vocation even to perfection, and the Christian witness which is proper to the world. To them the Lord entrusts the task of making visible to men the holiness and sweetness of the law which unites the mutual love of husband and wife with their cooperation with the love of God the author of human life.\footnote{HV 25.}

He also reaffirmed this in one of his addresses when he said, «like all the baptized, you are truly called to holiness. This teaching in the Church has been solemnly reaffirmed by the Council. But you are to achieve this in your own proper way, in and through your holy life».\footnote{Pope Paul VI, \textit{Address of Pope Paul VI to the Teams of Our Lady}, (May 4, 1970), in O Liebard, \textit{Love and sexuality}, cit., p. 378, Here the Pope cites \textit{Lumen Gentium} nos, 11, 41. (Hereafter cited as Paul VI, Teams of Our Lady).} These very words of Pope Paul VI affirm also the teaching of Vatican II which emphasized on the idea that, married partners are called to a special vocation of holiness through marriage.

The Pope also developed in his encyclical the concept of conjugal love and responsible parenthood. According to him, the nobility of married love is affirmed and its source is indicated in «God, who is love, (1Jn 4:8) ‘the father, from whom all fatherhood in heaven and on earth receives its name’ (Eph...
3:15).\textsuperscript{361} Also in his allocution to the Youths of the Italian Catholic Action of June 4, 1967, he spoke to them about the true characteristics of love and the consequences they can obtain if these characteristics are not respected. According to the Pope,

Love tends to be exclusive; tends to be perennial. The two good foundation in which the good and legitimate family grows are exclusivity and perenniality. These are premises of indissolubility. If these two characteristics are not accepted, love is betrayed, deformed, oppressed and is lost. It procures only unhappiness. It is necessary to be permanently decided in aspiring a unique love that fills the heart and is total to a love that will never be repudiated and will never fail: it will surpass instead the limits of present time to attain that of paradise, that of eternity.\textsuperscript{362}

This is a clear indication that exclusivity and perpetuity characterize love and are equally premises of indissolubility. This is because they characterize the reciprocal giving of self which the spouses at the moment of giving consent give and accept one another reciprocally.\textsuperscript{363} On the occasion of the visit of the group “Equipes Notre-Dame”, May 4, 1970, he emphasized on the difference between human associations and the union of a man and woman in the following words:

The union of a man and woman in effect radically differs from all other human associations, and it constitutes a singular reality namely, the couple founded on the mutual giving of one to the other: ‘and they become one’ (Gen 2:24). A unity whose irrevocable indissolubility is the seal affixed to the free and mutual engagement of two persons who from the moment on are not two but one body (Mt 19:6). One flesh, one couple, (we could almost say one being), whose unity will take social and legal form in marriage, and will manifest in a


\textsuperscript{363} Cf. Can. 1057§2: states that: «matrimonial consent is an act of will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing marriage».  

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community life whose carnal gift is the creative expression. This means that, when they marry, spouses express a desire to belong to each other for life, and for this purpose contract an objective bond whose laws and requirements, far from becoming an enslavement, are a guarantee and a protection, a real support, as you yourselves experience in your daily life.\textsuperscript{364}

Here indissolubility is irrevocable since it binds the spouses for life. In another discourse of January 30, 1975 on the occasion of the Judicial year he said the following \textit{inter alia} to the members of the Roman Rota: «the first duty is to protect therefore, and defend those values which on assailable, biblical, theological and rational ground possess an undeniable authority. […] one example of many would be the divine law and resultant human duty of respecting the indissolubility of a true and perfect marriage, that is, a marriage that is both sacramental and consummated».\textsuperscript{365} Again he affirms in his Christmas message of December 1, 1970 that,

The Church cannot in fact, cease to proclaim that noble principle which, written in the laws of nature, has been proclaimed and strengthened, for Christians, from the law of the gospel […]. Neither can the Church cease to remind man and in particular a Christian that the observance of the law so solemn and lofty it may be is not only obligation but guarantee of the good: the good, precisely, coming from the defense that indissolubility of the marriage bond guarantees for the stability, for the safety, for the serenity of the family, natural cell of human society and specially the offspring.\textsuperscript{366}

What is of prime importance here is that, the indissolubility of marriage is and remains a divine right. These are all attempts on the part of the Pope as well as the duties of the auditors of the Roman Rota, to defend the indissolubility of marriage.


1.3.3. The 1983 Code of Canon Law

Pope John Paul II, with the Apostolic Constitution Sacrae disciplinae leges promulgated on January 25, 1983 the new Code of Canon Law. He wrote: «It is the primary legislative document of the Church, based on the juridical and legislative hereditary of revelation and the Tradition». He affirmed that it is a true and proper complement of the Post-conciliar Magisterium which is fully in harmony with the ecclesiology of the pastoral and Dogmatic constitutions of the Second Vatican Council. The Pope said, «the Code could be seen as a great effort which will help to translate into canonical language this very doctrine, that is, the conciliar ecclesiology». Its principal characteristic evidently is to be permeated by the Spirit of the Council:

Since the Vatican Council II has drawn from the treasures of the Tradition old and new things and its novelty consist in the one and in the other elements, it appears clear that the Code has understood the same note of fidelity in the novelty and of the novelty of fidelity, and these conforms to what regards its proper material and its particular language.

This therefore gives us the go ahead to examine what the new Code says concerning the indissolubility of marriage. The 1983 Code of Canon in can. 1055 teaches that, the marriage covenant between two baptized persons has been raised by Christ the Lord to the dignity of a sacrament. Dacanáy is of the opinion that:

The human reality of marriage, the union established through consent, is the human matrix of the sacrament, it is the reality which is assumed and consecrated into sacrament by virtue of baptism. If we understand marriage as a particular vocation/mission which specifies the general mission received in baptism; and if we understand further that baptism incorporates us into the body of Christ precisely by effecting an

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368 Ibid.

369 Ibid.
ontological change in our being conforming us to Christ, and allowing us to participate in His work and mission, we may be able to present a better understanding of the traditional teaching of the Church, summarized in C. 1055§2 that the matrimonial contract cannot validly exist between baptized persons unless it is also a sacrament by that very fact. 370

In this light, the Church explicitly teaches the inseparability of contract and sacrament, that the only marriage that baptized persons can contract is a sacramental marriage because the only requirement for a sacramental marriage is the baptism of the parties. In this case if the parties are baptized, and their marriage is valid, then their marriage is also sacramental. 371 The Church therefore teaches that, for the baptized person, the contract is the sacrament. It is the material out of which the sacrament is made. If sacramental marriage is understood as participation in, and specification of the mission of Christ and of the Church, then the baptized person shares in this mission for that is what he was consecrated and empowered for, in his baptism. 372 This would be true

370 A. N. DACANAY, Canon Law on Marriage, Introductory notes and Comments, Philippines 2000, pp. 2-3. Here after this text will be cited as Canon Law on Marriage.

371 Ibid., p. 3. This has been the constant teaching of the Church, and it was a teaching that was enshrined in the law of the Church certainly since 1140, in the first codification of Church law that became accepted universally more or less, the work commonly called the Decretum Gratiani. Cf. A. N. DACANAY, Matrimonium Ratum: Significatio Termini, in Periodica, 79 (1990), pp. 69-89. The principle enunciated in Can. 1055 is doctrinal, one which has elicit various reactions. For a review of the theological conspectus after Vat. II, Cf. D. BAUDOT, L’inséparabilité entre le Contrat et le Sacrement de mariage [Analecta Gregoriana 245], Pontificia Università Gregoriana, Roma 1987, pp. 113-167. For other brief studies on this Cf. T. NORRIS, Why the Marriage of Christians is one of the Seven Sacraments, in Irish Theological Quarterly, 51 (1985), pp. 37-51; M. J. HIMES, The Intrinsic Sacramentality in Marriage: The Theological Ground for the Inseparability of Validity and Sacramentality in Marriage, in The Jurist, 50 (1990), pp. 198-220; C. BURKE, The Sacramentality of marriage: Canonical Reflections, in Monitor Ecclesiasticus, 119 (1994), pp. 545-556; C. BURKE, La Sacramentalità del Matrimonio: Reflexioni Teologiche, in Apollinaris, (1993), pp. 315-338; C. BURKE, La Sacramentalidad del Matrimonio: Reflexiones Teologicas, in Jus Canonicum, 54 (1994), pp. 167-188.

372 Cf. A. N. DACANAY, Canon Law on Marriage, cit., p. 3 note 3; He affirms that «The role of baptism in the sacramentality of marriage is explained by Hostiensis and Hugh of Pisa. The ‘reconstitution’ of marriage into a much richer reality is posited on the baptismal character, understood in terms of ontological configuration to God, a rebirth, a disposition to grace, an indissoluble bond with God, empowerment for divine mystery. It was on the basis on this
whether he is aware of it or not, whether he actually accepts and lives up to this vocation or not. The emphasis therefore is on the existence of a responsibility, not on the acceptance of it by the baptized person.\(^\text{373}\)

Canon 1056 states «The essential properties of marriage are unity and indissolubility; in Christian marriage they acquire a distinctive firmness by reason of the sacrament».\(^\text{374}\) It is quite evident from this canon that, the two essential properties characterize the special partnership or bond that originates from the marriage covenant; unity and indissolubility. These properties are required by natural law and are present in every valid marriage, even marriage which is contracted by non-Christians. Following the teaching contained in GS, no. 48, these properties are required by the intimate union of marriage as a mutual giving of two persons, and by the good of the children which demands total fidelity from the spouses and requires an unbreakable unity between

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them. These properties are particularly strengthened by the grace of the sacrament, which provides a specific aid to the spouses to remain indissolubly faithful to each other.\footnote{Cf. I. Gramunt, J. Hervada, L. A. Wauck, *Canons and Commentaries on Marriage*, Minnesota U.S.A. 1987, p. 4. «Since unity and indissolubility are essential properties, to exclude them in the marriage contract renders the marriage covenant invalid. For the same reason, civil divorce cannot dissolve the marriage bond, and a divorced person cannot enter into a new valid marriage while the first spouse is still alive.»} Despite the fact that this canon talks of the essential properties of marriage, at the moment we shall treat only indissolubility which concerns our topic. In the third chapter of the work, we shall try to look at indissolubility in relation to unity and the sacramentality of marriage.

The indissolubility of the marital union means that the bond of sacramental marriage cannot be broken except by death of either husband or wife. When Jesus Christ raised marriage to the level of a sacrament, indissolubility took on a new significance, becoming a sign of the love – faithful to death – of Christ for his Church. So indissolubility in Christian marriage is said to acquire a distinctive firmness by reason of the sacrament. In the following words of Cormac Burke he affirmed:

> God, the author of marriage, instituted it as indissoluble from the very start. Jesus specifically confirmed this as the divine plan. «Have you not read that he who made them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one'? So they are no longer two but one. What therefore God has joined together, let no man put asunder» (Mt 19:4-6). So even if one saw no other reason in favor of indissolubility, our Lord's teaching should be enough, at least for a Christian.\footnote{C. Burke, *Indissolubility of marriage* in *Encyclopedia of Catholic Doctrine*, Our Sunday Visitor, 1997, in www.cormacburke.org.ke.}

By virtue of the covenant of married life, the man and woman "are no longer two, but one flesh" (Mt 19:6). Aided by grace, the two are able to give themselves daily to one another, thus bringing the object of the covenant, the union of the whole of life, into reality. The indissolubility of marriage consist in unity which is projected in time, which means in the perpetuity of the marriage,
in the prohibition that it, validly contracted and consummated, could be dissolved by an act of the will of the spouses or by any human authority.\textsuperscript{377} It can be understood at this point that, the properties of marriage are qualities which are very necessary to the same marriage, since they deal with the direct consequence of the sacramental nature of the bond. In a special way, marriage which is celebrated by non Catholic Christians is also regulated by the law of their proper ecclesial community separated from the Catholic Church.

\textbf{1.3.4. The teachings of Pope John Paul II on indissolubility of marriage}

From every indication, Pope John Paul II, during his pontificate certainly understood the preoccupation of Paul VI and was determined to continue with what he had begun in his magisterial teaching on marriage and the family. It is obvious that his pontificate marked or showed a lot of interest regarding the family.\textsuperscript{378} This is quite glaring in his Apostolic Exhortation \textit{Familiaris Consortio} (1981), his \textit{Letter to the Family} (1994), and so many other documents. We shall examine his contributions regarding the indissolubility of marriage beginning from \textit{Love and Responsibility}, \textit{Familiaris Consortio}, \textit{Man and Woman be created them}, his allocations to the Roman Rota and finally his Wednesday catechesis and homilies. The theological anthropology of John Paul II is equally significant regarding the theology of the body which he developed in his Wednesday audiences.

\textbf{1.3.4.1. Love and Responsibility}

\textit{Love and Responsibility} by Karol Wojtyla, has a long pre-history. The experiences of his faithful supplemented his own personal experience and feelings regarding these issues, and in a way prompted him to reflect and

\textsuperscript{377} Cf. E. \textsc{Vitali-S. Berlingò}, \textit{Il matrimonio canonico}, Milano 2007, pp.18-19. This is also expressed by A. \textsc{Abate}, \textit{Il matrimonio nella nuova legislazione canonica}, Brescia 1985, p. 28.

meditate on them. *Love and Responsibility* is intended therefore to be a testimony.\(^ {379}\)

Some of the topics treated in this book which concern us are monogamy and the indissolubility of marriage. The Pope emphasized that, «... the union of man and woman needs a certain framework, one which permits the full development of the sexual relationship while ensuring the durability of their union. Such a union is of course, called marriage».\(^ {380}\) He goes on to explain that:

We shall consider marriage here mainly in the light of the personalistic norm, which bids us show ‘loving kindness’, and treat a person in a manner appropriate to his or her essential nature. This principle is fully compatible only with monogamy and the indissolubility of marriage. It is fundamentally opposed to all forms of polygamy, whether polygyny or polyandry. It is likewise opposed in principle to the dissolution of marriage. [...] for such a union must be durable, must last until one of the parties to the relationship ceases to exist. I am speaking not of spiritual existence, which is above and outside of time, but of existence in the body, which ends with death. Why is this so important? Because marriage is not only a spiritual but also a physical and terrestrial union of persons.\(^ {381}\)

He goes on to refer to the answer which Christ gave to the Sadducees (cf. Mt 22:23-30) when they asked what would become of marriage after the resurrection of the body – those who live anew in their bodies neither marry nor are given in marriage but are like angels in heaven’. In this regard, the Pope affirmed that, “marriage is strictly a feature of man’s physical and terrestrial existence, so that it is naturally dissolved by the death of one of the spouses. The other is then free to marry another person. In law this is called *bigamia successiva*”.\(^ {382}\)


According to him, the question concerning monogamy and the indissolubility of marriage is dealt with decisively and conclusively in Christ’s teachings. Christ had before his eyes the fact that, marriage as the Creator instituted it, was strictly monogamous (cf. Gen 1:27 and 2:24) and indissoluble as well. He said,

For the memory of the polygamy of the patriarchs, the great leaders and the kings (David and Solomon for instance), was still alive in the traditions of his immediate audience, the Israelites, as was the mosaic letter of repudiation authorizing the dissolution of a legally valid marriage in certain circumstances. Christ uncompromisingly opposed these traditional usages, stressing the character of marriage as originally instituted and the primordial intention of the Creator (‘… in the beginning it was not so’). 383

The Pope emphasized the idea that, the abolition of polygamy and the re-establishment of monogamy and the indissolubility of marriage are necessary consequences of the command of love, understood as the embodiment of the personalistic norm. This therefore means that, if all the relationships between men and women are to be on this high level, they must be developed in accordance with and also embody the principle of monogamy and indissolubility, which equally highlights those other aspects of the coexistence and association of man and woman. 384 In the final analysis, the Pope affirms that,

We must accept that in their conjugal life a man and a woman unite as persons and that their union therefore lasts as long as they live. We cannot accept that their union lasts only as long as the persons themselves wish it to last, for that would be a contradiction of the personalistic norm, which is based on the concept of the person as a primary being. 385

From this point of view, a man and a woman who have lived as husband and wife within the framework of a valid marriage are joined in a union which

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383 Ibid., p. 213.
384 Ibid., pp. 213-214.
385 Ibid., p. 215.
only the death of one of them can dissolve. And the fact that, one or even both of them may cease in course of time to want this does nothing to alter the situation: their change of mind cannot cancel the fact that they are objectively united as man and wife.

1.3.4.2. Familiaris Consortio

In his Apostolic Exhortation *Familiaris Consortio*, the pope has written, «The future of the world and of the Church passes through the family». This conviction is at the basis of his constant attention to the well-being of the family from the very beginning of his pontificate. This conviction culminated in the publication of *Familiaris Consortio*, which John Paul II has himself defined as «a summa of the teaching of the Church on the life, tasks, the responsibilities, and the mission of marriage and of the family in the world today». The apostolic exhortation *Familiaris Consortio* came to birth on the occasion of the Fifth Synod of Bishops, celebrated at Rome in 1980. It is a document of the Supreme Pontiff which, «gathers together the proposals and the suggestions which the Synod Fathers from the Episcopate of five continents presented to him»; it is also «an authentic expression of the collegiality of the Church»; it contains a summary of all the doctrines of the Church – *a summa* – in which «the clear teaching of Vatican Council II on marriage and the family is deepened and amplified». The doctrine of the Catholic Church on marriage and family life rests not simply on deductions from the principles of natural law as so often seems to be presumed, but on

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386 Apostolic Exhortation *Familiaris Consortio*, (November 22, 1981), no. 75, in AAS 74 (1982), pp. 81-191. For the rest of this chapter this document will be cited in the text as FC, leaving other citations for the footnotes.

387 Address of (December 22, 1981), in which the pope presented his new Apostolic exhortation; *Enchiridion Familiae*, 4.3415ff.

388 «At the close of their assembly, the Synod fathers presented me with a long list of proposals in which they had gathered the fruits of their reflections, which had matured over the intense days of work [...]». See JOHN PAUL II, Apostolic Exhortation *Familiaris Consortio*, Catholic Truth Society, London 1981, no. 2. From now hence forth it shall be cited as FC.


the teaching of Jesus Christ himself.\textsuperscript{391} It is the Lord who «reveals the original truth of marriage, the truth of the ‘beginning’».\textsuperscript{392} Through \textit{Familiaris Consortio}, John Paul II hopes that, young people preparing for marriage and family life will find a new vision of loving and serving life.\textsuperscript{393}

Its theme is the family and also provides a critical analysis of modern society and its root problems. In John Paul II's view, the Christian family is a miniature of the domestic Church, because it is the “first community called to announce the Gospel” to the child. The Christian family in effect, does what the Church does. It evangelizes, catechizes, ministers, educates for greater love and justice etc even though it does this on a smaller scale.\textsuperscript{394} Many of the observations John Paul II makes here are taken up and developed at greater length in his other documents. But in this the Pope formulates the major critical principles which helped in the first place, to accurately discern the problems underlying the modern misconceptions of the human person and secondly, provide the philosophical and theological ground upon which an adequate anthropology can be constructed, that is, one that is consonant with, and that explains the true meaning of the human person. Christian marriage is described in this Apostolic Exhortation as a conjugal covenant (\textit{foedus conjugale}). Marriage is a community of persons brought to life by love and at the service of life. Christ raised marriage to a sacrament and established it as a way of holiness. Talking about the liturgical celebration of marriage he said: «Christian marriage normally requires a liturgical celebration expressing in social and

\textsuperscript{391} Cf. Pope John Paul II and the Family, (ed. M. J. Wrenn), New York, 1983, p. 25. Wrenn asserts that: «The words of Jesus on marriage are admittedly brief, but nonetheless both significant and authoritative. As the Holy Father has demonstrated so well in the tasks just referred to, the Lord’s teaching on marriage provides the framework in which we must understand this basic institution».

\textsuperscript{392} Fc, no. 13.

\textsuperscript{393} Cf. J. S. Hamlon, \textit{A call to families, Study guide and commentary for Familiaris Consortio}, Minnesota 1984, p. 4.

\textsuperscript{394} Ibid., «In article 3, the Holy Father introduces God’s plan for marriage and the family, a plan which forms the theological backbone of the document. In Genesis, we see that God had a plan for marriage and family right from the beginning. Accepting the Gospel, therefore, is our only hope of finding true fulfillment in marriage and the family». 

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community form the essentially ecclesial and sacramental nature of the conjugal covenant between baptized persons».

Familiaris Consortio begins its presentation of the theology of the family with a consideration of the «original design of God for marriage and the family». In numbers 11-14 of this letter in which he summarizes the concept of marriage, the Popes’ point of departure is the constitution of man as a created being in the image and likeness of God, called to love which is expressed as a body that has an immortal spirit. In these numbers, the Pope refers to the Council of Trent reaffirming that marriage is a sacrament that is written in the alliance of God with men and of Christ with the Church. Following the example of Christ, who referred to the “beginning” (cf. Mt 19:8), when God revealed his will for ordering conjugal and family life, the Pope therefore takes us back to the creation of man and woman. This “beginning”, the time before the disruption in human relations caused by original sin, sets for the original truth of the family. According to Miller, one of the Pope’s favorite scriptural texts is Gen 1:27: «God created man in his image, in the image of God he created him; male and female he created them» (Gen 1:23). Human beings are called into existence “through love” and “for love” (FC, 11.1). Bearing the divine image, their vocation is to act as God acts. That is, they are to love as he does and to give themselves to others as he does: «love is therefore the fundamental and innate vocation of every human being». This call to love and be loved is at the heart of the spousal covenant which forms the wider community of the family. Conjugal love and marriage

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395 FC, 67.
396 FC, no. 10.4.
397 Cf. M. C. FORCONI, Antropologia cristiana come fondamento dell’unità e dell’indissolubilità, cit., p. 128.
399 Ibid.
400 FC, 11.2.
are ordained to the procreation and education of children, in which they find their crowning. \(^{401}\)

It is in this very light that, the community of life and love forms the indissoluble bond between the spouses, and has become such due to the merits of redemption of Christ. \(^{402}\) With the sacrament, the spouses therefore create a link (\textit{res et sacramentum}) which is the Christian conjugal bond, the communion of the two which relates to the mystery of the incarnation of Christ and to his mystery of alliance. The two then become one flesh in the totality of the persons, body, instinct, will and spirit arrive at unity through the reciprocal donation which is by its nature total and indissoluble. \(^{403}\) He therefore underlines that, the \textit{Res et sacramentum} is the effect of the same indissoluble and unique marriage and not an \textit{accidens}, but a substantial reality that engages the two spouses, as testimonies of a love which has divine characteristics. And this is the \textit{proprium} of Christian marriage. \(^{404}\)

The principle novelty of FC is the profundity with which it succeeds in showing how the various goods and properties of marriage flow from the very reality of the person and of his innate vocation to love. \(^{405}\) FC also clarifies that the marriage vocation is authentically fulfilled, in its integrity only in marriage and virginity: \(^{406}\) in virginity by means of a direct giving of oneself to God; in marriage, by means of a unique form in which the self-giving between a man and a woman can be realized “in a truly human way”: «The only ‘place’ where this self-giving in its whole truth is made possible is marriage, the covenant of

\(^{401}\) Cf. J. M. Miller, \textit{The Post Synodal Exhortation of John Paul II}, cit., p. 123.

\(^{402}\) Ibid.

\(^{403}\) Cf. John Paul II, \textit{Familiaris Consortio}, no. 3 which refers to \textit{Humanae Vitae}, no. 9; See M. C. Forconi, \textit{Antropologia cristiana come fondamento dell’unità e dell’indissolubilità}, cit., pp. 128-129.

\(^{404}\) Cf. M. C. Forconi, \textit{Antropologia cristiana come fondamento dell’unità e dell’indissolubilità}, cit., p. 129.


\(^{406}\) FC, 11§4.
conjugal love freely and consciously chosen, whereby man and woman accept the intimate community of life and love willed by God Himself (FC, no. 11, pars. 5 and 7).\footnote{407}

As John Paul II clearly states, human sexuality is never purely biological.\footnote{408} For it to maintain its specific human integrity, it must respect the dignity and value of the total human person: conjugal love involves a totality, in which all the elements of the person enter appeal of the body and instinct, the power of feeling and affectivity, aspiration of the spirit and of will. It then aims at a deeply personal unity, the unity that, beyond union of one flesh, leads to forming one heart and soul; it demands indissolubility and faithfulness in definitive mutual giving; and it is open to fertility.\footnote{409} When any of these essential elements such as: self-gift, sexual differentiation, personal bodily unity, indissolubility and fecundity are rejected or contradicted by the society, it is a clear sign of a culture of death that is beginning to take root.

Fundamental to his anthropological view, he links the creation of man to the image of God. Not only is human nature given, but its specificity is determined by its relationship to God. What is constitutive of the human person is its being reflective of the divine nature. \textit{Familiaris Consortio} defines this essentially as the vocation to love: God inscribed in the humanity of man and woman the vocation, and thus the capacity and responsibility, of love and communion. He strongly affirms that, love is intimately tied to the concept of self-gift and is constituted by \textit{«the value of ‘total’ self-giving»}.\footnote{410} \textit{Familiaris Consortio} demonstrates that, the symbolic nature of the person and the body are both intrinsically tied to divine revelation. God uses the relational aspect of the human person such as: love, family, and marriage to express his very covenant of love towards the human race. For this reason, the central word of Revelation, “God loves his people,” is likewise proclaimed through the living and concrete word through which a man and a woman express their conjugal

\footnote{407}See GS, no. 48.\footnote{408} FC, 11.\footnote{409} FC, 13.\footnote{410} FC, 32.

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love. Their bond of love becomes the image and the symbol of the covenant which unites God and his people.\textsuperscript{411}

The Pope emphasized the indissolubility of marriage in the following words: «conjugal communion is characterized not only by its unity but also by its indissolubility: as a mutual gift of two persons. This intimate union, as well as the good of children, imposes total fidelity on the spouses and argues for an unbreakable unity between them».\textsuperscript{412} The conjugal community request for its same structure that, the union of the spouses be indissoluble other than being indivisible. Unity and indissolubility may seem to be two different realities. In fact, One thing is that, this act of the reciprocal giving of themselves be total and exclusive and another thing is that, this reciprocal giving should last for the whole of life. But this unity and indissolubility are complementary and they are in reality different aspects of the same reality because what is indissoluble is not something else than that, the spouses are “one flesh.” This bond through which man and woman become husband and wife is the conjugal union in its indivisible unity.\textsuperscript{413} This idea is reaffirmed by Hogan and Levoir in the following words:

The husband and wife must give themselves totally to one another. This is not complete unless it is unbounded either in terms of their potentialities, for example, their fertility, or in terms of time. If a man were to give himself to a woman just for a few years, the relationship would not be founded on true love, but on the use. […] To give oneself for some years, reserving the right to break the relationship, is to treat the other person as a useful object which can be discarded as soon as it is no longer useful.\textsuperscript{414}

Regarding this very text of FC number 20, Larrabe commented in the following words:

Indissolubility is not a purely legal aspect of Christian marriage but it has its force and foundation in Christ’ (FC 20b). This alludes to the

\textsuperscript{411} FC, 12.

\textsuperscript{412} FC 20.

\textsuperscript{413} A. SARMIENTO, \emph{A Missão da Família Cristã}, Portugal 1985, p. 76.

\textsuperscript{414} R. M. HOGAN and J. M. LEVOIR, \emph{Covenant of love}, San Francisco 1982, p. 240.
Christological and ecclesial dimension that completes the indissolubility and fills it of the contents and spirit. The spirit of Jesus Christ makes it possible, easy and even pleasant and these are natural characteristics of marriage. Christ reveals the meaning of indissolubility gives grace to fulfill it and as such demands its completion, above all to Christian marriage. Hence evangelization and catechesis would be the transformation into “a new heart” proper of the new alliance in that which inscribe free and voluntary marriage of Christians so that marriage would be a Christian and ecclesial vocation in the form of living this love. […]\textsuperscript{415}

Another text of the Pope explains:

Being rooted in the personal and total self-giving of the couple, and being required by the good of the children, the indissolubility of marriage finds its ultimate truth in the plan that God has manifested in his revelation: he wills and he communicates the indissolubility of marriage as a fruit, a sign and a requirement of the absolutely faithful love that God has for man and that the Lord Jesus has for the Church. The gift of the sacrament is at the same time a vocation and commandment for the Christian spouses, that they may remain faithful to each other forever, beyond every trial and difficulty, in generous obedience to the holy will of the Lord: ‘what therefore God has joined together, let not man put asunder’.\textsuperscript{416}

From here has been formulated the classical argument that indissolubility is required by the natural institution of marriage. This is required by the very natural ends of marriage, mutal help for its proper perfection, the safeguard of proper fidelity, the common good of the society etc.\textsuperscript{417} For Hogan and Levoir, «this indissolubility of marriage is grounded in the specifically Christian obligation to bear witness to the faithful love of God for his people and to Christ’s love for the Church. God is forever faithful and Christ will never abandon the Church».\textsuperscript{418} Indissolubility is therefore in the very same structure

\textsuperscript{415} J. L. LARRABE, \textit{El matrimonio cristiano y la familia}, Biblioteca de autore cristianos, Madrid 1986, p. 443. The English translation is mine.

\textsuperscript{416} FC, 20c.

\textsuperscript{417} A. SARMIENTO, \textit{A Missão da Família Cristã}, Portugal 1985, p. 78.

of conjugal love. The idea that, therefore, a man will leave his father and mother and the two will become one flesh, is not referring only to one external temporal unity but an internal total communion of unity and therefore durable. It is such a unity that requires by its nature indissolubility. From here we can therefore conclude that, indissolubility more than moral imperative and positive will of God is the requirement of the essence of marriage because it is a reality that was willed by God in this way.

1.3.4.3. Letter to the Family

John Paul II in his Letter to the Families\footnote{JOHN PAUL II, Letter to the Family, (February 2, 1994), in AAS 86 (1994), pp. 868-1019. Here after this text will be cited as LF.} takes as the point of departure the words of the Encyclical Redemptor Hominis, published in the first days of his ministry as the successor of Peter which affirms that, man is the way of the Church.\footnote{Cf. JOHN PAUL II, Encyclical Letter Redemptor Hominis (March 4, 1979), in AAS 71 (1979), pp. 284-285.} «The family has always been considered as the first and basic expression of man’s social nature. The family is in fact a community of persons whose proper way of existing and living together is communion: communion personarum».\footnote{LF, no. 7.} John Paul II in this light asserts that, only persons are capable of living “in communion.” The family, therefore, originates in a marital communion which the Second Vatican Council described as a “covenant”, in which man and woman give themselves to each other and accept each other.

The family, as a community of persons, is thus the first human “society”. It arises whenever there comes into being the conjugal covenant of marriage, which opens the spouses to a lasting communion of love and of life, and it is brought to completion in a full and specific way with the procreation of children. This communion of the spouses gives rise to the “community” of the family.\footnote{Cf. Ibid.} He further expresses that, marriage, the sacrament of matrimony, is a covenant of persons in love. And love can be deepened and preserved only by love. This love is «poured into our hearts through the Holy Spirit which has been given to
us» (cf. Rom 5:5). He exults that, our prayer during this year of the family, should focused on the crucial and decisive moment of the passage from conjugal love to child bearing, fatherhood and motherhood. Through the communion of persons which occurs in marriage, a man and a woman begin a family. And bound up with the family is the genealogy of every individual: the genealogy of the person. In this light, human fatherhood and motherhood are rooted in biology, yet at the same time transcends it. For him, «the question of responsible fatherhood and motherhood is an integral part of the “civilization of love.” The family is fundamental to what Paul VI called the “civilization of love”, an expression which has entered the teaching of the Church and has now become familiar».

«In affirming that the spouses, as parents, cooperate with God the creator in conceiving and giving birth to a new human being, we are not speaking merely with reference to the laws of biology. Here the emphases is based on the idea that, God himself is present in human fatherhood and motherhood quite differently than he is present in all other instances of begething on earth». Indeed, God alone is the source of that “image and likeness” which is proper to the human being, as it was received at creation. Begething in this case is therefore, the continuation of Creation. He stresses

423 Cf. LF, no. 9; John Paul II stresses in the following words that: «The Apostle, with knees bowed 'before the Father from whom all fatherhood [and motherhood] in heaven and on earth is named', in a certain sense asks us to look at the whole world of living creatures, from the spiritual beings in heaven to the corporal beings on earth. Every act of begetting finds its primordial model in the fatherhood of God. Nonetheless, in the case of man, this ‘cosmic’ dimension of likeness to God is not sufficient to explain adequately the relationship of fatherhood and motherhood. When a new person is born of the conjugal union of the two, he brings with him into the world a particular image and likeness of God himself: the genealogy of the person is inscribed in the very biology of generation».


426 LF, no. 9.

that, by its very nature the gift of the person must be lasting and irrevocable. 

The indissolubility of marriage flows from the very essence of that gift: that is, the gift of one person to another person. This reciprocal giving of self reveals the *spousal nature of love.* John Paul II, emphasized on the work women do within the family and this work should be acknowledged and deeply appreciated.  

John Paul II asserts that, the liturgical crowning of the marriage rite is the Eucharist, the sacrifice of that “body which has been given up” and that “blood which has been shared”, which in a certain way finds expression in the consent of the spouses. When a man and a woman in marriage mutually give and receive each other in the unity of “*one flesh***”, the logic of the sincere gift of self becomes a part of their life. Without this marriage would be empty; whereas the communion of persons which is built on this logic, becomes the communion of parents. In a nutshell «the common good for the whole society dwells in man; he is, as we recalled, ‘the way of the Church’». The family is indeed more than any other human reality. It is the place where an individual can exist “for himself” through the sincere gift of self. This is the reason why it remains a social institution which neither can nor should be replaced. John Paul II, terms it “the sanctuary of life”.

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428 Cf. LF, no. 11; «In their marital consent the bride and groom call each other by name: ‘I …take you…as my wife (as my husband) and I promise to be true to you… for all the days of my life.’ A gift such as this involves an obligation much more serious and profound than anything which might be ‘purchased’ in any way and at any price».


1.3.4.4. “Man and woman He created them”

*Man and woman He created them: A theology of the body* is the main expression of this commitment to the beauty of love in John Paul II’s teaching: Cardinal Wojtyla originally gave it the title *Male and Female He created them* (Gen 1:27). The reflection about creation stands at the very heart of his argument, as this title suggests.

One of the main goals of the theology of the body is the defense of Paul VI’s prophetic encyclical *Humanae Vitae*. The defense must be seen in the context of John Paul II’s defense of the ordinary human experience of love and its reasonableness. The teaching of *Humanae Vitae* as John Paul II understands it, is based on the spousal meaning of the human body, that is, on the God-given power of the body to be a sign of the radical gift of self between man and woman.433

On the basis of his defense of ordinary human reason in the experience of love between man and woman, John Paul II unfolds a theological argument that is in many respects new in catholic magisterial teaching. Three of these striking theses are: the image of God is found in man and woman above all in the communion of love between the persons of the Trinity (Tob 9:3). In God’s design, the spousal union of man and woman is the original effective sign through which holiness entered the world (Tob 9:5). This visible sign of marriage “in the beginning” is connected with the visible sign of Christ’s spousal love for the Church and is thus the foundation of the whole sacramental order (Tob 95b:5). John Paul II’s theology of the body is most often cast as an extended catechesis on marriage and sexual love. It certainly is that, but it is also much more. Through the mystery of the incarnate person and the biblical analogy of the spousal love, John Paul II’s catechesis illumines the entirety of God’s plan for human life from origin to the eschaton with a splendid supernatural light.434

This in a nutshell, is the gift of John Paul II’s theology of the body. With profound insight and great originality, it helps us understand who we are

434 Ibid., p. 139.
according to God’s original plan and how and why we fell from it. Most importantly, it shows us how the death and resurrection of Jesus Christ can effectively transform our understanding and experience of sexual embodiment, thus enabling us to reclaim our true identity.

1.3.4.5. Allocutions to the Roman Rota

In this part of the work we shall examine the allocutions of Pope John Paul II to the Roman Rota regarding the indissolubility of marriage. In all his allocutions intrude implicitly the indissolubility of marriage even when he is talking of other topics such as the favour of marriage and so forth.\textsuperscript{435} According to Bersini, «tumbling through the allocutions of the supreme pontiffs given on the occasion of the inauguration of the judicial year, we have discovered a treasure of teaching that is not limited to questions that are strictly juridical or concerning marriage, but that cover an immense ecclesiological, moral and theological sphere».\textsuperscript{436} Ecclesiastical tribunals can only be understood in the context of the mystery of the Church founded by Jesus and the pastoral office of sanctifying, teaching, and governing conferred by him upon the apostles and their successors.\textsuperscript{437} The Pope exercises his role as judge for the universal Church through the judges of the apostolic tribunals, and in particular through the Roman Rota. So too in this light, Pope John Paul II has contributed a lot regarding the indissolubility of marriage.


\textsuperscript{436} F. BERSINI, (ed.), I discorsi del Papa alla Rota, Studi Giuridici, no. 9, Vatican City 1986, p. 5.

\textsuperscript{437} See LG, nos. 18-28.
In his allocution to the Roman Rota of January 24, 1981 he expressed the idea that, as Vatican II emphasizes, from matrimony springs the family, in which «different generations meet and help each other to increase in wisdom and to reconcile the rights of persons with other requirements of social life, constitutes the basis of society». In truth, adds the Council: «the well-being of the person and of human and Christian society is intimately connected with the healthy state of the community of marriage and the family». It is well known how, since the beginnings the Church confirmed by the word of the Gospel (cf. Mt 19:5; 5:32) has always taught and confirmed explicitly the precept of Jesus on the unity and indissolubility of marriage, without which there can never be a secure family, the healthy and truly vital cell of the society.

According to him therefore, there is need to respect the laws willed by God for the coming together of man and woman and for the continuance of their union as a new element that Christianity introduced to the institution of marriage. In marriage the Second Vatican Council said later:

The covenant, or irrevocable personal consent, of marriage sets up an intimate sharing of married life and love as instituted by the Creator and regulated by God’s laws. Thus the human action in which spouses give themselves to each other and accept each other results in an institution which is stable by divine ordinance and also in the eyes of society.

In his allocution to the Roman Rota on January 28, 1982 stressing to the auditors of the Roman Rota that their mission is first of all a service of love, he mentioned that, of this love marriage is the reality and the mysterious sign. «God created humankind in his own image and likeness; calling them to existence through love, he called them at the same time for love. God is love

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439 GS, no. 52.

440 GS, no. 49.

441 Ibid.

and in himself he lives a mystery, of personal loving communion. As a sacrament marriage is a mysterious sign. An indissoluble bond which unites the spouses, just as in the one love Christ and the Church are united (Cf. Eph 5:32-33).

In his allocution to the Roman Rota on January 30, 1986 he said, «God created humankind in his image ...male and female he created them»; [...] saying, «Be fruitful and multiply» (Gen 1:27-28). According to him, every marriage between the baptized is a sacrament. It is a sacrament in virtue of baptism, which introduces our life into God’s making us “participants of the divine nature” (2Pt 1:4), through incorporation in his divine son, the Incarnate word, in whom we form but one body, the Church (1Cor 10:17). In another allocution to the auditors of the Roman Rota on February 5, 1987 he said: «the aforementioned vision of the person and of the institution of marriage cannot be reconciled with the Christian concept of marriage as ‘an intimate sharing of married life and love’ in which the spouses give themselves to each other and accept each other». The love between the spouses must in fact be modeled on the love of Christ «who loved us and gave himself up for us, a fragrant offering and sacrifice to God» (Eph 5:2 and 25).

In his allocution to the Roman Rota on January 28, 1991 the Holy Father takes us back to the creation account. He sustains that, marriage is an institution based on natural law, and its characteristics are inscribed in the very being of man and woman. From the very first pages of the Holy Scripture the sacred author presents the distinction between the sexes as being willed by God: «God created humankind in his image, in the image of God he created them; male and female he created them» (Gen 1:27). The other creation account in the book of Genesis also tells us that the Lord God said, «it is not

443 FC, no. 11.
446 GS, no. 48; Cf. Can. 1055§1.
good that the man should be alone; I will make him a helper as his partner» (Gen 2:18). The narrative continues: «and the rib that the Lord God had taken from the man he made into a woman and brought her to the man. Then the man said, ‘this at last is bone of my bones and flesh of my flesh» (Gen 2:22). The bond which is created between a man and a woman in the marriage relationship is superior to every other interpersonal bond, even the one between parent and child. The Pope explains that, the Christian faith by introducing into it the value of the indissolubility of the marriage bond, found in the Roman juridical reflection on consent, an instrument for expressing the fundamental principle that is at the basis of canonical discipline on the subject. This same principle was firmly repeated by Pope Paul VI to the auditors of the Roman Rota on February 9, 1976.\textsuperscript{448} He then affirmed among other things, the principle that

\begin{quote}
Marriage is brought into being by the consent of the parties (matrimonium facit partium consensus). This principle is of paramount importance in the whole canonical and theological teaching received from tradition and has frequently been restated by the Church’s Magisterium as one of the chief bases on which both the natural law of the institution of marriage and the evangelical precept are founded.\textsuperscript{449}
\end{quote}

It is therefore fundamental in the canonical juridical system.\textsuperscript{450} In his allocution of January 21, 1999\textsuperscript{451} to the Rota, the Pope amongst other things said, in the mentality of the contemporary world, we can discern a wide spread deterioration of the natural and religious meaning of marriage, which have troubling repercussions in both the personal and the public sphere. According to him, not only are the properties and ends of marriage called into question


\textsuperscript{450} Cf. Can. 1057,§1.

\textsuperscript{451} Cf. JOHN PAUL II, \textit{Allocation}, (January 21, 1999), in AAS 91 (1999), pp. 622-627.
today, but even the value and the very usefulness of the institution. He said we cannot in this regard, ignore the growing phenomenon of mere de facto unions, and also the unrelenting public opinion campaigns to gain the dignity of marriage even for unions between persons of the same sex. In this regard, he stressed the fact that, the central core and foundation of these principles is the authentic concept of conjugal love between two persons of equal dignity, but different and complementary in their sexuality. For him, amor coniugalis, therefore, is not only and not primarily a feeling, but is essentially a commitment which give amor (love) the quality of coniugalis (conjugal). He ends up by saying that, the Church and consequently canon law, recognize that every person has the possibility of contracting marriage; a possibility however, which can only be exercised by those who “are not prohibited by law.”

In his allocution of January 21, 2000 to the auditors of the Roman Rota, he stressed that the Church’s “fundamental duty” is «to reaffirm strongly, as the Synod Fathers did, the doctrine of the absolute indissolubility of ratified and consummated marriage as definitive truth» , in order to dispel the shadow that seems to be cast over the value of the indissolubility of the conjugal bond by certain opinions stemming from theological and canonical research. He referred here to theories which were in favor of ignoring the absolute indissolubility of a ratified and consummated marriage because of the so called incompatibility of the couples and recommending a new marriage

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452 See, FC, no. 81, in AAS 74 (1982), pp. 181ff.
455 See CIC, can. 1058; CCEO, can. 778.
456 Ibid.
458 FC, no.20.
459 See CIC, can. 1061, §1.
by one of the spouses while the other is still alive. According to him, in fidelity to Christ the Church, must firmly stress, «the good news of the definite nature of that conjugal love that has in Christ its foundation and strength (Eph 5:25)», to those of our day who think that it is impossible to be bound to one person for the whole of their life, and to those who are unfortunately caught up in a culture that rejects the indissolubility of marriage and openly mocks the couple’s commitment to fidelity.

The “good news of the definitive nature of conjugal love” is not a vague abstraction or a beautiful phrase reflecting the common desire of those who decide to marry. This message is rooted instead in the Christian newness that makes marriage a sacrament. Christian spouses, who have therefore received “the gift of the sacrament,” are called by the grace of God to bear witness to the holy will of the Lord: ‘what therefore God has joined together, let not man put asunder’ (Mt 19:6), that is, to the inestimable value of the indissolubility… of marriage. For these reasons the Catechism of the Catholic Church says «in fidelity to the words of Christ (Mk 10:11-12) […] the Church maintains that a new union cannot be recognized as valid, if the first marriage was».

The Pope then quoted in particular a statement of Pius XII which emphasized that:

A ratified and consummated marriage is by divine law indissoluble, since it cannot be dissolved by any human authority (can. 1118); while other marriages, although intrinsically indissoluble, still do not have an absolute extrinsic indissolubility, but, under certain necessary conditions, can (it is a question, as everyone knows, of relatively rare cases) be dissolved not only by virtue of the Pauline privilege, but also by the Roman Pontiff in virtue of his ministerial power” With these words Pius XII gave an explicit interpretation of canon 1118.

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460 FC; no. 20.

461 Ibid.

462 Catechism of the Catholic Church, no. 1650, from now on it will be quoted as CCC.

463 PIUS XII; Address to the Roman Rota, (October 3, 1941), in AAS 33 (1941), pp. 424-425.
His allocution to the Roman Rota on February 1, 2001\textsuperscript{464} mentioned that, the very act of marital consent is best understood in relation to the natural dimension of the union. [...] It is a question of seeing whether the persons, in addition to identifying each other’s person, have truly grasped the essential natural dimension of their married state, which implies, as an intrinsic requirement, fidelity, indissolubility and potential fatherhood/motherhood as goods that integrate a relationship of justice.\textsuperscript{465} His allocution to the auditors of the Roman Rota on January 28, 2002\textsuperscript{466} states that, the essential properties of marriage – unity and indissolubility – offer an opportunity for a fruitful reflection on marriage itself. He emphasized that indissolubility was a good for the spouses, for children, for the Church and for the whole of humanity. He said:

Marriage “is” indissoluble: this property expresses a dimension of its objective being; it is not a mere subjective fact. Consequently, the good of indissolubility is the good of marriage itself; and the lack of understanding of its indissoluble character constitutes the lack of understanding of the essence of marriage. It therefore follows that the “burden” of indissolubility and the limits it entails for human freedom are no other than the reverse side of the coin with regard to the potential which is inherent in the marital institutions as such. In this perspective, it is meaningless according to the Pope, to speak of an “imposition” by human law, because human law should reflect and safeguard the natural and divine law, which is always a freeing truth.\textsuperscript{467}

The Pope stressed on the other hand that,

The essential witness to the value of indissolubility is given through the married life of the spouse, in their fidelity to the bond, through all the joys and trials of life. However the value of indissolubility cannot

\textsuperscript{464} Cf. JOHN PAUL II, \textit{Allocation}, (February 1, 2001), in AAS 93 (2001), pp. 385-365.


be held to be just the object of a private choice: it concerns one of the cornerstones of all society.\textsuperscript{468}

From all that has been explained above, it is quite glaring from John Paul II’s allocutions to the Roman Rota, the absolute indissolubility of ratified and consummated marriage as that definitive truth which has to be promoted and re-inforced.

1.3.4.6. \textit{Catechesis on the Wednesdays, general audiences and homilies}

The catechesis on Wednesdays constitutes an organic picture of his doctrine and have been published together under \textit{Man and Woman He Created Them}.\textsuperscript{469} Here the Pope treats marriage and the family following the trend of adequate theological anthropology, where man is presented as the one who is created by God in a supernatural state of justice, fallen into sin, redeemed by Christ and destined to rise up at the end of time.\textsuperscript{470}

During the general audience of September 5, 1979 he referred to the “beginning” which refers to what Genesis speaks about. “from the beginning the Creator created them male and female,” \ldots{} He went further by saying that, the normative meaning is plausible, because Christ does not limit himself only to the quote itself, but adds, «so it is that they are no longer two, but one flesh. Therefore what God has joined let man not separate». That phrase, “let man not separate,” is decisive. In the light of this word of Christ, Genesis 2:24 states the principle of the unity and indissolubility of marriage as the very content of the word of God expressed in the most ancient revelation.\textsuperscript{471}

In another general audience of February 6, 1980, the Pope stressed that, according to Gen 2:25, “the man and his wife were not ashamed.” This enables us to reach the conclusion that the exchange of the gift, in which the whole of

\textsuperscript{468} \textsc{John Paul II, Letter to Families}, cit., no. 17.

\textsuperscript{469} Cf. \textsc{John Paul II, Man and Woman He Created Them, A Theology of the body}, Boston U.S.A. 2006.

\textsuperscript{470} Cf. \textsc{Garcío De Haro, Marriage and family}, cit., p. 383.

\textsuperscript{471} Cf. \textsc{John Paul II, General Audience (September 5, 1979)}, in \textit{Man and Woman He Created Them}, cit., p. 132.
their humanity, body and soul, femininity and masculinity, participates, is actualized by preserving the interior characteristics (that is precisely innocence), of the donation of oneself and of the acceptance of the other as gift. These two functions of mutual exchange are deeply connected in the whole process of the “gift of oneself: the giving and the accepting of the gift interpenetrate, so that the giving itself becomes accepting, and the acceptance is transformed into giving.\textsuperscript{472}

During a mass for families in York (Great Britain) on May 31, 1982, the Holy Father, in his homily emphasized the duty of the Church and its people to proclaim the true plan of God in married love and fidelity to that plan. He said:

\begin{quote}
We cannot overlook the fact that some marriages fail. But still it is our duty to proclaim the true plan of God for married love and to insist on fidelity to that plan, as we go towards the fullness of life in the kingdom of heaven. [...] And the covenant between a man and a woman joined in Christian marriage is as indissoluble and irrevocable as this love. This truth is a great consolation for the world and because some marriages fail, there is an ever greater need for the Church and all her members to proclaim it faithfully.\textsuperscript{473}
\end{quote}

Christian marriage in this light reflects God’s infinite love for his people and of Christ to the Church. This relationship of the covenant which is between a man and woman reflects Christian marriage which is in itself indissoluble and irrevocable.

In another mass which he celebrated for families in Madrid (Spain) on November 2, 1982, the Pope affirmed that, by divine design marriage is a communion of love that is indissoluble. It was his wish during this mass that couples should witness this indissolubility and fidelity in their marriage. He specified that:

\begin{quote}
\end{quote}

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\normalsize
Speaking of marriage, Jesus our Lord made reference to the beginning, that is to say, to the original plan of God, the truth of marriage. According to this project, marriage is a communion of indissoluble love. ‘This intimate union as mutual giving of two persons, as well as the good of children, demand total conjugal fidelity and urge an indissoluble unity.’ For that, some attack at the conjugal indissolubility, by which it is contrary to the original plan of God, goes against the dignity and truth of conjugal love. One understands then, that the Lord, proclaiming valid for all, teaches that it is not licit for man to separate what God has united. […] For this I repeat to you what I already said in the apostolic exhortation Familiaris Consortio: ‘To bear witness to the inestimable value of the indissolubility and fidelity of marriage is one of the most precious and urgent tasks of the Christian couples in our time’ (FC 20f).

Looking at the other teachings of John Paul II, one can say that, in the course of his pontificate, he has issued so many documents such as his addresses to the Roma Rota, His homilies and so forth, which are mostly addressed to the family. This vast work springs from the conviction that the world could be renewed through the reconstruction of the family. With this conviction, the Holy Father in his address to Cardinals in 1980 said: «it is necessary to restore the value of the family, the holiness of marriage, the intangibility of human life. I will never be tired of carrying out what I consider a non-deferable mission, deriving benefit from the trips, meetings, audiences, personal messages, institutions, associations, consultations which are concerned with the future of the family, and which make it the object of their study and action». With this catechesis, the Holy Father wants to shed light, from the very first, on the work of the synod on the family: «the cycle of reflections we are beginning today …has also, among other things, the purpose of accompanying, from afar, so to speak, the work of preparation for the synod, not touching its subject directly, however but turning our attention to


the deep roots from which this subject springs,»

The Catholic Church has consistently taught – and I repeat here with the conviction that springs from my office as chief Pastor and Teacher that marriage was established by God; that marriage is a covenant of love between one man and one woman; that the bond uniting husband and wife is by God’s will indissoluble; that marriage between Christians is a sacrament symbolizing the union of Christ and his Church; and that marriage must be open to the transmission of human life.

This same teaching is set forth in different occasions such as the address which was given on the occasion of the family while enumerating the values which are proper to marriage: «these values are love, fidelity, and mutual help. Indissolubility, fertility in its full meaning, intimacy enriched by an openness to life, awareness of being the first and originating cell of society, etc». Likewise in an address given to the French bishops on march 28, 1992 he said: «I know that you have at heart the formation of Christian spouses in order to prepare engaged couples for marriage. Without forgetting the contribution of the human sciences, it is important to show that the meaning of the sacrament of marriage is based on Scripture, Tradition and the Magisterium of the Church».

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476 JOHN PAUL II, General audience, (September 5, 1979), in Original unity of man and woman, cit., p. 19.


1990 the Holy Father said: «let us not cease praying for our Polish families, that they may become strong in God, even when every kind of human weakness accompanies them. [...] There is need at this time to reconstitute that other economy which is called the morality of the family so as to reconstitute love which is responsible for indissolubility and for the life conceived in the mother’s womb». In another homily to families in Kinshasa, the Pope also insisted on the same idea terming it as the way the love of spouses can become solid:

A union of hearts! The nuances which distinguish the love of husband and wife are many. [...] It is a sharing in common that brings unity, in joys and even more so in sufferings. But it is above all in their common love for their children where hearts must be united. A union of minds and wills! [...] Finally, the union of their souls reaches its culminating point when they are united to God! Each of the spouses must keep for himself or herself moments to be alone with God, ‘heart to heart’, at a time when the other spouse is not a primary preoccupation. This personal life of the soul with God, which is indispensible, far from excluding a sharing of the whole conjugal love and family life in common, stimulates Christian spouses to search for God together, to discover together his will and to fulfill it with the light and the energies they have found in God himself.  

During his homily at a Mass at Rio de Janeiro, the Pope said, in giving directions regarding sex education it is necessary to promote

A full, serious, and deep education to true love, which is required far more than the much praised ‘sex education’. A generous effort and courage are demanded for creating in society a fitting environment for realizing the Christian ideal, based on the values of unity, of fidelity, of indissolubility, of responsible fertility.

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Again on another occasion, the Pope emphasized that, «the delicate responsibility for sex education belongs principally to the families, where an atmosphere of loving reverence will be conducive to a fully human and Christian understanding of the meaning of love and life». In a nutshell, these catechesis of John Paul II based on marriage and the family reaffirms the teaching of Christ and the magisterium of the Church right from the beginning regarding the indissolubility of marriage.

1.3.5. The doctrinal teachings of Pope Benedict XVI

Certainly Pope Benedict XVI, in his various allocutions to the Roman Rota, homilies and addresses to various groups continued with that same teaching which his predecessors emphasized. With this objective in mind, Pope Benedict XVI on the occasion of his first meeting with the auditors of the Roman Rota on January 28, 2006 stressed that, «the principle of the indissolubility of marriage, which John Paul II highly reinforced, belongs to the integrity of the Christian ministry. Today we find that this truth is sometimes darkened in the conscience of Christians and persons of good will».

Pope Benedict XVI’s allocutions to the Roman Rota on January 27, 2007 also take us once more to the creation account found in the Book of Genesis. The citations of Genesis (cf. Gen 1: 27; 2: 24) justify the matrimonial truth of the "principle", that truth whose fullness is found in connection to Christ’s union with the Church (cf. Eph 5: 30-31) and was also the object of the deep reflections of Pope John Paul II in his cycles of catechises on human love in the divine design. He criticized those who think that the conciliar teaching on marriage, and in particular, the description of this institution as

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"intima communitas vitae et amoris" [the intimate partnership of life and love] must lead to a denial of the existence of an indissoluble conjugal bond because this would be a question of an "ideal" to which "normal Christians" cannot be "constrained". On the basis of this dual unity of the human couple, it is possible to work out an authentic juridical anthropology of marriage.

Every marriage is of course the result of the free consent of man and the woman, but in practice their freedom expresses the natural capacity inherent in their masculinity and feminity. The union takes place by virtue of the very plan of God who created them male and female and gave them the power to unite for ever those natural and complementary dimensions of their persons. The indissolubility of marriage does not derive from the definitive commitment of those who contract it but is intrinsic in the nature of the "powerful bond established by the Creator". Benedict XVI’s allocutions to the Roman Rota on January 26, 2008 stressed on the fact that, Rotal jurisprudence should be seen as an exemplary work of juridical wisdom, carried out with authority by the tribunal constitutively established by the successor of St. Peter for the good of the whole Church. Thanks to such a duty, in the case of matrimonial nullity, the objective reality is judged in the light of criteria which reaffirm constantly the reality or indissoluble marriage, which is open to every man and woman according to the design of God the Creator and Savior.

The Pope on the occasion of his visit to the Roman Rota on January 29, 2009 said, the reaffirmation of the human capacity regarding marriage is properly the point of departure for helping couples to discover the natural reality of marriage and the importance it has in the plan of salvation. He said,

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486 GS, n. 48.
488 Ibid., p. 119.
489 JOHN PAUL II, Catechesis, General Audience, (November 21, 1979), no.2; OR, 26, (November 26, 1979), p. 1. This text was quoted by Benedict XVI.
490 Cf. BENEDICT XVI, Allocution to auditors of the Roman Rota, (January 26, 2008), in AAS 100 (2008), pp. 84-88.
what is in play here is the same truth about marriage and on its intrinsic juridical nature\footnote{Cf. BENEDETTO XVI Sermo ad Rotam Romanam, (die 27 ian. 2007), in AAS 95 (2007, pp. 433-475.} presupposing that which cannot be regarded to be able to reap or to evaluate the capacity requested for one to marry. In this sense, the capacity has to be put in relation with that which is essentially marriage and in a special way, with the essential obligations of marriage which are inherent to it, which has to be assumed by the spouses (CIC can. 1095, n. 3).\footnote{Cf. BENEDETTO XVI, Allocation, , (January 29, 2009), in AAS 101 (2009), pp. 124-128.} In his address to participants on pilgrimage from the diocese of Verona, the Pope said, the family is called to be the intimate community of life and love because it is founded on indissoluble marriage.\footnote{Cf. BENEDETTO XVI, Address to participants in pilgrimage of the Diocese of Verona in conclusion of the synod of bishops on June 4, 2005, in Quaderni de L’Osservatore Romano, 77, p. 11.}

During his homily to participants at the plenary assembly of the Pontifical council for the family, he reminded them of the idea that, the encyclical \textit{Humanae Vitae} expresses clearly the idea that, human procreation has always to be the fruit of conjugal act, with a double unitive and procreative significance (HV, 12). This is also demanded by conjugal love according to the divine plan.\footnote{Cf. BENEDETTO XVI; Deus Caritas Est, (December 25, 2005), in AAS 98 (2006), pp. 217-252, no. 5.} In his address to presidents of the Episcopal commissions for the family in Latin America, the Pope stressed that the elevation of marriage to the highest dignity of a sacrament has to be seen with gratefulness because of the sacramentality which marriage assume in Christ; the gift by which creation is elevated to the grace of redemption. He specified that the grace of Christ is not added from outside to the nature of man, it is not done by violence but it liberates and restores it by elevating it above its proper borderline.\footnote{Cf. BENEDETTO XVI, Discorso all’apertura del convegno Ecclesiale della Diocesi di Roma su famiglia e comunità cristiana, (6 Giugno 2005), in Insegnamenti di Benedetto XVI, 1 (2006), pp. 200-208.} He said love and the spouses’ total gift of themselves, with their peculiar exclusivity,
fidelity, duration in time and open to life, is at the base of this community of life and love which is marriage (GS, 48).  

The Holy Father during his visit at Valencia (July 8, 2006), mentioned in his homily that: «united in the same faith in Christ we have gathered as a community in thanksgiving and also to render joyous testimony to that fact that, human being was created in the image and likeness of God for love, and this fully realizes itself only when it makes a sincere gift of itself to others». He stressed that, the family is the privileged sphere where a person learns how to give and receive love. In this very light, the magisterium teaches that: «God who is love and who has created man for love, called him to love. Creating man and woman, he called them in marriage to an intimate communion of life and love between them». He continued by affirming that, this is a truth which the Church is never tired of proclaiming. He then quoted the words of John Paul II, who said: «man became the ‘image and likeness’ of God not only through his proper humanity, but also through the communion of persons that man and woman form right from the beginning. Man becomes the image of God not so much during the moment of solitude but also during the moment of communion».

In his letter to cardinal López, he said that the people of God, in order to be able to give a face which is truly human to the society, cannot ignore the precious gift which is the family, founded on marriage. «The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children…» (can. 1055), is the foundation of the family, patrimony and at the

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496 Cf. BENEDICT XVI, Homily to presidents of the Episcopal commissions for families and for life in Latin America, (December 3, 2005), in Insegnamenti di Benedetto XVI, 1 (2005), pp. 924-927.


499 JOHN PAUL II, Catechesis, (November 14, 1979), in Man and Woman He Created Them, cit., p. 163.
same time the common good of humanity. In this light therefore, the Church cannot stop announcing that, accordingly to the plan of God (cf. Mt 19: 3-9), marriage and the family are irreplaceable and do not admit alternatives.\textsuperscript{500}

Pope Benedict XVI in his address to the participants of the International congress promoted by the Pontifical Institute of John Paul II, underlined very strongly two fundamental elements regarding marriage. In the first place he underlined that,

Marriage and the family are inserted in the most intimate nucleus or core of man’s truth and his destiny. The holy Scripture reveals that the vocation to love is part of that authentic image of God which the Creator wanted to imprint in his creature, calling him to become properly similar in the manner that is open to love. The sexual difference which distinguishes the body of a man and that of a woman is not a simple biological fact, but it carries a deep significance: it expresses that form of love with which man and woman, becoming – as Sacred Scripture states – only one flesh, they can realize an authentic communion of persons open to the transmission of life and cooperate in this manner with God to the generation of new human beings. The second element characterizes the novelty of the teaching of John Paul II on human love: […] In Christ in fact, the fullness of the revelation of the Father’s love, manifest also the full truth of the vocation to the love of man, which can fully find itself only in the sincere gift of self.\textsuperscript{501}

During this same meeting the Pope also mentioned that, in his recent encyclical, he had said clearly that, «the Christian image of God and the consequent image of man and his path are enlightened through love».\textsuperscript{502} This goes to explain the fact that, God used the path of love in order to reveal the intimate mystery of his Trinitarian life. According to him the close relationship which exists between the image of God’s love and the human love helps us to understand that «in the image of the monotheistic God corresponds

\textsuperscript{500} Cf. \textit{Benedict XVI}, \textit{Discourse to the participants at the International congress promoted by the Pontifical Institute of John Paul II on} (March 11, 2006), in \textit{Quaderni de L’Osservatore Romano}, 77; \textit{La verità della famiglia, Matrimonio e unioni di fatto nelle parole di Benedetto XVI}, Città del Vaticano 2007, pp. 9-10.

\textsuperscript{501} \textit{Ibid.}, pp. 26-27.

\textsuperscript{502} \textit{Benedict XVI, Deus Caritas Est}, cit., no.1.
monogamic marriage. Marriage which is based on exclusive and definitive love becomes the icon of the relationship of God with his people and vice versa: The manner of God’s loving becomes the measure of human love.\textsuperscript{503}

In the meeting with participants of the diocese of Rome at the Lateran Basilica, the Pope spoke on the fact that, in the formation and in educating according to faith, a particular mission, fundamental and the primary responsibility belongs to the family. He stressed that, through parents a child is brought to life, makes the first and decisive experience of love, a love which is not only human but a reflection of the love that God has for him. In this sense, the Christian family reflecting that “small domestic Church”,\textsuperscript{504} and the large family of the Church has to develop that very intimate collaboration regarding especially the education of children.\textsuperscript{505}

In his address to participants of the International congress organized by the Pontifical Institute of John Paul II, he quoted the words of his predecessor John Paul II during the inauguration of the Sanctuary at Cracovia who said: «There doesn’t exist for man any other source of hope, outside the mercy of God».\textsuperscript{506} He is aware that, with the help of grace, human liberty is capable of giving itself faithfully and definitively, that renders possible the marriage of a man and a woman as an indissoluble pact, which human liberty even in very difficult circumstances is capable of that extraordinary gestures of sacrifice and solidarity which is needed in order to welcome the life of a new human person.\textsuperscript{507} In another occasion of the same year, addressing a forum of family associations, the Pope emphasized that, «the story of love and union between a man and a woman was assumed by God as symbol of salvation. The

\textsuperscript{503} Ibid., no. 11.

\textsuperscript{504} Lumen Gentium, 11.


\textsuperscript{507} Cf. BENEDICT XVI, Address to participants of the International congress organized by the Pontifical Institute of John Paul II, (April 5, 2008), in Insegnamenti di Benedetto XVI, 4.1 (2008), p. 518. The English translation is mine.
family is found on this union which is not to be confounded or put at the same level with other unions». The Pope expressed that: «we are aware of the many challenges facing families today, and we know how difficult it is, in current social conditions, to achieve the ideal of fidelity and solidarity in conjugal love, to bring up children, and to preserve the harmony of the human family».

Finally, for Benedict XVI, the communion of life and of love which is marriage is configured in this way as an authentic good for the society. For him only the rock of total and irrevocable love between a man and a woman is capable of setting a base for the construction of a society that becomes a house for all.

1.3.6. Résumé

In this chapter of our work, we sought to establish the foundation and origin of the indissolubility of marriage from various sources. At the first level, we were able to bring out the elements of indissolubility of marriage from biblical sources especially the creation story. At a second level, we searched for elements and the perennial nature of this doctrine in the tradition of the Church. This search went into a variety of sources which included the teaching of the Fathers of the Church, the official magisterium of the Church and the development of Canon Law itself concerning the indissolubility of marriage.

For the sake of clarity, we decided to limit our analysis in this section to the period leading up to the Second Vatican Council. At a third level, we examined the teaching of the Second Vatican Council on the indissolubility of marriage. This was extracted especially from the Pastoral Constitution on the

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509 Ibid., p. 804.

510 Cf. BENEDICT XVI, Discourse to the participants at the International congress promoted by the Pontifical Institute of John Paul II, (March 11, 2006), in Quaderni de L’Osservatore Romano, 77; La verità della famiglia, Matrimonio e unioni di fatto nelle parole di Benedetto XVI, Città del Vaticano 2007, pp. 27.
Church in the Modern World (*Gaudium et Spes*). This was followed by the teaching of post-conciliar popes: Paul VI, John Paul II and Benedict XVI. In the final analysis, the more or less definitiveness of the bond does not depend on the will of the spouses, but they only adhere to the natural institution created by God that is by itself indissoluble.
CHAPTER II: THE CHRISTIAN ANTHROPOLOGICAL
STUDY OF THE INDISSOLUBILTY OF CANONICAL
MARRIAGE

We shall devote this chapter to analyzing the anthropological dimension of indissolubility especially when it is considered as a natural institution. We shall study the ends of marriage which are the good of the spouses (bonum coniugum) and the good of the children (bonum prolis) in the ambit of generation and education. The ends to which the matrimonial consortium is “ordained by its very nature”, in the plan of God, right from the beginning of creation, could be summarized in two things: the good of the spouses and the good of the children, in their generation and education. The good of the spouses is realized in the intimate communion of persons, through which they complement each other as the two become one. The good of the children regards the bringing forth and moulding of new life. We shall also examine the challenge of divorce and the law of God, indissolubility in the personalist dimension of marriage and the concept of conjugal love as an essential dimension of indissolubility.

2.1. The concept of Christian anthropology

According to Barbagaglio and Dianich in the dictionary of theology, «Christian anthropology is a structured discourse brought out as a development of the narration of creation». Anthropology is the study of man

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as a relational subject not from the normative point of view but from the point of view of social action through which man’s presence in the world is manifested. «Man is considered not to be alone but in relation with God. A study of his being-in-relation shows him to be dependent upon God for his origin, nature, condition, dignity and destiny». There certainly exist a theological anthropology which studies beginning from revelation and faith, the design which God provided for the salvation of the human creature and his insertion of the person in the being and in the supernatural way of acting. We are not going to get into this ambit because theological anthropology is a branch of theology. But when we talk of Christian anthropology we are not making a direct reference to the object nor to the perspective of theological anthropology, instead we are referring to the object of the science which is, the human person and anthropology as a proper requisite. Catozzella, expresses that, anyone who knows the catechesis of John Paul II on human love would have known with an adequate adjective a term which several times the Pontiff uses in order to indicate a reality that is in conformity, proportionate to «that which is essentially humano» to man, that is, in his ontological constitution. The words of Benedict XVI, recall that «the intimate community of life and

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6 Ibid., p. 20.


love in which conjugal love consist, ‘is determined by the principles of divine law, which establishes the real sense of permanent anthropology’\(^9\).

Bañana is of the opinion that, there exist a possibility of a natural knowledge of what man is, which can be reached through reason, without also forgetting his origin and final end. Therefore the content of human nature on the modality of male and female can be expressed in various ways. In this light what is “Christian” in anthropology is equivalent to what truly exist in the nuclear reality of the human being.\(^10\) For him anthropology is a deep explanation of the human being which does not in a way contradict the true structure of the person. It permits in itself, a Christian explanation which can be fully developed.\(^11\) In this regard, a confession of faith is not necessary at the anthropological level or a revealed anthropology. What is necessary here is a natural content which permits a further supernatural elaboration, which in effect does not render impossible a confession of faith and which is not incompatible with facts given by revelation on man and the divine design which regards him.\(^12\) The essential elements of Christian anthropology can be deduced from the primary consideration of man as «a being orientated towards


\(^11\) Ibid., p. 21.

an end» and having a vocation which carries him to God and at the same time have natural and supernatural means, which permits him to be able to reach his proper human fullness as a son of God in Christ with the grace given by the Holy spirit. This is the Christian vision, which holds that humans are beings «created in the image and likeness of God, with the capacity to know and love their creator» and that they experience internal disunity within themselves. The crucial point here is the fact that, these essential elements constitute values which permit man to orientate himself towards the love of God and the love of neighbor as his ultimate vocation.

Tadeusz Styczen affirms that without that permanent act of the creative love of God we shall not exist. Man can learn a truly radical anthropocentrism only through turning his or her proper attention on the love with which God loves him or her in a creative manner, and in particular on the fact that God himself has decided, in his unfathomable will, to cross the threshold – in his love for men as their creator – and to appear in their midst as God-man: Savior and redeemer, Redemptor hominis.

At this juncture, we can define Christian anthropology as any anthropology that remains open to the substantial unity of the person and respects human freedom, and the transcendence of life. From the point of view of marriage, Christian anthropology has to accept the same dignity and the difference of modality of the male and female persons. This difference

13 GS, 12.


manifests and expresses itself in the complementarity and the understanding of the richness of the human person, which subjects his whole sexual dimension or conjugality: to marriage, procreation and the education of children. Benedict XVI in these very words emphasizes that, «this development was based on the indisputable presupposition that marriage has a truth of its own - that is, the human knowledge, illumined by the Word of God, of the sexually different reality of the man and of the woman with their profound needs for complementarity, definitive self-giving and exclusivity».

On the other hand a correct anthropology should not prevent the vocational perspective of marriage as a means of human and spiritual perfection, as an exigency of the baptism of the spouses and to raise marriage to the level of a sacrament. One thing which is of vital importance here is the capacity and necessary effort needed not only for the harmony of conjugal and family life but also for the mature, human and spiritual balance of the same subject. According to Bañares, in the strict sense, an anthropology which is fully Christian is that which does not only permit components brought from faith and from revelation “to stick perfectly” but also to integrate them in an effective way.

In the same manner we can say that, what is very much distinctive of Pope John Paul II’s Christology is its profound anthropocentric orientation. According to him, Jesus Christ is «the chief way for the Church» (Redemptor Hominis 13). He insists that the Church, has to travel with humanity: «man in


18 _Ibid_., p. 23.

19 Cf. JOHN PAUL II, _Allocation_, (January 28, 1982), no.8, in AAS 74 (1982), pp. 449-454: «Undoubtedly, because of sin human nature has become disordered, wounded. Nevertheless it has not been corrupted; it has been restored by the intervention of him who came to save it and to raise it to the point of sharing in the divine life. Truly, to consider human nature incapable of assuming a real obligation; of giving a definitive consent; of making a covenant of love expressing what it is; of receiving a sacrament instituted by the Lord, to heal it, to strengthen it; and to elevate it by grace».

the full truth of his existence, of his personal being and also in his community and social being, in the sphere of his own family as well as that of the society, in the sphere of the whole mankind, is the primary road that the Church must travel in fulfilling her mission. He is therefore the primary and fundamental way for the Church, the way which Christ himself traced out, the way which invariably leads through the mystery of the Incarnation and Redemption» (RH 14). Here is the theocentrism of Karol Wojtyla in which only man is included, through this we can learn directly from the heart of God, the love for man, that is the love intended for man by his very source which is in God the Father, in which, Christ, man-God, loves us right to the end.\(^1\) This theocentrism leads to anthropocentrism, because it moves from man to man through God, as the best possible way of man to man. From one to the other it brings him to the end always and alone, the unique way of possible fact. This road is, and can be only him, Jesus Christ, God and man together, man and God together.

### 2.2. Indissolubility of marriage a natural institution

Natural law is that objective, eternal and immutable hierarchy of moral values, which are sources of obligation with regard to man since they have been so ordained by the Creator of nature.\(^2\) This law conforms to the essence of the human nature which God has created. It is then that aspect of the eternal law which directs the actions of men. Despite the fact that this law is divine in the sense that it does not depend on human will, nevertheless, it is distinguishable from divine positive law, which has been communicated directly from God to man through revelation, for this natural law is discoverable by reason alone.\(^3\) Natural law has been promulgated in the intellect. At least as regards its more fundamental principles, it is knowable

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\(^1\) Cf. T. STYCZEN, Comprendere L'uomo: La visione antropologica di Karol Wojtyla, cit., p. 251.


proximately through the conscience.\textsuperscript{24} In this sense Hervada affirms that, «the human person has an ontological determined structure (nature). Man is not only made of pure existence, but is always having a nature».\textsuperscript{25} Hervada thinks that by natural law the human person has inclinations, for example: «The inclination toward marriage, which is ordered to the procreation and education of children. From this are deduced the fundamental precepts which govern the institutions of marriage and the family, the rights related to these, the right use of active faculty, etc».\textsuperscript{26}

According to St. Thomas, the sacrament of matrimony is grounded in the natural law. This natural law according to him is nothing else but the creative intention of God inscribed in the creature, that is, in that creature’s natural inclinations. He then notes that these natural inclinations themselves do not constitute the natural law.\textsuperscript{27} Instead he emphasizes that there are real distinguishable goods through which human persons are naturally oriented, and these can be known directly, spontaneously and immediately by the practical intellect through the use of reason. This concept of the natural law is absolutely fundamental to his whole notion of divine providence, through which God guides each creature to its final perfection in accord with its own nature.\textsuperscript{28} In this regard Aristotle thinks that, «living beings whenever they do something naturally, they not only do this for their own good, for the sake of their own form in one sense, but also for the sake of the Divine in the other sense».\textsuperscript{29} The natural law is the result of, and it is the reflection of God’s continuing providence through which he leads the creature to its final end. As intelligent rational creatures, human persons actively participate in God’s


\textsuperscript{25} J. Hervada, Studi sull'Essenza del Matrimonio, Milano 2000, p. 185. The translation is mine.

\textsuperscript{26} J. Hervada, What is Law? The modern response of the juridical realism, Montréal 2009, p. 146.

\textsuperscript{27} Cf. E. May, An introduction to moral theology, Huntington Indiana 1994, p. 47.


eternal law, and this intelligent participation is what is precisely established by
the natural law.\textsuperscript{30} For St. Thomas, «reason, which is the first principle of human
acts, is the rule and measure of human acts».\textsuperscript{31} Man’s reason is not the source
of the moral order, but it is the means through which he participates in God’s
wise and loving plan which is the eternal law. Natural law stresses the
apprehension of the purpose, goods and reasonableness offered to man in a
practical way in his options. Man is able by the use of his intellect, to recognize
true, practical propositions about what is to be done and pursued.\textsuperscript{32} Aquinas
expresses the general principle that «good is to be done and pursued, and evil is
to be avoided».\textsuperscript{33}

At this juncture he distinguishes three levels of basic human goods. The
first regards that good which man has in common with all things that come
into existence: that is being itself, which means life. Man is naturally inclined
to being and life. Secondly, man has certain goods in common with the animal
world. This particularly regards the union of male and female, procreation and
care for the offspring. Thirdly, man has a certain good which is distinct from
all other parts of creation, which is proper to him, «a natural inclination to
know the truth about God, and to live in the society».\textsuperscript{34} According to St.
Thomas, these goods, to which man is inclined and which he grasp through
practical reason, «serve as starting points or principles of practical reason, of
natural law, of deliberating what is to be done».\textsuperscript{35} This in a way will help all
men to realize that, there must be some definite and settled arrangement which
will enable man and woman not only to procreate, but also to care for the
offspring until they reach the age of looking after themselves. It is self-evident

\textsuperscript{30} Cf. T. AQUINAS, \textit{Summa Theologiae}, Ia IIae q. 91, a. 2.
\textsuperscript{31} \textit{Ibid.}, q. 90, a. 1.
\textsuperscript{32} Cf. W. E. MAY, \textit{An Introduction to Moral theology}, cit., p. 47.
\textsuperscript{33} T. AQUINAS, \textit{Summa Theologiae}. Ia IIae q. 94, a.2; Other books which could be consulted here
131ff.
\textsuperscript{34} \textit{Ibid}.
\textsuperscript{35} W. E. MAY, \textit{An Introduction to Moral theology}, cit., p. 84.
here that marriage is also different from the mating of animals, to the extent that will and reason are distinguishable from blind instinct. Thomas appeared sensitive to the need not to leave the principle of indissolubility without support in man’s nature.

To establish excluding terms and dialectics of how marriage should be and how it is, supposes that, this is the key question, and how it expresses the fact that, besides many proposal which are relative to the essence of marriage, real life for many couples is carried out in a normal way. The fundamental fact here, is constituted by the idea that marriage is a natural reality and not a cultural reality. In this light Sacred Scripture tells us that man, was gifted by God through inventive discernment (Cf. Sir 17:1-6). The tradition of natural law stresses that, there is a reason and an order within all of creation since creation is the work of God. Vatican II taught that the «highest norm of human life is God’s divine law eternal, objective, universal whereby God orders, directs and governs the entire universe and all the ways of human community according to a plan conceived in wisdom and love». The Council taught that, «man has been made by God to participate in this law, with the result that, under the gentle disposition of divine providence, he can come to perceive ever increasingly the unchanging truth». (DH 3).

36 Cf. POPE PIUS XI, Encyclical Letter, Christian marriage (Casti Connubii), (December 31, 1930), in AAS 22 (1930), pp. 539-592: Translation published by the National Catholic Welfare Conference Washington D. C. (1931), 5. This Encyclical elaborates emphasizes certain points in the Encyclical Arcanum of POPE LEO XIII, published fifty years previously, namely on February 10, 1880. The chief basic purpose of Casti connubii was to reaffirm the basic thought of Arcanum in the light of conditions which adversely affected the society of the family at the beginning of the last century. See B. F. BROWN, The Natural Law, the marriage Bond and Divorce, cit., p. 26.


40 SECOND VATICAN COUNCIL, Declaration on Religious Liberty, Dignitatis humanae, no. 3 (December 7, 1965), in AAS 58 (1966), pp. 929-1119. Hereafter this will be quoted within the text as DH.
Also the study of cultural anthropology reveals the historical fact that practically all peoples have attached an inherently sacred and religious character to marriage, which they have expressed through symbolic rites either public or solemn. These rights became part of their traditions, customs and laws, which recognized the fact that, marriage is not of human but divine origin, in which man does not create life but only cooperates with Divinity in its transmission.\footnote{Cf. P\textsc{ope} P\textsc{ius XI}, \textit{Encyclical Letter, Christian marriage (Casti Connubii)}, cit., p. 28; Cf. B. F. B\textsc{rown}, \textit{The Natural Law, the marriage Bond and Divorce}, cit., p. 26.}

Man is obliged in his choice of institutions to select only those which are in agreement with the natural law. This is particularly true of marriage since it deals with the spiritual and temporal welfare of the human race in determining the status of the family which is the foundation of society.\footnote{Ibid., p. 3; P\textsc{ius XI}, \textit{Address to the National congress of the 'Family Front' and the Association of Large families}, (November 26, 1951), in AAS 43 (1951), pp. 855-862.}

Pope John Paul II, in his allocution to the Roman Rota of February 1, 2001\footnote{Cf. J\textsc{ohn P\textsc{aul II}, Allocution, (February 1, 2001), in AAS 93 (2001), pp. 385-365; See W. H. W\textsc{oestman}, \textit{Papal Allocutions to the Roman Rota 1939-2002}, cit., p. 260.} reassumed the traditional teaching about the natural dimension of marriage and the family. The Church’s magisterium and canonical legislations abound with references regarding the natural character of marriage. In \textit{Gaudium et Spes} - the Second Vatican Council, after first stating that: «God who is the author of marriage and has endowed it with various purposes and values»\footnote{GS, 48.}, addresses several problems of conjugal morality by referring to «objective criteria derived from the nature of the man and of his acts».\footnote{GS, 51.}

He feels that many misunderstandings have beset the very idea of “nature.” There is a tendency to reduce what is specifically human to the cultural sphere, claiming a completely autonomous creativity and efficacy for the person at both the individual and social levels. From this point of view, the nature is merely a physical, biological and sociological datum to be technologically manipulated according to one’s own interests. For him, this opposition between culture and nature deprives culture of any objective foundation, leaving it at the mercy of
will and power. This can be glaringly seen in the current attempts to present *de facto* unions, including those of homosexuals, as comparable to marriage, whose natural character is precisely denied. 46

The Pope feels that, «this merely empirical conception of nature makes it radically impossible to understand that the human body is not something extrinsic to the person but constitutes, along with the spiritual and immortal soul, an intrinsic principle of the unitary being which is the human person». 47 This is what he himself explained in *Veritatis Splendor*, 48 where he stressed the moral relevance of this doctrine as being important to marriage and the family. According to the Pope when the Church teaches that marriage is a natural reality, she is proposing a truth evinced by reason for the good of the couple and the society, which at the same time is confirmed by the revelation of our Lord, who closely and explicitly relates the marital union to the “beginning” (Mt 19:4-8) spoken of in the book of Genesis: «male and female he created them» (Gen 1:27), and «the two shall become one flesh» (Gen 2:24). He affirms that:

The fact, however, that the natural datum is authoritatively confirmed and raised by Our Lord to a sacrament in no way justifies the tendency, unfortunately widespread today, to ideologize the idea of marriage nature, essential properties and ends by claiming a different valid conception for a believer or a non-believer, for a Catholic or a non-Catholic, as though the sacrament were a subsequent and extrinsic reality to the natural datum and not the natural datum itself evinced by reason, taken up and raised by Christ to a sign and means of salvation. 49

Again for him, marriage is not just a union between human persons that can be formed according to a variety of cultural models. Man and woman experience in themselves the natural inclination to be joined in marriage. But

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46 Cf. JOHN PAUL II, *Allocation*, (February 1, 2001), cit., no.3.


49 JOHN PAUL II, *Allocation*, (February 1, 2001) cit., no. 4.
marriage as St. Thomas states it very clearly, is natural not because «it results by necessity from natural principles», but because it is a reality «to which one is inclined by nature, although it comes about through free will». Any opposition, therefore, between nature and freedom or between nature and culture is extremely misleading. The only way that this authentic richness and variety of all that is essentially human can come to light is through fidelity to the requirements of one’s nature. In the same light, in marriage, the desirable harmony between the diversity of expressions and the essential unity is not only conjectural, but is guaranteed by living in fidelity to the natural requirements of the person. Christians are aware of the fact that, for this task they can count on the strength of grace, which at the same time is capable of healing nature which is wounded by sin. He then emphasizes the idea that, the consortium totius vitae requires a reciprocal self-giving of the spouses.

But this personal self-giving needs a principle to specify it and a permanent foundation. The natural consideration of marriage shows us that husband and wife are joined precisely as sexually different persons with all the wealth, including spiritual wealth, that this difference has at the human level. Husband and wife are united as man-person and a woman-person. The reference to the natural dimension of their masculinity and femininity is crucial for understanding the essence of marriage. The personal bond of marriage is established precisely at the natural level of the male and female mode of being, a human person.

The ordering of the natural ends of marriage the good of the spouses and the procreation and education of the offspring – is intrinsically present in masculinity and femininity. This teleological characteristic is important in the understanding of the natural dimension of the union. In this sense, the natural character of marriage is better understood when it is not separated from the family. In this regard, marriage and the family are inseparable, because the masculinity and femininity of the married couple are constitutively open to the

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50 T. AQUINAS, Summa Theologiae, Suppl., q.41, a. 1, in c.; Cf. Ibid., p. 262.
51 Cf. JOHN PAUL II, Allocation, (February 1), 2001, cit., no. 4.
52 Cf. CIC, can. 1057, §2; CCEO, can. 817, 1.
53 JOHN PAUL II, Allocation, (February 1, 2001), cit., no. 5.
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gift of children. And without this openness there may not be a good of the spouses worthy of the name.\(^{54}\) The sacrament, on the other part, presupposes that natural reality and renders marriage for Christian spouses an instrument of true participation in the love of Christ for the Church.\(^{55}\)

Considering the indissolubility of marriage from the point of view of natural institution, De Guzman, in discussing the fundamental ideas of natural law, applied doctrine to the indissolubility of marriage. He distinguished two qualities which are intrinsic to marriage as a natural institution. The first is derived from the essential constitution of the marriage bond while the second is derived from the dynamism and the proper ends of marriage itself.\(^{56}\) Marriage in its essential constitution corresponds to the mutual commitment between the spouses and a public compromise which is seen as the basis of the social community. This therefore pertains to the marriage law «ius», that is, all that regards the reciprocal justice between a person and the society. Another note is that which is derived from the dynamism of marriage as an institution.

\(^{54}\) Ibid., p. 263.

\(^{55}\) Cf. PONTIFICIO CONSIGLIO PER LA FAMIGLIA, *Famiglia e questioni etiche*, Vol. 2, Bologna 2006, p. 139. He goes further to explain that: «This ecclesial reality can without doubt, guide and motivate the pastoral decisions according to priorities or opportunities. But the true central axis of family problems everyday continues to be the natural institution as such».

«It is exactly due to this that theology stimulates us to enter in the dialogue of matrimonial anthropology. The person is the object of theology as the work of God and marriage. It is the primordial expression of its essential social character. Christ, other than revealing the mystery of God, reveals to man, the ‘mystery’ of the same man, in which he is written in the project of God the Creator on marriage».

\(^{56}\) In the article of V. B. LÓPEZ DE GUZMAN, dedicated a section regarding the topic: «Momento Analítico: La indisolubilidad del matrimonio a la luz del derecho natural», in *Matrimonio indisolubile? Una cuestión disputada*, in Burgense, 20 (1979), pp. 407-453. Obviously, his intention is not to discuss the whole treatise of natural law but to give some annotations to basic ideas which eventually he attempted to apply into the problem of the indissolubility of marriage. See, O. J. FLORENCIO, *The anthropological and sacramental foundations of the indissolubility of marriage in the 20th Century Catholic theology*, Roma 2000, p. 31.
This concerns the proper ends of marriage, since it is where nature inclines them to be.\textsuperscript{57}

Dalla Torre feels it is not enough to understand the intrinsic indissolubility of marriage in the light of natural law, neither can it be understood from that which is contained in the law and the gospel. It deals with an expression which identifies the natural law with divine law,\textsuperscript{58} a law which exceeds reasons because it contains the supernatural norms which at the same time makes it easier for believers to understand natural law. He feels it is only through the Thomistic definition «lex naturalis est aliquod per rationem constitutum»\textsuperscript{59}, that we can find the key to understand the logic that regulates the family institution and its stability. In this light, natural law therefore, is a natural and reasonable inclination found in man regarding the good of his own nature and recognition of the destination to realize himself according to his nature and life in a personal manner.\textsuperscript{60}


\textsuperscript{58} Cf. G. Dalla Torre, L’indissolubilità intrinseca del matrimonio nella concezione cristiana del diritto naturale, in Persona y Derecho, 1 (1974), pp. 191-211. Recurrent observations shows that on the bases of purely civil legislation, one cannot sustain and defend fully the indissolubility of marriage. Hence in his article, G. DALLA TORRE tries «to bring into light the intrinsic indissolubility of marriage basing on the Christian understanding of natural law. There is no doubt he believes that, the acquisition of the knowledge of absolute indissolubility is largely influenced by the Christian concept of marriage, with the accent among other things, on the ethical-religious character. Therefore can be known rationally by every man. This rationality, moreover, constitutes a guarantee of a common ground of dialogue with those who do not have faith and at the same time offers the possibility of a common conclusion». The translation is mine.

\textsuperscript{59} T. Aquinas, Summa theologicae, 1-2, „, 94, a.1.

\textsuperscript{60} Cf. Dalla Torre, L’indissolubilità intrinseca del matrimonio nella concezione cristiana del diritto naturale, in persona y Derecho, 1 (1974), p. 197. Other authors which could be consulted here among others: P. M. Alzate, Fundamentatio juridica de la indissolubilidad del matrimonio, cit., pp. 106-114; G. T. Barberena, Sobre el matrimonio in fieri, in Salmanticensis, 1954, p. 422; A. C. JemoLo, Il matrimonio nel diritto canonico, Milano 1941, p. 8; J. Hervada, El matrimonio in facto esse, su estructura juridica, in Ius Canonicum, 1 (1961), pp. 135-175; A. De La Hera, Relevancia
Taparelli, helps us to understand better the indissolubility of marriage in the light of natural law by pointing out that, the conjugal society is willed by the Creator, established in the reason, in the affections, in the senses, in the impulses by which, he with an infallible certainty obtains from human liberty, without offending him, which will perpetually propagate in the new individuals that life, which is in every individual and is perpetually wanting. Commenting on this he affirms that: «the perpetuation of the human being appears therefore bonded into a general law of nature that invests all men without violating the freedom of the individual. A law, unlike those which rule in the animal world, being destined to rational creature does not explicate a passive, necessary or material participation, but postulates a conscious, responsible and personal participation».  

This law of the indissolubility of the marriage bond is of natural law which is in relation to the divine law since it has God as its author. This law regarding indissolubility is founded and expressed in the human nature, hence, it is natural, reasonable and proper to the fulfillment of his nature as a human being. For Soria, it is the divine law which determines the mode of acting, the end as well as the means which correspond to the specific nature of every creature. This natural law can be distinguished into physical and moral. The natural physical law rules in a necessary manner that is, rather not free while the natural moral law refers to man as a unique being which is capable of acting morally, that is, rather freely. For him the place of the indissolubility of marriage is properly found in natural law and in particular to the natural moral law.

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Pope John Paul II emphasized succinctly that,

The essential properties of marriage, unity and indissolubility, are also inscribed in the very being of marriage, since in no way are they laws extrinsic to it. Only if marriage is seen as a union involving the person in the realization of his natural relational structure, which remains essentially the same throughout his personal life, can it withstand the changes of life, the efforts and even the crises throughout which human freedom often passes in living its commitments. But if the marital union is thought to be based only on personal qualities, interests or attractions, it obviously is no longer seen as a natural reality but a situation dependent on the current perseverance of the will in relation to the continuance of contingent facts and feelings. Certainly, the bond is caused by consent, that is, by an act of the man’s and the woman’s will, but this consent actualizes a power already existing in the nature of man and woman. Thus, the indissoluble force of the bond itself is based on the natural reality of the union freely established between man and woman.\(^64\)

Therefore in the light of marriage as a natural reality we can easily grasp the natural character regarding the capacity to marry: «All who are not prohibited by law can contract marriage».\(^65\) Natural law is therefore God’s eternal law which is shared with man. In this light, man’s active participation in God’s eternal law takes place through man’s reason in a way that man does not dictate the law, but he actively participates in it.

2.3. The foundation of theological anthropology: original solitude.

The words of Genesis directly give us the point of departure for the reflection on original solitude: «It is not good that the man» (male) «should be alone; I want to make him a help similar to himself» (Gen 2:18).\(^66\) John Paul II points out that the creation of the male in the second account is «prior to the creation of the woman not so much in the chronological sense, as in the

\(^{64}\) JOHN PAUL II, _Allocution_, (February 1, 2001), cit., no. 5.

\(^{65}\) CIC, can. 1058; CCEO, can. 778.

\(^{66}\) Cf. JOHN PAUL II, _Man and Woman He Created Them_, cit., pp. 146-147.
existential sense. It is prior by its very nature».\footnote{Ibid., p. 148.} In fact, all that Pope John Paul II is going to say about the identity of the male under original solitude, in the existential sense will refer equally to the human identity of the female. In a wider delineation, original solitude has basically two meanings: the first is derived from man’s very nature, that is from his humanity, and the second is derived from the relationship between male and female, and this is evident on the basis of the first meaning.\footnote{Ibid., p. 147.} The statement God-Yahweh used in this context in the following words: «it is not good that the man be alone» does appear not only immediate to the context of the decision to create the woman, but also in the wider context of motives and circumstances which explains more deeply the original solitude of man.\footnote{Ibid.}

The first meaning of original solitude depends on man’s spiritual interior identity. The description of this spiritual identity stems from the instructions given by God which describes his vocation as that of tilling the ground (Gen 2:5), the naming of animals (Gen 2:19) and the instructions of God regarding the tree (Gen 2:16-17). In this light he therefore points out that,

The first meaning of original solitude is defined on the basis of a specific test or examination [the tilling of the ground (Gen 2:5), the naming of animals (Gen 2:19), and the command regarding the tree (Gen 2:16-17)] which man undergoes before God (and a certain way also before himself). By means of this test, man becomes aware of his own superiority […].\footnote{F. Martin, The New feminism: Biblical foundations and some lines of development, Michigan 2004, p. 36. «The task which God gives to man is a conditional superintendence and use of nature in accordance with the original intention of God». K. Schmitz, At the Center of the Human Drama, Washington D.C 1993, p. 96; Cf. J. B. Bransfield, The impossibility of same-sex marriage in the light of the anthropological principles found in the teachings of John Paul II on the Communio Personarum, Roma 2008, p. 220.}

In the book entitled The Acting person, John Paul II’s «first and chief concern is to deduce from the experience of action (that is, ‘of man-acts’) that
evidence which shows man to be the person or ‘brings the person into view’. In examining the text of Genesis, John Paul II: «pauses on the process of reduction, which leads us in the direction of understanding the human being in the world (a cosmological type of understanding), in order to understand the human being inwardly. This latter type of understanding may be called personalistic».

Original solitude in relation to man in search of his essence highlights the fact that,

The created man finds himself from the first moment of his existence before God in search of his own being, as it were; one could say, in search of his own definition; today one would say in search of his own “identity.” The observation that man “is alone” in the midst of the visible world and, in particular, among living beings, has a negative meaning in this search, inasmuch as it expresses what “man is not.” Nevertheless, the observation that he cannot identify himself essentially with the visible world of the other living beings (animalia) has, at the same time, a positive aspect for his primary search: even if this observation is not yet a complete definition, it nevertheless constitutes one of its elements. If we accept the Aristotelian tradition in logic and anthropology, one would have to define this element as the “proximate genus” (genus proximum).

The pope also emphasized the idea that, the concept of original solitude includes both self-consciousness and self-determination. The fact that man is alone contains in itself this ontological structure, and at the same time

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73 JOHN PAUL II, Man and Woman He Created Them, cit., p. 149. The Pontiff goes on to explain that, «an essential (quidditive) definition is a statement that explains the essence or nature of things». C. N. BITTLE, The Science of Correct thinking, Logic, Milwaukee 1947, pp. 73-74.
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indicates an authentic understanding.\textsuperscript{74} It is important to understand that, the task which God gives to the first man as actions enables John Paul II to see them as those features found in man which constitutes him as a person. The Pope tries then to understand the human person from this point of view. This task emphasizes the interior activity of man’s consciousness whereby he comes to self-knowledge through what is known as self-awareness.\textsuperscript{75} Man then uses his rationality in the task assigned to him for dominion, thus through his actions man reveals himself as being that possesses both the intellect and the will. Man \textit{distinguishes himself} before God-Yahweh from the whole world of the living beings (\textit{animalia}) with his first act of self-consciousness, and of how he reveals himself to himself. In this way, consciousness reveals man as the one who possess a cognitive faculty as regards the visible world.\textsuperscript{76}

The idea that man has to till the ground, the naming of animals, understanding and keeping the instructions regarding the tree are noted to be acts of consciousness which involves man’s self-knowledge.\textsuperscript{77} The analysis of

\textsuperscript{74} Cf. \textsc{John Paul II}, \textit{Man and Woman He Created Them}, cit., p. 151.

\textsuperscript{75} Cf. \textsc{John Paul II}, \textit{The Theology of the Body: Human love in the divine plan}, Boston 1997, p. 36.

\textsuperscript{76} Cf. \textit{Ibid.}, 36-37. The Pope then points out that, the command to “till the ground (Gen 2:25)” corresponds with “vocation to subdue and have dominion over the earth (Cf. Gen 1:28)” in the first account. Cf. J. B. \textsc{Bransfield}, \textit{The impossibility of same-sex marriage}, cit., p. 221.

\textsuperscript{77} \textit{Ibid.}, p. 30. D. \textsc{Asci} describes John Paul’s understanding of consciousness: «According to Wojtyła, ‘consciousness allows us not only to have an inner view of our actions (immanent perception) and of their dynamic dependence on our ego, but also to \textit{experience these actions as actions and as our own}’. [K. Wojtyła, \textit{The Acting person}, 42, emphases on Asci]. «Thus, the consciousness enables man to experience the intimate relationship between himself and his acts, thereby enabling him to take responsibility for his own acts and to share in the moral quality of the act as its subject» (D. \textsc{Asci}, \textit{The Conjugal act as a personal act}, cit., pp. 317-318). See, R. \textsc{Hogan} - J. \textsc{Le Voir}, \textit{Covenant of Love}, cit., p. 40: «Our consciousness not only allows us to determine ourselves, it is also the source of our self-knowledge. The latter function of consciousness is the source of self-knowledge». K. Schmitz notes, «The original solitude certainly marks man off from the rest of creation; it registers a radical difference between him and the other visible creatures, and seals his distinctive nature. For ‘\textit{adam} alone of all visible creatures have been created in the image and likeness of God... John Paul II remarks that, the root of self-knowledge is to be found here in this solitary awareness, which senses both the privilege of the solitude that sets man apart from other creatures, and the incompleteness that
the first meaning of original solitude links man’s original solitude with the awareness of the body, through which man is distinguished from all the animalia and is separated from them, and through which he is a person. In this regard one can affirm with certainty that man thus formed, has at the same time that awareness and consciousness of his own body based on the experience of original solitude.\textsuperscript{78} This touches the central problem of anthropology. The consciousness of the body is «identical in this case with the discovery of the complexity of one’s own structure, which, in the end, based on a philosophical anthropology, consists in the relation between soul and body.\textsuperscript{79} Thus this “original description of human consciousness […] comprises also the body» and this asserts that man, in discovering his corporality also perceives its meaning.\textsuperscript{80} The fact that man has the capacity to respond to God with his body shows that depth and awareness of his personhood and the relation of man to God through the covenant.\textsuperscript{81}

The second meaning of original solitude is based on the relationship between male and female. Man has come to discover in original solitude that he is alone and different from the visible creation on the basis his body. John Paul II summarizes this in the following words:

Thus formed, man belongs to the visible world; he is a body among bodies. Taking up again, and in a way reconstructing the meaning of original solitude, we apply it to man in his totality. His body, through attends ‘adam as he faces the rest of the visible creation» (K. Schmitz, \textit{At the Center of the human Drama}, cit., p. 100); Cf. J. B. Brandsfield, \textit{The impossibility of same-sex marriage}, cit., pp. 222-223.\textsuperscript{78} Cf. \textsc{John Paul II, \textit{Man and Woman He Created Them}}, cit., p. 152.

\textsuperscript{79} \textit{Ibid}.

\textsuperscript{80} Cf. \textsc{John Paul II, \textit{The theology of the body}}, cit., p. 41.

\textsuperscript{81} «Man is the object of the creative action of God-Yahweh, who at the same time as legislator, establishes the conditions of the first covenant with man». Theology of the body p. 36 The Pope equally points out that the subjective nature of man is emphasized: «The premise of man’s distinguishing himself in this way is precisely the fact that he is capable of ‘tilling the earth’ (Gen 2:5) ‘and subduing it’» (Gen 1:28), \textit{Ibid.}, p. 40.
which he participates in the visible created world, makes him at the
same time conscious of being alone.\(^{82}\)

Despite the fact that man has exercised his intellect and will, and
therefore come to that self-awareness through his consciousness, there is still
one aspect of his identity that is not yet fulfilled.\(^{83}\) This conclusion stems from
the second account of creation which asserts that: «It is not good that the man
should be alone; I will make him a helper fit for him» (Gen 2:18). This brings
us to the understanding of man’s search for fulfillment in this second meaning
of original solitude. This is due to the fact that man through his self-awareness
and knowledge has come to the discovery that, «the other living creatures of
the earth, however, are not equal to him; they are not worthy to be his
companions, his partners».\(^{84}\) Genesis 2:18 highlights the idea that man cannot
exist ‘alone’, he can only exist as a unity of the two, and therefore in relation to
another human person.\(^{85}\) Through the body man has come to the realization
that he is alone, and still this same body has revealed to man certain differences
from the rest of the visible world, and the fact that he is alone in their midst.
Wojtyla, in *Love and Responsibility* expresses that, man’s interior faculties makes
«man not only the subject, but can also be the object of an action».\(^{86}\) Therefore,
if man is to be the object of an action of another person, he must be
considered as unique due to that rich inner nature which characterizes him. In
this light «it is necessary to consider carefully the principles to which a human
being’s actions must conform when their object is another human person».\(^{87}\)

The words of Genesis «it is not good that the man should be alone»
(Gen 2:18), are a prelude, as it were, to the account of the creation of man and
woman. Together with this account, the meaning of original solitude enters


\(^{83}\) *Ibid*.

\(^{84}\) W. E. *May*, *Marriage and the complementarity of male and female*, cit., p. 42.

\(^{85}\) Cf. *MD*, 7.


\(^{87}\) *Ibid*.
and becomes part of the meaning of original unity, the key point of which seems to be precisely the words of Gen 2:24, to which Christ appeals in his dialogue with the Pharisees: «A man will leave his father and his mother and unite with his wife, and the two will be one flesh» (Mt 19:5).\(^8\) In this context, the Lord caused torpor (the state of unconsciousness) to fall upon the man and through this act man fell asleep, and the Lord took one of his ribs and he formed the woman (cf. Gen 2:21-22). Sleep here does «indicate a specific return to non-being (sleep has a component of the annihilation of man’s conscious existence), or to the moment before creation, in order that the solitary “man” may by God’s creative initiative reemerge from that moment in his double unity as male and female».\(^9\) The concise words of the first man on seeing the newly created woman, «taken from Him»\(^1\) indicates something that is unique and

\(^8\) John Paul II, Man and Woman He Created Them, cit., pp. 156-157.

\(^9\) John Paul II, Man and Woman He Created Them, cit., p. 159. John Paul II explains that, «Torpor’ (tardemah) is the term that appears in Sacred Scripture when, during the sleep or immediately after it, extraordinary events are to take place» (see Gen 15:12; 1Sam 26:12; Isa 29:10; Job 4:13; 33:15). The Septuagint translates tardemah as “ekstasis” (a trance, ecstasy).

In the Pentateuch, tardemah appears once, in a mysterious context: at God’s command, Abraham has prepared a sacrifice of animals, driving away birds of prey from them. «As the sun was setting, torpor fell on Abraham and a dark terror assailed him» (Gen 15:12). It is at this moment that God begins to speak and makes a covenant with him, which is the summit of the revelation made to Abraham.

This scene resembles in some way that of the garden of Gethsemane. «Jesus began to feel fear and distress» (Mk 14:33) and found the apostles «sleeping from sadness» Lk 22:45).

The biblical author admits in the first man a certain sense of lack of solitude, even if not of fear (“it is not good that the man should be alone,” “he did not fine a help similar to himself”). Perhaps this state causes “sleep from sadness,” or perhaps, as in Abraham, “a dark terror” of nonexistence, as at the threshold of creation: «the earth was unformed and deserted and darkness covered the abyss» (Gen 1:2).

In any case, according to both texts in which the Pentateuch, specifically Genesis, speaks about deep sleep (tardemah), a special divine action takes place, namely, a “covenant” filled with consequences for the whole history of salvation: Adam begins the human race, Abraham the chosen people (Ibid).

«And on awakening from his sleep the man delights in finding this partner, this ‘bone of his bones and flesh of his flesh,’ and in his delight gives to her the name ishah, ‘woman,’ and to himself ish, ‘man.’ Both are obviously regarded, in this text, as equal in their dignity, one far
unrepeatable.\footnote{Cf. \textsc{John Paul II}, \textit{Man and Woman He Created Them}, cit., p. 163.} The man on realizing the woman is delighted and this is crucial in the fact that, she is the answer to that search for an identity as established in original solitude. This reveals that, man is the answer to the search of the woman. The concept of original unity helps us to understand that, male and female sexual difference is an essential component of man’s identity.

\subsection*{2.3.1. Unity in sexual difference, male and female complementarity}

Original unity «has its roots in the creation of man and woman as male and female»\footnote{\textsc{John Paul II}, \textit{The Theology of the Body}, cit., p. 42.}, and this is described by the two accounts of creation. Therefore, the spousal character of the relationship is founded on the complementarity of masculinity and femininity. It is a unity in sexual difference.\footnote{Cf. \textsc{M. Shivanandan}, \textit{Crossing the threshold of love}, cit., p. 157.} In his Wednesday catechesis John Paul II, equally outlined that, «man and woman were to make visible the invisible plan of God for mankind to participate in divine Trinitarian life for all eternity».\footnote{\textsc{John Paul II}, \textit{The theology of marriage and celibacy}, cit., p. 245. In the same light, «man appears in the visible world as the highest expression of the divine gift, because he bears within himself the interior dimension of the gift. And with it he brings into the world his particular likeness to God, whereby he transcends and dominates also his ‘visibility’ in the world, his corporality, his masculinity or femininity, his nakedness. Resulting from this likeness there is also the primordial awareness of the conjugal significance of the body, pervaded by the mystery of original innocence». \textsc{John Paul II}, \textit{L’amore umano nel piano divino}, Città del Vaticano 1980, p. 90.} This great mystery is confirmed by Ephesians 5:21-33. The union of Adam and Eve in original innocence was an efficacious sign bringing about what it signified so that marriage is the primordial sacrament.\footnote{Cf. \textsc{John Paul II}, \textit{L’Amore Umano nel Piano Divino}, Città del Vaticano 1980, p. 247.}

John Paul II, attributes different but complementary roles to man and woman in original sin. Original sin resulted as a break of man and woman in surpassing that of the other living creatures God has made» (W. E. May, \textit{Marriage and the complementarity of the sexes}, p. 42).
the unity with God, who is the source of the unity within man’s own “I.”\textsuperscript{96} This further resulted to another break in the \textit{communio personarum} of the man and woman, between them and the rest of the natural world. This disturbance of unity between the two affected the woman since the domination of the man takes the place of the sincere gift of self. In this regard, it is only when the woman is treated equally as a person that there will be that true \textit{communio personarum}.\textsuperscript{97} In trying to overcome discrimination, «the woman must not adopt the masculine role and give up the riches of her femininity».\textsuperscript{98}

Despite the fact that he quotes the passage taken from Genesis from which he draws the concept of original solitude ‘I will make him a helper fit for him’ and ‘this at last is bone of my bones and flesh of my flesh,’ John Paul II, indicates that men are therefore called to live within the family community their gift and role as husbands and fathers.\textsuperscript{99} He then goes further by affirming that, «in true conjugal love, a man must have ‘a profound respect for the equal dignity of his wife.’ […] His task in the family as father is ‘of unique and irreplaceable importance’ and reveals the very fatherhood of God. The absent father and the oppressive father are equally damaging to the family (FC, 25)».\textsuperscript{100} John Paul II, also calls for ‘a theology of work’ so that women’s work in the home may be recognized in accord with ‘the fullness of true feminine humanity’ and not an imitation of the male role (FC, 23). He stresses that

\begin{flushleft}
\textsuperscript{96} Cf. M. SHIVANANDAN, \textit{Crossing the threshold of love}, cit., p. 158.
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\textsuperscript{98} MD, 9-10.
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\textsuperscript{99} Cf. M. SHIVANANDAN, \textit{Crossing the threshold of love}, cit., p. 158.
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\textsuperscript{100} Ibid, «John Paul’s sensitivity to the role of the father is perhaps best expressed in his play \textit{Radiation of fatherhood}. He sees the vocation of St. Joseph, ‘called by God to serve the person and the mission of Jesus directly through the existence of his fatherhood,’ as having a special meaning in our day. In fact he ‘turned his human vocation to domestic love into a superhuman oblation of self, an oblation of his heart and all his abilities into love placed at the service of the Messiah growing up in his house’». Cf. JOHN PAUL II, \textit{Guardian of the Redeemer (Redemptoris Custos), Apostolic Exhortation of the Supreme Pontiff on the person and Mission of St. Joseph in the life of Christ and of the Church}, (August 15, 1989), Boston 1989.
\end{flushleft}
The nature of the human person, that he cannot find himself without making a ‘sincere gift of himself,’ is key to understanding the motherhood. When a woman gives herself in sexual union, she can only be a complete gift if the man does not dominate her for his own selfish purposes or she does not close herself within her instincts.\textsuperscript{101}

\textit{Gaudium et Spes} also refers to the communion of male and female in marriage constituting «the first form of communion between the persons» (\textit{GS}, 12). John Paul II in his anthropology asserts that, the gift of oneself is an institution which involves that person’s full identity. This gift of self may be in two forms: Either marriage or virginity/celibacy (\textit{FC}, 11). The identity of the person reveals that he has the capacity as a subject that is conscious in his intellect and will to engage the totality of his being in a manner which essentially includes his body\textsuperscript{102} in all its maleness and femaleness as the gift of self to the other who can fully receive it in such a way that its fullness is fully open.\textsuperscript{103} This is confirmed in the character of an exchange:

\begin{quote}
The body which expresses femininity manifests the reciprocity and communion of the persons. It expresses it by means of the gift as the fundamental characteristic of personal existence. [...] Masculinity and femininity – namely, sex – is the original sign of the creative donation of an awareness on the part of the male-female, of a gift lived in an original way.\textsuperscript{104}
\end{quote}

During the rite of marriage, the spouses are asked the following: «\textit{will you accept children lovingly from God, and bring them up according to the law of Christ and his Church}?».\textsuperscript{105} The answer which the spouses give to this pertinent question reflects the most profound truth of love which unites them. «Their unity, however, rather than closing them up in themselves, opens them towards a

\textsuperscript{101} MD, 17-18.

\textsuperscript{102} Cf. POPE JOHN PAUL II, \textit{Letter to the families}, Città del Vaticano 1994, no. 8, p. 19. «It is also through the that body man and woman are predisposed to form a communion of persons in marriage».


\textsuperscript{104} JOHN PAUL II, \textit{The Theology of the body}, cit., pp. 61-62.

\textsuperscript{105} \textit{Ritual Romanum, Ordo Celebrandi Matrimonium}, no. 60, p. 17.

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new life, towards a new person» (LF, 8). To sum up, the creation of man as male and female, and the fulfillment of his identity in marriage and in a special manner in the communion of persons, reveals that the meaning of the body and sexual difference can be fully fulfilled when they are a total gift of themselves to one another such as, in a marriage that is heterosexual (the marriage of one man and one woman) in which the two become one —flesh in openness to new life.\footnote{Cf. JOHN PAUL II, \textit{Theology of the body}, cit., p. 44.}

\subsection*{2.3.2. The spousal meaning of the body}

In developing the concept of the spousal meaning of the body, original nakedness is crucial here as it is part of man’s identity. This is affirmed in the following words: «The beatifying “beginning” of man’s being and existing as male and female is connected with the revelation and the discovery of the meaning of the body that is rightly called ‘spousal’».\footnote{JOHN PAUL II, \textit{Man and Woman He Created Them}, cit., p. 183.} The words which expressed the joys of man’s first coming into existence as “male and female” (Gen 2:23), follows the verse which attest their conjugal unity (Gen 2:24) and the one which regards their nakedness without reciprocal shame (Gen 2:25).\footnote{Cf. JOHN PAUL II, \textit{Man and Woman He Created Them}, cit., p. 184.} «These verses face each other in such a significant way which allows us to speak of revelation together with the discovery of the ‘spousal’ meaning of the body in the mystery of creation».\footnote{\textit{Ibid.}, p. 184.} In considering the spousal meaning of the body it is crucial to the understanding that, for John Paul II, the body expresses the person.\footnote{Cf. JOHN PAUL II, \textit{Theology of the body}, cit., p. 61.} The human body «as a constitutive part of the human

\footnote{Cf. JOHN PAUL II, \textit{Theology of the body}, cit., p. 61. One thing which should be noted here is the fact that, in JOHN PAUL II, \textit{Man and Woman he created them}, John Paul II uses the term “spousal meaning of the body”. Meanwhile in the \textit{Theology of the body} he uses the term the “nuptial meaning of the body.” To my understanding these two concepts: “Nuptial” and “spousal” have the same connotations and meaning.}
person»\textsuperscript{111}, when engaged in the full truth of the sexual difference, as male and female, has a capacity to express the self-giving love of the person in a way which is unique.\textsuperscript{112} John Paul II then emphasizes that:

Gen 2:24 speaks about the ordering of man’s masculinity and femininity to an end, in the life of the spouses-parents. Uniting so closely with each other that they become “one flesh,” they place their humanity in some way under the blessing of fruitfulness, that is, of “procreation,” which the first account speaks of (Gen 1:28). Man enters “into being” with the consciousness that his own masculinity-femininity, that is his own sexuality, is ordered to an end.\textsuperscript{113}

John Paul II, clarifies original nakedness in terms of the hermeneutics of the gift.\textsuperscript{114} «The body which expresses femininity manifests reciprocity and the communion of persons. It expresses it by means of the gift as the fundamental characteristic of personal existence».\textsuperscript{115} The spousal meaning of


\textsuperscript{112} Cf. J. CROSBY, John Paul’s vision of sexuality and marriage. The Legacy of Pope John Paul II: His contribution to Catholic thought, New York 2000, pp. 59-60.

\textsuperscript{113} JOHN PAUL II, Man and Woman He Created Them, p. 184; He goes further by affirming that, «the words of Gen 2:25, ‘both were naked, the man and his wife, but they did not feel shame,’ seem to add to this fundamental truth of the meaning of the human body, of its masculinity and femininity, another truth that is not in any way less essential and fundamental. Aware of the procreative power of his own body and of his own sex, man is at the same time free from the ‘constraint’ of his own body and his own sex». \textit{Ibid}.

\textsuperscript{114} Cf. W. MAY, An introduction to moral theology, cit., p. 58 in this same light John Paul II expresses that, «The creator has assign as a task to man his body, his masculinity and femininity. In masculinity and femininity he, in a way, assigned to him a task his humanity, the dignity of the person, and also the clear sign of the interpersonal communion in which man fulfills himself through the authentic gift of himself». \textit{(Ibid,} p. 214\textit{). Then M. SHIVANANDAN comments, A true communion of persons comes about when the person is affirmed by the reciprocal acceptance of the gift. (M. SHIVANANDAN, Crossing the threshold of love, cit., p. 123). Cf. The theology of the body, cit., pp. 63-66.}

\textsuperscript{115} JOHN PAUL II, Theology of the body, cit., pp. 61-62. In this regard John Paul II, affirms that «the community of unity which they should establish through marriage is constituted by a reciprocal donation of self, which is also a mutual subjection, which, being reciprocal “out of reverence for Christ», confers on the conjugal union a profound and mature character. […] The
the body in relation to the “spousal character” of the body and the revelation of the person brings to light two main emphases. The first affirms that man is the only creature in the world that the Creator willed ‘for its own sake’; secondly, this same man willed by the Creator in this way from the ‘beginning’, can only find himself through a disinterested gift of self (GS, 24:3). This interior freedom of the gift – the disinterested gift of self – is at the root of nakedness. This gift allows both the man and the woman to find each other reciprocally, in as much as the Creator willed each of them “for his own sake” (GS, 24:3). In the first beatifying encounter,

The man thus finds the woman and she finds him. In this way he becomes her within himself (and she welcomes him within herself), welcomes her as she is willed “for her own sake” by the Creator, as she is constituted in the mystery of the image of God through her femininity; and, reciprocally, she welcomes him in the same way, as he is willed “for his own sake” by the Creator and constituted by him through his masculinity.117

In this consists the revelation and the discovery of the spousal meaning of the body. The Yahwistic narrative and Gen 2:25, helps us to deduce that man, as male and female, enters the world precisely with this consciousness of the meaning of his own body, that is of his masculinity and femininity.118 John Paul II emphasizes that “the human body, oriented from within by the “sincere gift” of the person, (GS, 24:3) reveals not only its masculinity or femininity on the physical level, but reveals also such a value and such a beauty that it goes beyond the simply physical level of “sexuality.” The “affirmation of the mutual subjection “out of reverence for Christ «a subjection arising from the basis of Christian pietas» always produces that profound and solid structure of the community of the spouses in which the true ‘communion’ of the person is constituted». Ibid., pp. 310-311.

116 Cf. JOHN PAUL II, Man and Woman He Created Them, cit., p. 186.
117 Ibid.
118 Ibid.
119 Ibid., He also goes further to explain that, “In this way, the consciousness of the meaning of the body, linked with man’s masculinity-femininity, is in some sense completed. On the one hand, this meaning points to a particular power which expresses the love in which man becomes a gift; what corresponds to this meaning, on the other hand, is power and deep availability for the “affirmation of the person,” that is, literally, the power to live the fact that
person” is nothing other than welcoming the gift, which through reciprocity, it creates the communion of persons and this communion builds itself from within, while also taking into itself man’s whole “exteriority,” that is, all that which constitutes that pure and simple nakedness of the body in its masculinity and femininity.  

The spousal meaning of the body as the fruit of rootedness in love highlights the idea that, «the revelation and discovery of the spousal meaning of the body explains man’s original happiness and at the same time, it opens the perspective of his own earthly history, in which he will never withdraw from this indispensable ‘theme’ of his own existence». Therefore, the spousal meaning of the body, highlights the gift of self as an action of the person in his full and corporal nature, and is a manifestation of love as expressed in the following words: «As an incarnate spirit, that is, a soul which expresses itself in a body and a body informed by an immortal soul, man is called to love in his unified totality. Love includes the human body, and the body is made a sharer in spiritual love» (FC 11). According to John Paul II, reciprocity in and through the body, is of the very nature of love. In the same light Karol Wojtyla stressed that Love is conditioned by the common attitude of people towards the same good, which they choose as their aim, and to which they subordinate

the other – the woman for the man and the man for the woman – is through the body someone willed by the Creator “for his own sake” (GS, 24:3), that is, someone unique and unrepeatable, someone chosen by eternal love. (Ibid.

120 Ibid.

121 JOHN PAUL II, Man and Woman He Created Them, cit., p. 189. He goes further to say that, «one can understand this “spousal” meaning of the human body only in the context of the person. The body has a “spousal” meaning because the human person, as the Council says, is a creature that God willed for his own sake and that, at the same time, cannot fully find himself except through the gift of self». (Ibid).

122 Cf. A. WOZNICKI, A Christian Humanism: Karol Wojtyla’s Existential Personalism, Washington D.C. 1980, pp. 35-37. He points out the idea that for Wojtyla, «Love, from its very nature, is reciprocal; […] Love, as mutual ‘self-giving’ of persons to one another, is not ‘diminishing and impoverishment but, on the contrary, it leads to a widening and an enrichment of human beings in love […]. Since a person is conceived as an ontological entity, ‘self-giving-love’ is also ‘written in the very being of the person.’ This ontological structure of mutual ‘self-giving-love’ enables a person to experience his own life in a way which unifies it with the life of another person and establishes an inner bind between their individual selves». 

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Marriage is then one of the most important areas where this principle is put into practice. In marriage this love is manifested when the two persons subordinate themselves to the gift of self in a communion of persons.

2.4. The ends of marriage

After having examined the foundation of theological anthropology in original solitude, unity in sexual difference and the spousal meaning of the body, we shall now embark on examining the ends of marriage. Pope Pius XII, in his address to the Roman Rota (1944) spoke about two ends of marriage. He used two expressions to explain this: finis operis and finis operantis. «The finis operis in matrimony is that benefit which matrimony tends of its very nature to obtain, and which God the Creator gave to the institution of marriage. The finis operantis is that benefit to obtain that which the will of the contracting parties tends». In this way marriage “in facto esse” is regarded as a state of life naturally directed and addressed as proper end (“finis operis”) above all as the reciprocal good of the spouses.

The ends of marriage, according to the Church’s teaching right up to the Second Vatican Council, were clearly understood to exist in a hierarchical order. This concise statement was found in can. 1013,§1 of the 1917 Code of Canon Law which stated that: «The primary end of marriage is the procreation and education of the children; its secondary end is mutual help and allaying of concupiscence». Leaving aside every distinction between the primary end and

the secondary end of marriage\textsuperscript{127} dominated discussions at the pre-conciliar and post-conciliar levels up to the promulgation of the new Code of 1983.\textsuperscript{128} It is quite clear from the legal text that the Legislator expressed his intention by stressing the inter-relation which exists between the \textit{good of the spouses} and \textit{procreation}, found both in conjugal love, and in the sexual conjugal act.\textsuperscript{129} Such values appear not only as objectives through which the institute of marriage naturally tends, but above all as the unique willfulness in the plan of the spouses: this means they have to realize the double essential destiny of the human person, regarding the construction and continuation of personal existence in a form of life characterized by the same nature.\textsuperscript{130} Therefore the expression \textit{Bonum coniugum}\textsuperscript{131} which replaces the \textit{mutuum adiutorium} and the \textit{remedium concupiscientiae} of Can. 1013 CIC 1917, opens up a personal new and rich perspective in the communion of life [of the spouses], not limiting itself any longer to a reductive conception regarding acts which are properly conjugal, and if they remain ordained to procreation, are now inserted in the logic of total donation which embraces the whole life of the spouses, in which

\textsuperscript{127} Cf. Can. 1013, §1 CIC 1917: «Matrimoni finis primarius est procreatio atque educatio prolis; secundarius mutuum adiutorium et remedium concupiscientiae».


\textsuperscript{129} Cf. A. D’AURIA, \textit{Il consenso matrimoniale, Dottrina e giurisprudenziale canonica}, cit., p. 29.

\textsuperscript{130} \textit{Ibid.}, pp. 29-30.

life in common, love and collaboration express clearly the realization of the persons and their dynamic good.\textsuperscript{132} \textit{Bonum coniugum} assumes a notable juridical relevance, because it offers convincing reasons so that the rights of persons should be admitted to celebrate the indissoluble conjugal pact and so that this should also be recognized by the civil authority.\textsuperscript{133}

In this regard, the Second Vatican Council twice insists that procreation is an end of marriage and of married love in the following words: «By their very nature the institution of marriage and married love are ordered to the procreation and education of children» (GS, 48, 50). While it states at the same time that, marriage is endowed with “various ends” (GS, 48), it neither speaks of a hierarchy between these ends, nor does it specifies what the other ends, besides procreation are. It is crucial at this point to note the fact that, the very first canon in the title on matrimony is assign to the ends of marriage but it does not specifically mention any hierarchy between them. This canon states that marriage, «by its nature is ordered to the good of the spouses and the procreation and education of offspring» (Can. 1055, §1).\textsuperscript{134} Therefore the Code of Canon Law of 1983 clearly states two ends of marriage which are: procreation and education of the children and \textit{bonum coniugum} (the good of the spouses). We shall then examine them in the next paragraphs.

\textbf{2.4.1. The procreation and education of the children}

\textit{The Catechism of the Catholic Church} underlines that, «children are a precious gift of marriage and contributes a lot to the good of their parents. God said: ‘it is not good for the man to be alone’ (Gen 2:18) and he ‘created them at the

\begin{itemize}
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beginning male and female’ (Mt 19:4), ‘by its very nature the institution of marriage and married love is ordered to the procreation and education of the offspring and it is in them that it finds its crowning glory’.\textsuperscript{135} It is not enough that the conjugal act is ordered towards procreation, the child conceived or given birth to also has to be accepted and physically cared for. The Pastoral Constitution affirms that: «By its very nature the institution of marriage and married love is ordered to the procreation and education of the offspring and it is in them that it finds its crowning glory» (GS, 48). Education of children is work which can be considered as progressive generation continued in time.\textsuperscript{136} Education of children includes seeing to the physical, social, cultural, moral and religious upbringing of children (cf. c. 1136). It is about giving children an integral education.\textsuperscript{137} In the same light Archbishop Tomasi, the Holy See’s permanent observer to the United Nations at Geneva, said that, «the first right of children is that of being born and educated in a welcoming and secure family environment where their physical, psychological and spiritual growth is guaranteed, their potential is developed and where the awareness of personal dignity becomes the base for relating to others and for confronting the future».\textsuperscript{138} The institution of marriage is ordered to this purpose. The spouses must appropriate the same goals, otherwise they fail to enter the married state. They «should regard as their proper mission the task of transmitting human life», they must «fulfill their task with human and Christian responsibility» (GS, 50).\textsuperscript{139} Education in this regard is a broad concept. It therefore includes more than providing for the physical needs of the child; the parents must attend to his emotional and spiritual needs as well.\textsuperscript{140}

Pope Pius XI affirmed that, «it is noted that for the natural and divine ordination, the right and education of children belongs above all to those

\textsuperscript{135} CCC, no. 1652.
\textsuperscript{136} Cf. A. M. ABATE, Matrimonio nella Nuova Legislazione Canonica, cit., p. 16.
\textsuperscript{137} Cf. GS 50.
\textsuperscript{138} S. TOMASI, Address during the 4\textsuperscript{th} session of the human rights council of the united nations, (March 23, 2007).
\textsuperscript{139} L. ÖRSY, Marriage in Canon law, cit., p. 53.
\textsuperscript{140} Ibid.
whom through this generation they begin the work that was begun leaving it imperfect. In the same manner Pope John XXIII, affirmed that:

In the family we have the closest and most wonderful cooperation of man and woman with God: two human persons created in the image and likeness of God are called not just to the great work of creation through giving physical life to new beings, in whom the life-giving spirit will infuse the powerful principle of immortal life, but also to the nobler role that completes and perfects the former – that of providing for the human and Christian education of their offspring.

John Paul II on the other hand confirms the Conciliar thinking that «the mission» of educating the children is for parents a natural right, since they have given life to their children. In this same light, «Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and therefore must be recognized as the primary and principal educators», at the same time they also have «the primary, inalienable right and duty to educate their children» (G.E. 6). This education and formation serves in developing and promoting in children the fullness of growth and human dignity.

Therefore to carry out this duty adequately, «there must be the closest cooperation between parents and the teachers to whom they entrust their


145 Cf. A. M. Abate, Matrimonio nella Nuova Legislazione Canonica, cit., p.17.
children to be educated. In fulfilling their task, teachers are to collaborate closely with the parents and willingly listen to them; associations and meetings of parents are to be set up and held in high esteem.\textsuperscript{146} John Paul II, emphasizes that: «Thus the fundamental task of the family is to serve life, to actualize in history the original blessing of the Creator—that of transmitting by procreation the divine image from person to person» (FC, 28). Again he affirms that:

The mission to educate demands that Christian parents should present to their children all the topics that are necessary for the gradual maturing of their personality from a Christian and ecclesial point of view. They will therefore follow the educational lines mentioned above, taking care to show their children the depths of significance to which the faith and love of Jesus Christ can lead. Furthermore, their awareness that the Lord is entrusting to them the growth of a child of God, a brother or sister of Christ, a temple of the Holy Spirit, a member of the Church, will support Christian parents in their task of strengthening the gift of divine grace in their children's souls. [...] By virtue of their ministry of educating, parents are, through the witness of their lives, the first heralds of the Gospel for their children. Furthermore, by praying with their children, by reading the word of God with them and by introducing them deeply through Christian initiation into the Body of Christ—both the Eucharistic and the ecclesial Body—they become fully parents, in that they are begetters not only of bodily life but also of the life that through the Spirit's renewal flows from the Cross and Resurrection of Christ.\textsuperscript{147}

This confirms the role and duty which parents have regarding the formation and education of their children. Dalla Torre talking of intrinsic indissolubility draws the conclusion that, the procreation of the offspring demands stability of the conjugal bond.

The scope of marriage is not only material, that of perpetuating man namely, the guaranteeing on the universal plan the survival of the human species; but also that of spiritual and ethical, of leading the living being to a reasonable and social life, to the integral formation of his personality, namely, the making of this individual a person. To

\textsuperscript{146} Can. 796 §2.
\textsuperscript{147} FC, no. 39.
arrive at this end, it is necessary for a lasting cohabitation because the family is a propagating and educating society that must provide not only the reproduction of an animal, but also of a moral being, a person.  

He affirms in this text that, it is not enough to procreate and perpetuate human beings but it is necessary at the same time, to develop man properly to the integral formation of his personality. In this same light Garcia underlines that, «the education of the offspring lasts for years, i.e., practically it involves his whole life, therefore, it requires that family life once established, be neither discontinued nor disrupted. […]» Again he affirms that «the education of children cannot be properly attained without the united efforts and close cooperation of both parents. Their love, protection, care and guidance play a vital role in true education, so much so that, they are bound by a grave obligation to give these to their offspring. […]» Alvarez in his book brings out the social end of marriage which consist in the spouses procreation and education of the offspring.

Miralles also lay some emphasis on the good of the offspring especially in relation to their education. He is convinced of the fact that, in order to achieve the good of the offspring, the indissolubility in the conjugal bond is necessary. Garcia also attempts to look at marriages which are not

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149 E. GARCIA, Indissoluble marriage and divorce, in Philippiniana Sacra, 7 (1972), p. 60.
150 Ibid.
152 Cf. A. MIRALLES, Il matrimonio teologia e vita, cit., p. 87. He goes further by explaining that, «the good of the children demands indissolubility of the conjugal bond, this is not only concerning the transmission of the physical life but also for the education of the child and not only for some years but right to human maturity». The translation is mine. Some other bibliographies which could be consulted here among others are: F. T. COLONNA, “Bonum coniugum”. Dal “mutuum adiutorium” al “consortium totius vitae”, in AA.VV., «Institia et Indicium» Studi di diritto matrimonial e processuale canonico in onori di Antonio Stankiewicz, (a cura di J. KOWAL e J. LLOBELL), Vol. I, Città del Vaticano 2010, pp. 155-168; C. J. ERRÁZURIZ MACKENNA, Riflessione circa il “Bonum coniugum” e la nullità del matrimonio, in AA.VV., «Institia et Indicium» Studi di
productive or consummated and he is of the opinion that such marriages have to remain indissoluble.\textsuperscript{153} To sum up, «the family, which is founded and given life by love, is a community of persons: of husband and wife, of parents and children, of relatives. Its first task is to live with fidelity the reality of communion in a constant effort to develop an authentic community of persons». (FC, 18). The family is a community essentially educative and the spouses are the first educators.\textsuperscript{154} «Bonum prolis» can be contemplated in two distinct perspectives:\textsuperscript{155} First from the perspective of «bonum familiae»: that is when the children are effectively persons that integrate the family community. Every son that enters to be part of the family weighs in the global evaluation of the «bonum familiae» and consequently in that of the «bonum coniugum», since every person is the «common good»\textsuperscript{156}. On the one hand, conjugal love is ordained to the proper fecundity of conjugal acts; on the other hand, the same conjugal relation is intrinsically ordained to the son, in the sense that, it acquires his full intelligibility only in relation to the son.


\textsuperscript{153} Cf. E. GARCIA, \textit{Indissoluble marriage}, cit., pp. 60-61. He then affirms that: «The institution of marriage remains such even though in particular cases it produces no children to the spouses. In itself, marriage is ordained to the achievement of its natural end, that is to the procreation and education of the offspring. In this case when the latter is wanting, the marriage ordination remains. And it is precisely on this ordination of marriage, to the achievement of its natural ends, that marriage is endowed with indissolubility. The reason why a couple without children cannot dissolve their union is not that they actually have the obligation of giving education to the offspring (which evidently is wanting), but for the simple reason that their marriage, as any other marriage, has in its very root and origin a natural ordination to the offspring and is therefore, endowed with the essential propriety of indissolubility». \textit{Ibid.}

\textsuperscript{154} Cf. LG, 11: «From the marriage of Christians there comes the family in which new citizens of human society are born and, by the grace of the Holy spirit in baptism, those are made children of God so that the people of God may be perpetuated throughout the centuries. […] They must foster the vocation which is proper to each child, and this with special care if it be to religion».


\textsuperscript{156} Cf. LF, no. 11.
2.4.2. The good of the spouses

The Second chapter of the Book of Genesis which talks of the creation of the first human couple male and female did not only guarantee the transmission of human life, but offered to the first man a help which was similar to him. It is from this point of view that mutual help is also considered as an end of marriage, with a terminology which became frequent in theological and canonical texts and which is found in the 1917 Code (Cf. Can. 1013,§1) and in the Encyclical Casti Connubii. The new Code of Canon Law therefore has abandoned the terminology «mutual help» of the 1917 Code in order to indicate this other end of marriage, «the good of the spouse». The finality of the good of the spouses (bonum coniugum) in can. 1055 of the 1983 Code, as an end of marriage having the same juridical relevance with the good of the offspring (bonum Prolis) marks a shift whose correct interpretation has also been subject to a lot of discussion. The term which is used in the 1983 Code denotes that, marriage is described as a sharing of the whole of life (consortium totius vitae), which is ordered to the good of the spouses (ad bonum coniugum) and to the good of the offspring (ad prolem) as two essential aspects of the same unitary concept of marriage, but does exclude the hierarchical primacy which is derived from the specific nature of the conjugal relationship.

The good of the spouses (Bonum Coniugum) is a traditional value in the doctrine of canonical marriage. According to Miralles, St. Thomas described


158 Cf. DS no. 3718.

159 «Matrimoniale foedus, quo vir et mulier inter se totius vitae consortium constituant, indole sua naturali ad bonum coniugum atquae ad prolis generationem et educationem ordinatum, […]» (Can. 1055,§1).


this end as «mutual help which the spouses render reciprocally in domestic life».\footnote{162} Domestic things in this regard refers to that community of life (a domestic life) which implies an indivisible familiarity (\textit{individua vitae consuetudo})\footnote{163}, which is not simply stable but should be specifically conjugal, with the intimate characteristics of the spouses. The family dimension of their union is characterized by intimacy which brings them a personal benefice which cannot be found in any human association, which is not itself conjugal.\footnote{164} The scope of consent is to create a conjugal union, which is an interpersonal relationship at the same time (\textit{bonum coniugum}) and family (\textit{bonum familiae}). But this refers to personal goods, goods which are loved in themselves and should never be exploited.\footnote{165} The good of the spouses being the object of matrimonial consent, acquires immediately a role which is absolutely central within the canonical matrimonial system.\footnote{166}

Before Vatican II, Pius II expressed his mind regarding this second end of marriage. This he did in order to underline the ordination of this end of marriage to that of the procreation and education of the children. He said: «...perfect conjugal life in its nature signifies also the total dedication of parents to the benefit of their children, and conjugal love in its force and in its tenderness is in itself a postulate of the most sincere care of children and the

\footnote{162} Cf. A. Miralles, \textit{Il matrimonio teologia e vita}, cit., p. 65. \textit{«(...) quantum ad secundum finem matrimonii, qui est mutuum obsequium sibi a coniugi bus in rebus domesticis impensum»: T. Aquinas, q.41, a. 1.c.}


\footnote{164} Cf. A. Miralles, \textit{Il matrimonio teologia e vita}, cit., p. 66; This is what is expressed in this definition of marriage: «Matrimonium autem, ut supra dictum est, non est essentialiter ipsa coniunctio carnalis: sed quaedam association viri et uxor is in ordine ad carnalem copulam et alia quae ex consequenti ad virum et uxorem pertinent, secundum quod eis datur potestas in invicem respect carnalis copulae»: T. Aquinas, \textit{Suppl.} q. 48, a. 1.c.


guarantee of its accomplishment». Marriage life which corresponds to the same nature of marriage implies a specific help between the man and woman. This help is derived above all from the gift of self, established at the moment in which man and woman give themselves reciprocally giving place to a conjugal community, but raised effective daily. In this light their daily experience lived of their unity (una caro), is particularly gratifying or rewarding, from the moment that conjugal life becomes the aspiration of love to the effective union. What they constitute permanently is una caro (one flesh) and this una caro is identified with the essence of matrimony: therefore, the spouses are one flesh. Marriage before being what it is, union in activity, in life and in love, is a juridic bond, it is unity of natures. From this derives the duties and ways of living, but these does not correspond the essence. Hervada affirms that: «from the point of view of literal biblical exegesis, the common interpretation holds that, this (una caro) wants to allude to a union that is so deep and intimate, so that the two spouses, without ceasing from being two persons, different as it is obviously, also are formed ‘as one person or one flesh’».

Love in this sense becomes not only the principle animator of the couple’s life, but also the motive of life and joy. In the same light, GS does not describe clearly other ends of marriage as it does with the procreation and education of the children, but at the same time offers indications which are very important and precious. In this regard the idea of the end is not expressed which means it is implicit. It is realized through intimate union not only due to activities but also of persons. It is crucial to this understanding the experience of that growing unity between the spouses and which enriches them a lot, since it is the fruit of the reciprocal gift of itself, in which the human

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170 Ibid., p. 252.

person is fully found.\textsuperscript{172} The "good of the spouses", is the "good" that God seeks to
draw from marriage for each of the spouses which consists not merely in
possible human satisfactions, but essentially in the maturing of husband and
wife by persevering in the task of loving and caring for each other and their
children over a life-time; "in good times and in bad", when it is easy and when
it is tough.\textsuperscript{173} The institution of marriage is ordered for the good of the spouses
and this is an all-embracing expression. This includes the physical, emotional,
intellectual and spiritual welfare of the couple. For this common good to be
achieved, each must be intent on promoting the good of the other.\textsuperscript{174} Burke
expresses the idea that,

One can debate about the hierarchy between the ends of matrimony,
i.e. whether procreation is still to be regarded as a primary end, or
whether (as would appear from can. 1055) the "\textit{bonum coniugum}" – the
good of the spouses – stands on equal footing. One can also transcend
this debate (as I would prefer to do) by considering whether, instead of
contrasting these ends, one should not rather see them as interrelated
and necessarily connected.\textsuperscript{175}

\textsuperscript{172} \textit{Ibid}; «Haec similitude [between the union of the sons of God and the union of the divine
persons] manifestat hominem, qui in terris sola creatura est quam Deus propter seipsam
voluerit, plene seipsum invenire non posse nisi per sincerum sui ipsius donum» GS, no. 24c) In
this very context Miralles emphasis on the idea that: «in another passage we find explicit the
idea of the end, although the term mutual help or the good of the spouses was not used: "But
marriage, is not merely for the procreation of children: its nature as an indissoluble contract
between two people and the good of the children demand that the mutual love of partners be
properly shown, that it should grow and mature. Even in cases where despite the intense desire
of the spouses there are no children, marriage still retains its character of being a whole
communion of life and preserves its value and indissolubility”». (GS 50c). The translation is
mine. «Marriage here therefore serves in developing and bringing to maturity the mutual love
of the spouses; their communion of the whole life ordained not exclusively only to procreation
but also for themselves». \textit{Ibid.}, pp. 66-67.The translation is mine.

\textsuperscript{173} Cf. C. \textsc{Burke}, \textit{Marriage in Encyclopedia of Catholic Doctrine, Our Sunday Visitor}, 1997 in \texttt{www.
cormacburke.Org.ke}.

\textsuperscript{174} Cf. L. \textsc{Ors}, \textit{Marriage in Canon law, texts and comments Reflections and Questions}, Wilmington
Delaware 1986, p. 53.

According to him, "Bonum coniugum" is a comparatively new term in canonical usage and its precise meaning and content have not yet been satisfactorily determined. He mentioned that: «personally I am inclined to think that its essence is to be found in the line of the ‘mutual interior formation’ of the spouses, their ‘constant concern to help each other toward perfection,’ which ‘Casti Connubii’ described as a main reason for marriage understood in the sense of a life-communion (‘totius vitae communio’) or partnership. This view would seem to find confirmation in the passages from the Vatican II documents mentioned – in reference to canon 1055 of the new code of Canon Law. It is important to note that "Gaudium et Spes" specifically relates the unbreakable character of the marriage bond to the "Bonum coniugum" the point of this surely being that, all the effort and sacrifice involved in being faithful to the unbreakable and exclusive character of the bond – in good times and in bad, etc. – serves to develop and perfect the personalities of the spouses. A similar reading is no doubt to be made of that passage in "Gaudium et Spes" which states that «children greatly contribute to the good of their parents» (no 50). Children enrich their parents' lives in many human ways, and not least in virtue of the generous dedication they tend to evoke in them.

According to Can 1055.§1, «the marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature, is ordered to the well-being of the spouses and to the procreation and upbringing of children». It is glaring that the 1983 Code does not mention the bonum coniugum with the essential properties of marriage instead it is can. 1055, §1 that mentions it. Bonum coniugum in its

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178 «Hoc vinculum sacrum intuiri boni, tum coniugum et prolis tum societatis, non ex humano arbitrio pendent...» (GS 48).
181 See can. 1056.
ontological perspective regards the very essence of marriage and being also the matrimonial covenant itself, it incorporates the two essential properties of marriage which are unity and indissolubility. Since bonum coniugum is being presented as the essence of marriage covenant, it must therefore be reckoned in its existential reality. While can. 1055 §1 establishes the meaning of bonum coniugum in its ontological perspective, Can. 1057 §2 brings out the same understanding concerning the bonum coniugum but in its existential perspective.\(^{182}\) The expression “the good of the spouses” has been accepted by Jurisprudence without so much discussion and further development on this is to be determined by Jurisprudence and doctrine.\(^{183}\) In this light Pompedda affirms:

\[
\text{What is meant by the term “bonum coniugum”? this must be left to}
\text{jurisprudence and to your further study and reflection […] The term}
\text{“bonum coniugum” or the “good of the spouses” mentioned in the 1983}
\text{Code is “pregnant” or “filled” with meaning. It is the most profound}
\text{expression. This means it is both the good of the person in himself or}
\text{herself and the good of the other; but both to the extent that they are}
\text{both participants in the same reality, the same consortium, which is}
\text{matrimony.}\(^{184}\)
\]

This affirmation of Pompedda brings out three important meanings: first the term “bonum coniugum” is filled with meaning which implies that it is not as simple or easy as some people seem to consider it. Secondly this term implies the good of both spouses and lastly the term implies that, in it are found elements which are essential and those which are not essential. Wrenn, equally affirms that, the good of the spouses is an essential element of marriage.\(^{185}\) John Paul II also expresses the idea that «[…]marriage and the family are inseparable, because the masculinity and femininity of the married couple are constitutively open to the gift of children. Without this openness


\(^{185}\) See L. G. WRENN, Annulments, Washinton D.C. 1983, p. 149.
there could not even be a good of the spouses worthy of the name». This confirms the idea that, the good of the spouses is very important in the important role of bringing the children up.

This term “good of the spouses” as used in can. 1055 may also be the addition of another fourth good to St. Augustine’s original three bona, in this regard making the good of the spouses one of the essential objects of consent referred to generally in can. 1101 §2. But goes ahead to say that, this position cannot be sustained since in can. 1055 the term is used to describe the finality of marriage whereas can. 1101 §2 refers instead to components of the consensual act which vitiate consent. Garcia is of the opinion that mutual help and support of the spouses is possible when they do not separate from each other or abandon each other. This mutual help has its strength in conjugal love which demands unselfish and absolute surrender of the spouses to one another. In another instance he explains that:

The possibility of obtaining complete divorce sows and encourages antagonistic feelings between the spouses. Suspicions and jealousies will be very much alive. When there exists a clear conscience on the perpetuity and indissolubility of marriage, each spouse tries to adjust himself to the character and disposition of the other. They accept and bear with some more or less resignation each other’s defects and shortcomings, and all differences and disputes are suppressed for the sake of domestic peace and harmony sought and desired by both parties. On the contrary, when such conscience is crushed even the most trivial difference will grow immensely, and self-esteem and pride will know no bounds. Sacrifice and submission, the basis of domestic happiness, are unknown where divorce throws forth its ominous shadow.

Indissolubility can be enhanced when there is mutual help between the spouses. This indissolubility of marriage is also confirmed by Miralles when he

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186 JOHN PAUL II, Allocation to the Rota, (February 1, 2001), cit., no. 5.
188 E. GARCIA, Indissoluble marriage and divorce, cit., pp. 54-88.
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states that, the good of the spouses demands the indissolubility of their union.\(^{189}\)

2. 5. The challenge of divorce and the law of God

Divorce as a challenge to the law of God can be deduced right from Sacred Scriptures. The Gospels of Matthew and Mark report to us the answer which Christ gave to the Pharisees, when they questioned about the indissolubility of marriage, referring then to the Law of Moses which admitted divorce in certain cases. To this effect, Christ reminding them of the first chapters of the book of Genesis, answered them in the following words: «have you not read that he who made them from the beginning made them male and female, and said, ‘for this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one flesh’? So they are no longer two but one flesh. What, therefore, God has joined together, let not man put asunder».\(^{190}\) Again Christ referring to their questions about the Law of Moses, added: «for your hardness of heart Moses allowed you to divorce your wives, but from the beginning it was not so (Mt 19:3; Mk 12:2ff) […]».\(^{191}\) John Paul II stressed on the idea that:


\(^{191}\) Ibid. He then goes further by emphasizing that: «Christ meaning has a historical meaning—but not only a historical one. Men of all time raise the question on the same subject. Our contemporaries, too. do so, but in their questions they do not refer to the law of Moses, which admitted the certificate of divorce, but to other circumstances and other laws. These questions of theirs are charged with problems, unknown to Christ’s interlocutors». Ibid., pp. 171-172.

Again John Paul II affirms that: «Among the answers that Christ would give to men of our time and to their questions, … the one he gave to the Pharisees is fundamental. Answering those questions, Christ would refer above all to the ‘beginning.’ He would do so, perhaps, all the more resolutely and essentially in that the interior and at the same time cultural situation of modern man seems to be moving away from that ‘beginning’ and assuming forms and dimensions which diverge from the biblical image of the ‘beginning’ into points that are clearly more and more distant». Ibid.
Christ’s answer called for a particularly thorough analysis. In that answer, in fact, the fundamental and elementary truths about the human being, as man and woman, were recalled. It is the answer through which we catch the glimpse of the very structure of human identity in the dimensions of the mystery of creation and, at the same time, in the perspective of the mystery of redemption. Without that, there is no way of constructing a theological anthropology and, in its context, a “theology of the body,” from which also the view, fully Christian, of marriage and the family takes its origin.\textsuperscript{192}

Paul VI pointed this in his encyclical which he dedicated to problems of marriage and procreation at that time. In his responsible meaning on the human and Christian plans, he therefore referred to the “total vision of man,” without which no adequate answer could be given to questions connected with marriage and procreation. For him this total vision of man must be constructed right from the “beginning”.\textsuperscript{193}

The indissolubility of marriage presents an essential value, that is, for the full realization of the personal life of the spouses, two essential complementary human beings, under the physical and psychological aspects, for the stability and progress of the family and for the good of the same society.\textsuperscript{194} John Paul II in FC no. 20.1 teaches that: «Conjugal communion is characterized not only by its unity but also by its indissolubility: «As a mutual gift of two persons, this intimate union, as well as the good of children, imposes total fidelity on the spouses and argues for an unbreakable oneness between them».\textsuperscript{195} Again John Paul II in his allocution to the Roman Rota

\textsuperscript{192} \textit{Ibid.}, p. 173. For John Paul II, «The answer given by Christ to the Pharisees also wishes man, male and female, to be this subject, that is, a subject who decides his own actions in the light of the complete truth about himself, since it is the original truth, or the foundation of genuinely human experiences. This is the truth that Christ makes us to seek from the ‘beginning’». \textit{Ibid.}, p. 174.

\textsuperscript{193} HV, no. 7.


\textsuperscript{195} Cf. also GS, no. 48. The same FC no. 20.2 affirms that: «to all those who, in our times, consider it too difficult, or indeed impossible, to be bound to one person for the whole life, and to those caught up in a culture that rejects the indissolubility of marriage and openly
entitled «one cannot give in to the divorce mentality» explains that, a positive presentation of the indissoluble union is important, in order to be able to rediscover its goodness and beauty. He feels it is important to overcome the idea of looking at indissolubility as a restriction of the freedom of the contracting parties, and seeing it as a burden that at times can become unbearable. In this light indissolubility, is seen as a law that is extrinsic to marriage, as an “imposition” of a norm against the “legitimate” expectations of the further fulfillment of the person. Also added to this is the widespread notion that indissoluble marriage is only for believers, who cannot try to “impose” it on the rest of civil society. John Paul II is very convinced that: «to give a valid and complete response to this problem one must begin with the word of God».

According to Jesus’ teaching, it is God who has joined man and woman together in the marital bond. This union certainly takes place through the free consent of both spouses, but this consent although human, concerns a plan that is divine. In other words, «it is the natural dimension of the union and more concretely, man’s nature created by God, himself that provides the mocks the commitment of spouses to fidelity, it is necessary to reconfirm the good news of the definitive nature of that conjugal love that has in Christ its foundation and strength (Cf. Eph 5:25).».

«Being rooted in the personal and total self-giving of the couple, and being required by the good of the children, the indissolubility of marriage finds its ultimate truth in the plan that God has manifested in his revelation: he wills and communicates the indissolubility of marriage as a fruit, as a sign and a requirement of the absolutely faithful love that God has for man and that the Lord Jesus has for the Church». FC, no. 20.3.


197 Ibid.

198 Ibid., no. 2, pp. 267-268.

199 He mentions here concretely the passage of the gospel of Mt that recounts Jesus’ conversation about divorce with some Pharisees and with his disciples. See Mt 19: 3-12.

indispensable key for interpreting the essential properties of marriage.\textsuperscript{201} Another reinforcement which the properties obtain in Christian marriage by virtue of the sacrament\textsuperscript{202} is based on the foundation of natural law which, if removed, would make incomprehensible the very work of salvation and elevation of the conjugal reality that Christ effected once and for all.\textsuperscript{203} Treating indissolubility not as a juridical norm but as a mere ideal empties of meaning the unequivocal declaration of Jesus Christ, who absolutely refused divorce because «from the beginning it was not so».\textsuperscript{204}

According to Dalla Torre, the internal logic which rules the family institution and within which the law of indissolubility is inscribed, is correlated to the wider logic that rules the entire civil society and the family being part of it. It can be affirmed that this indissolubility is presupposed also by the social community. In this regard, following the law of nature, marriage is ordained not only for the good of the spouses and that of the offspring, but also for the civil society for which its dissolution, in as much as it concretizes an antisocial fact, is equally anti-natural.\textsuperscript{205} He therefore views divorce as anti-social in the following words:

\begin{quote}
By the fact that indissolubility of the bond favors the good manners and the more faithful love between the spouses; it promotes a more prompt and orderly care of the family household; knowing that the spouses are being bound forever, it urges and confirms the bond of relationship and affinity, avoiding those principles of discord that inevitably appear when the spouses break the bond which unites them.\textsuperscript{206}
\end{quote}

\textsuperscript{201} Ibid.
\textsuperscript{202} Cf. Can. 1056.
\textsuperscript{203} Cf. JOHN PAUL II, Allocations, (January 28, 2002), cit., no. 3.
\textsuperscript{204} Mt 19, 8.
\textsuperscript{205} Cf. G. DALLA TORRE, L’indissolubilità intrinseca del matrimonio nella concezione cristiana del diritto naturale, in persona y derecho, cit., p. 205.
\textsuperscript{206} Ibid.
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At the same time St. Thomas sees «indissolubility as the source of morality not only within the family but also of the entire society». Minoli is of the opinion that, «what the society has as its essential growth and existence is the family (primary cells), within which comes the procreation and education of the children. [...] And for this, they render an essential service to the whole society, and this cannot be done conveniently if this stability is lacking». He goes further by affirming that, «on the contrary, divorce brings social damages especially to the children [...]». In this light the quality of their education will also suffer in case of divorce on the part of the parents.

Garcia stresses on the idea that «marriage has always been regarded as an inviolable social institution upon which both the social and ecclesiastical societies are based. The constant experience among all people is that, the stronger the family ties, the more vigorous and stronger will a nation grow up. This is a fact which no one can deny». Garcia here sustains that marriage is indissoluble and it belongs to the natural institution.

Burke clearly states that, marriage is indissoluble of its nature and this was explicitly taught by Jesus Christ (Mt 19:8-9). He then emphasized that, «our Lord’s teaching has been re-echoed and solemnly confirmed time and

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207 S. Th., Summa Contra Gentiles, III, 123, no. 2966.

208 E. Minoli, L’indissolubilità al servizio del bene comune, in AA.VV., Ricerca delle ragioni umani e sociali dell’indissolubilità del matrimonio, Atti del Convegno Nazionale Unione uomini e donne (13-16 Giugno), Roma 1968, pp. 49-72. The translation is mine.

209 Ibid.

210 See Ibid., p. 65.

211 E. Garcia, Indissoluble marriage and divorce, cit., p. 81. At the same time he points out that, «there is an essential difference between the inconveniences felt in an indissoluble marriage and the evils which are caused by divorce. The former are personal in character. They have no direct impact on the society and the latter are social in nature. They adversely affect the education of the offspring, family life, and consequently the social vitality of the nation. The society may justly claim that the public and common welfare should prevail over the individual inconveniences». Ibid., p. 84.
again by the Catholic Church.\textsuperscript{212} In this regard, the Church therefore teaches that, every true marriage (whether sacramental or not) is indissoluble.\textsuperscript{213} In this light, his purpose is not to restate this unvarying teaching, but he rather wants to suggest the following: «(1) that divorce, even on the level of individual and earthly happiness, tends to do more harm than good; and (2) that indissolubility, far from being an enemy of human love or a restraint on human fulfillment, is meant to be their support and bulwark.\textsuperscript{214} John Paul II, expresses that:

This truth about the indissolubility of marriage, like the entire Christian message, is addressed to men and women of every time and place. In order to make that a reality, testimony on that truth must be given by the Church and, in particular, by individual families as “domestic Churches” in which husband and wife recognize that they are bound to each other forever by a bond that demands a love that is ever renewed, generous and ready for sacrifice.\textsuperscript{215}

John Paul II underline that: «whenever a couple is going through difficulties, the sympathy of pastors, and of other faithful must be combined with clarity and fortitude in remembering that conjugal love is the way to work out a positive solution to their crisis»\textsuperscript{216} Given that God has united them by means of an indissoluble bond, the husband and wife by utilizing all their human resources, together with good will, and by, above all, confiding in the good assistance of divine grace, can and should from their moments of crisis be renewed and strengthened. He then exhorts that eventual solutions must be

\begin{itemize}
\item \textsuperscript{212} Cf. COUNCIL OF TRENT, sess. 24, can 5; Vatican Council II, Constitution on the Church in the modern world, GS, 48.
\item \textsuperscript{213} Cf. C. BURKE, Covenanted Happiness, Love and Commitment in Marriage, New Jersey 1990, p. 66.
\item \textsuperscript{214} Ibid., «Burke feels that, the arguments backing each of these affirmations complement one another and at times are identical», Ibid., pp. 66-67.
\item \textsuperscript{215} JOHN PAUL II, Allocution, (January 28, 2002), cit., no. 5.
\item \textsuperscript{216} Ibid., «The doctrinal aspects in this case should be transmitted, clarified, and defended, but even more important are consistent actions».
\end{itemize}
examined in such a way that the indissolubility of the bond, whenever it turns out to be validly contracted, should continue to be safeguarded.  

2.6. Indissolubility from the personalist’s dimension of marriage

John Paul II in his allocution to the Roman Rota expressed the following regarding indissolubility from the personalist’s dimension of marriage. His thoughts could be summarized in the following words:

In a vision of authentic personalism, the Church’s teaching implies the affirmation that marriage can be established as an indissoluble bond between the persons of the spouses. Consequently, that conception of the conjugal union which would put this possibility in doubt and lead to a denial of the existence of marriage wherever problems arise in the shared life of the spouses, would clash with a true personalist dimension. At the root of such an attitude we see an individualistic culture, which is antithetical to a true personalism.  

In this affirmation he brought out two important aspects: first that marriage can be established as an indissoluble bond between the spouses and secondly the concept of conjugal union which can put this possibility in doubt leading to a denial of the existence of marriage in the course of problems between the spouses. Hence individualism presupposes a use of freedom in which the subject does what he wants, in which he himself is the one to “establish the truth” of whatever he finds pleasing or useful. He does not tolerate the fact that someone else “wants” or demands something from him in the name of an objective truth. He does not want to “give” to another on the basis of truth; he does not want to become a “sincere gift.”

The personalist aspect of Christian marriage implies an integral vision of man which, in the light of faith, takes up and confirms whatever we can know.

\[\text{\textsuperscript{217} Cf. JOHN PAUL II, }\textit{Allocation}, (January 28, 2002), cit., no. 5.\]

\[\text{\textsuperscript{218} JOHN PAUL II, }\textit{Allocation to the Roman Rota}, (January 27, 1997), no. 4, in AAS 89 (1997), pp. 486-489.\]

\[\text{\textsuperscript{219} Cf. LF, no. 14.}\]
by our natural powers. It is characterized by a sound realism in its conception of personal freedom, placed between the limits and influences of a human nature burdened by sin and the always sufficient help of divine grace.\(^{220}\) This view proper to Christian anthropology also includes an awareness of the need for sacrifice, for the acceptance of suffering and the struggle as indispensable realities for being faithful to one’s duties. In the handling of marriage cases, it would be a mistake to have a too “idealized” notion, so to speak, of the marital relationship, which would lead one to interpret the normal difficulties that can occur as the couple progresses towards full and reciprocal emotional integration as though there were a genuine incapacity to assume the obligations of marriage.\(^{221}\) The value of the human society can only be perceived when we see and appreciate the value of each member separately.\(^{222}\) The adequate base of any behavior together with others and of every community is the common good.\(^{223}\)

The recognition of the dignity of the human person, as understood according to the principles of sound anthropology, appears to be foremost in


\(^{221}\) Ibid. He goes further to emphasize that: «A correct evaluation of the personalist elements also requires that we keep in mind the essential nature of the person and, concretely, the essential nature of his conjugal dimension and the resulting natural inclination to marriage. A personalist conception based on pure subjectivism and, as such, unmindful of the nature of the human person—obviously taking the word “nature” in the metaphysical sense—would lend itself to every sort of ambiguity, even in the canonical domain. Marriage certainly has an essential nature, described in canon 1055, which pervades the entire teaching concerning marriage, as can be seen in the concepts of “essential property,” “essential element,” “essential rights and obligations of marriage,” etc. This essential reality is a possibility open in principle to every man and woman; indeed, it represents a true vocation for the great majority of the human race. Consequently, in assessing the capacity or the act of consent necessary for the celebration of a valid marriage, one cannot demand what is not possible to require of the majority of people. It is not a question of a pragmatic or convenient minimalism, but of a realistic view of the human person, as a being always growing, called to make responsible choices with his inborn abilities, continuously enriching them by his own efforts and the help of grace» Ibid.


this approach, and rightly so. The human being is at the center of creation and is its crowning glory. Although some animals remain partnered for life, we do not speak of marriages among other beings. Rather, this "great Sacrament" is reserved for humans. It is based on the complementarity of man and woman (GS, 48). According to Burke,

Vatican II sought to offer a renewed vision of marriage, of marital love and commitment. How is it that this renewed vision seems so infrequently to have been translated into practice? A main reason, I feel, is much post-conciliar reflection on marriage has not always grasped the Christian anthropology which is a key to conciliar thinking about human realities, especially as applied to the marital covenant. The result is that the understanding and presentation of marriage has been largely, though no doubt unconsciously, colored by the secular anthropology dominant in today's world, with its individualistic view of the human person, seeing the key to fulfillment in self: self-identification, self-assertion, self-concern.224

In our study in this part of the work, we shall look at personalism and self-giving, the conjugal instinct, love as a duty and not just a right, happiness and difficulties, the saving strength of indissolubility, indissolubility presupposes justice, and the Christian anthropology on indissolubility.

224 C. BURKE, Marriage, Annulment, and the Quest for Lasting Commitment (Catholic World Report, Jan. 1996, pp. 54-61), in www.cormachburke.org.ke; He also expands on the idea that: «The current crisis about indissolubility - the tendency to look on it as an "anti-value" - finds much of its explanation in this individualism, present outside and inside the Church. Individualism fosters a fundamentally self-centered approach to marriage, seeking to get from it rather than being prepared to give in it: will - this union, this liaison, this arrangement - make me happy? Then marriage becomes at best a tentative agreement between two individuals, each inspired by self-interest, rather than a shared endeavor of a couple who together want to build a home for themselves and for their children. With that approach no marriage is likely to last». Ibid.

«Contrasted with this individualistic view, we have the distinctive anthropology of Vatican II which includes the christian personalism mentioned earlier. Developed in great power by Pope John Paul II, it is fundamental to a deeper human understanding of Christian life and of marriage in particular». Ibid.
2.6.1. Personalism and self-giving

Alzate affirms that, indissolubility primarily derives its essence from the mutual personal giving: a «giving of the person to the person». It is in this personal giving that true marriage personalism finds its roots. The dignity of the human person does not only tell its relation to being, it tells also the relation to the ends which he is called: the vocation of man to love through the sincere giving of self. Outside the order of the ends they do not have rights that originate from the human dignity.\(^{225}\) According to Burke,\(^{226}\) procreativity and the unbreakable character of the conjugal bond which are two aspects of marriage – traditionally regarded in Christian thinking as essential matrimonial properties – are being specially questioned today.\(^{227}\) For him, a current attitude, also among some Catholics, is that these two aspects are not "values" in a personalist sense, but they are rather potential or real obstacles to personal fulfillment and happiness. Moreover, «it is at times suggested within the Church that, this diffident attitude about having children and about indissolubility is in some way rooted in or justified by the personalism of the Second Vatican Council».\(^{228}\) Burke believes that, this latter idea does not stand analysis.\(^{229}\) Man is in fact made for others. Hence derives the contemporary analysis of conjugal consent as the gift of self mutually made and accepted.\(^{230}\) Within this renewed Christian understanding, in other words, the happiness and fulfillment that marriage promises depends on the spouses' capacity for self-donation.\(^{231}\)


\(^{227}\) Ibid., p. 48.

\(^{228}\) Ibid.

\(^{229}\) GS, no. 24.


He emphasizes on the idea that there is a deep contrast between the idea of "self-sufficiency" presented by much of modern psychology, and the Christian ideal of realization through self-giving. He therefore believes that, it is «only by transcending themselves and living a life of self-giving and openness to truth and love that individuals reach fulfillment». In this case, it is important the experience of being fulfilled in the structure of the operative “I” in regard to the understanding of causal relationships that is given between persons and in behavioral actions. The metaphysical understanding of the subjectivity of men already contains in itself the fundamental idea of the relationship between to be and to act, expressed as “operari sequitur esse.” From this conception Wojtyla wishes to explore this revelation of being and human behavior. Thus, if acting is derived from being, therefore, through human operari (way of operating) we know the esse. It is not only through human acting or behavior that we know man as a subject, but we need to enter in a more adequate way into the subjectivity of men in order to understand them as individual and personal subjects. The personalist norm demands that, human relationships be equitative and connected, but Wojtyla signals that, given the great dignity of the human person, only love is the foundation that permits one to be able to come nearer that “justice and equity.” It is

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232 Ibid.
236 Cf. C. SANDOVAL RANGEL, El valor de la persona como fundamento del amor esponsal en el pensamiento filosófico de Karol Wojtyla, Roma 2003, p. 62.

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something right to love a person and not treat him/her as a medium.\textsuperscript{239} The understanding of the human person as such is orientated to respond and to pay attention in reference to the human experience, such as the existential problems of men in the contemporary world.\textsuperscript{240} Self-sufficiency has always been a radical temptation for man; one that he needs to overcome if he is to give himself and realize himself, and in the end be saved.\textsuperscript{241} Marriage, which is a covenant of self-giving, presents itself in the plan of nature as a safeguard against the trap of self-sufficiency.\textsuperscript{242} As Vatican II says, «this [conjugal] partnership of man and woman constitutes the first form of communion between persons. For by his innermost nature man is a social being; and if he does not enter into relations with others he can neither live nor develop his gifts».\textsuperscript{243}

A true personalist analysis of marriage underlines how its traditional properties – the exclusiveness of the conjugal bond, its openness to life, and its unbreakable character – contribute so powerfully to the realization or fulfillment of the person who marries. I have elsewhere considered the personalist aspect of procreation, maintaining that to have children is not only a natural human tendency but one which also contributes powerfully to the human maturing, happiness and fulfillment of the spouses.\textsuperscript{244}


\textsuperscript{240} K. Wojtyla, \textit{The Acting Person}, Boston 1979, pp. 28-30. «In another fundamental text regarding this, Wojtyla, examine thoroughly the «subjectivism-objectivism antinomy, that is hidden behind idealism-realism which created an atmosphere that was less favorable to the objective which they occupied themselves of the subjectivity of man». K. Wojtyla, \textit{El hombre y su destino}, Madrid 1998, pp. 25-26.

\textsuperscript{241} Cf. C. Burke, \textit{Marriage: A personalist focus on the indissolubility}, cit., p. 48.

\textsuperscript{242} Ibid.

\textsuperscript{243} GS, no. 12.

His present purpose is therefore to consider how indissolubility can and should be understood in personalist terms. In connection to this topic, Burke also looked at the reactions regarding the truth of indissolubility. "It is of course an integral part of the Catholic faith that marriage is indissoluble by nature that is, by divine design. He goes on to explain that:

It need be no matter of surprise if people's first human reaction to this truth is negative. So it was initially with the Apostles, when Our Lord himself reaffirmed its validity (Mt 19, 3-10). «The disciples said to him, 'If such is the case of a man with his wife, it is not wise to marry'. Better not to marry, they felt, if a person is caught for always. It is up to priests, religion teachers, catechists and marriage counsellors, to understand and help people understand the positive content and purpose of this truth about the most natural of institutions."

He believes that this validity was confirmed by our Lord initially with the Apostles. «When Our Lord told the disciples that divorce was not God's plan, he gave them a key to a positive understanding of this, referring them back to the original divine design for marriage. The Church has always taken this as its reference point, in analyzing the matter». In the new *Catechism of the Catholic Church* we read that man and woman are made for one another as affirmed by Holy Scripture: "It is not good for man to be alone". Woman, "flesh of his flesh", that is, his "other self", his equal, so closely associated to him, is given to him by God as a "helpmate", so representing God from whom comes our help. This signifies an unfailing unity of their two lives, which was indicated by Our Lord himself, recalling what was the design of the Creator «at the beginning: "So they are no longer two, but one single flesh" (Mt. 19,6). For Burke,

We need to also take note of the unquestionable development in Church teaching about the ends of marriage. The idea of a primary end and two secondary ends has given way to one of two co-equal

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245 C. BURKE, *Marriage: A personalist focus on the indissolubility*, cit., p. 49.
246 Ibid.
247 Cf. CCC, no. 1605.
ends: the good of the spouses, and the procreation of children (cf. no. 1660 of the new Catechism; also c. 1055 of the Code of Canon Law). Some careless thinking draws a contrast between these two ends, presenting the "good of the spouses" as the personalist "non-institutional" end, and procreation as the institutional end. But this is incorrect. Both are institutional ends, standing in harmony not in opposition.249

He then asserts the fact that, «when one considers things from the viewpoint of the good or the interests of the children, it is easy enough – and very important – to madduce reasons for marriage being indissoluble. My concern here however is to relate indissolubility directly to the "bonum coniugum", the good of the spouses, which is a great end but not one that is easily achieved».250 Thus, the happiness that love offers depends on the gradual overcoming of selfishness; and therefore it is a happiness which takes an effort. It is only fooling oneself to think that happiness can be achieved without effort.

2.6.2. The conjugal tendency

«There is a natural instinct – what I would call a conjugal instinct – that draws people to the marital commitment. One sees it in traditional formula by which marriage vows are exchanged: For better or for worse, in sickness or in health, until death».251 Burke says that to think that people are not attracted by the idea of a permanent commitment to a loved one would reveal a profound pessimism or skepticism about human nature.252 There is something natural in this indissoluble commitment: the good of a life shared together, of a mutual

249 C. BURKE: Marriage: a personalist or an institutional understanding?: Communio 1992-III, pp. 287ff; See C. BURKE, Marriage: A personalist focus on the indissolubility, cit., p. 50.

250 Ibid., p. 50. He also stressed that, «while man and woman are made for one another, the enrichment that comes from the covenanted union between them is not attained without real and sustained self-donation».

251 Ibid.

252 Regarding this anthropological pessimism, the point here is that many people think that man cannot commit himself forever in which ever ambit and not only in matrimony.
"belonging" that will not be reneged upon. People are made for this, and not only want it but expect that it will require sacrifices, sensing moreover that these are worth it. As John Paul II says, «It is natural for the human heart to accept demands, even difficult ones, in the name of love for an ideal, and above all in the name of love for a person».

According to Burke, it is through dedication, effort and sacrifice which one makes for the sake of the other that, can help them to grow and mature most. In this regard, «loyalty to the commitment of married life – to be mutually faithful, to persevere in this fidelity until death, and to have and rear children – contributes more than anything else to the true good of the spouses, so powerfully realized in facing up to this freely accepted commitment which, by mutual consent, also becomes a duty owed in justice». John Paul II in his address to the Roman Rota described this duty as involving «a conscious effort on the part of the spouses to overcome, even at the cost of sacrifices and renunciations, the obstacles that hinder the fulfillment of their marriage». The Catechism of the Catholic Church also teaches that the spouses, «have need of the grace of God. Without this help, man and woman cannot achieve that union of their lives for which God created them at the beginnings».

2.6.3. Love as a duty and not just as a right

According to Vatican II, what makes married love an "eminently human love" is the fact that it is «an affection between two persons rooted in the

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253 Ibid.


255 Cf. C. Burke, Marriage: A personalist focus on the indissolubility, cit., pp. 50-51.

256 Ibid., p. 51.


258 CCC, no. 1608.
Love tends to begin on the level of feelings; but it can never mature and become truly deep if it remains on that level (which after all is the surface level of human relations). In order to grow, love must not remain a purely emotional matter; it needs to become a matter of deliberate and voluntary choice. The law of indissolubility says to a married person:

> Love in marriage is a duty as much as a right. Therefore you have no right to give up the effort to love even if marriage proves difficult or runs into unforeseen obstacles, least of all if the obstacle is simply your spouse’s unforeseen defects. He or she has the right to be loved with those defects: that is, as the true person he or she is; and you have the duty to love him or her so. This we can say is what genuine love consists in. Therefore, in the face of difficulties and defects, “you have no right to quit: have no right to let your spouse down, or your children down, or other people down. And, finally, you have no right to let yourself down; to think you can find a better happiness than the one God has planned for you. You won't be happy that way. It won't work.”

Here he tries to bring out the point that, one should never give up the efforts of loving despite the vicissitudes or obstacles that sometimes comes with it. Therefore, it is precisely the unbreakable character of the marriage bond that makes it contribute so powerfully to the "good of the spouses." Burke emphasizes that, «Indissolubility tells them that God wants them to remain committed to one another even when commitment seems pointless (perhaps

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259 GS, no. 49.

260 C. BURKE, *Marriage: A personalist focus on the indissolubility*, cit., pp. 52-53. He goes on to affirm that: «of course it is not easy for two people to live together for life, in a faithful and fruitful union. It is "easier" for each to live apart, or to unite casually or for a short time, or to avoid having children. It is easier, but not happier; nor does it contribute to their growth as persons. "Non est bonum homini esse solus": it is not good for man or woman to live alone, or in successive temporary associations that tend to leave him or her more and more trapped in self-isolation. Married commitment is not an easy endeavor; but, apart from normally being a happy one, it is one that matures». Ibid., p. 53.

261 Ibid.
there are no children) or impossible; that he wants them to keep loving one another even when all feelings of love seem to have died».

In this regard we could say that, indissolubility, is God's plan to defend the spouses themselves from selfishness: and for happiness. God knows that happiness depends on love, on the ability to love, on developing this ability. And his design for marriage is that it should be a constant spur to this development of the capacity to love. This, from the personalist point of view, is what marriage is in fact about. The true bonum coniugum (the "good" or "well-being") of the spouses depends on this. This is the reason why there is no true matrimonial personalism which ignores or fails to stress the goodness for the spouses, and not just for the children and also of the conjugal commitment.

2.6.4. Happiness and difficulties

Burke affirms that, «everyone has a chance of happiness in life. But many people throw their chance away because they don't or won't face up to the challenge that it involves. Any true pastoral work needs to take account of this element of challenge and also enter into God's plan for human happiness».

In this light he affirms that:

The challenge holds good even for what one may be tempted to classify as utterly hopeless marriage cases. For instance, marriages where one of the spouses has become totally alcoholic or has been given a life-sentence in jail. It is easy to argue that when a person promised to accept the other "in sickness or in health", "for better or for worse", he or she did not foresee eventualities like these. Nevertheless, the anticipation of even such eventualities is what is literally and directly implied in the promise. Otherwise this promise expresses nothing more than a conditioned and worthless "love": "I

262 Ibid. In this light he feels «that too is why the "bad" moments of marriage - the hard moments - can also be specially good moments, always provided a person is prepared to rise to the challenge they pose».

263 Ibid. He expresses the idea that, «People in difficulties need consolation; they need to be helped out of these difficulties if this is possible. But sometimes the only truly pastoral possibility is to help them face up to the difficulties and to the challenge they imply».
promise to love you, always provided loving you involves me in no sacrifice.”

For indissolubility to stand in such marriages human wisdom may have no hope to offer but Christian wisdom has: the hope of the immense reward reserved for the person who keeps fidelity – not only with his or her spouse, but also with Christ in carrying the Cross. In this light therefore, the Catechism affirms the following: «This equivocal insistence on the indissolubility of the marriage bond may have left some perplexed and could seem to be a demand impossible to realize. However, Jesus has not placed on the spouses a burden impossible to bear, or too heavier than the law of Moses (Cf. Mk 8:34; Mt 11:29-30)». By coming to restore the original order of creation disturbed by sin, he himself gives the strength and grace to live marriage in the new dimension of the Reign of God. Therefore, it is by following Christ, renouncing the self, and taking up their crosses that spouses will be able to “receive” the original meaning of marriage and live it with the help of Christ. This grace of Christian marriage is a fruit of Christ’s cross, the source of all Christian life.

2.6.5. The saving strength of indissolubility

According to Burke, «the indissoluble bond depends for its saving strength on the response of spouses aided by grace; aided also by that conjugal instinct […] which priests and counselors need to rely upon, appeal to and stir up in couples going through a difficult moment». Faithfulness in such difficult circumstances is precisely an expression of this instinct. This is the reason why it has something deeply natural to it, in the challenge that it offers

264 Ibid. He therefore believes that, «to describe such situations as "hopeless" makes no pastoral sense. Pastoral terms of reference can never be exclusively human. Otherwise, to take the example of something like a terminal cancer, a medical judgment that the case is hopeless would signify that, pastorally speaking, there is nothing more to be said. This is not true. The doctor may have no hope to offer, the pastor has; any Christian has».

265 Ibid.

266 C. Burke, Marriage: A personalist focus on the indissolubility, cit., pp. 54-55.
to the better and more generous side of human nature. Burke then specifies that,

> Just as it is not natural for a mother to reject or abandon her son, no matter how drunk or criminal he may be (it might be easier for her to do so, and to live simply for herself; but she does not do so), so it is neither truly natural nor in any way Christian for a husband or wife to abandon their spouse just because he or she is alcoholic or neurotic. Relatives, friends, pastors or counselors of the couples whose marriage is undergoing tension, need to build on this conviction; and when they see that some married persons who tend to think or react differently with too little natural loyalty and courage and with too much natural self-concern and cowardice – there it sees a problem to be worked at, so as to help them acquire a more Christian understanding of all the demanding strength and beauty of the married relationship, and to stir up the loyalty to be faithful to it.

For him, indissolubility is not meant for the easy moments, when the two spouses want to be together, they don't need the help of a law. It is designed for the difficult moments, precisely to be the force that keeps them together and in that regard then, they need the reminder of God's law and its positive purpose, and the encouragement to seek the grace of abiding by it.

According to John Paul II, «it is a fundamental duty of the Church to reaffirm strongly, as the Synod Fathers did the doctrine of the indissolubility of marriage». John Paul II says, «to bear witness to the inestimable value of the

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267 Ibid., p. 55.
268 Ibid. He feels that, when people talk of indissolubility as being by the Church, they are not speaking accurately because indissolubility is a design and law of God, and not of the Church.
269 Ibid. He goes further by affirming that: «[…] the Church in defending indissolubility is defending people against the constant temptation to softness and selfishness, which are major enemies of personal growth and fulfillment. A person is more undone by being unfaithful to a hard marriage bond, than by remaining bound by it. God knows what he is doing in making the bond of marriage indissoluble. He knows that love means giving and being faithful to one's gift; and therefore he wants husband and wife to be bound to the liberating task and saving effort of learning to give and learning to love».
270 FC, no. 20.2 in J. M. Miller, The Post-Synodal Exhortations of John Paul II, with introductions, cit., p. 165, and CCC., no. 1648.
indsolubility and fidelity of marriage is one of the most precious and most urgent tasks of Christian couples in our time.\textsuperscript{271}

2.6.6. Indissolubility presupposes justice

Williams Benavente asserts that indissolubility is a connatural exigency to marriage.\textsuperscript{272} The reason for this is due to the fact that,

> The person who comes to agreement is the person of the other [spouse] in its own intimacy and it is not an isolated action of the person. It is more exact to say that a person ‘is’ married, than ‘stays’ married, because that which stays in play is not an accidental action of the other part, but the being of the spouses. In marriage, one accepts the conjugalitity itself. From this moment on, the bond, remains at the margin of the will of the spouses because that which each one has given does not pertain anymore to them. Thus a tremendous injustice can be produced by the spouses when they decide to divorce unilaterally, and, if they acted in a common accord in both cases, they violate the rights of children.\textsuperscript{273}

He stresses on the idea that, what is accepted in marriage is the conjugalitity itself. In another text he underlines the idea that,

> Christ renews the first plan that the Creator inscribed in the hearts of man and woman, and the celebration of the sacrament of matrimony offers a ‘new heart’: thus the couples are not only able to overcome ‘hardness of heart’ (Mt 19:8), but also and above all are able to share the full and definitive love of Christ, the New and Eternal covenant made flesh. Just as the Lord Jesus is the ‘faithful witness’ (Rev 3:14), the ‘yes’ of the promises of God (Cf. 2Cor 1:20) and thus the supreme realization of the unconditional faithfulness with which God loves his people, so Christian couples are called to participate truly in the irrevocable indissolubility that binds Christ to the Church his Bride, loved by him to the end (Cf. Jn 13:1).\textsuperscript{Ibid.} FC, no. 20.6.«

> The gift of the sacrament is at the same time a vocation and commandment for the Christian spouses, that they may remain faithful to each other-forever, beyond every trial and difficulty, in generous obedience to the holy will of the Lord.\textsuperscript{Ibid.} FC, no. 20.5.

\textsuperscript{271} FC, no. 20.6.

\textsuperscript{272} Cf. R. WILLIAMS-BENAVENTE, Divorcio e Iglesia. El cuestionamiento de la indisolubilidad, Ediciones Fundacion de Ciencias Humanas, Santiago (Chile) 1997, p. 177.

\textsuperscript{273} Ibid., pp. 191-192. The translation is mine.
The fallacy of the divorcist’s argument who aspires for divorce for the «good of the children» is evident. Meanwhile habitually children who suffer divorce of their parents are not consulted over the said decision, but it imposes or oblige them without the right to an answer. And the bad example of their parents would produce in them an indelible negative impact such as loss of credibility in their parents, it would break in the values sustained by them, loss of a necessary reference for the conjugal fidelity in the future. The bad example of the parents would destroy in their children the precise idea of a generous love and of an effective reciprocal giving. The children would be marked by distrust in as much as those in whom they would confide, since their parents have failed them. They will prefer to solve their own problems leaving them abandoned. This moreover, adds in the children, a sequel of security, psychological, behavioral and affective traumas. Deprived of the union of the father and mother, the children are condemned to the condition of orphans of alive parents. […] The damage or shock produced by divorce in children – even if they are grown up and do not live in paternal home – is intense and full of fatal consequences. The testimony of fidelity and marriage indissolubility demanded to the parents is, then, one of the decisive goods that the children would always be grateful to them.274

In the above quoted text the author is well aware of the different consequences which divorce can bring especially on themselves, children and the society as well. In this light therefore, when the spouses decide to divorce, this brings injustice first and foremost to themselves, in the sense that, they are breaking that indissoluble bond of the Church. secondly this injustice is felt by the children since the family is a domestic Church and parents have the great role of educating and bringing up their children and, lastly, this injustice will certainly be felt by the society since they are part of that society and are supposed to witness Christ in their daily living as spouses.

2.7. Christian anthropology and indissolubility

After having defined the concept of Christian anthropology at the beginning of this chapter, this part of our work shall be based on trying to understand the concept of man and woman as the image of God who is love. In this light we shall look at other related issues such as man and woman in relation to love which deals with the substantial unity of the spouses; equalness and difference. These are all premises which cannot be disregarded since they deal with Christian anthropology.

2.7.1. Man and woman, the image of God who is love

John Paul II in FC tells us that, «God created man in his own image and likeness (Cf. Gen 1:26-27.): calling him to existence through love, he called him at the same time for love.» God is love (Cf. Jn 4:8.) and in him he lives the mystery of personal loving communion. Creating the human race in his own communion and continually maintaining it in being, God inscribed in the humanity of man and woman the vocation, and thus the capacity and responsibility, of love and communion. John Paul II asserts that, «Christian revelation recognizes two specific ways of realizing the vocation of the human person, in its entirety, to love: marriage and virginity or celibacy. Either one is, in its own proper form, an actuation of the most profound truth of man, of his being “created in the image of God”.»

Man and woman, the image of God who is love, can be considered as the central idea in the theology of John Paul II. They assert that, «endowed with a likeness of God, we have been created to act as he does, that is, to love, to give ourselves as He does within the Holy Trinity». In this light therefore,

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275 FC, no. 11.1.
276 Cf. GS, no. 12.
277 FC, 11.4; See J. M. MILLER, The post-synodal Exhortations, cit., p. 156.
278 Cf. R. M. HOGAN - J. M. LEVOIR, Covenant of Love, cit., p. 36.
279 Ibid.
our dignity lies in our similarity to God. When we fail to act as He does, we destroy ourselves and our dignity. In his very first Encyclical, John Paul II affirms that, «man cannot live without love. He remains a being that is incomprehensible for himself, his life is senseless». In the same light in his document on family life he expresses the idea that, «love is therefore the fundamental and innate vocation of every human being». For we must love and this love needs to flow from within ourselves. God does not compel us to love. Rather the obligation to love is derived from the kind of creatures that we are, that is, persons made in the image of God.

One can say that, God’s self gift of himself is extended to us and made known to us in the creation and most especially too in redemption. «In creation, God shared himself with us and all creation because He shared really what he is, his existence. Therefore this implies that, he gave himself to what he created». Love is an activity that is proper to persons and it is the only way through which we can relate to persons. John Paul II teaches that a person is a good towards which the only proper adequate attitude is love. This [personalistic] norm, in its negative aspect, states that the person is a kind of

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280 Ibid.
281 John Paul II, *Redemptor Hominis*, (April 4, 1979), no. 10, in AAS 71 (1979), pp. 257-324; here after this will be quoted as RH.
282 FC, no. 11.
283 Cf. R. M. Hogan - J. M. Levoir, *Covenant of Love*, cit., p. 37. They went further by asserting that, «however, God must show us how to love because love is primarily a divine activity in which we, through God’s creative act, are called to share. (Thus, Christ, the God-man, is absolutely central to each and every human being. Only in him can we see how God loves, that is, how we should love.) We know from revelation, i.e., from the Old Testament and most perfectly from Christ, that God loves through a complete self-donation of himself. This love is perfectly present in the Holy Trinity where each divine person totally surrenders Himself to the others. This total self-gift of each person within the Trinity, while preserving the distinct features of each person (Father, Son and Holy Spirit) establishes a complete union of wills. The love of each Divine person is a personal choice, a will-act, made by each based on knowledge of the truth. The self-donation of each divine person to the others unites all three in a *communion of persons*. In effect, there is an attitude, a choice to act as one. This is what love is: an act of the will to do what another wills».
284 Ibid.

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good which does not admit of the use and cannot be treated as an object of use and as such the means to an end. In a unique way God gave himself to man and woman when he created Adam and Eve in His own image.

Man and woman in relationship to love remind us of the unity which Genesis 2: 24 speaks of ("and the two will be one flesh") and without doubt the unity that is expressed and realized in the conjugal act. The biblical formulation, so extremely concise and simple, indicates sex, as that characteristic of man – male and female – that allows them, when they become one flesh, to place their whole humanity at the same time under the blessing of fruitfulness. Yet the whole context of this formulation does not allow us to stop on the surface of human sexuality; it does not allow us to treat the body and sex outside the full dimension of man and the "communion of persons", but imposes on us from the "beginning" the obligation to see that fullness and depth proper to this unity, the unity that man and woman must constitute in the light of the revelation of the body.

Since they [man and woman] are formed in the image of God also inasmuch as they form an authentic communion of persons. The first man and the first woman must constitute the beginning and the model of that communion for all men and women who in any period unite with each other so intimately that they are "one flesh". The body, which through its own masculinity and femininity helps the two (a help similar to himself) from the beginning to find themselves in the communion of persons [see GS, 24:3], becomes in a particular way the constitutive element of their union when they become husband and wife. This takes place, however, through the reciprocal choice. The choice is what establishes the conjugal covenant between the

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285 Cf. K. Wojtyla, _Love and Responsibility_, cit., p. 41. Hereafter this will be quoted as LR..
286 Cf. C. Burke, _Covenant of Love_, cit., p. 37.
288 Ibid.
persons, who become “one flesh” only based on this choice. Better still, this union carries within itself a particular awareness of the meaning of that body in the reciprocal self-gift of the persons.

Regarding the substantial unity of the person, we can say that, the human person distinguishes himself from other material beings: he has a body that is alive. It is not just a person that has a body but this body surpasses a dimension that is purely biological, since it is a personal body, and in this way it manifest the interior richness of a particular being who is different from other living beings. The soul which is the spiritual principle of the human being, possesses a certain autonomy, but it is not a subject which dominates the body. On the other hand, the body is a portion of matter which contains the spirit. Therefore, the body and soul are the two principles of the one and unique reality, spiritual and material at the same time, which denotes the human person, that is, every human person. So, the soul which is directly created by God is not a soul in a body, neither a certain soul in a given body: it is the soul of this body, which constitutes the human person, unique and unrepeatable. In this regard, through the human body is expressed the exclusive language of the personal existence, that is look, smile, embrace, a gesture of emotion or surprise, of admiration etc. These are all things which reveal the interiority of a human person. But we cannot forget the fact that, «man and woman as person, is an image of God not only in his spiritual soul,

289 «The intimate community of conjugal life and love, established by the creator and structured by its own laws, is established by the conjugal covenant, that is to say, by irrevocable personal consent» (GS 48).

290 Cf. JOHN PAUL II, Man and Woman He Created Them, cit., p. 168.

291 Cf. GS, no. 14; See J. I. Bañares, Antropología cristiana e dimensione giuridica del matrimonio, cit., p. 25.

292 Cf. LF, no. 9.

293 Cf. CCC no. 366.

294 Cf. J. I. Bañares, Antropología cristiana e dimensione giuridica del matrimonio, in AA.VV., Verità del Consenso, cit., p. 25.

295 Ibid.
but also in his corporal dimension». In the divine design is constituted as the summit of the whole material creation, which was created for him and entrusted to his care.

Concerning the concept of equalness and difference, Bañares affirms that, the elements which flows in the conjugal pact, regarding the natural plan, is that which is offered concerning the truth of the masculine and feminine human being and also regarding their liberty. In this light «man is called to love and to the gift of himself in his corporal and spiritual unity. Femininity and masculinity are complementary gifts, in virtue of which the human sexuality is an integral part of the concrete capacity of loving which God has written in man and in woman». This document of the PCF on the truth and the significance of the human sexuality explains: «sexuality characterizes man and woman not only on the physical plan but also in the psychological and spiritual leaving an impression in all his manifestations. This diversity, unity of the complementarity of the two sexes, responds in a fulfilled way to the design of God according to the vocation to which each was called to».

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296 CONGREGAZIONE PER LA DOTTRINA DELLA Fede (CDF), Istruzione Donum Vitae, (22 Febbraio 1987), n. 3. Here after it shall be cited as DV. The translation is mine.

297 Cf. CCC no. 373; Cf. J. I. BAÑARES, Antropologia cristiana e dimensione giuridica del matrimonio, in AA.VV., Verità del Consenso, cit., p. 25.


299 PONTIFICIO CONSIGLIO PER LA FAMIGLIA, Sessualità umana: verità e significato, (Decembre 8, 1995), n. 10, Here after it will be cited as PCF; the text adds the following: «this capacity to love as gift of itself possess, therefore, the proper ‘incarnation’ in the spousal character of the body. In it is written the masculinity and femininity of the proper person.» (Ibid). Cf. A. SCOLA, Il mistero nuziale, (I) y (II), Roma, 1998 e 2000; Ibid., Uomo-Donna: Il “caso serio” dell’amore, Genova-Milano 2002; Cf. J. I. BAÑARES, Antropologia cristiana e dimensione giuridica del matrimonio, in AA.VV., Verità del Consenso, cit., p. 26. The translation is mine.

300 PONTIFICIO CONSIGLIO PER LA FAMIGLIA, Ibid., n. 13; this text was taken from CONGREGAZIONE PER L’EDUCAZIONE CATTOLICA, Orientamenti Educativi sull’amore umano, cit., n. 4. The translation is mine.
Complementarity refers to the objective diversity and wholeness of the subjects in the ambit of the human gender, “masculine” and “feminine.” This sexual diversity offers a specific complementarity to man and woman, which is based precisely on their difference. Due to the deepness of the human person, and the force in which is deep-rooted in it the sexual dimension that is, its being feminine and masculine which brings a richness in the exclusive part of the feminine and masculine person. «But for every concrete subject, the complementarity with another person of the opposite sex is not exhausted in the specific difference; on the contrary, it originates from there in order to permit an interpersonal relationship proper of the spousal love, either through marriage or celibacy». From the point of view of the subject, complementarity adds to diversity different aspects. On the one hand, the existence of the other that is equal – as a person – is different from his mode of being and makes me take in conscience my being and my way of being in a new form. On the other hand, to ascertain that my same nature (what I am) is lived in a different modality, helps me to be able to receive better the richness of this nature, the limits of the same person and the necessity of opening myself to the other who is different.

Therefore, the fact that, «man and woman are and are seen as equal human beings, signifies that they welcome the structure of their sexual dimension, their proper virility (manhood) or femininity as an ontological (real) structure of communication, participation and interpersonal communion». Sexuality as the modality to relate and open itself up to the other, has love as its intrinsic end, and more precisely love as donation and reception, as giving

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301 Cf. J. I. BAÑARES, Antropologia cristiana e dimensione giuridica del matrimonio, in AA.Vv., Verità del Consenso, cit., p. 27; «neither man nor the woman separately are the image of the Creator, but man and woman in their reciprocity» (JOHN PAUL II, Udienze Generale, (November 24, 1999), n. 1, in Enchiridion Familiae, 11 (1999) 24/1).

302 Cf. CONGREGAZIONE PER LA DOTTRINA DELLA FEDE, Lettera ai Vescovi della Chiesa Cattolica sul la collaborazione dell’uomo e della donna nella Chiesa e nel mondo, (31 Maggio, 2004).


304 Ibid., p. 28.

305 Ibid.
and receiving. The relation between a man and a woman is essentially a relation of love: «sexuality, orientated, elevated and integrated by love, acquires true human quality».\textsuperscript{306} When such love is implemented in marriage, the gift of self expresses through the body the complementarity and the totality of the gift; conjugal love becomes, then, the force which enriches and makes the persons to grow and at the same time contributes and nourishes the civilization of love.\textsuperscript{307}

2.8. Conjugal love as an essential dimension of indissolubility

This section is an attempt to study the different perspectives on how conjugal love reinforces the doctrine regarding an indissoluble marriage. We shall therefore look at the different aspects of conjugal love in relation to the indissolubility of marriage. The Second Vatican Council teaches that, «married love is an eminently human love because it is an affection between two persons rooted in the will and it embraces the good of the whole person; it can enrich the sentiments of the spirit and their physical expression with a unique dignity and ennoble them as the special elements and signs of the friendship proper to marriage».\textsuperscript{308}

2.8.1. The concept of love

Love is that “force” which John Paul II talks of as «the key element of the spirituality of the spouses and parents».\textsuperscript{309} Viladrich affirms that, «in the ordinary language, love is desire, it is commitment, love is possession, love

\textsuperscript{306} CONGREGAZIONE PER L’EDUCAZIONE CATTOLICA, Orientamenti educativi sull’amore umano (1 Novembre, 1983), n. 6: OR 2 Dicembre 1983. The translation is mine.

\textsuperscript{307} Cf. PONTIFICIO CONSIGLIO PER LA FAMIGLIA, Sessualità umana: verità e significato, cit., n. 11; Cf. J. I. BAÑARES, Antropologia cristiana e dimensione giuridica del matrimonio, cit., p. 28.

\textsuperscript{308} Cf. GS, 49.

overcomes everything, it lives more from what it gives than from what it
receives, if you want to be loved, you yourself must love. Love is a personal act
and in its most sublime expression it is inter-personal between persons».\(^{310}\)
According to Benedict XVI, the word love has a semantic range: we speak of
love of one’s country, love of one’s profession, love between friends, love of
work, love between parents and children, love between family members, love
of neighbor and love of God. Amid these multiplicities of meanings, however,
one in particular stands out: «love between man and woman, where body and
soul are inseparably joined and human beings glimpse an apparently irresistible
promise of happiness. This would seem to be the very epitome of love; all
other kinds of love seen to fade in comparison».\(^{311}\)

Burke asserts that man is created for love, with an ability, a tendency,
and a need to love but at the same time, there is an ill powerful factor at work
inside us which makes it difficult to love and even to understand in practice the
true nature of love.\(^{312}\) He goes further by affirming that,

Love is above all a matter of knowing; and yet we easily let it depend
on feelings. Love means giving, and yet we all tend to be very aware of
our right to receive – also from those whom we say we love. Love
means generosity, and yet in practice we find it hard to free our love
from calculation. Love means sacrifice, and yet we all want an easy life
where the demands made on us are minimal. Love creates bonds of
union and understanding between persons, but also duties of support
and forgiveness, and we all tend at times to shirk our duties.\(^{313}\)

In this light Burke emphasizes that, «in calling man into existence, God’s
plan was that man should be conceived in love and grow in love; that his
experience of life should be matured in a particular school of love which in this

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\(^{311}\) BENEDICT XVI, Encyclical letter, Deus Caritas Est, (December 25, 2005), cit., no. 2.

\(^{312}\) Cf. C. BURKE, Covenanted Love, cit., p. 194; L. CHIAPPETTA, Il matrimonio nella nuova
Legislazione Canonica e Concordataria, cit., p. 34; U. NAVARRETE, Structura iuridica matrimonii

\(^{313}\) Cf. C. BURKE, Covenanted Love, cit., p. 195.
sense is the family, constituted by the marital union of man and woman. God therefore instituted the family to be the first place, the normal "locus" where love is naturally learned and from which that love can spread out to others. As a sacrament, marriage is a mysterious sign. An indissoluble bond that unites the spouses, just as in the one love Christ and the Church are united (see Eph 5:32–33). Every true love inclines towards God and this explains why Christ and the Church raised marriage to the level of a sacrament and made it the road through which in the most concrete and demanding way man learns how to love, that is, learns what is in general the right behavior towards the other person. Since the relationship with God is the only unique relationship that enhances in an adequate manner the person, so also in God the relationships between persons find their completeness of value. In this light we can understand deeply the essence of marriage. Man and woman cannot belong to themselves reciprocally if God himself does not give them one to the other and if their decision is not first of all, the recognition of God’s act. This is how it was at the beginning as written in the book of Genesis, for the first man and woman. This continues to be the principle of living together of every human couple.

John Paul II, defines formally marriage as ‘a pact of love.’ Wojtyla reminds us that the word love has more than one meaning. It is a complex reality which has many aspects. «love is always a mutual relationship between

314 Ibid. «Through marriage and the family, God wishes to send love and, with it goodness into the world. Wherever love is made present, good acquires that strength of God which conquers the world».

315 Ibid.

316 Cf. JOHN PAUL II, Allocutio, (January 28, 1982), cit., no. 3.


318 Cf. R. BUTTIGLIONE, Il pensiero dell'uomo che diviene Giovanni Paolo II, cit., p. 143.

319 FC, no. 19.1; «Conjugal love involves a totality, in which all the elements of the person enter- appeal of the body and instinct, power of feeling and affectivity, aspiration of the spirit and of will. It aims at a deeply personal unity, the unity that, is beyond union in one flesh». Cf. FC, no. 13.9.
This relationship in turn is based on particular attitudes to the good, which is adopted by each of them individually and by both jointly. In every love there is always present attraction and good will. The love between a man and a woman is one particular form of love, in which elements common to all of its forms are embodied in a specific way. In this regard, the love of a man and woman takes shape deep down in the psyche of the two persons, and is bound up with the high sexual vitality of human beings. He stresses that the love of a man and a woman is a mutual relationship between persons and possesses a character that is personal. Its profound ethical significance is intimately bound up with this – and in the ethical sense it constitutes the content of the greatest commandment in the gospel. The meaning of love which we have just examined above, will then help us at this juncture to explore on conjugal love.

2.8.2. The concept of conjugal love and its essential contents

Marriage is a community of persons and its essence is defined by love. Conjugal love is that love which is due in justice, which unites in communion man and woman who have united themselves legitimately in marriage and are therefore one for the other spouse. Conjugal love is an essential element of human and Christian marriage. Since conjugal love is implicit in the same juridical definition of marriage, although explicit in the Conciliar constitution [GS] in which marriage is the consequence not only theoretical but also instrumental in the life of the people of God and particularly of married

320 Cf. K. Wojtyla, Love and Responsibility, cit., p. 73.
321 Ibid.
322 Ibid.
323 Ibid., p. 74.
324 Cf. FC, no. 17; J. Carreras – H. Franceschi – M. A. Ortiz, Diritto Canonico del Matrimonio e della Famiglia, cit., p. 35.
Christians, it assumes juridical importance and is connected with the deep essence of the same sacrament of marriage.\textsuperscript{327} Paul VI allocution to the Roman Rota in 1976 is of great importance to the understanding of what conjugal love is.\textsuperscript{328}

\begin{footnotesize}
\footnote{\textsuperscript{327} Cf. L. Panzini, \textit{La rilevanza giuridica dell’amore coniugale nel matrimonio canonico}, in AA.VV., \textit{Matrimonio e Famiglia: Quale Futuro? Aspetti Antropologici}, (a cura di D. Bonifazi – G. Tortorella) Milano 2001, p. 206. The author affirms that «since this is dealing with a relationship between two subjects, the conjugal affection implies necessarily the reciprocity, and is carried out in it: it does not deal therefore with a sum of two loves, that of a man and a woman and vice versa, but of a love which becomes objective in the optic of awe». \textit{Ibid.}, p. 207.}


\begin{quote}
«Love is a fundamental element of marriage: the Second Vatican Council has put this in light in \textit{Gaudium et Spes} (no. 49). […] The supporters of these opinions at times lay undue emphasis on conjugal love and the perfection of the spouses. They go far as to neglect or even completely eliminate children as a basic value of marriage. They consider conjugal love to be so important, even in law, as to make the validity of the marriage depend on it. Thus, they open the door to divorce almost without taking anything else into consideration. In their view, once love – or, more accurately, the original feeling of love ceases, with it goes the validity of the irrevocable conjugal covenant brought into existence by free and full consent of love».
\end{quote}

\begin{quote}
«There can be no doubt that the Council set a high importance on conjugal love, for it speaks of it as representing the perfection of marriage and the great goal to which spouses are urged always to be directing their common life. The point, however, which in the present context we wish to see once again emphasized, is this: the Christian teaching on the family, as you are well aware, cannot admit any concept of conjugal love which will lead to the abandonment or lessening of the force and meaning of the well-known principle ‘marriage is brought into being by the consent of the parties’ (\textit{matrimonium facit partium consensus}) (CIC, can. 1081 §1; can. 1057§1). This principle is of paramount importance in the whole canonical and theological teaching received from tradition and has frequently been restated by the Church’s magisterium as one of the chief bases on which both the natural law of the institution of marriage and the evangelical precept are found». (see. Mt. 19:5-6; DS, nos. 643, 756, 1497, 1813, 3701, 3713).
\end{quote}

\begin{quote}
«We must, therefore, reject without qualification the idea that if a subjective element – among these especially conjugal love – is lacking in a marriage, the marriage ceases to exist as a \textit{juridical reality}, which originated in a consent for once and forever efficacious. No, this reality, which is
\end{quote}

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After the council, the question regarding the importance of attributing to the *ius vitae communionem* the juridical projection of the element of conjugal love was posed. But at the same time we must take into consideration the fact that the Legislator, in the final drafting, of the code did not welcome the *ius ad vitae communionem*, whose exclusion by a positive intention of the parts could lead to the invalidity of the bond. It is important to realize that the author of the code, «with more explicit attention on the persons of the spouses, talks of the good of the spouses as the finality of the *consortium totius vitae* (can. 1055 §1)». In this light conjugal love can be put in relation either with the *bonum coniugum*, translated in the *jus obligationis ad vitae communionem*; either with the *bonum prolis* (*procreatio-educatio prolis*), which is translated in the *jus ad actus coniugalis* but in accordance with the dignity of marriage, in respect to the spouses and the real good of the children (paternal responsibility). The Council has also given «a more personalistic significance to marriage, which is

juridical, continues to exist and does not depend on love; it remains even though love may have totally disappeared…».

«All these considerations are not considered in any way as lessening the importance and dignity of conjugal love, for the rich blessings proper to the institution of marriage are not limited to the juridical elements alone. Although conjugal love does not enter into the purview of law, it nonetheless plays a lofty and necessary role in marriage. It is a force of the psychological order and God has established as its goals the ends of marriage itself. In fact, when love is wanting, spouses lack a powerful stimulus for carrying out with mutual sincerity all the duties and functions proper to conjugal life. On the other hand, where genuine conjugal love is strong, that is a love that is ‘human…total…faithful and exclusive of all others, and until death,…fruitful (see HV, no. 9), a marriage can reach the full perfection, which it can obtain by its very nature». *Ibid.*


substantial to the due relevance given to conjugal love and the reciprocal perfection of the spouses».  

According to Ford and Kelly, conjugal love can be defined as «the virtue for which the husband and wife desires to communicate reciprocally the proper benefits of marriage». Conjugal love signifies specifically the mutual integral donation of the parts, that is, the mutual integral donation of the person to the other person as mutual integral donation which excludes a third party and excludes that it should be restricted to a determined or indetermined period. Any genuine human love tends in itself to be always perpetual, the indissolubility and unity is necessarily achieved from the Physical essence of natural marriage “in facto esse”. «From the perfect correspondence between the internal and external structure, springs out a completed concordance in the constitutive moment of marriage». Such conjugal love which is intended as a reciprocal offering that male and female do of themselves as sexual beings – giving themselves not in what they have, but in a way that is total in what they are – is called sexuality. The man and woman in this case make what can be termed as an act of love. In marriage this deals with the reciprocal will of doing good on the part of a man and a woman, in a specific community based on the fact that God created them male and female. In this manner, the essential node of conjugal love – as a complex reality in its components of

334 PAOLO VI, Allocation, (February 9, 1976), in AAS 68 (1976), pp. 204-208; See M. F. POMPEDDA, Studi di Diritto Matrimoniale Canonicò, Vol/2, cit., p. 67.


337 P. A. BONNET, L’Essenza del matrimonio canonico: Contributo allo studio dell’amore coniugale, I. Il momento costitutivo del matrimonio, Padova, 1976, p. 130ff. Here after this text shall be quoted as L’essenza del matrimonio canonico. «There is a perfect correspondence between the constitutive moment of marriage and conjugal love, which is not considered in some way as the partial or added component of the first». Cf. M. F, POMPEDDA, Studi di diritto matrimoniale canonico, cit., p. 51.


kindness or courtesy, sentimental, psychological, sexual, evolutionary and social without which one cannot in some cases talk of true love – is that which regards every love, the will to do good to the other.  

In this light, marriage is conjugal love, but it is also at the same time the institution of marriage, that is, the institution of conjugal love. The specific and fundamental element of conjugal love is the assumption on the part of the will, the inclination to the other as a spouse: therefore not only the instinctive attraction, but the decision of the will for which a person orientates his tendency to the other sex towards another determined person. Conjugal love is an interior force, guided by the will, which from spontaneous sentiments becomes an urgent duty which favors the fulfillment of the expressed self-donation in matrimonial consent, and which the consorts have to make an effort themselves to put into act in their daily communion of their whole life. In order to understand better the concept of conjugal love, there is need in the first place to say what it is not, so as to then indicate subsequently what it is on the other hand. In this light:

Conjugal love is not: fornicated love between a man and a free woman. Adultery love: between people whom one among them is married. Concubinary love, onanistic love, homosexual love. Conjugal love is: love that is fully human, a free act of will, it is total gift of his/her to the

340 Cf. M. F. Pompedda, Studi di Diritto Matrimoniale Canonico, cit., p. 52; Bonnet affirms that «in marriage this deals with the reciprocal will of doing good on the part of a man and a woman, in a specific community based on the fact that God created them male and female». See P. A. Bonnet, L’essenza del matrimonio Canonico, cit., p. 29ff.


other, it is faithful and exclusive till death, it is fecund. This is the ideal concept of conjugal love, but it is not yet its juridical concept.344

After having said what conjugal love is not and what it is, we shall now embark at explaining the three levels of conjugal love:

- The first level is called the level of sex. This is something more than the simple genitals, it deals with corporal commotion, desire, pleasure and tendencies to union, taking into consideration that a human being subsist in bisexual form.345

- The second and third level: eros and agape. Love between man and woman which is neither planned nor willed, but some how imposes itself upon human beings, was called eros by the ancient Greeks. Thus, eros indicates worldly love and agape refer to love grounded in and shaped by faith. These two notions are often contrasted as ascending love and descending love. Descending, oblique love agape would be typically Christian, while on the other hand ascending possessive or covetous love – eros – would be typical of non-Christian, and particularly Greek culture. Yet eros and agape – ascending love and descending love – can never be completely separated. The more the two in their different aspects, find a proper unity in the one reality of love, the more the true nature of love in general is realized.346

Benedict XVI goes further by explaining that, the element of agape enters into this love otherwise eros is impoverished and even loses its own nature. This is because man cannot live by oblique, descending love alone. He cannot always give, he must also receive. In this regard, anyone who wishes to give love must also receive love as a gift.347

344 R. LLANO CIFUENTES, A relevância jurídica do amor conjugal, in Ius canonicum, 30 (1990), p. 249.
345 J. GÓTI ORDENANA, Amor y matrimonio en las causas de nulidad por miedo en la jurisprudencia de la Sagrada Rota Romana, Oviedo 1978, p. 122ff. The translation is mine. Cf. F. M. POMPEDDA, Studi di diritto matrimoniale canonic, cit., pp. 58-59. These three quotations belong to the same quoted author. These different forms of love have also been dealt with by P. J. VILADRICH, The Agony of legal marriage, cit., p. 129
346 BENEDICT XVI, Deus Caritas Est, cit., pp. 10-18; J. GÓTI ORDENANA, Amor y matrimonio en las causas de nulidad por miedo en la jurisprudencia de la Sagrada Rota Romana, cit., p. 122ff.
Goti Ordanana brings out three pertinent levels of conjugal love. While the first level deals with the bodily commotion, desires, pleasure and tendencies to union; the second deals with interpersonal communication. Here man opens himself totally to the other and in particular with an attitude of service and lastly the third level helps a person to be capable of choosing and evaluating the other as a person, in the transcendent perspective.\footnote{J. Goti Ordenana, Amor y matrimonio en las causas de nulidad por miedo en la jurisprudencia de la Sagrada Rota Romana, cit., p. 122ff.}

Llano emphasizes that, the minimum identity of human conjugal love could be defined with four indispensible and inseparable elements: 1) The disponibility for sexual relationship which includes the *jus in corpus*; 2) The intentionality of a minimum of “*affectus maritalis*” which permits a sexual relationship “*humano modo*” (in which we consider implicit the potential desire of procreation or the non voluntary exclusion of the children): this condition would not be if, for example, one gets married in order to make suffer the other spouse, for hatred or for sadism; 3) A deliberatedness or willfulness of a minimum cohabitation and necessary mutual help in order to achieve sexual relationship and the *affectus maritalis*; 4) A willfulness of permanence and exclusivity in love (since if not this way the consent could be given for a fornicated or concubine union).\footnote{Cf. R. Llano Cifuentes, A relevância do amor conjugal, cit., p. 261.}

This understanding of conjugal love from its essential and comprehensive nucleus helps us to consider it as a free and total gift of a person to the other, and the receiving of the other with the same significance which includes personal opening to the other and an encounter of dialogue at the body level.

It is crucial at this point, in matters of matrimonial legislation to refer to the fundamental doctrinal principles enunciated by *Gaudium et Spes*. The Council describes marriage as an intimate community of life and conjugal love: at the same time reaffirming the fundamental juridical principle for which consent is the efficient cause of marriage, by declaring that this intimate community is by its nature ordained for the good of the spouses and to the
three traditional goods.\textsuperscript{350} Therefore the notion of conjugal love is specified by 
\textit{Gaudium et Spes}\.\textsuperscript{351} This also shows the theological progress of the Church’s 
teaching on marriage.\textsuperscript{352} This number 49 of GS, underlines the importance of 
the frequent scriptural invitations which were addressed to believing spouses to 
nourish and enrich their union by chaste and undivided love.\textsuperscript{353} There is some 
equilibrium in the teaching of GS concerning marriage realizing its depth of 
meaning in the marital communion as declared in the following words: «The 
Council stresses the person and the communion of persons of different sexes 
that takes place in marriage, without detracting from institutional character for 
procreative ends; it is thus defined in a personalistic and dynamic perspective 
as the intimate union (\textit{intima unio}) of persons, as community of love (\textit{communitas amoris}) and more precisely in the now classic expression of an “intimate 
community of conjugal life and love” (\textit{intima communitas vitae et amoris}

\textsuperscript{350} Cf. A. MENDONÇA, \textit{The theological and juridical aspects of marriage}, in \textit{Studia Canonica}, 22 (1988), 
p. 303ff.

\textsuperscript{351} Cf. GS, no. 49a affirms that: «marriage love is an eminently human one since it is directed 
from one person to another through an affection of the will; it involves the good of the whole 
person, and therefore can enrich the expressions of body and mind with a unique dignity, 
ennobling these expressions as special ingredients and signs of the friendship distinctive of 
marrage. This love God has judged worthy of special gifts, healing, perfecting and exalting 
gifts of grace and of charity. Such love, merging the human with the divine, leads the spouses 
to a free and mutual gift of themselves, a gift providing itself by gentle affection and by deed, 
such love pervades the whole of their lives: indeed by its busy generosity it grows better and 
grows greater. Therefore it far excels mere erotic inclination, which, selfishly pursued, soon 

\textsuperscript{352} Cf. V. PALATHINGAL, \textit{Consortium Totius Vitae: Essence and Form of marital Relationship in the 
Malabar Church}, Always 1992, p. 29.

\textsuperscript{353} Cf. W. J. LADUE, \textit{Conjugal love and the juridical structure of Christian marriage}, in \textit{The Jurist}, 34 

\textsuperscript{Clothilde Wanki}
Conjugal love is consistently identified in the Conciliar document as the animating energy of the covenant which reveals itself through various signs and expressions. The continuous mutual self-donation of the partners is precisely what gives to their expressions and acts of affection that special significance and unique dignity (GS, no. 49).

In his encyclical Casti Connubii, Pius XI, affirms that, the goal of conjugal love and the action which flows from it should bring the spouses towards the fulfillment of that potential found in them which is characteristically human. Pius XII in his discourse to the Italian Catholic Union of Midwives (October 29, 1951), considers conjugal love as one of the essential secondary ends of marriage. Paul VI, in HV describes conjugal love as fully human, total, exclusive and also fecund. Pope Paul VI asserts again


355 Cf. W. J. LADUE, Conjugal love and the juridical structure of Christian marriage, p. 41. Ladue asserts that: «Marriage as a sacrament is the authentic human love of the Christian spouses. For this wedlock consists in the fact that the revelation and the communication of an indispensable facet of the amor divinæ spoken in Christ are realized in a highly intensive fashion through the genuine human love which is lived and expressed between the believing partners (GS, no. 49)».

S. LENER, L’oggetto del consenso e l’amore nel matrimonio, in L’Amore Coniugale, Città del Vaticano 1971, p. 141.

356 See Casti Connubii, in AAS 22(1930), pp. 548-549. The Pope affirms that, «The Lord deigned to heal, to perfection and elevate this love with a special gift of grace and charity. Such a love, uniting together human and divine values, leads the spouses to a free and mutual gift of themselves, proved by sentiments and gestic of tenderness, and pervade the whole life of the spouses; above all their lives becomes more perfect and grows properly through the generous exercise of itself». Ibid., p. 547- 548; DS., 2232 (3707).

357 See AAS., 43 (1951), pp. 835-854.

358 See AAS 60 (1968), pp. 486-487. He also said the following regarding conjugal love. «Married love is also faithful and exclusive of all other, and this until death. This is how husband and wife understood it on the day on which, fully aware of what they were doing, they freely vowed themselves to one another in marriage. Though this fidelity of husband and wife sometimes presents difficulties, no one has the right to assert that it is impossible; it is, on the contrary, always honorable and meritorious. The example of countless married couples proves not only that fidelity is in accord with the nature of marriage, but also that it is the source of profound and enduring happiness». (HV, no. 9).
that, «conjugal love reveals its true nature and nobility when it is considered in its supreme origin, God, who is love (Cf. 1Jn 4:8), ‘the father, from whom every family in Heaven and on earth is named (Eph 3:15)».

John Paul II in FC mentions that: «the love between husband and wife and, in a derivatory and broader way, the love between members of the same family – between parents and children, brothers and sisters and relatives and members of the household – is given life and sustenance by an increasing inner dynamism leading the family to even deeper and more intense community, which is the foundation and soul of the community of marriage and the family». John Paul II states that, «conjugal love is not only made of defects and emotions, but also and above all of reciprocal devotion, free, voluntary, total, irrevocable». He goes further by asserting that, «conjugal love links two human persons distinguished by sex, making them a continuity of life and love, uniting them therefore in marriage».

«This love is fecund. It is not confined wholly to the loving interchange of husband and wife; it also contrives to go beyond this to bring new life into being. Marriage and conjugal love are by their nature ordained toward the procreation and education of children. Children are really the supreme gift of marriage and contribute in the highest degree to their parents' welfare». (HV, no. 9; He also quoted GS, no. 50).

Cf. HV, no. 8.

Cf. AAS 74 (1982), pp. 100-101. Some other parts of FC where he also mentioned conjugal love are nos. 13 and 20. «Conjugal love involves a totality, in which all the elements of the person enter—appeal of the body and instinct, power of feeling and affectivity, aspiration of the spirit and of will. It aims at a deeply personal unity, a unity that, beyond union in one flesh, leads to forming one heart and soul; it demands indissolubility and faithfulness in definitive mutual giving; and it is open to fertility. In a word it is a question of the normal characteristics of all natural conjugal love, but with a new significance which not only purifies and strengthens them but raises them to the extent of making them the expression of specifically Christian values». (FC, no. 13).


John Paul II talking of the definitive nature of conjugal love expresses that, in fidelity to Christ, the Church must firmly stress «the good and definitive news of that conjugal love that has in Christ its foundation and strength» (FC, no. 20) and to those in our day who think that it is difficult or even impossible to be bound to one person for their whole life, to those who are caught up in a divorce culture, that rejects the indissolubility of marriage and openly mocks couple’s commitment to fidelity. Spouses are called to bear witness to the Lord’s will that marriage is indissoluble, a truth which today’s society finds difficult.

Conjugal love is different from any kind of love due to its specific character which is sexual and the procreative dimension. For Hervada man and woman are above all human persons and as such are the object of conjugal love. The one who is loved according to the conjugal modality is fundamentally and primarily, the person. Hervada affirms that true conjugal love is personal; from one person, love is directed to the person of the other. The double significance of the conjugal act is: unitive and procreative. Marriage and conjugal love are by their nature ordained toward the begetting and educating of children. Children are really the supreme gift of marriage and contribute very substantially to the welfare of their parents. Buttiglione brings out explicitly the idea that, a sexual act is right when in it, the destination to fecundity is received in the terms in which God himself gave it and is raised immanent in the order of nature. This means that, in the order of nature,

364 Ibid., no. 3.
365 Cf. J. HERVADA, Studi sull’essenza del matrimonio, cit., p. 94.
366 Ibid.
367 Cf. PONTIFICIO CONSIGLIO PER LA FAMIGLIA, Matrimonio e Famiglia: Dottrina e Vita, problemi, orientamenti, esperienze, Torino 1987, p. 28.
368 Cf. Gs, no. 50; This same number emphasizes that, «While not making the other purposes of matrimony less important, the true practice of conjugal love, and the whole meaning of the family life which results from it, have this aim: that the couple be ready with good hearts to cooperate with the love of the Creator and the Savior. Who through them will enlarge and enrich His own family day by day». See GS, no. 50.
sexuality in its specific human forms does not exist simply to serve for procreation but also indissolubly to express the union of man and woman, the personal communion. The central core and foundation of human principles is the authentic concept of conjugal love between two persons of equal dignity, but different and complementary in their sexuality. For John Paul II, Amor coniugalis, therefore, is not only and not primarily a feeling, but is essentially a commitment to the other person, a commitment made by a precise act of will. It is this commitment which gives amor the quality of coniugalis. Once a commitment has been made and accepted through consent, love becomes conjugal and never loses this character. Here the fidelity of love, which is rooted in the freely assumed obligation, comes into play. In one of his meetings with the Rota, Pope Paul VI, said succinctly: “From a spontaneous feeling of affection, love becomes a binding obligation” (AAS 68 [1976], p. 207). The Catechism teaches that:

Conjugal love involves a totality, in which all the elements of the person enter - appeal of the body and instinct, power of feeling and affectivity, aspiration of the spirit and of will. It aims at a deeply personal unity, a unity that, beyond union in one flesh, leads to forming one heart and soul; it demands indissolubility and faithfulness in definitive mutual giving; and it is open to fertility. In a word it is a question of the normal characteristics of all natural conjugal love, but with a new significance which not only purifies and strengthens them, but raises them to the extent of making them the expression of specifically Christian values (Cf. FC 13). This text brings out the idea that, conjugal love is total, it forms in the spouses one heart and soul, it demands indissolubility and definitive mutual giving of the spouses. In this light, it is only on truth, in fact, can the love between persons be founded.

Cf. R. BUTTIGLIONE, L’Uomo e la famiglia, cit., pp. 116-117.

Cf. JOHN PAUL II, Allocution, (January 21, 1999), cit., no. 3.

Ibid., pp. 250-251.

CCC, no. 1643.
Personal love in this case reaches its maturity only when it is addressed not more to what the other makes happen to me but towards what the other is in himself or herself, considering not this or that peculiar characteristic of the love which exercises on us a particular fascination but his same person.\textsuperscript{373} The sacramentality of marriage is also explained first of all in terms of that transforming influence which the conjugal partnership has on the spouses, and through their gradual growth and Christian maturation, the life-giving effects of the union is communicated to the offspring and beyond.\textsuperscript{374} It is quite clear in the text the emphasis upon the personalist goal of the couple’s growth in Christ as the means, the way to realization of the societal goal of effecting life-transformation in others.\textsuperscript{375} The examination of unity between a man and a woman has led us to discover the relevant role of love between the two; so much relevant that their union can be described in brief as the community of conjugal love, which is like the soul. He goes further by explaining that, «the joy of Adam in front of Eve, indicates that they formed a communion which was really proportionate to their dignity of persons, vivified by reciprocal love and that this was for them the source or spring of intimate happiness».\textsuperscript{376} Love

\textsuperscript{373} Cf. R. BUTTIGLIONE, \textit{Il pensiero dell’uomo che diviene Giovanni Paolo II}, cit., p. 129.

\textsuperscript{374} Cf. GS, no. 48, «Authentic married love is caught up into divine love and is directed and enriched by the redemptive power of Christ and the salvific action of the Church, with the result that the spouses are effectively led to God and are helped and strengthened in their lofty role as father and mothers. Spouses therefore, are fortified, consecrated for their duties and dignity of their state by a special sacrament; fulfilling their conjugal and family role by virtue of this sacrament, spouses are penetrated with the spirit of Christ and their whole life is suffused by faith, hope and charity; thus they increasingly further their own perfection and their mutual satisfaction, and together they render glory to God».

\textsuperscript{375} Cf. W. J. LADUE, \textit{Conjugal love and the Juridical structure of Christian marriage}, cit., p. 40. At this point Ladue asserts that, «the Christian family is depicted as arising from the conjugal covenant, the innate partnership of life and love». (Cf. GS, no. 48). It is therefore this ongoing dedication of the believing spouses to one another which constitutes the privileged image and participation in the covenant of that saving love which is between Christ and the Church».

\textsuperscript{376} A. MIRALLES, \textit{Il matrimonio teologia e vita}, cit., p. 39. «It is not therefore difficult to be convinced of the fact that «love is the soul of conjugal community; and this becomes a reality which constitutes the most intimate and authentic aspiration of every couple». The translation is mine.
between the spouses, being a human reality that is rich in content, interests so many human sciences, in particular psychology, ethics and law.\textsuperscript{377}

After having examined conjugal love from the point of view of GS, we shall now look at the relationship of conjugal love with marriage. The Council’s preparatory commission explained that, conjugal love supposes the existence of a matrimonial pact between the spouses which is made inviolable by the law.\textsuperscript{378} This type of love is different from that which exists between two friends. No matter how fraternal love may be, it is not binding. Mackin states that, it is an established teaching of the Church that a marriage which is a sacrament is such that it signs forth the love relationship of Christ and his people, the Church, and the signing it forth intensifies the spouse’ love for one another, that is, their conjugal love. It is also a close and necessary corollary that this love, according to the Christ-Church model is a saving and sanctifying love.\textsuperscript{379} But the marriage of two Christians is a sacrament in the fact that, the human elements of the relationship do this signing. In this light GS and HV place conjugal love at the center of these elements.\textsuperscript{380}

It is worth nothing at this point that, Mackin says, prospecting the concept of love and responsibility as a new category which is at the center of moral conscience specifies that responsibility is for love since love regards the same value of the person. In this regard, responsibility for love is synonymous with the responsibility for the value of the person.\textsuperscript{381} In this case Wojtyla asserts that:

\textsuperscript{377} Ibid., pp. 39-40.

\textsuperscript{378} «Ubi agitur de amore coniugali foedus supponitur, quod lege sancitur». \emph{Acta Synodalia}, vol., IV, pars VII, p. 498.

\textsuperscript{379} Cf. T. MACKIN, \emph{Conjugal love in the magisterium}, in \emph{The Jurist}, 36 (1974), pp. 263-303 and especially p. 265. Cf. also HV, no. 8 «For baptized persons, moreover, marriage invests the dignity of a sacramental sign of grace, inasmuch as it represents the union of Christ and the Church».

\textsuperscript{380} Ibid.

\textsuperscript{381} Ibid., p. 143: «The concept of responsibility is intended as a response, a giving of response to someone who interpellates. This somebody cannot but be, himself/herself, the other, God». 

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If marriage is to satisfy the demands of the personalistic norm it must embody reciprocal self-giving, a mutual bethroded love. This acts of surrender reciprocate each other, that of the man and of the woman, and though they are psychologically different in kind, ontologically they combine to produce that which is perfect, an act of mutual self-surrender. Hence a special duty devolves upon the man: he must give to ‘conquest’ or ‘possession’ its appropriate form and content – which means that he too must give himself, no less than she does.\(^{382}\)

Here Wojtyla stresses that, in order for marriage to satisfy these demands of the spouses, reciprocal self-giving and love is an important factor. The Second Vatican Council also brought out some fundamental principles regarding the new lay down of marriage and sexual ethics which the Council decided to point out to the Church and the entire world. According to Bonomi these principles are:

- Human sexuality is the most radical and significant connotation of the person.
- The human person is a subject of human affection; made from love, of love, for love.
- Sexuality is the meaning of interpersonal affectionate relationship; significant as the expressive symbolic and operative sign of the relational person.
- Matrimony as the state of total sexual integration, is the place or the natural condition of the full realization of the human sexuality in a context of true unitive love.
- Fecundity is one of the exigencies, is one of the fruits of conjugal love and finds in it, it’s true qualification as the procreative responsible mission.
- The procreative modality of fecundity is consented by an authentic meaningful sexual act of conjugal love.\(^{383}\)

The above citation gives us the essential content of the principles which were outlined by the Council fathers so that Catholics could follow them in order to be in conformity with the new concept of marriage and sexuality.

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In line with this, we cannot forget that, sexuality in the light of marriage is a natural reality. Sexuality is not a product of culture but it is a structure of the human person who constitutes and is part of his being. This is not in the static sense, but dynamic as the principle of operation. Pompedda states: «the fact that the relationship between a man and a woman has a natural dimension, implies in the first place that, there exist a limit between fitness and unapt, between mature and immature: that which conforms to nature is suitable, is mature; on the contrary that which does not contain this fitness is immature». In this case the natural is posed as the fundamental criteria of maturity and fitness. In the second place, nature gives the proportion of the capacity needed to arrive at the correct formation of the will of commitment, but between capacity and the correct formation of such a will, exist a distance which can be filled only by education and the response of man to the duty of his being.

In this regard, Pompedda asserts that, «if the structure of conjugal love contains fullness and totality as its proper characteristics, it is a sign that, the structure of human sexuality request this fullness and totality: man and woman are naturally constituted for this full and total union». In this light, the conjugal act in reality is the culminating expression of such love and its continuous growth. Due to this the Council describes marriage in terms of conjugal love being its specific elements (GS, 48). In order to conclude this

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384 Cf. E. BLEULER, Trattato di Psichiatria, Milano, 1967, p. 8ff; See F. M. POMPEDDA, Studi di diritto matrimoniale Caninico, cit., p. 82.
385 M. F. POMPEDDA, Studi di diritto matrimoniale Caninico, cit., p. 62. The translation is mine.
386 Ibid.
388 M. F. POMPEDDA, Studi di Diritto matrimoniale Caninico, cit., p. 65. «The union of man and woman is made full and total through the engagement (the pact, the compromise), which represents that act of the will which engages liberty assuming the possible future in its fullness, totality and hand it over to the other». The translation is mine.
synthetic concept regarding sexuality and marriage, we can therefore affirm in these words of Hervada that: «maturity consist in understanding and assuming in a responsible and sufficient way the structure, the profundity and the finality of love and sexuality, that is, of conjugality».  

After having analysed conjugal love and what it entails from the point of view of various authors, personally I will like to look at conjugal love from the point of view of Hervada and Viladrich. According to Hervada, conjugal love is distinguished from another kind of love due to its specific sexual character that is for its procreative dimension. True conjugal love is personal; from the whole person of one of the spouses this love is radiated to the other spouse. What is loved here is not the masculinity and femininity isolatedly considered or exclusively their bodily aspects, but the total person of man and woman. The specific object of conjugal love is the humanity of man as man (masculinity) and the humanity of the woman as woman (femininity) in order to build the *una caro*. Masculinity and femininity have in themselves respectively potential fatherhood and motherhood. Conjugal love is a peculiar form of love of neighbor, connaturally rooted in man which, through that intimate and profound personal meeting which it expresses, enables the spouses to feel in a particular way that essential proper value which helps them to live with particular intensity their marital life.

According to Viladrich, conjugal love is based upon the sexual differentiation between males and females, so that the object, that is, the loved good which typifies this kind of love as being conjugal is the love of the person of the man (masculine or virile) and the love of the woman (femininity). This kind of love distinguishes itself from any type of love due its specific sexual nature, thus, its procreative nature. The specific object which makes love to become conjugal is to love the humanity of the man in so far as he is a man (virility) and the humanity of the woman in so far as she is a woman (femininity). Therefore, the specific good which makes conjugal love to be

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peculiar and unique is then to love the person of the other. Thus, so far as virility and femininity are distinct and complementary goods, they constitute the peculiar object which makes the love between two persons to be conjugal.\textsuperscript{393}

Regarding the personal nature of conjugal love, what this love has then to be, in a basic manner, is the personal “you” of the man and woman. In this way, the person who loves conjugally must love the other, that is, the man or the woman, as a complete person. The typical nature of conjugal love, reveals it as a love of a person vis-à-vis another person. Above all, the sexual and procreative nature of all conjugal love is that which specifies this love.\textsuperscript{394} Therefore, conjugal love is the love of one person towards another in so far as he or she is a man or a woman, precisely as long as there exists a difference within the sexual modalization of the two. Their difference also makes them naturally complementary. The union which conjugal love is referred to is that unity in nature, the unity which exist between a man and a woman.

\textit{2.8.3. Conjugal love and matrimonial consent}

Gaudium et Spes expresses that, «The intimate partnership of life and love which constitutes the married state has been established by the Creator and endowed by him with its own proper laws: it is rooted in the contract of its partners, that is, their irrevocable consent» (GS, no. 48). Once consent has produced its juridical effects, that is, the matrimonial bond, it is irrevocable.\textsuperscript{395} When conjugal love is true, its same dynamics carries in itself stability and leads to a conjugal relationship which is deep enough. The union which regards

\textsuperscript{393} Cf. P. J. \textsc{Viladrich}, \textit{The Agony of legal Marriage}, cit., pp. 82-83.

\textsuperscript{394} \textit{Ibid.}, pp. 92-94. Viladrich stresses that «what distinguishes conjugal love from any other type of love between persons is its specific nature of sexual complementariness. The other person is loved through his or her virility or femininity, in so far as that other person is sexually distinct and precisely for this reason. Virility and femininity are the good by means of which the other person is loved».

conjugal love is that unity in natures, that is, the formation of the unity between a man and a woman or conjugal community which is marriage. The juridical structure is essential to marriage because it gives the form.\(^{396}\)

A consent in order to be truly defined matrimonial, has to be, as noted by Viladrich, radical, unconditioned and binding, that is, juridically demanding. In more technical terms we will say, it has to be a juridical act, directed to assume an obligation of justice, binding in itself. In brief, it is an act which constitutes unity in natures, which involves a juridical title of right and duty on the person – through the body in both spouses. Consent is radical because it is being directed to the person of the other, to assume the other as a spouse, to be one flesh, and it is not just a consent which is ordained uniquely to an activity, to a living together or to something similar; consent has to arrive at the most radical and deep level of matrimonial union. Unconditioned consent means the other is assumed in a full and total manner according to natural order, which has to make the spouse to think of a consent which assumes with fullness and totality the other as man and woman.\(^{397}\)

The love between a man and a woman, in its ultimate instance, is dilectio and this therefore is a special love which is present with special intensity in the will of the lovers. This love inclines the man and the woman towards conjugal union; it tends to make the man and the woman a unity in what is conjugable – masculinity and femininity – within their natures. Thus, this reveals the natural dynamics of love between a man and a woman: the tendency toward union. However fuller and more total that love is, the less it is satisfied with a fleeting encounter.\(^{398}\) Since conjugal union implies donating oneself and not simply relating to the other as a masculine person or as feminine person, this donation without which there could be no interpersonal union to add onto the conjugal but rather a mere encounter, contact or relation which is fleeting, is either

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396 Cf. J. Hervada, Studi sull’essenza del matrimonio, cit., pp. 124-125.

397 Ibid., p. 287: «In other words, consent has to be the fruit of a love and unconditioned decision, in such a way that, the act of giving consent doesn’t exclude selectively factors that integrate masculinity and femininity and conforms the unity in natures. This implies it should not exclude some of the goods of matrimony: unity, perpetuity and ordinatio ad prolem».

decided by the will of the lovers or it will not come about. Without this assumption therefore, on the part of the decision of their reciprocal wills, the inclination towards union would remain as a mere invitation, but such a union would not come about. The reason being that, the human person cannot be united unless the will so wishes it to be. Thus, the decision of founding themselves as a total conjugal union by virtue of its being a present commitment concerning the future requires a free decision, a decision made with one’s full liberty.\(^{399}\) In this light, Viladrich comments that,

What husband and wife donate to each other, in the strict sense of natural marriage, is their real and true masculine and feminine being within the totality of their essential and existential complementariness as they are by nature. They donate themselves in the essential and existential totality of their conjugable dimensions. They donate themselves in the ordaining of that natural complementariness which tends towards procreation and fertility and towards the community of life and love which is contained therein. They donate themselves in all the unitive and fertile inclination of their being as a man and as a woman. And they donate themselves according to nature, and not according to an artifice or a substitute of natural reality because they

\(^{399}\) *Ibid.*, pp. 152-153. He then comments that: «To feel the desire of total union and its foundation here and now are two essentially different moments in the logbook of all sentimental histories. It is therefore necessary to distinguish that fundamental decision of the conjugal union from any other previous and posterior acts which there have been and there shall be between the lovers. People who have fallen in love, in so far as they love each other, feel the invitation of “going steady or of living together.” But the husband-wife union must not be confounded with the mere fact of living together or of going steady. Certainly the love they feel – the spontaneous inclination of their instinct, the tendency of their sentiments and also their will – invites them to a never ending story. But it simply invites them since this is the tending dynamics of love between man and woman». «Only when through a new act of their will, with full reflection and freedom, they decide that union which is so profound and so total to which their love beckons should exist, only then is that union established. That foundational decision is a new, original and unrepeatable highlight among all the other acts of love within their common history because that decision also has for its object a new, original and unrepeatable reality: the object of that act of the will is not so much to continue loving each other, but rather to donate each other to the other in such a way that they become transformed from lovers into spouses: conjugal love. […] And this new form of being spouses and not lovers requires an act of reciprocal will, a decision, a commitment, in so far as it is the mutual disposal of each other». 
freely decide on their own to do so. Their decision is that of assuming
the nature of what is conjugable as it exists in nature, that is, without
manipulating it, without reservations, exclusions or changes.⁴⁰⁰

According to Von Hildebrand, there is a real distinction between
conjugal love and marriage.⁴⁰¹ He is aware that the irrevocable and indissoluble
bond of marriage is formed once the spouses manifest their consent. However,
this consent of the spouses is then implied in conjugal love which therefore
possesses the characteristic of the *intentio unionis*, that is, the desire to participate
in the life of the loved being, in order to bind oneself for life.⁴⁰² The *intentio
unionis* of conjugal love finds valid and full expression in the irrevocable union
which constitutes consent.⁴⁰³

For Martín de Agar, since marriage is a community of life and love
between a man and a woman, love plays a decisive role. It is love which leads
two persons to marry. Marriage is the natural channel where love flows,
making this an exclusive and permanent commitment. In this way, whereas
two persons who are engaged say to each other: «I want to marry you because I
love you»; the two spouses will say: «I love you because I have married you». In
marriage, love becomes a bond, a community of life, a duty».⁴⁰⁴ Again he goes
further by affirming that, «this fully corresponds to human nature, to the
intimate and profound aspiration of men and women to love and be loved, to
the fact that they find their realization in the gift of themselves. This reflects
the image and likeness of God which is in man (cf. GS, 24). Every person who
is in love swears that his love is eternal, unique, total; it is natural that the union
that arises from this love be exclusive and indissoluble, and that only in

⁴⁰¹ Cf. D. VON HILDEBRAND, *Marriage*, cit., p. 21; see ARJONILLO, *Conjugal love and the ends of
marriage in Dietrich von Hildebrand and Herbert Doms*, cit., p. 184.
cit., p. 21.
marriage would the giving of one’s body make sense».\textsuperscript{405} In this regard «conjugal love is rooted in the will. Its root is not, therefore, sensuality nor sentiment although emotionality is not excluded, which can manifest itself phenomenologically priority and to permeate all the relationships between man and woman; but only the intervention of the will can make that they reach their authentic human dimensions».\textsuperscript{406} Lener is of the opinion that conjugal love that is certain forms or should form the object of matrimonial consent and there is no doubt about this.\textsuperscript{407} Lener defines conjugal love as a juridic reality and not a mere fact. In virtue of consent such a love becomes radical and obliges in justice.\textsuperscript{408}

Since consent is an act of the will, love will be present in the manner in which it is assumed by the act of the will. In other words, the act of matrimonial consent is informed by the will.\textsuperscript{409} In this regard, Cifuentes affirms that, «it can then be repeated that, habitually the matrimonial consent is motivated from love».\textsuperscript{410} The expression “\textit{matrimonium et amor coniugalis}” does not indicate an aspect of marriage, one of its parts but the whole of it is conjugal love.\textsuperscript{411} Conjugal love has importance being the cause of marriage since it identifies with the consent \textit{qui matrimonium facit}. It has importance with the essence of marriage since it constitutes the object demanded by consent.\textsuperscript{412} Finally, «conjugal love regards the personal dynamics of a being in terms of person who is inclined to openness, communication and the donation of the

\textsuperscript{405} \textit{Ibid.}

\textsuperscript{406} A. Miralles, \textit{Il matrimonio teologia e vita}, cit., p. 40. The translation is mine.


\textsuperscript{408} \textit{Ibid.}, p. 167.

\textsuperscript{409} Cf. M. F. Pompedda, \textit{Studi di diritto matrimoniale canonico}, cit., p. 46.

\textsuperscript{410} R. Llano Cifuentes, \textit{A relevância jurídica do amor conjugal}, in \textit{Ius Canonicum}, 30 (1990), p. 268ff. The translation is mine.


\textsuperscript{412} V. Fagiolo, \textit{Amore Coniugale ed Essenza del Matrimonio}, in AA.VV., \textit{L’Amore Coniugale}, Città del Vaticano 1971, p. 185.
personal you to the other which is specified by openness, communication and the reciprocal donation to virility and respective femininity». In this light, the juridical relevance of conjugal love does not cause any radical or substantial changes to the canonical matrimonial disposition. Thus, conjugal love arises from consent and in the strict sense is brought about by it: consent is an engagement in virtue by which love as that free reality becomes due in justice.

2.8.4. The human person and his dignity

At the beginning of his pontificate John Paul II in explaining the truth about the human dignity said, «man is one, unique and unrepeatable being». This unrepeatability concerns the human individual, not taken abstractly, but immersed in the historical, ethnic, social and above all cultural reality that distinguishes him in his individuality. According to Arjonillo, «the dignity of the human person is a concept which cannot be defined nor conferred to him by an external agent, say the society. [...] Rather to understand the dignity of the human person, the recognition of the sacred value, which man possesses

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413 P. J. Viladrich, Amor conyugal y esencia del matrimonio, in Ius Canonicum, 12 (1972), p. 311. The translation is mine.
414 Cf. J. Carreras – H. Franceschi – M. A. Ortiz, Diritto Canónico del Matrimonio e della Famiglia, cit., p. 36 note 61. They quoted the following: Paul VI, Allocation to the Roman Rota, February 9, 1976, in AAS 48 (1976), pp. 204-208; Communicationes, 8 (1976), pp. 3-7; C. J. Errázuriz, El matrimonio como conjunction entre amor y derecho en una óptica realista y personalista, in Scripta Theologica, 16 (1994), p. 1035: «Matrimonial consent constitute a peculiar act of love between persons who unite themselves. This does not deal with adding to consent a new requisite of validity, as if it is a particular degree of love (which is often intended as sentimental love) but this same consent which is the cause of marriage, is in itself an act of love of special transcendence». The translation is mine.
416 John Paul II, Allocation, (January 22, 1996), in Woestman, cit., p. 239.
417 Ibid.
and which is inherent in him, is necessary». For one to understand this reality, it is important to have recourse to the divine transcendence. In this light the principles of the dignity of the human person are being stated on the first part of GS. According to GS, the dignity of the human person is founded on his origin and his supernatural destiny.

_Gaudium et Spes_ number 12 specifically talks of the human person and his dignity. The first dignity of the human person is that which is inherent and inalienable to him right from his origin. Man is the only creature whom God has created according to his image (GS 12c) and whom God loves for his own very sake. GS, 24c). «The dignity of man to which he is called to acquire is manifested above all in his superior destiny. Man is called to live in communion with God (GS, 18b, 19a), a calling which is revealed by and which is realized in Jesus Christ (GS, 22a)». Man through his conscience is then called to his full realization through that communion with God. Man is capable of hearing God right deep into his heart, telling him to do good and avoid evil. Man has in his heart a law which is inscribed by God. His dignity lies in observing this law, and by it he will be judged (cf. Rom 2:15-16). Man’s conscience is his most secret core, and in it he is alone with God whose voice echoes in his depths. The fact that all men are endowed with a rational soul and are created in God’s image; they have the same nature and origin and being redeemed by Christ they do have a basic equality between them which must be given greater recognition and this must be respected (GS, no.29). Therefore man can only discover himself through a sincere giving of himself (GS, no. 24c).

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418 R. B. Arjonillo, _Conjugal love and the ends of marriage in Dietrich von Hildebrand and Herbert Doms_, cit., p. 161.
419 Ibid.
420 Cf. R. B. Arjonillo, _Conjugal love and the ends of marriage in Dietrich von Hildebrand and Herbert Doms_, cit., p. 162.
421 Ibid.
422 Cf. GS, no. 16a.
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In a way Von Hildebrand also develops the dignity of the human person which is provided by his condition as *Imago Dei*, and which is manifested at the same time by his rational nature [intelligence and free will] which helps him to be able to transcend and give himself.\footnote{Cf. D. VON HILDEBRAND, *Etica cristiana*, Barcelona 1962, p. 245; See R. B. ARJONILLO, *Conjugal love and the ends of marriage in Dietrich von Hildebrand and Herbert Doms*, cit., p. 163.} «Through his intellect, man is capable of knowing. Knowledge is the basis of all spiritual life, serving as a foundation of all spiritual acts of man such as willing and loving».\footnote{D. VON HILDEBRAND, *What is philosophy?* London and New York 1991, p. 13.} Man’s rational nature helps to be able to transcend himself and enter into a close relationship with another *thou*, responding to this value and taking interest as well in that person. This transcendent dimension is what gives man his personal character. On this transcendent character also depends his dignity which is unique among all created beings.\footnote{Cf. D. VON HILDEBRAND, *Man and woman, love and the meaning of intimacy*, Manchester 1992, p. 241.} Man’s sublime dignity requires a sublime response in human relationships and «the only fundamental response which is due to the value of the human person as *Imago Dei* is love».\footnote{D. VON HILDEBRAND, *Etica cristiana*, cit., p. 419.}

2.8.5. Openness to fertility

One aspect of conjugal love is openness to fertility. The catechism affirms that, “By its very nature the institution of marriage and married love is ordered to the procreation and education of the offspring and it is in them that it finds its crowning glory.”\footnote{CCC no. 1652; See FC, no. 84.} In this light FC asserts that, Children are the supreme gift of marriage and contribute greatly to the good of the parents themselves. Hence, true married love and the whole structure of family life which results from it, without diminishment of the other ends of marriage, are directed to disposing the spouses to cooperate valiantly with the love of the Creator and Savior, who

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through them will increase and enrich his family from day to day (Cf. Gen 2:18; Mt 19:4; Gen 1:28).\textsuperscript{429}

Therefore, the fruitfulness of conjugal love extends to the fruits of the moral, spiritual, and supernatural life that parents hand to their children through the education which they give them. Parents are therefore the principal and the first educators of their children.\textsuperscript{430} «In this sense, the fundamental task of marriage and the family is to be at the service of life».\textsuperscript{431} The moral value of the intimate link between the goods of marriage and between the meanings of conjugal act, is based upon the unity of the human being, a unity which involves the body and the spiritual soul. The spouses mutually express their personal love in the ‘language of the body,’ which clearly involves both ‘spousal meanings’ and parental ones.\textsuperscript{432} The conjugal act by which the couple mutually express their self-gift at the same time, expresses openness to the gift of life. It is an act that is inseparably bodily and spiritual. It is in their bodies and through their bodies that the spouses consummate their marriage and are able to become father and mother. In order to respect the language of their bodies and their natural generosity, the conjugal union must take place with respect to its openness to procreation; and the procreation of a person must be the fruit and the result of married love.\textsuperscript{433}

2.8.6. Unitive and procreative dimensions of conjugal love

It is crucial at this juncture to examine marriage and the beautiful expression of marital love, which is both unitive and procreative. These two dimensions are intrinsically good and they are inherent to the act of marriage.

\textsuperscript{429} GS, no. 50.1.

\textsuperscript{430} GE, no. 3.

\textsuperscript{431} FC, no. 28.

\textsuperscript{432} Cf. CONGREGATION FOR THE DOCTRINE OF FAITH, Donum Vitae, Instruction on Respect for human life in its origin and on the dignity of procreation, (February 22, 1975), II A 2. Hereafter this instruction will be cited as DV.

\textsuperscript{433} Cf., DV, II B 4 b.
Consequently, in marital love, the unitive dimension cannot be separated from the procreative dimension. To this married love, and to this love alone, belongs sexual giving, «realized in a truly human way only if it is an integral part of the love by which a man and a woman commit themselves totally to one another until death». In this regard, therefore, Pope Paul VI in his encyclical "Humanae Vitae" stated, «Each and every marriage act must remain open to the transmission of life». Paul VI further affirms that, «This particular doctrine, expounded on numerous occasions by the Magisterium, is based on the inseparable connection, established by God, which man on his own initiative may not break, between the unitive significance and the procreative significance which are both inherent to the marriage pact».

John Paul II and Paul VI have repeatedly affirmed that, what has consequently evolved in society is a contraceptive mentality, that is, the removal of conjugal love from the sacrament of marriage, and in many cases – especially outside the context of marriage – the reduction of conjugal love to simply a sex act without genuine love. In Evangelium Vitae, Pope John Paul II seemed to have been so touched about the effects of contraception as mentioned in the following words of his:

Sexuality too is depersonalized and exploited: from being the sign, place, and language of love, that is, of the gift of self and acceptance of another, in all the other's richness as a person, it increasingly becomes the occasion and instrument for self-assertion and the selfish satisfaction of personal desires and instincts. Thus, the original import of human sexuality is distorted and falsified, and the two meanings, unitive and procreative, inherent in the very nature of the conjugal act, are artificially separated: in this way, the marriage union is betrayed and its fruitfulness is subjected to the caprice of the couple. Procreation then becomes the 'enemy' to be avoided in sexual activity: if it is welcomed this is only because it expresses a desire, or indeed the intention, to have a child 'at all costs,' and not because it signifies the

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435 Cf. HV, no. 11.

436 HV, no. 12.
complete acceptance of the other and therefore an openness to the richness of life which the child represents.\textsuperscript{437}

The Church has always taught that a couple must act as responsible parents: «The couple must fulfill their role as cooperators of God's creative love with responsibility: they must respect the divine providence of God, consider their own good and the good of their children, born and yet to be born, weigh their own situation and needs on the spiritual and material levels, and look to the good of the family, society, and Church».\textsuperscript{438}

2.8.7. Indissolubility as a necessity of conjugal love

Hildebrand affirms that, «the indissolubility of marriage has an important retroactive effect on conjugal love. It is considered by many as something oppressive and dispiriting, something which deprives love of its wings and gives it a coercive character».\textsuperscript{439} They think that this love will vanish with the knowledge that the tie is binding whether this love persist or not.\textsuperscript{440} He then asserts that, «for the real lover, the consciousness of being indissolubly united with his beloved in Christ, the fact of forming an objectively indissoluble community whose validity is beyond all wavering and all human frailties, is the source of the highest satisfaction».\textsuperscript{441} «The indissolubility of marriage must likewise be considered as the unique fulfillment of the specific intention of conjugal love. The true lover experiences the objective validity of his self-


\textsuperscript{438} GS, no. 50.

\textsuperscript{439} D. VON HILDEBRAND, \textit{Marriage the mystery of fruitful love}, cit., p. 59.

\textsuperscript{440} Ibid.

\textsuperscript{441} Ibid., «This is due to the fact that, he wants to be with his beloved, and he is grateful and happy of the fact that, this unity can be realized to so great a degree and that it also rises above all emotional changes». Ibid.
bestowal, and the accomplishment of such a transcendent, irrevocable decision, as a specific fulfillment of his love».\textsuperscript{442}

2.8.8. Characteristics and specific qualities of conjugal love

The characteristics\textsuperscript{443} of conjugal love drawn from GS, 49 can be summarized in the following points:

1. Conjugal love is an eminently human love. It does not refer to an act of man nor to passion: rather, it is a habit and thus, must not be equated with mere egoistic and erotic inclination. For conjugal love to be eminently human it has to respect the entire truth regarding the loved person. This entire truth of the loved person is provided by his dignity as a human person and as God’s image as well. Among all the visible creation, only man is the subject of love. This love connotes that the object of loved is perceived and respected. Since the object loved is another person, the entire truth concerning the person must be encompassed by such love. This therefore embraces the good of the person in his totality, in all his physical and spiritual components thereby bringing one to love another not for what he has nor for what he can give, but for what he is: a person. This is therefore what we can call a personal love.\textsuperscript{444} In this light therefore, «conjugal love in the Council appears in the constitution as a fully human love which is governed by the will and is rooted in all spheres of the person, body and soul, and expressed in all its dimensions: biological, psychological, spiritual, and even supernatural».\textsuperscript{445} Hence Miralles affirms that, «that which is exhausted in

\textsuperscript{442} Cf. D. VON HILDEBRAND, Marriage the mystery of fruitful love, cit., p. 60.

\textsuperscript{443} Cf. POPE PAUL VI in Humanæ Vitæ mentioning these characteristics said: «under this light, there clearly appear the characteristic marks and demands of conjugal love, and it is of supreme importance to have an exact idea of these». See HV, no. 9, p. 4 of the English translation.

\textsuperscript{444} Cf. D. DE ROSA, Dignità del matrimonio e della famiglia e sua valorizzazione, (Diret. by A. FAVALE), La Chiesa nel mondo contemporaneo, Torino 1968, p. 768.

\textsuperscript{445} M. ZALBA, Dignidad del matrimonio y de la familia, in (ed. CARD. A. HERRERA ORIA), Comentarios a la constitución «Gaudium et Spes» sobre la Iglesia en el mundo actual, Madrid 1968, p. 429. The translation is mine.
transiency, that which surges, blooms and withers» within a short period of time cannot be considered as truly human love.  

2. *Conjugal love is rooted in the will, being directed from one person to the other: it concludes in the person. As such it is a personal love which entails the good of the whole person* and thereby entails a love of friendship which is faithful and indissoluble, as demanded by the institution of marriage. This implies that, it is a love which entails the good of the person as a whole. The benevolent character of conjugal love is then insisted also by the council. Browne said, in assigning a place for conjugal love and its right in marriage society, there is need to distinguish love of friendship from the love of concupiscence. On the other hand, Fernandez clearly stated that, love of friendship or benevolence is proper to persons while the lover of concupiscence is proper to things, therefore concluding that friendship does not exist among animals, but it exists between the spouses.

3. *Conjugal love covers the totality and the manifestations of the indivisible union of the body and soul of the spouses. As such, conjugal love neither excludes affectivity nor the sexual dimension of the person of the spouses but rather comprehends them. It is crucial at this juncture the fact that, if the human person is an indivisible unity of body and soul, then it follows that this love encompasses the totality and the manifestations of the indivisible union of body and soul.*

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Hildebrand said that, conjugal love involves «the gift of one’s own person» and for him it is conjugal love which forms an organic bridge between the sexual and spiritual spheres of the human person. Doms on the other hand also admitted the fact that, conjugal love involves a total and mutual self-giving of the spouses which is expressed in the act proper to marriage.

4. **Conjugal love is dynamic:** it is united with the fulfillment of the obligations of daily life and sacrifices and is cultivated and fostered through them. Conjugal love has to be nourished and fostered daily. For Hilderbrand “marriage is the wonderful union of two persons in love and by love.” The fact that the communion of love constitutes the most profound sense of marriage, suggests that this love has to be fostered and cultivated by the spouses.

5. **Conjugal love is assumed, healed and perfected by divine love.** Gaudium et Spes affirms that, «authentic conjugal love is assumed into the divine love and enriched by the saving action of the Church so that the spouses might be led efficaciously to God and be helped and supported in their sublime task as father and mother». When the affectivity of the individual is more rich and strong then much more will he find himself in a full and satisfying contact of the reality which is around him and this will appear to him worthy of loving and living.

The idea of conjugal love being assumed, healed and perfected by the divine love is wonderfully expressed by *Gaudium et Spes*. Considering some of the difficulties of conjugal life and the weakness of human nature and in

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451 D. VON HILDERBRAND, *Marriage the mystery of fruitful love*, cit., p. 15; see pp. 4; 8; 20; 22 and *Marriage and over population*, cit., pp. 13-14.

452 Ibid, p. 15.


455 Ibid., p. 32.

456 GS, no. 49b.

particular concerning the spouses, the Council affirmed that the realization of an authentic conjugal love will only be thanks to divine assistance. This frail and human reality can be healed only by God’s grace. In this light, GS affirms that, «authentic conjugal love is assumed into the divine love and enriched by the saving action of the Church so that the spouses might be led efficaciously to God and be helped and supported in their sublime task as father and mother» (GS, no. 48b). More over this love has been healed and elevated by Our Savior with a special gift of grace and charity (GS, no. 49b). In this light, since it is being helped by the sacramental grace and imbued by the spirit of Christ which then permeates their whole life with faith, hope and charity, the spouses in fulfilling their conjugal and family duties, attain also their proper perfection and mutual satisfaction and thereby giving glory to God (GS, no. 48b). By affirming this, GS does nothing else than to place the very meaning of marriage in harmony with what has been proclaimed by Lumen Gentium regarding the universal call to holiness.

Conjugal love involves mutual self-giving and in this regard the giving has to be complete and ultimate. Not only the heart but the entire personality is given up to the other. When a man and a woman love each other in this way,

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459 Cf. LG, no. 11b. «In virtue of the sacrament of matrimony by which they signify and share the mystery of the unity and faithful love between Christ and the Church, Christian married couples help one another to attain holiness in their married life and in the rearing of their children. Hence, by reason of their state in life and of their position, they have their own gifts in the people of God». The translation is mine.

«All in the Church, whether they belong to the hierarchy or are cared for by it, are called to holiness… All Christians in any state of life are called to the fullness of Christian life and to the perfection of love and by this holiness a more human manner of life is also fostered in earthly society». LG, no. 40b.

«Christian married couples and parents, following their own way, should support one another in grace through life with a faithful love… They stand as witnesses and cooperators of the fruitfulness of Mother Church, as a sign of, and a share in that love with which Christ loves his bride and gave himself for her». LG, no. 41. see, K. Madjanski, Communion di vita e d’amore. Teologia del matrimonio e della famiglia, trad., by V. Levi, Vita e pensiero, Milano 1980, pp. 43-46; 104-114; 181-200. The translation is mine.

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they give themselves to each other at the very moment they begin to love.\textsuperscript{460} For Hildebrand, «all love certainly desires reciprocity which is free from every shade of egoism; but in conjugal love there is an aspiration not merely for a return of affection in general, but for the unique love whereby the beloved belongs to the lover in an entirely exclusive manner, as he in turn wants to belong to the beloved».\textsuperscript{461} He asserts that this love, tends to a unique union and partly constitutes it: a community where two persons constitutes a closed union which can exist only between them. In this light conjugal love establishes a relationship in which the love of each one of the two parties is turned exclusively to the other.\textsuperscript{462}

The person is thus capable of a higher kind of love than concupiscence, which only sees objects as a means to satisfy one's appetites; the person is capable rather of friendship and self-giving, with the capacity to recognize and love persons for themselves. Like the love of God, this is a love capable of generosity. One desires the good of the other because he or she is recognized as worthy of being loved. This is a love which generates communion between persons, because each considers the good of the other as his or her own good. This is a self-giving made to one who loves us, a self-giving whose inherent goodness is discovered and activated in the communion of persons and where one learns the value of loving and of being loved.\textsuperscript{463}

Each person is called to love as friendship and self-giving. Each person is freed from the tendency of selfishness by the love of others, in the first place by parents or those who take their place and, definitively, by God, from whom all true love originate and in whose love alone does man discover to what extent he is loved. At this point, we find the root of the educative power of Christianity: «Humanity is loved by God. This very simple yet profound

\begin{footnotesize}
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\item[460] Cf. D. VON HILDEBRAND, Marriage the mystery of faithful love, Manchester 1991, p. 8.
\item[461] Ibid., p. 13.
\item[462] D. VON HILDEBRAND, Marriage the mystery of faithful love, cit., p. 13.
\item[463] THE PONTIFICAL COUNCIL FOR THE FAMILY, The truth and meaning of Human sexuality, (December 8, 1995), no. 9.
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The proclamation is owed to humanity by the Church.\textsuperscript{464} In this way Christ has revealed his true identity to man: «Christ the new Adam, in the very revelation of the mystery of the Father and of his love, fully reveals man to himself and brings to light his most high callings.\textsuperscript{465}»

It is quite clear at this point that, man is called to love and to self-giving in the unity of body and spirit. In this regard, femininity and masculinity are complementary gifts, through which human sexuality is an integrating part of the concrete capacity for love which God has inscribed in man and woman. «Sexuality is a fundamental component of personality, one of its modes of being, of manifestation, of communicating with others, of feeling, of expressing and of living human love.\textsuperscript{466}» This capacity for love as self-giving is thus "incarnated" in the nuptial meaning of the body, which bears the imprint of the person's masculinity and femininity. «The human body, with its sex, and its masculinity and femininity, seen in the very mystery of creation, is not only a source of fruitfulness and procreation, as in the whole natural order, but includes right from the beginning' the nuptial' attribute, that is, the capacity of expressing love: that love precisely in which the man-person becomes a gift and — by means of this gift — fulfils the very meaning of his being and existence.\textsuperscript{467}» Every form of love will always bear this masculine and feminine character.


\textsuperscript{465} John Paul II, Letter to the Family, Gratissimam Sane, no. 22. The love revealed by Christ «which the Apostle Paul celebrates in the First Letter to the Corinthians...is certainly a demanding love. But this is precisely the source of its beauty: by the very fact that it is demanding, it builds up the true good of man and allows it to radiate to others». (Gs, 14) Therefore it is a love which respects and builds up the person because "Love is true when it creates the good of persons and of communities; it creates that good and gives it to others" (Ibid.).

\textsuperscript{466} Congregazione per l'educazione cattolica, Orientamenti educativi sull'amore umano (11 Novembre 1983), n. 4: OR (2 Dicembre 1983); EV 9/422; see the Truth and meaning of human sexuality, no. 10.

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The document also emphasizes the idea that, human sexuality is thus a good, part of that created gift which God saw as being "very good", when he created the human person in his image and likeness (Genesis 1:27). Insofar as it is a way of relating and being open to others, sexuality has love as its intrinsic end, more precisely, love as donation and acceptance, love as giving and receiving. The relationship between a man and a woman is essentially a relationship of love: «Sexuality, oriented, elevated and integrated by love acquires truly human quality». When such love exists in marriage, self-giving expresses, through the body, the complementarity and totality of the gift. Married love thus becomes a power which enriches persons and makes them grow and, at the same time, it contributes to building up the civilization of love. But when the sense and meaning of gift is lacking in sexuality, a «civilization of things and not of persons» takes over, «a civilization in which persons are used in the same way as things are used. In the context of a civilization of use, woman can become an object for man, children a hindrance to parents...». Conjugal love is possible only between a man and a woman and not between persons of the same sex, as is the case with friendship, parental love, or filial love and this thus marks its special character. Hildebrand then affirms that,

These two types, man and woman, have a unique capacity for complementing each other. Their meaning for one another is something quite unique. They are made one for the other in a special way, and they can, purely as spiritual persons, form a unity in which they reciprocally complement one another.

It is only in conjugal love, where a man and a woman are united in a unique communion and where they are able to give themselves to one another

468 THE PONTIFICAL COUNCIL FOR THE FAMILY, The truth and meaning of human sexuality, cit., no. 11.

469 CONGREGAZIONE PER L’EDUCAZIONE CATTOLICA, Orientamenti educativi sull’amore umano, (December 12, 1983), n. 6, in EV 9/424.

470 LF n.13.

471 Cf. D. VON HILDEBRAND, Marriage the mystery of faithful love, cit., p. 13.

472 Ibid., p. 15.
in the deepest sense of the word and belong to each other in an ultimate interpretation of their souls, that this relationship in the sensual sphere becomes intelligible. It is only in this order that the sublime meaning of the sexual sphere is realized and the union of two beings in a complete spiritual-sensual union according to the words of Christ: “and they shall be two in one flesh” (Mt 19:5).

Still some other characteristics of conjugal love can be seen in the article of Montanari which states that conjugal love requires perennial fidelity. He begins by affirming that mutual consent is a characteristic of conjugal love and it goes beyond sexual satisfaction and sexual integration. This consent therefore involves an institution which is born out of an absolute commitment, by an act which is absolute, from the free will of the spouses and which also establishes a reality which transcends the free availability of the spouses. He develops another point regarding the idea that conjugal love is characterized by sexuality and it involves a dedication which in itself has to be total.

After having examined the characteristics of conjugal love, we shall now proceed to examining the specific qualities of conjugal love which are fullness and totality, conjugal love leads to unrepeatable self-giving, conjugal love demands a permanent and long lasting duration.

Hervada affirms that, conjugal love is total in order to indicate that it embraces the whole extension, all its aspects including those of conjugality. It is oriented to the union of the spouses in the reciprocal and total possession of their masculinity and femininity (as man and woman), but at the same time not in all aspects of the person. An analysis of this characteristic makes evidence the following aspects: 1°) conjugal love implies loving a woman as wife which signifies loving her in her whole dimension as a woman, in all that which is distinct and in consequence as complement of the proper personality as in that

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473 Ibid., p. 19.
475 Cf. J. Hervada, Studi sull’essenza del matrimonio, cit., p. 116.
which is man – and primarily in the generative strength and the same is necessary with the love of the wife for the husband.\textsuperscript{476} 2°) This involves also the exclusivity, that is, the giving of all the love to the other spouse, with the exclusion of other distinct persons of the proper spouse, not only in what refers to the union of bodies (adultery), but also to the remaining manifestations of conjugal love, which includes the community of life which is properly matrimonial.\textsuperscript{477} 3°) It is as a consequence of totality that, the spouses surrender themselves to each other with all the facets of femininity or virility. It would subvert the nature of conjugal love the giving of all the aspects of the sexuality, but only partially.\textsuperscript{478} Totality which is required by conjugal love, corresponds to the exigencies of responsible fecundity (FC, no. 11). Viladrich distinguishes the totality of conjugal love into essential totality and existential totality. What concerns us here is the existential totality of conjugal love so far as it brings us to the understanding of the total reciprocal donation of conjugal love for the entire duration of time.\textsuperscript{479} He asserts the fact that,

Conjugal love is total, when apart from signifying the reciprocal donation of everything contained within virility and femininity, that whole content is donated for its entire duration in time, in any of its possible living realization, during the entire existential unfolding of its masculinity and each femininity. In other words, life in its totality is an essential part of the personal uniqueness of men and women and so of the exclusiveness of their conjugal community.\textsuperscript{480}

Viladrich emphasizes here that the aspect of the virility or femininity is needed for the entire life. This regards the donation of one’s total being as emphasized by the same Viladrich in the following words: «this existential

\textsuperscript{476} \textit{Ibid.}, p. 116.
\textsuperscript{477} J. \textsc{Hervada}, \textit{Studi sull'essenza del matrimonio}, cit., p. 116.
\textsuperscript{478} \textit{Ibid.}
\textsuperscript{479} Cf. P. J. \textsc{Viladrich}, \textit{The Agony of legal marriage, An introduction to the basic conceptual Elements of marriage}, Pamplona 1982, p. 105.
\textsuperscript{480} \textit{Ibid.}, p. 181.
The totality of conjugal love, therefore, entails the requirements of a love lasting forever and of an everlasting love between one man and one woman.\[\ldots]\)\[481\]

On the other hand, fullness means that conjugal love regards the integration of man and woman in their whole intensity. In this light, conjugal love extends union for the whole of life. Since conjugal love has the tendency to unite, it is opposed to separation of the spouses and to the dissolution of their union.\[482\]

To say that fullness is a characteristic of conjugal love means that such love has the tendency of being a perpetual union which has in itself the necessary force to arrival at it. From the biblical brand which states that, «for this man shall leave his father and mother and shall be united to his wife and the two shall be one body» (Jn 2:24), very often reveals that, conjugal love depicts the most unitive tendency that can exist at the natural level between two persons. Conjugal love orientates and directs man and woman in marriage, to form unity of natures, a union of two personalities which unites the spouses through the unity in a more intense possible way.\[483\]

Piana states that:\[484\] «conjugal love demands an integral and eternal giving of the person. This is at the biological and spiritual levels. Love expresses the idea that we are one flesh, we are one indivisible unity».\[485\]

Fullness and totality are characteristics of conjugal love, but at the same time they are exigencies which generates responsibility inherent to the interpersonal relationship between a man and a woman. Therefore «if every conjugal love – for its nature – is capable of being full and total right from the beginning, it has then, the said characteristics as its specific exigency».\[486\]


\[482\] Cf. J. *Hervada*, *Studi sull’essenza del matrimonio*, cit., p. 117.


\[486\] Cf. J. *Hervada*, *Studi sull’essenza del matrimonio*, cit., p. 121.
The point regarding the idea that conjugal love leads to unrepeatable self-giving is very much reflected in the words of Campanini as follows:  

One can affirm that, the donation of self comes in all its fullness and interiority. If this unrepeatability of a physical giving appears particularly evident for the woman, it is not less in the man even at the physiological level because the same sexual experience, apparently identifies its materiality, assumes on the same physiological plan a diverse intensity and fullness.

The experience of authentic love has its fundamental unity and this should not be compared to diverse or another experience. This is due to the fact that it is not mentioned that the experience of love always coincides and it is not that which is realized in marriage as a juridical institution; but one must say that, in as much as it is lived in its fullness and entirety, this experience of authentic love tends naturally to marriage, to make it permanent, definitive and irrevocable. On the psychological perspective this same author affirms that,

[...] It is observed that, love demands a full and reciprocal availability, that is, the total gift of self. Besides the full and mutual agreement, the fundamental component of the experience of love, brings a series of renunciation and sacrifices that can rarely be many times repeated in the course of time. This understanding in the psychological plane requires space, effort, patience and represents the mature fruit of the fullness of personal life so much that long years at times are not sufficient to realize it. The permanence in time of the conjugal bond represents therefore an optimal condition for this mutual psychological integration among the spouses.

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488 Ibid., pp. 64-65.

489 Ibid., p. 65.

490 G. Campanini, *Il fondamento dell’indissolubilità del matrimonio*, cit., pp. 67-69. «In this sense then, every marriage grows from the auto-limitation of choice which in effect presupposes that, this choice would be definitive and destined to be permanent. The very Campanini laid emphases on the idea that, “the exigency of endurance is strictly connected to the fulfillment
In this text Campanini underlines the idea that, the spouses need patience and the element of unrepeatability which denotes that definitive giving of themselves to one another. Another point we shall now examine is the fact that, conjugal love demands a permanent and long lasting duration. At the beginning of every experience concerning authentic conjugal love, independently from the manner of posing the legislation, there is always that aspiration for it to endure in time.

2.9. Indissolubility in relation to fidelity

This section is an attempt of examining the relationship that exists between indissolubility and fidelity. *Gaudium et Spes* in numbers 48 and 50 enrich our comprehension of the foundation of the essential properties of marital fidelity and indissolubility by referring to them as requirements which are not only of the *bonum prolis* but also of the intimate love union and mutual self-donation of the spouses. «So much of the traditional argumentation advanced for the *bonum fidei et bonum sacramenti* was grounded in the societal rather than in the personalist goals of marriage. Now these arguments need to be broadened». The nature of the intimate love union itself, calls for and at the same time even demands conjugal fidelity and indissolubility, prescinding from the emergent obligations and responsibilities of parenthood.

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of the procreative function at the authentic human level. [...] To realize fulfillingly at the authentic human level, the same procreation, demands time, continuity, fidelity and at the same time the exigency of indissolubility».


492 *Ibid.*, p. 40. «But marriage is not merely for the procreation of children: its nature as an indissoluble compact between two people and the good of the children demand that the mutual love of the partners be properly shown, that it should grow and mature. Even in cases where despite the intense desire of the spouses there are no children, marriage still retains its character of being a whole manner and communion of life and preserves its value and indissolubility» GS, no. 50.


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Alzate, observes that, the root of culture is the human dignity for which the inculturation of the truth of the beginning is an acknowledgement of the value of the human person. Thus, man and woman who choose marriage opt for the free acceptance and reciprocal giving of themselves; marriage does not admit other possibility that would not be the freedom of the gift. This relation of justice with love manifests to us the evident manner in the indissolubility of marriage, here it is implied not only a principle of justice but the recognition of a relation that cannot be alienated, much less, destroyed by any behavior. Therefore, it is in the indissolubility of marriage where one discovers that behind this demanding principle beats-among others things a virtue: the fidelity that begins with itself being faithful to the proper identity of the spouses.\footnote{Cf. P. M. ALZATE, \textit{Fundamentación jurídica de la indisolubilidad del matrimonio}, Roma 1995, p. 206.}

The freedom of the gift is an act of self-mastership, an act of justice founded in love. This is an essential concept of the person because auto donation is only possible if there is auto domination. Both fidelities of the spouses and the personal giving imply a mastership of the person over which lays the foundations its moral and juridical dominion. The person owner of his being is the juridical foundation of the indissolubility of marriage.\footnote{Ibid., pp. 206-208: «This freedom and auto donation presupposes in the person the understanding of himself and the person of the other to assume responsibly the law of love. The freedom of the gift which results to \textit{one flesh} in a total and full love bring them to a mutual giving and receiving of themselves to exclusivity and for life. And it leads them to accept reciprocally their fertility. Thus, it is possible for man to conceive a conjugal project for the whole of life and to be loyal to the commitment in spite of difficulties in the future». The translation is mine.}

The Catechism affirms that,

\begin{quote}
By its very nature conjugal love requires the inviolable fidelity of the spouses. This is the consequence of the gift of themselves which they make to each other. Love seeks to be definite; it cannot be an arrangement ‘until further notice.’ The ‘intimate union of marriage, as a mutual giving of two persons, and the good of the children, demand total fidelity from the spouses and require an unbreakable union between them.\footnote{CCC., no. 1646. See also GS, no. 48a.}"
\end{quote}
Conjugal love in this regard requires inviolable fidelity. Marriage itself and the good of the children demand total fidelity. The deepest reason is found in the fidelity of God to his covenant, in that of Christ and the Church. Through the sacrament of matrimony the spouses are enabled to represent this fidelity and witness to it. Through the sacrament the indissolubility of marriage receives a new and deeper meaning.\textsuperscript{498} This teaching is based upon God's fidelity to the Old Covenant and Christ's fidelity to his Church. This indissolubility receives a deeper meaning from the sacrament. The catechism affirms that:

\begin{quote}
It can seem difficult, even impossible, to bind oneself for life to another human being. This makes it all the more important to proclaim the good news that God loves us with a definitive and irrevocable love, that married couples share in this love, that it supports and sustains them, and that by their own faithfulness they can be witnesses to God's faithful love. Spouses who with God's grace give this witness, often in very difficult condition, deserve the gratitude and support of the ecclesial community.\textsuperscript{499}
\end{quote}

Because this seems so difficult, the spouses must hear the Good News of God's irrevocable love for them. They share in this love and witness to God's love by their own fidelity.

\textit{2.9.1. Fidelity as the law of love}

Love is an encounter of persons who aim at reaching a fuller communion. In marriage this love is then realized in the form of reciprocal giving and reciprocal acceptance of two persons in their totality, in their manner of being, of acting, for an interpersonal reciprocal complement which is expressed at all levels, that is, body and spirit, the heart, the will and the

\textsuperscript{498} Cf. CCC., no. 1647.
\textsuperscript{499} CCC., no.1648; See also FC, no. 20.
senses. Conjugal love at this point becomes a reciprocal relationship between the two.  

Conjugal love, presents motivations which demands the exigency of fidelity. A true conjugal love has a complete fusion of spirits, of souls and of bodies. Such a fusion occurs progressively, it requires time, space, effort, patience and it represents the mature fruit of the fullness of personal life. In this context, the aspiration to stability, rather to duration without limits in time, is present in every encounter of love. Therefore, the ultimate foundation of fidelity in conjugal love is found in God. God is the end of every human fidelity and its point of support. This fidelity of human love will find its ultimate foundation in the fidelity of the love of God.

2.9.2. Indissolubility as the seal of fidelity

It is exactly in the capacity of human love from becoming itself transitory (as it is, at least initially every human experience) to perennial, for not saying eternal, consist the proof and the definitive seal of the love. In this regard, the indissolubility of the bond does nothing else but transfers on the plan of the law an exigency which emerges from a more attentive moral conscience. At this point one could say that, love which does not aspire and does not tend on indissolubility, which does not defend and does not safeguard it with care and with severe self-discipline, does not cross the threshold of authenticity. Certainly this love can always decline and decrease along the way; but the love which succeeds in mobilizing all the energies of the person is unlikely disposed to recognize his end, to accept his definitive failure. Thus, divorce is in reality the admission that from the beginning marriage experience was deprived of the seal of authenticity. With this therefore, the defense of indissolubility

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501 Cf. O. J. Florencio, *The anthropological and sacramental foundations of the indissolubility of marriage in the 20th century Catholic theology*, cit., p. 86

presupposes a profound faith which is alive in man, in his capacity of perfecting himself.

2.9.3. Fidelity is required for all marriages

*Gaudium et Spes* expresses the idea that the intimate union between a man and woman demands total fidelity from the spouses (GS, no. 50). This statement of the Council shows that, the essential conjugal fidelity is for the good of the spouses, and this can be achieve only through a deep commitment from each of the spouses. This is of prime importance to every marriage if that marriage has to last. Bourghy states that:

> The love of the spouses, in the actual conception, finds its full manifestation in the gift of life. Here in all cases at the level of theory, one establishes an enormous progress. […] This incarnated love, if one can say it leads the spouses to wish for children. But how can they transmit life if they do not have the conviction that their union will be durable?²⁵⁰³

Some contemporary psychologists underlines the importance of a stable family milieu which is harmonious for the blossoming of the children. The permanence of the union and the fidelity of the spouses at this juncture are considered as essential elements. St. Josemaria Escrivá states that «the trueness of love demands faithfulness and rectitude in all marital relations».²⁵⁰⁴

2.10. Résumé

In this chapter we have concentrated on the anthropological dimension of the indissolubility of marriage. The concept of Christian anthropology while basing itself on the human person as a being created in the image and likeness

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²⁵⁰³ Cf. AA.VV., *Les mariage des divorcés. Pour un attitude nouvelle de l’Église*, Paris 1978. This document is written by various authors such as P. BOURGHY, L. DINGEMANS, P. HAYOIT, J. NATALIS. This various authors shall be quoted as P. BOURGHY. p. 37.

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of God accepts and accords the same dignity to human persons and acknowledges the difference of modality between male and female. Naturally, therefore, marriage corresponds to the mutual commitment between the spouses and the public declaration which establishes the basis of society. This society which is basically conjugal is willed by the Creator Himself. The created human person (man) discovers from the very beginning that he is alone and different from the visible creation on the basis of his body which at the same time identifies him with the visible creation. He searches for fulfillment as the other beings cannot provide him with sufficient partnership. This leads to the creation of the woman.

The creation of the woman establishes a unity in sexual difference – male and female complement each other in nature. The creation of man as male and female, in the image and likeness of God and the fulfillment of the human person’s identity in marriage and in a special way in the communion of persons, reveals that the meaning of the body and sexual difference can be fully fulfilled when they are total gifts of themselves to one another (personalism) in marriage of one man to one woman in which the two become one flesh (conjugal instinct and love), in openness to new life (love and procreation).

We have also seen that, the moral value of the intimate link between the goods of marriage and between the meanings of the conjugal act is based upon the unity of the human being, a unity involving body and spiritual soul. When love is lived out in marriage, it includes and surpasses friendship. Love between a man and a woman is achieved when they give themselves totally, each in turn according to their own masculinity and femininity, founding on the marriage covenant that communion of persons where God has willed that human life be conceived, grow and develop. A spirituality of marriage cannot be established that neglects the tasks which are primordial to it. Conjugal spirituality implies that one takes on consciously and voluntarily the aspects linked to the vocation of spouses and parents, and that they live them in faith, hope and charity. The essential elements of this conjugal mission cannot be opposed for they are linked to one another. It should not be feared that a responsible attitude with regard to the transmission of life might be directly detrimental to the love the spouses have for one another, to the education of children or even to fidelity itself.
Spousal love is properly the gift of oneself to the other and the acceptance of the gift of the other to myself; the will and reality of a reciprocal belonging. In this way is accomplished the highest good and the proper destiny of being loved. In love liberty finds an adequate object of donating his/herself in order to realize his/herself fully in the dependence from the other and in the obedience of a common destiny.
CHAPTER III: THE JURIDICAL DOCTRINE REGARDING THE INDISSOLUBILITY OF CANONICAL MARRIAGE

The definition of marriage stated in canon 1055 will not be complete if we forget to recall that the essential properties of the same marriage are unity and indissolubility though in this dissertation we are mostly concerned with indissolubility.¹ In this regard Bañares affirms that, can. 1056 is a continuation of the radically sacramental point of view with which the Legislator has sought to begin the general study of marriage.² The main affirmation of canon 1056 refers to every marriage independently of its sacramentality. The idea of qualifying unity and indissolubility as the essential properties of marriage implies that the same nature of marriage intended as the personal and intimate community of the spouses demands it.³

¹ See can. 1056.
² Cf. J. I. Bañares, Commentary to canon 1056 in (ed. E. Caparros), Exegetical Commentary on the Code of Canon Law, Montréal, 2004, p. 1056. He emphasizes that «can. 1055 established the identity between marriage and the sacramental reality. In this canon, we find an application, by way of affirmation, of what the elevation of marriage to the status of a sacrament entails».
³ Cf. A. D’Auria, Il consenso matrimoniale, Dottrina e giurisprudenza canonica, cit., p. 36. Here after this text will be cited as Il consenso matrimoniale. He goes on by quoting from Bonnet that: «It should be noted that, the expression essential properties of marriage makes reference to some concepts borrowed from scholastic philosophy, seems useful in order to understand other important themes of canonical marriage system». The translation is mine. Cf. also P. A. Bonnet, Essenza, Proprietà essenziali, fini e sacramentalità (cann. 1055-1056), in AA.Vv., (a cura di P. A. Bonnet – C. Gullo), Diritto matrimoniale canonico, vol 1, Città del Vaticano, Milano 2002, p. 115; F. Puig, Realismo giuridico e dottrina canonistica contemporanea sull’essenza del matrimonio, in Ius
Normally, doctrine tries to distinguish between essence, ends and the essential properties in order to indicate the decisive reality and relationships which exist between them. Essence means that which identifies a thing in itself and includes the necessary elements which need to be singled out in its identity and to distinguish it from any other thing.\textsuperscript{4} In this case, the term essence is that complex of elements through which a determined reality could be identified or defined as such.\textsuperscript{5} Though these properties do not constitute the essence of things, they are necessarily connected with it, identifying it in relation to any other reality. Essence does not express these properties but demands them, and in themselves are distinguishable. Applying these concepts to the canonical matrimonial system, doctrine underlines that, the essential properties of unity and indissolubility are related to the state of marriage life and consent, and being the efficient cause according to the norm of can. 1057 §1, cannot but necessarily involve the potential principles from which the same essential property springs and which will be implemented in marriage \textit{in facto esse}. In other words, if the essence of marriage is the \textit{consortium totius vitae ordinatio}, the essential properties of unity and indissolubility belong to it, and since they are essential, they are identified as such but they do not exhaust the essence. The marriage consent which is the efficient cause of the \textit{consortium}, has to contain these properties, otherwise it will not be a properly conjugal consent, because it will not recognize the matrimonial consent to which the properties of unity and indissolubility essentially belong.\textsuperscript{6}

After the above brief and succinct examination of the essence, end and the essential properties of marriage, we shall proceed immediately to the particularity of this canon which concerns the topic of our study. The above brief analysis was to bring out the connection which exists between the first three canons on marriage (cann. 1055-1057) which I consider pertinent to the study of this third chapter. In this manner, marriage is a pact or contract,
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distinguished from other pacts for its origin, and rooted in the natural law, due
to its consent that cannot be substituted by any other Person, its object and
essential properties come from the free will of the contractants. 7

The meaning of indissolubility signifies that God, taking people for
their word, wants them to be faithful. This can only be understood from the
point of view that love lies essentially in the will; it depends on the will, not on
feelings. "Love for a person" does not mainly mean "feelings for a person".
The feelings of love are generally strong at the start of a marriage, and tend to
wane or even disappear altogether later on. What the Pope states to be natural,
is the desire and determination to remain faithful - feelings or not - to the love
one freely pledged to give, for better or for worse. If one remains faithful, it is
always for better. 8 In this third chapter we shall examine in the different parts,
the concept of indissolubility, its doctrinal foundation, unity and indissolubility,
the bond as the communion of persons, indissoluble and sacramental.

7 Cf. M. MORGANTE, Il matrimonio, diritto canonico e diritto concordatario pastorale, Casale

8 Cf. C. BURKE, Indissolubility of marriage in Encyclopedia of Catholic doctrine, Our Sunday visitor,
1997, in www.comarcburke.org.ke. According to him «It is not enough to accept or defend
indissolubility as the law of God. We should also try to see and to get others to see that the
indissolubility of marriage, hard as at times it may seem, is a law of love, of fulfillment and of
happiness».

«The Second Vatican Council, in its major document about the modern world, set forth an
anthropological principle of fundamental importance: «man can fully discover his true self only
in a sincere giving of himself» (GS 24). The self-gift the Council has in mind is not to things
but to values and above all to persons; self-giving in a spirit of service and of love. When we
give ourselves so, we find ourselves. If we do not manage to give ourselves in love, we lose
ourselves».

«GS speaks of the "irrevocable personal consent by which the partners mutually give and
accept one another" (no. 48; cf. CCC 1627; c. 1057, § 2). Marital self-giving and acceptance -
for life - is the way and challenge of fulfillment and growth for the great majority».

«To "give" self is not the same as to "lend" oneself. A person who lends, holds on to what is
his; he wants to be able to take it back. Real marital love is proved to be genuine because it is
really given. It would not be genuine if the person were to retain the right to withdraw it.
"Love seeks to be definitive; it cannot be an arrangement 'until further notice'" (CCC 1646). So
indissolubility is an essential property of every marriage. There cannot be any real marriage
where the partners will their commitment to be temporary or rescindable at will».
3.1. The concept of indissolubility as an essential property of marriage

Indissolubility is that property through which the bond enjoys a unitive force in such a way that, outside of the exceptions admitted by the Church\(^9\), the spouses are called to live the exigencies of the proper communion of their identity as spouses and they cannot celebrate another wedding while the previous is still in force.\(^10\) According to the small dictionary of canon law, «Indissolubility is one of the ‘essential properties’ of marriage (with unity) (can. 1056): ‘what God has united man should not separate’ (Mt 19:6; Mk 10:9)».\(^11\) Indissolubility is that property of marriage which qualifies conjugal relation in the temporal sense, defining it perpetual and subjecting its existence to the will of the same spouses and any other person or authority.\(^12\)

\(^9\) Cf. J. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, Diritto canonico del matrimonio e della famiglia, dispensa ad uso degli studenti, Roma 2007, p. 81 note 156 in which they precise the following. «The exceptions admitted by the Church have to do with the principle of ‘favor fidei’ in virtue by which it can dissolve a natural marriage in order to defend the faith of the converted and baptized spouse (cf. cann. 1143-1150), either with the missing perfection of the conjugal bond as the sign of the sacrament of marriage. Ratified and non consummated marriage, in fact, can be dissolved by the Roman Pontiff because it does not enjoy absolute indissolubility (cf. cann. 1061, 1142 CIC). A sacramental marriage ratified and consummated cannot be dissolved by any human authority neither by any cause outside death (cf. can. 1140). The motive for which is said in can. 1056 CIC that, the properties of the bond ‘in a Christian marriage attain a peculiar stability in reason of the sacrament’». The translation is mine. This same thinking is also reflected in the words of H. FRANCESCHI, Il “bonum Societas” e l’indissolubilità del matrimonio, in Ius Ecclesiae, 15 (2003), pp. 693-740; JOHN PAUL II, Allocution to the Roman Rota, (January 28, 2002), cit., no. 4.

\(^10\) Ibid., «The principle of indissolubility is the foundation of the impediment of the bond ex canone 1085 CIC». Cf. J. I. BANARES, Commentary on Can. 1085, (ed. E. CAPARROS), Exegetical Commentary of the Code of Canon Law, cit., pp. 1178-1181. They emphasized here that, as it is said many times, there is need to distinguish separation manente vincolo (in which is altered the obligational good order of the bond but it remains as a relation as such) from the dissolution of the bond in the strict sense in the cases stated in the previous note.


It is necessary to underline the terminological modification of the ends which the new Code introduced in can. 1056 which substituted can 1013 of the old codex. There is no difference between the old and the new text concerning the formulation of the essential properties. In effect, the theme of the essential properties is one of fundamental importance for the reconstruction of the relationship between marriage and nature. Indissolubility is one of the foundations of canonical marriage, which has faced a lot of problems especially with civil marriage institutes. The meaning which indissolubility has for the canon law is well known by all: once the conjugal society has been constructed validly, in respect with the substantial and formal elements required by the norm, it is no longer possible for any human power to dissolve. This implies that, it cannot be dissolved or revoked on the part of the contractants or by the will of the structure or order.\(^{13}\) The obligation of indissolubility is not only an element in the past, as it can be drawn from the formulation of can. 1056, 1057 §2, 1099, 1101§2, 1134, which correspond respectively to canons 1013, 1081§2, 1084, 2086§2, 1110 of CIC 1917. It equally goes back to the nature of God manifested in the Old, New Testaments and in the commands of Christ.\(^{14}\)

This canon affirms that «indissolubility together with unity are both essential properties of marriage according to nature through which the sacrament confers only a ‘peculiar firmness’: the sacrament therefore, intervenes

\(^{13}\) Cf. M. E. Casellati Alberti, Indissolubilità e unità nell’istituto naturale del matrimonio canonico, Padova 1984, p. 79. This theme of the indissolubility of marriage as explained already in the first chapter of this dissertation has gone through various contestations in the decades from the part of the theological and canonical doctrine, and even on the base of a new interpretation of the original sources of the Old and New Testament. Concerning the interpretation of the concept of indissolubility, the following texts could be useful. G. J. Gerhartz, L’Indissolubilité du mariage et la dissolution du mariage dans la problématique actuelle, in Revue de droit canonique, 21 (1971), p. 198ff; J. Bernhard, Reinterprétation (existentielle et dans la foi) de la législation canonique concernant l’indissolubilité du mariage chrétien, p. 243; De Naurois, Extension des exceptions au principe d’indissolubilité, in Revue de droit canonique, 28 (1978), p. 105ff.

\(^{14}\) Cf. Ibid., p. 80.
simply to seal the characteristics of natural marriage, which are precisely unity and indissolubility».

Bañares asserts in the following words that:

The exposition of this canon is clear and linear: in the first clause, it is established, in a direct and categorical way, that “the essential properties of marriage are unity and indissolubility.” This affirmation implies the following presuppositions: a) the canon is referring to marriage in facto esse, given that these properties cannot be predicted of marriage in fieri, at least not without important specifications and nuances which refer to its realization in marriage in facto esse; b) the marriage which is being treated is natural marriage, every marriage, independently of its elevation to the order of grace. This is demonstrated by the specific content of the subordinate relative clause which follows and closes the text of the canon; c) the essence of marriage has properties; d) these properties consist of the unique and indissoluble character of the bond, since the bond constitutes the formal principle of the essence; e) only these noted can be considered

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as essential properties; and f) it does not preclude that marriage can have other properties, nor is the importance that these possible properties could have from an objective or subjective point of view treated, but it is established, by exclusion, that they cannot be considered essential properties.\footnote{J. I. BAÑARES, Commentary on Canon 1056, in (ed. E. CAPARROS), Exegetical Commentary of the code of canon law, cit., pp. 1056-1057.}

Bañares then noted that, «it is precisely the ontological richness and dignity of the sexual person, who is constituted at once as subject and object of the pact itself, that requires these properties as elements constituting the dimension of justice in the relationship of the bond».\footnote{Ibid., p. 1057. Here he expresses that «in order to be more specific, it will be more fitting to look at this question from different perspectives».}

Despite the clearness and peremptoriness of the affirmation of GS and the Legislator regarding the institute of marriage as being ordained to the good of the spouses and the procreation and education of children (GS, 48), there have been and are some manifested perplexities on it and arguments in favor of the concept of the ratio indissolubilitatis in sacramentality.\footnote{Cf. A. SAMMASSIMO, L’indissolubilità: proprietà del matrimonio in quanto istituto di diritto naturale, cit., p. 132. She mentions that, among the old and modern authors contesting the natural foundation of indissolubility, while sustaining instead that of positive divine law, we can recall also Bellarmino, Suarez, Sanchez, Reiffenstuel, Fagnana, Perrone, Palmieri; Le Bras; Jemolo; Adami; Navarrete; Cf. M. E. CASELLATI ALBERTI, Indissolubilità e unità nell’istituto naturale del matrimonio canonico, Padova 1984, pp. 90-91.}

Indissolubility in this light is found in the very nature of natural marriage as a union between persons. Through the matrimonial consent a new personal identity is created, that of the spouses, and this identity is indelible as far as the other spouse is still alive.\footnote{Cf. P. J. VILADRICH, Il Consenso Matrimoniale, Milano 2001, pp. 408-414.} In the same way, indissolubility is rooted in the personal and total donation of the spouses.\footnote{Cf. FC no. 20.} Unity and indissolubility though distinguished in concepts are closely linked to one another as two faces of the
same medal, since indissolubility is the biographical fullness of unity.\textsuperscript{21} Fidelity or the conjugal exclusivity responds equally to the human nature. In this case, the “I” is indivisible and unique and therefore cannot be given simultaneously to different people.\textsuperscript{22} At this juncture, we can add «an intrinsic justification which can be considered as a proper juridical requirement of the relationship which springs from the act of consent – of the perpetuity of the bond, and the indissolubility that is derived from it».\textsuperscript{23} The sacramentality of the conjugal bond between non baptized adds a \textit{new foundation} and a new meaning to the intrinsic indissolubility which the same marriage has right from the beginning.\textsuperscript{24}

Before we begin by tackling the question regarding intrinsic and extrinsic indissolubility we wish to make clear the following: «All marriages, whether the spouses are baptized or not are intrinsically indissoluble».\textsuperscript{25} While the Church therefore does not recognize the power of civil authorities to dissolve marriages, it does claim the authority, under certain conditions, to dissolve non-sacramental marriages involving at least one unbaptized person and sacramental marriages that have not been consummated. Thus, the current Church law considers in this regard, only sacramental marriages that have been consummated to be extrinsically indissoluble by any cause except death.\textsuperscript{26} Noonan is of the opinion that, «the canons concerning marriage were meant to teach a single lesson, to incorporate a single value – indissolubility was the


\textsuperscript{22} Cf. C. Burke, \textit{L’oggetto del consenso matrimoniale}, Torino 1997, p. 45. «These properties are the essential costitutive conjugal elements of the \textit{traditio sui ipsius}».


\textsuperscript{24} Cf. A. Sarmiento, \textit{El matrimonio cristiano}, Pamplona 1997, p. 45.

\textsuperscript{25} J. P. Beal - J. A. Coriden – T. J. Green, \textit{New Commentary on the Code of Canon Law}, New York U.S.A. 2000, p. 1249. Here after this text will be cited following only the name of the first author: Beal.

raison d’être of the system; without it, the whole enterprise would have lacked focus, connection, energy».  

A theological approach which can be considered as traditional, distinguishes between intrinsic indissolubility, which excludes the possibility of the dissolution of marriage *natura sua* or for the mutual consent of the parts, and extrinsic indissolubility through which marriage could be dissolved in an exceptional way through the intervention of the higher authority. While intrinsic indissolubility is absolute, extrinsic indissolubility is relative. Therefore it derives that, only the ratified and consummated marriage of the baptized is intrinsically and extrinsically indissoluble, while ratified marriage and marriage celebrated by unfaithfuls is endowed with extrinsic relative indissolubility, which could be dissolved thanks to the vicar powers of the Roman Pontiff. Thus, the distinction between absolute indissolubility and relative indissolubility, between intrinsic indissolubility and extrinsic indissolubility are applied properly by the philosophical-theological traditional thinking, also and above all to legitimate marriages. They were being created

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originally in reference to the marriages of unfaithful. It seems appropriate to illustrate the meaning of indissolubility in non-sacramental bonds. We recall briefly the historical affirmation of the dissolution of marriage in favor of the faith. In this direction, as the point of arrival of various jurisprudence and doctrines, the *Instructio* of the Sacred Congregation of the Doctrine of Faith pro *solutio matrimonii* of 1973 formulated two fundamental principles:

a) The dissolubility of marriage between two infidels, independently of their will to convert themselves to the catholic religion.

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30 It is necessary to recall the fact that the new code has eliminated the title of legitimate marriage for the valid conjugal bond but not sacramental. This title is presently qualified in the code of 1917 by can. 1015 par. 3.


b) The recognition of the power of the pontiff to intervene in these marriages, as an act of his vicariate power.\textsuperscript{33} To this effect the Congregation for the Doctrine of Faith recently on April 30, 2001 promulgated the norms regarding the process for the dissolution of the marriage bond in favour of the faith.\textsuperscript{34}

Recapitulating all that has been explained above regarding indissolubility as an essential property of marriage, the first affirmation is that, indissolubility is an essential property of every marriage. It would however, be an error to identify it with the sacramentality of marriage of the baptized. Nonetheless, the canon affirms that, indissolubility achieves a peculiar stability by reason of the sacrament.\textsuperscript{35} Nevertheless, Canonical doctrine in an attempt to explaining the diversity between the indissolubility of sacramental and non sacramental marriage, always makes a distinction between intrinsic and extrinsic indissolubility which is the next object of our study.

\textbf{3.1.1. Intrinsic indissolubility}

Intrinsic indissolubility according to Catholic theology, is an absolute principle which is applicable to any valid marriage even between the non-baptized.\textsuperscript{36} When the bond is called indissoluble, it is usually to qualify the term further: \textit{intrinsic indissolubility} is the capacity of the bond to resist any attempt to be dissolved from within, that is, by the partners.\textsuperscript{37} Intrinsic indissolubility is the property of every marriage and indicates that, the bond cannot be dissolved


\textsuperscript{35} Cf. J. Carreras – H. Franceschi – M. A. Ortiz, \textit{Diritto canonico del matrimonio e della famiglia, dispensa ad uso degli studenti}, II parte, cit., p. 22 of chap. 11.

\textsuperscript{36} Cf. F. Bersini, \textit{Il Diritto canonico matrimoniale}, cit., p. 15.

\textsuperscript{37} Cf. L. Örsy, \textit{Marriage in Canon Law, Texts and comments Reflections and Questions}, Wilmington Delaware 1986; Here after this text shall be quoted as marriage and canon law. See L. Sabbarese, \textit{Il Matrimonio Canonico Nell’Ordine della Natura e della Grazia}, cit., p. 115.
by the will of the parties although in some hypothesis, for example _favor fidei_ or inconsummation could be dissolved by the Roman Pontiff.\(^{38}\) There is extrinsic indissolubility which is the impossibility of breaking the matrimonial bond by the spouses. Indissolubility renders marriage bond absolute since it has to last for the whole of life if not with the death of one of the spouses. According to Catholic doctrine, this is intrinsic indissolubility for which the consent given by the spouses is irrevocable and the matrimonial bond is not subject to anything arbitrary.\(^{39}\) Divorce is excluded by the same divine law.\(^{40}\) Kowal commenting

\(^{38}\) Cf. J. Carreras – H. Franceschi – M. A. Ortiz, _Diritto canonico del matrimonio e della famiglia, dispensa ad uso degli studenti_, II parte, cit., p. 22.

\(^{39}\) Cf. L. Chiappetta, _Il manuale del Parroco_, cit., p. 557; Here John Paul II asserts that: «Conjugal communion is characterized not only by its unity but also by its indissolubility: 'as a mutual gift of two persons, this intimate union, as well as the good of the children, imposes total fidelity on the spouses and argues for an unbreakable oneness between them'».

«It is a fundamental duty of the Church to reaffirm strongly, as the Synod Fathers did, the doctrine of the indissolubility of marriage. To all those who, in our times, consider it too difficult, or indeed impossible, to be bound to one person for the whole of life, and to those caught up in a culture that rejects the indissolubility of marriage and openly mocks the commitment of spouses to fidelity, it is necessary to reconfirm the good news of the definitive nature of conjugal love that has in Christ its foundation and strength».

«Being rooted in the personal and total self-giving of the couple, and being required by the good of the children, the indissolubility of marriage finds its ultimate truth in the plan that God has manifested in His revelation: He wills and He communicates the indissolubility of marriage as a fruit, a sign and a requirement of the absolutely faithful love that God has for man and that the Lord Jesus has for the Church». FC, nos. 20: 1-3.

«To bear witness to the inestimable value of the indissolubility and fidelity of marriage is one of the most precious and most urgent tasks of Christian couples in our time. So, with all my Brothers who participated in the Synod of Bishops, I praise and encourage those numerous couples who, though encountering no small difficulty, preserve and develop the value of indissolubility: thus, in a humble and courageous manner, they perform the role committed to them of being in the world a "sign"-a small and precious sign, sometimes also subjected to temptation, but always renewed-of the unfailing fidelity with which God and Jesus Christ love each and every human being. But it is also proper to recognize the value of the witness of those spouses who, even when abandoned by their partner, with the strength of faith and of Christian hope have not entered a new union: these spouses too give an authentic witness to fidelity, of which the world today has a great need. For this reason they must be encouraged and helped by the pastors and the faithful of the Church». FC no. 20.6.
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on the Pope’s allocution to the Rota in 2000\(^{41}\) said: «The practice of the Church whereby the Pope can dissolve a marriage which has not been consummated cannot be extended to include those marriages which have been consummated, something which the Pope addressed specifically in the allocution».\(^{42}\)

From this brief understanding of intrinsic indissolubility, we can say that, the concept of the *nuptial sign* is the pivot on which is articulated the social and sacramental dimensions of Christian marriage. The Church cannot hold that a couple which is cohabiting constitutes an authentic marriage, when even they themselves do not want to be considered married.\(^{43}\) Conjugality is not a fact, but a relation through which the spouses can recognize themselves and also being recognized by the society and the Church. The doctrinal–theological and juridical widening of the sacramental meaning of marriage is intimately linked to the historic evolution of the nuptial customs lived by Christians. Without knowing these customs, it is not possible to know the canonical regulations which find their foundation in it. There are two levels of the sacramental meaning which have different cultural context and belonging to history, they help us therefore, to understand the canonical regulations regarding the sacramentality of Christian marriage.\(^{44}\)

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43 Cf. J. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, *Diritto canonico del matrimonio e della famiglia*, cit., p. 107 note no. 253. They precise that: «A union which is merely contracted in the civil way by two catholics is not a valid canonical marriage, but could be convalidated by the legitimate authority through the institute of the *sanatio in radice* (cann. 1161-1165), but today this is not possible in the case of those cohabiting (this was possible before the Council of Trent, in a different cultural context. This difference is notable from the pastoral point of view: it is read in fact, in FC that ‘it is most spread the case of Catholics who due to ideological and practical motives, prefer to contract only the civil marriage, refusing or postponing religious marriage. Their situation cannot be put at the same level to that of cohabiting simply without any bond’». The translation is mine.

Ratified and consummated marriage which is the perfect sign of the union of Christ and the Church.\textsuperscript{45} In this context, canon 1061§1 indicates that, «A valid marriage between baptized persons is said to be merely ratified, if it is not consummated; ratified and consummated, if the spouses have in a human way (\textit{humano modo}) engaged together in a conjugal act in itself apt for the generation of offspring; to this act marriage is by nature ordered to the procreation and education of the offspring and by it, the spouses become \textit{one flesh}.\textsuperscript{46} The actual canonical regulation\textsuperscript{47} on ratified and unconsummated marriage cannot be adequately understood if we do not take into consideration that before, right upto the middle ages, the nuptial celebration was done in two phases that were sometimes distant one from the other. After the first nuptial phase in which man and woman became wedded and exchanged the “wedding ring”, the nuptial wedding was then celebrated at this point in which the whole community celebrated the moment of the conjugal meeting, in which the woman was brought in procession to the house of the bridegroom (\textit{domum deductio}). While this was binding two of their members, in the nuptial feast, instead, the effective union of the spouses was realized in a personal way. The conjugal pact as we understand today, did not coincide exactly with any of these two phases, but instead with the second: since through the conjugal act, the spouses could demonstrate to one another the conjugal will.\textsuperscript{48}

\textsuperscript{45} \textit{Ibid.}

\textsuperscript{46} \textit{Ibid.}

\textsuperscript{47} \textit{Ibid.} They precised in nota no. 255 that: «The canonical regulation relative to the so called ‘ratified and non-consummated marriage’ began in the IX century, during the occasion of the Bishop of Reims (Incmaro): marriage celebrated between two persons who are not united “sexually” in order not to incur incest (in the facts there were or they spoke of being a blood relation relative), could be dissolved because it wouldn’t have been consummated and consequently the spouses would not have become ‘\textit{one flesh}’. (L. LIGIER, \textit{Il matrimonio, questioni teologiche e pastorali}, Roma 1988, pp. 87-88, points out that, «the doctrine of Incmaro was new, even though it took theological elements which were already existing »). Such a doctrine had resonance in the decree of Gratian, and was later on overcome because it is considered more perfect, that which attributed to the conjugal consent the efficient causality of the conjugal bond, without that for its constitution will be necessary the conjugal copula. But it continued to be important the effects of ratified and non-consummated marriage».

Within the context of Christian marriage, with its foundation in the different sacramental meaning of the nuptial elements, two levels of sacramentality (the levels of sacramentality reflect also on indissolubility) can be distinguished:

- Ratified marriage (celebrated with consent) would be the sign of the union of Christ and man that does it for charity. This is done in a similar way like when the soul unites with Christ through charity, but could lose this union through mortal sin. Thus, the spouses are united through consent, but their union is not perpetual because it can be dissolved.\footnote{Cf. J. Carreras – H. Franceschi – M. A. Ortiz, Diritto canonico del matrimonio e della famiglia, dispensa ad uso degli studenti, cit., p. 109. In nota no. 259 it is stated that: «for example, the incapacity to have conjugal acts (copulative impotency) was for many centuries a cause for the dissolution of the bond which initiated in the nuptials. Only after the XII century that it became a cause of nullity of the same consent».}

- Consummated marriage on the other hand, is the sign of the union of Christ and the Church through the incarnation. From the moment, Jesus assumed the human nature, humanity has been united to his person in such a way that, such a union is indissoluble. This is the great mystery of which St. Paul speaks in the Letter to the Ephesians 5:32. “One flesh” is the sign of the unity of nature through which God becomes man in Jesus Christ and man becomes the son of God. In the XII century, the canonical and theological doctrine which was developed based on the ancient nuptial customs was given a place in the Corpus Iuris Canonici. By so doing was established the canonical principle of the indissolubility of sacramental marriage, which has come right to our days:\footnote{Cf. J. Carreras – H. Franceschi – M. A. Ortiz, Diritto canonico del matrimonio e della famiglia, cit., p. 109.}

   - «A marriage which is ratified and consummated cannot be dissolved by any human power or by any cause rather than death» (can. 1141 CIC). Therefore, from a canonical perspective the marriage which the parties celebrated initially perdures because the presumptions in law remain that the

\footnote{Clothilde Wanki}
two parties gave a true matrimonial consent according to the proper form without any impediments and that the marriage was consummated.  

- «A non-consummated marriage between baptized persons or between baptized parties can be dissolved by the Roman Pontiff for a just reason, at the request of both parties or of either, even if the other is unwilling» (can. 1142 CIC). Carreras, Franceschi and Ortiz ascertain that:

The canonical system can receive canonical norms that belong to different historic moments and which try to resolve practical problems. The normative which we have just exposed, therefore has an anthropological foundation and therefore is currently permanent. On the one hand the conjugal act is not indifferent in evaluating the quality of conjugal relation; on the other hand, consummation was an important moment from the sacramental point of view, also because the nuptial feast was circling around this act (the procession of the bride, the benediction of the bed talamo).  

b) The Christological and ecclesiological signification of conjugal copula. In our cultural context today, in which sexuality seems to fall between the attacks of ethical permissiveness and those of Puritanism, there stands out an explanation which attributes a sacramental value not only to the first conjugal copula, but this is dominant also in every conjugal act through which the spouses reaffirm the gift of themselves. The paradigm and model is always the spousal union of Christ and the Church. The Christian spouses participate in this union through the sacrament of marriage. This participation is not realized only in the celebration of marriage in which the gift of self of the spouses is the sign of the gift of Christ to the Church through his death on the cross, but above all, during the conjugal life through all the acts of love that the spouses carry out in order to increase and maintain alive their union. Among these acts, the

52 Cf. J. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, Diritto canonico del matrimonio e della famiglia, cit., pp. 109-110. «From the moment that the nuptial feast is made to circle around the manifestation of consent with the words of the one present, ‘consummation’ is a concept deprived of social support from where it came».  
53 Ibid., p. 110.
conjugal act stands out, as the Christological and ecclesiological sacramental sign of great importance.\textsuperscript{54}

The Eucharist is the very source of Christian marriage. The Eucharistic Sacrifice, in fact, represents Christ's covenant of love with the Church, sealed with His blood on the Cross (Jn. 19:34). In this sacrifice of the New and Eternal Covenant, Christian spouses encounter the source from which their own marriage covenant flows, is interiorly structured and continuously renewed (FC 57). What is repeated is its \textit{memorial} celebration, its "commemorative representation" (\textit{memorialis demonstratio}),\textsuperscript{55} which makes Christ's one, definitive redemptive sacrifice always present in time. The Eucharist therefore perfects the union of man and woman with God because by it «they attain God and God joins himself to them in the most perfect union».\textsuperscript{56} Being the source of ecclesial unity and the greatest manifestation «unites them one heart and one soul» (cf. Acts 4:32). The sacrificial nature of the Eucharistic mystery cannot therefore be understood as something separate, independent of the Cross or only indirectly referring to the sacrifice of Calvary. The Mass makes present the sacrifice of the Cross (MD 12).\textsuperscript{58} Our longing for the goal of unity prompts us to turn to the Eucharist, which is the supreme sacrament of the unity of the People of God, in as much as it is the apt

\textsuperscript{54} Cf. \textit{Ibid.}, p. 110. They assert that: «The expression of St. Paul to the Ephesians needs to affirm that, the sacrament of marriage and the Eucharist explains and enlighten themselves vice versa. Christ being the spouse of the Church offered himself to die on the cross and this sacrifice is renewed each time during the celebration of Mass. The Christian spouses renew the donation which they made the day of their wedding through conjugal acts. These acts contain therefore, a sacramental character: marriage is a sacrament \textit{“dum permanent”} and in a particular way for the spouses, even when they renew the gift of themselves realized in the conjugal pact». \textit{Ibid.}


\textsuperscript{58} Cf. Council of Trent, Session XXII, \textit{Doctrina de ss. Missae Sacrificio}, Chapter 2: DS 1743: «It is one and the same victim here offering himself by the ministry of his priests, who then offered himself on the Cross; it is only the manner of offering that is different». 
expression and the unsurpassable source of that unity.\textsuperscript{59} The Eucharistic communion has meaning truly in conjugal acts.\textsuperscript{60} Therefore, the Eucharist itself is the source of Christian marriage.\textsuperscript{61}

«The conjugal copula is an act where the whole family identity is united. The spouses express a gesture which not only expresses the gift of themselves, but also its transcendence to a third person. Above all, theological anthropology explains how filial relation should have its beginning in this conjugal act of love».\textsuperscript{62} In like manner, this family relation makes an intrinsic reference to a third person, found at the margin of relation, and in this light, the conjugal act presents an objective structure\textsuperscript{63} which is fully rational when it is intended under the family light.\textsuperscript{64}

\textsuperscript{59} Cf. \textit{Ecclesiae de Eucharistia}, cit., no. 43; LG no. 11.

\textsuperscript{60} MD no. 26: «We find ourselves at the very heart of the Paschal Mystery, which completely reveals the spousal love of God. Christ is the Bridegroom because "he has given himself": his body has been "given", his blood has been "poured out" (cf. \textit{Lk} 22:19-20). In this way "he loved them to the end" (\textit{Jn} 13:1). The "sincere gift" contained in the Sacrifice of the Cross gives definitive prominence to the spousal meaning of God's love. As the Redeemer of the world, Christ is the Bridegroom of the Church. The Eucharist is the Sacrament of our Redemption. It is the Sacrament of the Bridegroom and of the Bride. The Eucharist makes present and realizes anew in a sacramental manner the redemptive act of Christ, who "creates" the Church, his body. Christ is united with this "body" as the bridgroom with the bride. All this is contained in the Letter to the Ephesians. The perennial "unity of the two" that exists between man and woman from the very "beginning" is introduced into this "great mystery" of Christ and of the Church».

\textsuperscript{61} In FC 57 it is stated that: «The Christian family's sanctifying role is grounded in Baptism and has its highest expression in the Eucharist, to which Christian marriage is intimately connected. The Second Vatican Council drew attention to the unique relationship between the Eucharist and marriage by requesting that “marriage normally be celebrated within the mass” (LG 34). To understand better and live more intensely the graces and responsibilities of Christian marriage and family life. It is altogether necessary to rediscover and strengthen this relationship».


\textsuperscript{63} \textit{Ibid.}, nota 263: «Moving to another perspective, Paul VI in the encyclical HV, 12 spoke of «the inseparable connection, willed by God and unable to be broken by man on his own
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Therefore, a ratified marriage signifies a sacramental marriage celebrated by baptized spouses. The consummation of this marriage, consist in performing the conjugal copula apt for procreation. Ratified and consummated marriage is absolutely indissoluble because it is the symbol, figure and image of the indissoluble, full and fecund union of Christ with the Church (cf. Eph. 5:21ff). In this case, neither the concordant will of the spouses, nor any human power, civil or ecclesiastic, even if supreme, and for any reason can dissolve a ratified and consummated marriage. Only real and not presumed death, of a spouse dissolves the matrimonial bond. The indissolubility of marriage is in fact of divine law: «This is why a man leaves his father and mother and becomes attached to his wife, and they become one flesh» (Gen. 2:24), «so then, what God has united, human beings must not divide» (Mt. 19:6); «A wife is tied as long as her husband is alive. But if the husband dies, she is free to marry anybody she likes, only it must be in the Lord» (1Cor. 7:39).

3.1.2. Extrinsic indissolubility: The dissolution of marriage

Extrinsic indissolubility is «the immunity of the bond to any attempt to be dissolved from the outside, that is, by any external authority, civil or initiative, between the two meanings of the conjugal act: the unitive meaning and the procreative meanings». This doctrine is developed in FC, no. 32.

64 FC 12: «In the conjugal act, husband and wife are called to confirm in a responsible way the mutual gift of self which they have made to each other in the marriage covenant. The logic of the total gift of self to the other involves a potential openness to procreation: in this way marriage is called to even greater fulfillment as a family. Certainly, the mutual gift of husband and wife does not have the begetting of children as its only end, but is in itself a mutual communion of love and of life. The intimate truth of this gift must always be safe-guarded. Intimate is not here synonymous with subjective. Rather, it means essentially in conformity with the objective truth of the man and woman who give themselves. The person can never be considered a means to an end; above all never a means of “pleasure”. The person is and must be nothing other than the end of every act. Only then does the action correspond to the true dignity of the person».

Entrinsic indissolubility is the impossibility of breaking the matrimonial bond by any public authority. It is the characteristic of a ratified and consummated marriage — marriage between two baptized persons which was consummated through the first conjugal act (can. 1061§1), according to which this marriage cannot be dissolved by any human authority and for any motive. As John Paul II underlined in his discourse to the Roman Rota of the year 2000:

This doctrine that the Roman Pontiff’s power does not extend to ratified and consummated marriages has been taught many times by my Predecessors. I would like to quote in particular a statement of Pius XII: "A ratified and consummated marriage is by divine law indissoluble, since it cannot be dissolved by any human authority (can. 1118); while other marriages, although intrinsically indissoluble, still do not have an absolute extrinsic indissolubility, but, under certain necessary conditions, can (it is a question, as everyone knows, of relatively rare cases) be dissolved not only by virtue of the Pauline privilege, but also by the Roman Pontiff in virtue of his ministerial power" (Address to the Roman Rota, 3 October 1941: AAS 33 [1941], pp. 424-425). With these words Pius XII gave an explicit interpretation of canon 1118, corresponding to the present canon 1141 of the Code of Canon Law, and to canon 853 of the Code of Canons of the Eastern Churches, in the sense that the expression "human power" also includes the Pope’s ministerial or vicarious power, and he presented this doctrine as being peacefully held by all experts in the matter. In this context it would also be appropriate to quote the Catechism of the Catholic Church, with the great doctrinal authority conferred on it by the involvement of the whole Episcopate in its drafting and by my special approval. We read there: "Thus the marriage bond has been

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67 Ibid. «In any case, it has to be clear that every marriage, either natural or sacramental, is by its same nature indissoluble, for which there cannot exist any valid marriage that is not indissoluble, and therefore, the exclusion of this essential property would have invalidating effects on the consent».

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established by God himself in such a way that a marriage concluded and consummated between baptized persons can never be dissolved. This bond, which results from the free human act of the spouses and their consummation of the marriage, is a reality, henceforth irrevocable, and gives rise to a covenant guaranteed by God's fidelity. The Church does not have the power to contravene this disposition of divine wisdom” (n. 1640).  

Although extrinsic indissolubility signifies the impossibility of breaking the bond, there is need to admit that there are certain rare exceptions or cases of unconsummated marriages which the Roman Pontiff can dissolve through his Vicar power. Such rare exceptions include: 1) By the dispensation of a relatively ratified and not consummated by the Roman Pontiff: can. 1142; 2) By the Pauline privilege: cann. 1143-1147; 3) By the Vicariate powers of the Roman Pontiff (privilege of the Faith): cann. 1148-1149. These exceptions are found in the article de dissolutione vinculi of CIC (cann. 1141-1150; cann. 853-862 CCEO): moreover, there exist other special norms “in favorem fidei.” From the above exceptions it is clear that, the Catholic Church has exercised for centuries the faculty to dissolve any non sacramental matrimonial bond in virtue of the said privilege of the faith and other related norms. Although


70 See Congregatio pro Doctrina Fidei, Normae “Potestas Ecclesiae” de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei, 30 Aprile 2001, Città del Vaticano 2001, published for example in J. Kowal, Lo scioglimento del matrimonio, in favore Fidei, in AA.VV., Diritto matrimoniale canonico, III, (a cura di P. A. Bonnet-C. Gullo), Città del Vaticano 2005, pp. 447-491. This norm of April 30, 2001 is a recent norm emanated by this above mentioned Congregation as we have mentioned previously. These norms regulate cases of dissolution of the matrimonial non sacramental bond which are not considered in CIC and CCEO. This norms were not published in order to avoid giving the impression to the mass media that the Church is in favore of divorce. Cf. J. Kowal, Lo Scioglimento, cit., p. 447. This same norms have also been published in Cf. L. Sabbarese, Lo scioglimento dei matrimoni non sacramentale in favore fidei, Roma 2005, pp. 103-106.

71 This affirmation is not absolute from the moment in which there exist norms and conditions which regulate the possibility of dissolving the non sacramental marriage bond. In this practice not all types of non sacramental unions have the same possibility of being dissolved. Cf. (U. Navarrete, Privilegio de la fe, in El Vínculo matrimonial, (a cura di T. García Barberena), Madrid 1978, p. 300).
matrimonial indissolubility is a natural principle, its application is to be strictly observed uniquely for unions between the baptized (cann. 1141 CIC; can. 853 CCEO). In chapter 4 we shall then proceed to studying the implications of these questions.

3.2. Doctrinal foundation

It is necessary to rediscover the truth, goodness and beauty of the marriage institution. Since it is the work of God himself, through human nature and the free consent of the engaged couple, marriage remains an indissoluble personal reality, a bond of justice and love, linked from eternity to the plan of salvation and raised in the fullness of time to the dignity of a Christian sacrament. It is this reality that the Church and the world must encourage! This is the true *favor matrimonii*. The doctrinal foundation of indissolubility according to can. 1056 is in the nature of the ends and same essence of marriage which demands that indissolubility should be perpetual. This decisive foundation of indissolubility is found in divine law positively revealed in the project of the Creator (Gen 2:24), authoritatively confirmed by Christ (Mt 19:3-9), deepened by Paul in relation to the mystery of the Church and its union with Christ (Ef 5:32), and continuously taught by the Church.

A deep analysis of the natural foundation of indissolubility goes back right to the time of St. Thomas, for which this property is based on the necessity of parents to collaborate for the well-being of the family, children and the essence of the reciprocal help of themselves to one another. This indicates

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74 Cf. L. SABBARESE, *Il Matrimonio Canonico Nell’Ordine della Natura e della Grazia*, cit., p. 115. He states that, «this is required especially for the good of the spouses which can be difficult to achieve in a marriage which is temporary, either also for the education and assistance of the children, a task which is in itself continuous and never definitive».
75 Cf. ST. THOMAS, *Summa Theol.*, q. 67 a.1.
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that, indissolubility responds definitively to the finalities for which marriage institute is derived by nature.

3.2.1. The plan of God: “only one flesh”

According to the biblical narration of the creation of the first human couple, the reason why man and woman leave their proper families, is to be united to each other, as such becoming one flesh76 (Gen 2:24). This is a symbolic expression which has a moral and physical sense since the Hebrew term “flesh” does not only indicate the body but the totality of the human person. This deals with the most intimate union of the communion of thinking, will and love, which other than just being unique is not separable.77 The expression the “man will unite with his wife” so intimately that “the two will be one flesh,” leads us to what the biblical text expresses which connects the woman and the man in the very mystery of creation. The words of Genesis 2:23 explain this concept in a particular way. When the man and woman unite themselves to each other (in the conjugal act) so closely so as to become “one flesh,” they rediscover every time and in a special way the mystery of creation, thus returning to the union in humanity flesh from my flesh and bone from my bone (cf. Gen 2:23) that allows them

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76 “One flesh” (una caro in Latin). According to Viladrich, «This most extraordinary and strong expression which is in no way a metaphor-appears for the first time in the Bible when in Genesis we read about man’s creation. Independently of the religious convictions one may hold, it forcibly has to be recognized that human culture does not possess any other text on marriage that is as old and that can be compared to the mysterious simplicity, precision and profundity of the words of Genesis: ‘And the Lord God said: it is not good for man to be alone; let us make a help like unto himself…and brought her to Adam. And Adam said: this is bone of my bones and flesh of my flesh…wherefore a man shall leave father and mother, and shall cleave to his wife; and they shall be two in one flesh’ (Gen 2:18-24). This text, which has the sovereign simplicity of a masterpiece and a wealth of inexhaustible and surprising suggestions, more than any other text has set down the guidelines for the comprehension of the mystery of marriage on the part of the human mind». «Una caro ‘one flesh’. ‘One’ here has a specially intense meaning because it refers not so much to ‘one’ thing but rather to the unity of the uniqueness, to ‘only one’. With this it is manifested that the conjugal union is the unity of two: while being two, they are ‘only one’ in what is conjugable, one unique unity» (P. J. Viladrich, The Agony of Legal marriage, Pamplona 1992, p. 180).

to be able to recognize each other reciprocally and to call each other by name, as they did the first time.\textsuperscript{78}

«God created man in his own image; in the image of God he created him; male and female he created them» (cf. Gen 1, 27). The image of God is found in the duality of man and woman and in their interpersonal communion. For this reason, transcendence is inherent in the existence of marriage, right from the start, because it belongs to the natural distinction between man and woman in the order of creation. In their being \textit{one flesh} (Gen 2, 24) the man and the woman, in their mutual assistance and fruitfulness, participate in something sacred and religious, as the Encyclical \textit{Arcanum divinae sapientiae} of Leo XIII emphasized, pointing to the understanding of marriage held in ancient civilizations. In this regard marriage "from the very beginning is a figure (\textit{adumbratio}) of the Incarnation of the Word of God". In the state of original innocence, Adam and Eve already had the supernatural gift of grace. In this way, before the Incarnation of the Word took place historically, its effective holiness was already being bestowed on humanity.\textsuperscript{79}

John Paul II asserts that, unfortunately, on account of the effects of original sin, what was natural in the relationship between man and woman risks being lived in a way that is not in conformity with the plan and will of God and distancing oneself from God necessarily implies a proportionate dehumanizing of all family relationships. But in the "fullness of time", Jesus himself restored the primordial design of marriage (cf. Mt 19,1-12) and so, in the state of redeemed nature, the union between man and woman not only regains its

\textsuperscript{78} Cf. \textsc{John Paul II}, \textit{Man and Woman He Created Them}, cit., p. 167. In this analysis John Paul II affirms that, «This means reliving in some way man’s original virginal value, which emerges from the mystery of his solitude before God and in the midst of the world. The fact that they become ‘one flesh’ signifies a powerful bond established by the Creator through which they discover their own humanity, both in its original unity and in the duality of a mysterious power of human bodiliness, which acts, as it were, by virtue of instinct. On the level of man and in the reciprocal relationship of persons, sex expresses an ever-new surpassing of the limits of man’s solitude, which lies within the makeup of his body and determines its original meanings».

\textsuperscript{79} Cf. \textsc{John Paul II}, \textit{Allocation}, (January 30, 2003), no.3, in AAS 95 (2003), pp. 393-397.
original holiness, freed from sin, but is really inserted into the very mystery of the covenant of Christ with the Church.\footnote{Cf. JOHN PAUL II, \textit{Allocution}, (January 30, 2003), cit., no. 3.}

The Letter of St Paul to the Ephesians directly connects the account of Genesis with that mystery: «For this reason a man shall leave his father and mother and be joined to his wife and the two shall become one flesh (Gen 2,24). This is a great mystery; and I mean in reference to Christ and the Church» (Eph 5,31-32).\footnote{Ibid. This is also expressed in the following words by the CDF: «The sacrament of marriage which our Lord Jesus Christ instituted as the symbol of his union with the Church, in order for it to explain fully it efficacious sanctification and to reproduce in the spouses that great mystery (cf. Eph.5:32) in virtue by which their intimate community of life represents the love which Christ offered for the salvation of men, demands every full and perfect accord of the spouses». See CONGREGATION FOR THE DOCTRINE OF FAITH, \textit{Instr. Matrimonii sacramentum}, (March 18, 1966), in AAS 58 (1966), pp. 35-239; EV 2/230-238.} The intrinsic link, between marriage, established at the beginning [of creation], and the union of the Word Incarnate with the Church is shown in its salvific efficacy by means of the concept of \textit{sacrament}. The Second Vatican Council expressed this truth of our faith from the point of view of the married persons themselves thus: «Christian spouses, in virtue of the sacrament of matrimony, signify and partake of the mystery of that unity and fruitful love which exist between Christ and His Church» (cf. Eph 5,32). The spouses thereby help each other to attain to holiness in their married life and by the acceptance and education of their children. «And so, in their state and way of life, they have their own special gift among the People of God».\footnote{Cf. LG, n. 11.} The close link of the natural and the supernatural orders is immediately presented by the Council with reference to the family, that is inseparable from marriage and seen as a "domestic Church"\footnote{Cf. \textit{Ibid}.} 

Christian life and reflection find in this truth an inexhaustible fountain of light. In fact, the sacramentality of marriage is a fruitful way to investigate more deeply the mystery of the relationship between human nature and grace. In the fact that the marriage of old became in
the NT the sign and instrument of the grace of Christ, one sees the
evidence of the constitutive transcendence of all that belongs to the
being of the human person and in particular to his natural relationality
according to the distinction and complementarity of man and woman.
The human and the divine are interwoven in a wonderful way. 84

In these texts, the basic equality of the sexes appears, along with their
complementary roles. The two institutional ends of marriage – procreation and
the good of the spouses – are also indicated. The expression "the two become
one flesh" presupposes a singular and inseparable union, the marriage bond
being therefore exclusive by nature (one man with one woman) and breakable
only by death. 85

Although the Chosen People of the Old Testament received this
revelation about the nature of marriage, they did not always observe it
in practice. Procreation was given such importance that a man was
allowed to have several wives. Moreover, divorce was allowed in
certain instances. Jesus, against all those of his times, rejected divorce
as contrary to the divine plan ("from the beginning it was not so": Mt
19:8); and insisted on the uniqueness of the marriage covenant, where
"two" become an inseparable "one": "Have you not read that he who
made them from the beginning made them male and female, and said,
'For this reason a man shall leave his father and mother and be joined
to his wife, and the two shall become one'? So they are no longer two
but one. (Mt 19:4-6). 86

Quay speaking about sexual intercourse affirms that: «this physical act
of union, however, remains always the symbolic expression of the desire for an
ever deeper emotional and spiritual oneness with each other. Now, biologically,
intercourse can, and frequently does, result in the fusion of male with the
female organs. When the act has thus its total consequences, a new human
person comes into being. This fusion of the two organs is a further
intensification of the union of the two partners in one single flesh, the flesh of

84 JOHN PAUL II, Allocution, (January 30, 2003), cit., no. 5.
85 Cf. C. BURKE, Marriage in the Old Testament in Encyclopedia of Catholic doctrine, Our Sunday
86 Ibid.
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A wife desires, at least at the symbolic level, to give her husband the fullness of manhood, the gravity, the dignity, the sense of responsibility and sobriety which characterize a father. The husband in turn desires, as Abraham did for Sarah, to give his wife that particular richness, warmth, and fierce tenderness which are characteristic of a mother. This union of a man and woman though so private in act is manifested and made public through their offspring. The symbolism of sexual intercourse also shows us why marriage is essentially monogamous, that is, meant to bind only one man to only one woman.

In this way, sexual intercourse symbolizes the fidelity that is institutionalized in natural marriage. In the sacrament of matrimony, this natural fidelity is made to symbolize the fidelity of God himself. Christ’s union with His Church is wholly impossible of dissolution. Sexuality as part of the unitary nature of the person is set in a broader context which recognizes the interpersonal unity, interrelatedness and transcendental openness of the human person. Since man and woman are created in God’s image and likeness, each of them has the basic vocation to love. The sexual relationship which exists between the man and the woman including their marital acts, goes beyond the merely biological and «touches as it were the intimate centre of the human person as such» (FC, no.11). When two people, are drawn by love

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88 Cf. Ibid., pp. 35-37. He affirms that, «natural marriage, then, is constituted by a reciprocal vow of promise – at least to each other, perhaps to God – to do all things with love, not merely the act of intercourse itself but everything signified by this act, that is, the totality of their life together. Consequently it also involves the right to receive everything in love».

89 Cf. Ibid., p. 58.


based on the complementarity of the sexes, joined in the exclusive relationship of marriage, their decision to share all they have, all they are and their whole life with one another brings forth a relationship which tends towards the deepest personal unity of heart and soul as well as flesh, a relationship whose “inner principle, permanent power and final goal”, is love. The intrinsic fecundity of this love is recognized outstandingly. Sexual complementarity and communion have a much broader reference than marriage, but there is no reason to question the view that marriage is an intense form of this reality. The “unity of one flesh” which needs to be realized in the conjugal act, the sexual differentiation between the man and woman to which it relates is seen as that:

[...] Which allows them when becoming ‘one flesh’, to submit at the same time the whole of their humanity to the blessing of fecundity… In every conjugal union of man and woman the same original awareness of the unitive meaning of the body in its masculinity and femininity is again discovered...(and) with this the biblical text indicates, at the same time, that, in each of these unions, the mystery of creation is renewed in a certain sense in all its original depth and vital power.

Therefore the statement that sex enables the couples to “submit to the blessings of fecundity” is followed by the interpretative link of Genesis 1:28; 2:24, stressing that, the spouses unite intimately in the flesh, «… in a certain sense they will place their humanity under the blessing of fecundity, that is, procreation».

Sexuality has its impact on major aspects of human life and growth. Social relations need the presence of masculinity and femininity, in their complementary differences. A unisex society (which eventually becomes a

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92 FC, no. 19.2; HV no. 9; FC no. 13.9; 18:2-3.

93 FC, no.13.9.


95 JOHN PAUL II, Catechesis, (November 21, 1979) in JOHN PAUL II, Man and Woman He Created Them, cit., p. 166.

96 Ibid.
society bereft of any true human sexuality) is a place where people’s growth in humanity is severely handicapped. If there are many different types of sexually-characterized relationships in society and each type is important, one stands out above all as unique in God’s plan: the conjugal sexual relationship. In other words, the life-long exclusive and open-to-life union between a man and a woman is marriage.\textsuperscript{97} If both are willing to give themselves bodily to one another but are unable to actually receive bodily what they pledge to give, strictly speaking they are unable to marry. For example, a man and woman receive one another bodily through the act of sexual intercourse, which is why sexual union is called the marriage act. If for some reason they are unable to perform the marriage act, they are unable to consummate their marriage. That is why impotency and frigidity are impediments to marriage. A genuine and valid marriage also includes the intention to beget children. If she truly gave herself to him, and he gave his body to her without any reservations on the part of them both, that very intention includes an openness to offspring, because a child is the result of the physical union of both of them.

Since it was not clear in the book of Genesis who pronounced these words, Jesus removes every doubt, and puts them in the mouth of God himself.\textsuperscript{98} The union of these passages by Jesus makes it to have a deep significance. In this light the following reflections could be drawn from it.

1) The conjugal society has to be led to its primitive origin. In the supernatural economy the restoration of marriage has to be done according to the primordial will of God. In this way, man has to fulfill God’s designs which were prefixed in creation. There is no need to follow the instincts of concupiscence, but nature has to be reintegrated in its original purity. It is only in this manner that, the holiness of marriage and the family can be gotten.


\textsuperscript{98} Cf. G. DAMIZIA, \textit{Fondamento teologico dell’indissolubilità del matrimonio}, cit., p. 47.
Marriage, purified from concupiscence and egoism has to be transformed in true love which God wanted.\textsuperscript{99}

2) Christ uniting these two passages wanted to indicate that sexual difference was created by God for a determined end. The genital parts find their raison d’être only in the conjugal society. It is only due to this motive that God created the difference of the sexes. Therefore all the aberrations of sex, either matrimonial or extra-matrimonial are condemned. Every use of the genital parts which are not in conformity to what God wanted cannot have any justification. Man does not need to evaluate the goodness of his action from his instincts but from the will and wish of God.\textsuperscript{100}

3) Damizia asserts that, the words of the second chapter of the book of Genesis were pronounced by God in order to indicate that, these words were not only referring to the elected people but had deep and profound significance. They are revealing the law of God which is put in man. There is a desire which is natural in man to unite himself with his wife. It is man in this case that chooses his companion in order to generate new life for the kingdom of God.\textsuperscript{101}

4) Damizia expresses that «there is no need to believe that, these words are the fruit of an elaboration of the Sacred writer or a human reflection which is matured in the course of the centuries. They are in reality the divine words which reveal the profound and deep meaning of sex».\textsuperscript{102}

\textsuperscript{99} Ibid.
\textsuperscript{100} Cf. Ibid.
\textsuperscript{101} G. DAMIZIA, \textit{Fondamento teologico dell’indissolubilità del matrimonio}, cit., pp. 47-48. We are told by this author that God is the initiator of this love.
\textsuperscript{102} Cf. Ibid., p. 47.
5) In order to evaluate the nature of marriage, we cannot but in some way begin from the first two chapters of the book of Genesis. Christ with his divine authority confirmed them as revealed by God.\textsuperscript{103}

6) Following the thought of Jesus, man and woman in marriage constitute only one thing, they are inseparable. From the conformity of their intentions and the philosophy of their bodies, they will feel drawn to form a new entity. In this regard man feels in a preponderant way the desire of a new complementary being, will esteem in a powerful way the love for his wife above every other love. Here Jesus also emphasizes his psychology in order to indicate that, man has a mission which is well determined in the world: he has to cooperate according to the ends of creation which was established by God.\textsuperscript{104}

Damizia emphasizes that God himself, according to Christ consecrated and specified in what consists the indissolubility of marriage: it consists in the fulfillment of a new entity whose formation has to be contributed by the two sexes. God did this by pronouncing the words “in this way, the two become one flesh”. Assisting in the first matrimony Christ wanted to indicate that, “\textit{una caro}” is the seal of indissolubility which comes from God and is realized in fulfilling the purpose which God had at the beginning.\textsuperscript{105} Jesus wanted to confirm through his words the truthfulness of the divine thinking. In this way “they are no longer two, therefore, but \textit{one flesh}” (Mt 19:6), with this he also wanted to make clear that, his thinking is in conformity to that of God.\textsuperscript{106}

\textsuperscript{103} \textit{Ibid.}

\textsuperscript{104} Cf. G. \textsc{Damizia}, \textit{Fondamento teologico dell’indissolubilità del matrimonio}, cit., p. 48.

\textsuperscript{105} \textit{Ibid.}, pp. 48-48; he states that, «this is a divine precept, which no one needs to take away». According to him, «the conjugal society has an immediate aim, which God himself wanted and therefore is inborn in human nature: the realization of \textit{‘una caro’}. In this case if such an end could not be realized then marital union will not exist. Jesus in reference to the book of Genesis, puts in evidence the thought of Christ through which man has to live in conformity.»

\textsuperscript{106} Cf. J. M. \textsc{Mans Puigarnau}, \textit{Derecho matrimonial canónico}, I, Barcelona, 1953, pp. 49-54.
The logical consequence here is that, man has no power over the divine precept and no human authority can change or cancel a divine precept. Whatever comes from the human will can be changed or cancelled by man, but he has no powers on what has been established by God. Therefore no human authority has the power to change the law regarding indissolubility. As a logical consequence therefore, divorce is not permitted in any case. In every particular situation, the principle is important: «so what God has united, human beings must not divide» (Mt 19:6). Although these words are generic, they are referred to both man and the society. This indicates that, neither an individual nor a social authority either civil or religious can infringe or contravene the law of God. The positive law of God dominates every power and it is above the human juridical competence. At this juncture, Jesus applies his doctrine in practice with a very decisive text which does not admit any reply: «but I tell you». These words of Jesus recall his words in the Sermon on the Mount, through which he indicates the superiority of his teaching on that of the law. «Anyone who divorces his wife …and marries another is guilty of adultery and the man who marries a woman divorced by her husband commits adultery» (Mt 19:9).

The teaching of Jesus is against the custom of the people, against the system of life established from concupiscence and from human egoism, against a legalization which has existed already for many centuries. All this did not in any way prevent the proclamation of his doctrine. In it there is something sublime which was not understood in the minds of the Apostles, but they were convinced that the teaching of Jesus does not admit some exceptions to the indissolubility of marriage. The result of the union between a man and a

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107 Cf. G. DAMIZIA, Fondamento Teologico dell’indissolubilità del matrimonio, cit., p. 49.

108 Ibid. After all that has been said above and even in the second chapter regarding divorce, we can affirm here therefore that, «divorce is an effect of original sin. And therefore Christ repeats with insistence : ‘but it was not like this from the beginning’ (Mt 19:8)». Ibid., pp. 50-51.

109 Cf. G. DAMIZIA, Fondamento teologico dell’indissolubilità del matrimonio, cit., p. 51. This lack of understanding of the doctrine of Jesus on the part of the Apostles is affirmed in the following words: «The disciples said to him, ‘if that is how things are between husband and wife, it is not advisable to marry’» (Mt 19:20).
woman is spoken of as the formation of one flesh. The physicality of the sexual union is of prime importance in this notion of becoming “one flesh.”

“Una Caro” which denotes “one flesh” means human nature and within human nature, that sexual dimension of corporeity whereby a human person is a man or a woman. Within this dimension of the human nature there exists, by nature and not by some human invention complementariness. This complementariness contains the real possibility for a single unity, so that whereas a man and a woman are two persons and two individualized and complete natures, nonetheless within the order of their sexual modalization (virility and femininity) they can be one unity of nature and one single generative principle. In this regard the generative unity is very clearly seen in its typical fruit which is the offspring. This deep unity is caused by the free decision of the spouses

110 Cf. J. NOLLAND, The New International Greek Testament Commentary (NIGTC), the Gospel of Matthew, Unites States of America, 2005, p. 772. The commentary on Mt 19:6 asserts that: «In marriage God makes of a man and woman a linked pair, partnered for the needs, responsibilities, and eventualities of life. Presumably God is the one who yokes because the union between man and woman described in Gen 2:24 is seen to be based on the way God created men and women; it is a union which has the naturalness of a divinely appointed order of things. Certainly the state of being yoked together is understood as involving something that transcends the simple implementation of marriage vows. Jesus’ words set up an antithesis between God as the one who unites and the married man as the one all too often in the practice of Jesus’ day separates». Ibid., p. 773.

111 Cf. P. J. VILADRICH, The Agony of legal marriage, An introduction to the basic conceptual elements of matrimony, Pamplona 1992, p. 182. Here after this text shall be cited as The Agony of marriage. He goes further by explaining that: «There is no knife in the whole world that should be sharp enough to separate in a child what belongs to his father and what the other has placed. The unity of the child is a fruitful reflection of the unity of his or her parents as a generative unity. We have to be careful with this example because, as is well known, there is no “need” to be married in order to produce a child. This example cannot purely and simply be identified with a conjugal union. But, once this nuance has been pointed out, the example is useful if we extract from it its correct analogy. This analogy is the following. The unity of the parents in the child is a work of nature; the unity of the spouses is, on the contrary, a work of their will or of the marital pact. In the case of marriage, nature also permits something there, namely the radical complementariness between the man and the woman. So that if by means of and by virtue of the pact, a man and a woman donate each other mutually as spouses, all the unity to which, by nature, the complementariness between femininity and virility tends, is produced. And that conjugal unity which, in contrast to the child, is decided by the will, once committed
(alliance or pact). The possibility of having such a union is comparable though not identical to the unity which paternity and maternity would have in a child. Viladrich affirms that, this is not invented by marital partners but rather this was already prepared and predisposed by nature. The reason for saying nature is due to the radical complementarity which, by this same nature, potentially exists between a man and a woman. This natural complementarity has to be converted into act by the free will of the interested parties. When this is assumed, it therefore comes about with all the tremendous plenitude which it contains. This plenitude is that of one single unity. The husband and wife become, in what is conjugable, one flesh.\textsuperscript{112}

From the above analysis, we can draw the conclusion here that, marriage is inherently heterosexual, that is, the union between one man and one woman. Anthropological principles demonstrate that marriage is inherently heterosexual. It is ascertained that, while married couples engage in the marital

\textsuperscript{112} Cf. P. J. Viladrich, \textit{The Agony of legal marriage}, cit., p. 184. «This unity is not a fusion. The spouses, as is obvious, continue being two persons and two individualized natures. Marriage if I may use the expression does not convert them into two headed monsters. It would be an elementary error to think that the spouses lose their natural individual selves to become a new and unique ‘individual’. But there is no fusion here».

«The unity of nature refers to a social unity and a unity of justice. Husband and wife are a community – a social unity – and they belong to each other – co-possessors in justice- the unity of the conjugable. For this reason, the essence of that unity is the bond of interconjugal justice. It is not a visible and sensible link, but rather a social and juridical bond. Now, this unitary bond has a natural and real foundation: that most deep unity which by nature itself is predisposed between the feminine and the masculine. And in this sense there does not exist in nature any unit that is as basic, elementary and natural as that unity which is produced between spouses, between virility and femininity which are donated in their entire totality as a debt in the alliance. This is so elementary, so deep and so mysterious that in no text except for Genesis do we find it expressed with that surpassing simplicity: ‘and the two shall be one flesh’».

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Chapter III: The Juridical Doctrine regarding Indissolubility

act which is unitive through acts which are reproductive, couples of the same-sex cannot make such choices. According to May:

The union of the reproductive organs of husband and wife really unites them biologically (and their biological reality is part of, not merely an instrument of, their personal reality) [...] their (bodily) sexual union therefore can actualize and allow them to experience their real common good – their marriage [...] as an intelligible common good even if, independently of the spouses’ will, their capacity for biological parenthood will not be fulfilled by that act of genital union.

May tries to bring out the idea that, in the course of performing heterosexual acts, the partners, choose to use their own and each other’s bodies to provide subjective satisfactions and states of consciousness. Thus, the body becomes an instrument used, and the conscious subject the user. Therefore we can ascertain that, the genital act which is performed as the marital act between heterosexual spouses, be they sterile or fertile, is performed as a two in one-flesh. This is affirmed in the following words:

The marital act, is a type of act intrinsically apt both for communicating conjugal love and for receiving the gift of life if the couple is fertile [...]. This act is and remains a procreative type of act even if the spouses, because of non-behavioral factors over which they have no control, for example, the temporary or permanent sterility of one of the spouses, are not able to generate human life. Their act remains the kind of bodily act – in fact, the only kind of bodily act, ‘apt’ or ‘fit’ for generating life.

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113 Cf. J. B. BRANSFEILD, The impossibility of the same-sex marriage in the light of the anthropological principles found in the teachings of Pope John Paul II on the communion personarum, cit., p. 172.
117 Ibid., p. 312.
Since this act is reproductive it manifests that it is actually an authentical act of the bodily union. On the other hand Finnis emphasizes the idea that:

Sexual acts are not unitive in their significance unless they are marital (actualizing the all-level unity of marriage) and (since the common good of marriage has two aspects) they are not marital unless they have not only the generosity of the acts of friendship, but also the procreative significance, not necessarily of being intended to generate or capable in the circumstances of generating but at least of being, as human conduct, acts of the reproductive kind – actualizations, so far as the spouses then and there can, of the reproductive function in which they are biologically and thus personally one.\footnote{J. Finnis, \textit{Law, Morality, and \textquoteleft Sexual Orientation\textquoteright}, cit., p. 1067.}

Therefore, the biological, organic union between male and female or man and woman in the marital act, that is, the act of union that is procreative-in-type is an action which has an intrinsic end, the good of marriage itself, which is constituted by the union of the two reflected in acts which are procreative. By stressing the act of bodily union as an act that is necessarily reproductive-in-type rather than procreative-in-effect this line of thought preserves its status as an intrinsic good. And the \textit{one flesh} union, through acts that are reproductive-in-type of heterosexual spouses, be they fertile or sterile, is directed at the same time to the intrinsic good of marriage itself.\footnote{Cf. J. B. Bransfield, \textit{The impossibility of the same-sex marriage in the light of the anthropological principles found in the teachings of Pope John Paul II on the communion personarum}, cit., pp. 180-181.} These acts are totally different from the genital acts being exchanged by persons of the same sex. At this point Finnis stresses that:

A husband and wife who unite their reproductive organs in an act of sexual intercourse which, so far as they can make it, is a kind suitable for generation, do function as a biological (and thus personal) unit and thus can be actualizing and experiencing the two-in-one-flesh common good and reality of marriage, even when some biological condition happens to prevent that unity resulting in the generation of a child.\footnote{J. Finnis, \textit{Law, Morality, and \textquoteleft Sexual Orientation\textquoteright}, cit., p. 1068.}
Chapter III: The Juridical Doctrine regarding Indissolubility

From the above assertions it is glaring that, according to the anthropological foundation, the *two-in-one-flesh* can only take place fully in a heterosexual and mutual union and anything outside this is out of question. To sum up, when this mutual and total self-giving takes place, what is established is a unique, exclusive and permanent relationship, an indissoluble *one-flesh* union that has reference to children.

3.2.2. The plan of Christ “what God has joined together, man should not separate”\(^1\)

There are many Gospel texts that evoke marriage: two from the Gospel of Matthew (chap. 5 and 19), one from Mark (chap. 10), one from Luke (chap. 16). These texts have greatly been used by the Church to found her doctrine on the indissolubility of marriage. God wanted to make marriage the symbol of his alliance with his people, an alliance between Christ and the Church.\(^2\) The above quotation is the last part of Mt 19:6 which has already been treated above [cf. 3.2.1.]. So our reflection here shall be the continuation of what has been discussed already above. In order to understand it more adequately, it is important for us to begin with the *logion* of Jesus found in Mt 19:3-9.

\[3\] Some Pharisees approached him, and to put him to the test they said, ‘Is it against the law for a man to divorce his wife on any pretext whatever?’

\[4\] He answered, have you not read that the Creator from the beginning made them male and female

\[5\] And that he said: This is why a man leaves his father and mother and becomes attached to his wife, and the two become one flesh?

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They are no longer two, therefore, but one flesh. So then, what God has united, human beings must not divide.

They said to him, ‘Then why did Moses command that a writ of dismissal should be given in cases of divorce?’

He said to them, ‘It is because you were so hard-hearted, that Moses allowed you to divorce your wives, but it was not like this from the beginning.

Now I say this to you: anyone who divorces his wife – I am not speaking of an illicit marriage – and marries another, is guilty of adultery.

The teaching of Jesus regarding the indissolubility of marriage is that which is found in Mt 19. During the time of Jesus in Judaism, the lawfulness of repudiation was out of question despite the fact that, monogamic marriage is a lasting communion of life and it was considered as an ideal. There were lots of discussions on the motives of this, but the school of Hillel which was more permissive, considered the motive of repudiation anything that was unpleasant or an inconvenience to the husband. For example, if the husband

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had fallen in love with another woman. On the other hand the school of Sciammai interpreted Deuteronomy 24, 1-4 in a stricter sense. The valid motive for this was “something shameful” done by the wife, that is adultery. In this case the woman’s condition was discriminated in respect to that of the man. In such a case it was said that, “the woman was being sent away by the man, whether that was pleasant to her or not…” It was only in few cases that the woman’s right not to be libeled was recognized and she was given her proper liberty. It is in this religious and cultural context that we can place the argument of Jesus with the Pharisees reported by Mk 10:1-12 and Mt 19:1-9. The Evangelist Luke does not bring out this episode but reports in a different context the central affirmation (Lk 16:18): “Everyone who divorces his wife and marries another is guilty of adultery, and the man who marries a woman divorced by her husband commits adultery” (Mt 19:9).

The response of Jesus is articulated by citing Gen 1:17 and 2:24: «have you not read that the Creator from the beginning […]» (Mt 19:4-5). Here Jesus pronounces his halakab: «They are no longer two, therefore, but one flesh. So then, what God has united, human beings must not divide» (Mt 19:6). Here Jesus’ position is quite clear from the moment that he refuses radically the


127 For example in the case where the man changed his religion, or may be impotent or exercise disgusting or repulsive professions.


129 “Halakka is a technical Hebrew word which designates or indicates a norm of behavior. It precises what has to be followed to the latter according to the divine will expressed in the Torah. It is being distinguished from haggadah: another technical Hebrew term which means a narration which develops in a popular and attractive sense the biblical narration, drawing from it further teachings». Cf. A. Tosato, Il matrimonio nel Giudaismo Antico e nel Nuovo Testamento, cit., p. 28, note 7.
interpretation of Hillel and that of Sciammai and repudiation in itself. Jesus replied: «It was because you were so hard-hearted, that Moses allowed you to divorce your wives, but it was not like this from the beginning» (Mt 19:8; Mk 10:5). According to Jesus, the law quoted does not constitute a divine-positive norm which abrogates Genesis. It has neither an institutional repudiation nor a legalization of repudiation which in fact was used during the time of Moses. But it is only the political acceptation of such use with the scope to regulate the modality of its practice by means of a restrictive norm and the most effective protection of a woman and the stability of the family from the moment that, the immaturity of the people was not supporting the original divine law of indissolubility. The position of Jesus is drawn openly in favor of indissoluble and monogamic marriage, since it is the only marriage which corresponds to the will of the Creator and as such has a normative and universal effect.

Confronting Mt 19:9 with 5:32, according to some authors it seems evident that «Jesus used in this logia the language of the law but with a new usage in order to surpass the plan or level of the law and to reveal the reality of the interpersonal relationship in which God engages man in an immediate way». In this case, the words of Jesus will be moving to the ideal ethical level in the religious perspective and its request could be placed as an absolute moral imperative and not as a juridical norm; this could be an ideal to aim at not a law to obey. Some other authors notice that Jesus in quoting the Torah does not only apply it to an edifying and uplifting example but makes evidence an


131 Ibid.


134 Cf. L. SABBARESE, *Il Matrimonio Canonico nell'Ordine della Natura e della Grazia*, cit., p. 118. «Above all they assured that the whole dispute in Mt has ‘a theological-hermeneutic function: in it the order of creation is designed as the criteria of the interpretation of the law’, therefore the halakkah of Jesus is to be retained only as ‘the best interpretation of the will of God’, in opposition to Judaic interpretation, and not that He wanted to promulgate a new law which substitutes that of Moses». Cf. P. HOFFMANN, *Le parole di Gesù*, cit., p. 77.
explicit precept. «He does not propose a simple haggadah but a true and proper halakkah which comes to settle with an exemplary and strict binding sentence the facts in discussion, that is, repudiation and polygamy.»

The two passages of Mt 5:32 and 19:9 seem to provoke doubts in the sense that they seem to raise some limits to the halakkah of Jesus. But after every clear refusal of any cause of repudiation on the part of Jesus, the question is whether there exist or not according to the New Testament exceptions to the evangelical law of the indissolubility of marriage. According to Sabbarese «Jesus did not provide exceptions to his halakkah». Although some Eastern non Catholic Churches hold that these clauses of Jesus provided the possibility for divorce, but the traditional Catholic interpretation did not agree that the interpretative clauses brought by Matthew

135 Ibid., p. 119.
137 Cf. L. SABBARESE, Il Matrimonio Canonico Nell’Ordine della Natura e della Grazia, cit., p. 119.
138 Ibid. He brings out some different thoughts of opinions regarding the clauses of Jesus, some which we have mentioned below.
139 Ibid. «According to a line of thought of the supporters of divorce, an opinion holds that with the said parenthetic clauses which presumed to have been pronounced by Jesus, he provided or foresaw some exceptions of his halakkah, and therefore the possibility for divorce. This is the position of the Eastern non Catholic Churches, although the doctrine of indissolubility is not unknown to the previous orthodox tradition during the IV century when there was the lost of autonomy from civil power». Regarding this we could recall P. GEFÄLL, Fondamenti e limiti dell’oikonomia nella tradizione Orientale, in Ius Ecclesiae, 12 (2000), pp. 419-436.

«The divorce granted by these churches is intended not as the dissolution of the bond, but as tolerance/dispensation in force of ‘Oikonomia’ and is justified by the spiritual death of the conjugal bond, but not only in the case of adultery». Cf. L. BRESSAN, Il divorzo nelle Chiese Orientali, Bologna, 1976; See L. SABBARESE, Il Matrimonio Canonico Nell’Ordine della Natura e della Grazia, cit., p. 120.

«For the reformers, divorce is not justified by specific motivations, but is simply unavoidable in certain situations, such as that of adultery sanctioned in Mt 19:9». These are those cases determined by Lutero and condemned by the COUNCIL OF T Trent, in the XXIV session, can. 5: «Si quis dixerit, propter haeresim, aut molestam cohabitationem, aut affectatam abscentiam a coniuge dissolve posse matrimonii vinculum: anathema sit», DS 1805.
introduce an exception to the law of indissolubility. The motives which were adopted by many authors are diversified. Three interpretative lines of thought can be summarized here.

The first interpretation which is more traditional precises that the clause of Matthew indicates the cause of separation and not divorce which was already abolished by then. This is in keeping or in conformity to the solution given by St. Paul to the Corinthians (1Cor 7, 10-11), which had its first explicit formulation in St. Jerome and which also guided the practice of the Church, indirectly defined by can. 7 of the Council of Trent. The exception is referred only to the first part of halakkah: “He who divorces his proper wife” and not to the second “and marries another.”

The second interpretation makes this clause of Matthew to depend on the exact understanding of porneia and consequently Mt 19:6 acquires a different meaning which in any case excludes an exception and confirms the same divine law of the indissolubility of marriage as proclaimed by Jesus.

For some authors porneia is intended in the general sense to correspond to the Hebrew word zanut, that is, as a consequence of sin resulting from

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143 DS 1807: «Si quisdixerit, Ecclesiam errare, cum docuit et docet, iuxta evangelicam et apostolicam doctrinam (Mt 5:32; 19:9; Mc 10: 11-12; Lc 16:18; 1cor 7:11), propiter adulterium alterius coniugum matrimonii vinculum non posse dissolve, et utrumque, vel etiam innocentem, qui causam adulterio non dedit, non psse, altero coniuge vivente, alid matrimonium contrahere, moeccharique eum, qui dimessa adultera aliam duxerit, e team, quae dimesso adultero alii nupserit: anathema sit».


145 Cf. L. SABBARESE, Il Matrimonio Canonico nell’Ordine della Natura e della Grazia, cit., p. 121.
incestuous marriages and therefore invalid according to the Hebrew law as found in Leviticus 18. This clause therefore means that: it is not allowed for one to send back his wife except it has to do with incestuous and null marriages.\textsuperscript{146}

For others \textit{porneia} indicates the same thing which for Moses was sufficient cause for repudiation; that is immodesty and the bad behavior of a woman. In this light, unchastity would remain a grave cause but at the moment gives permission for separation but not for second wedding.\textsuperscript{147}

Finally for others, «\textit{porneia} indicates adultery which is committed by a woman, in a way that whoever sends away his wife commits adultery».\textsuperscript{148}

A third interpretation makes the sense of this clause to depend on the context which in any case excludes the meaning of the exception to the norm which Jesus had pronounced.\textsuperscript{149}

According to some exegetes, the conjunction \textit{mè epi porneia} used here as in other cases of the New Testament, have inclusive values and not of exception. Therefore the clauses of Matthew do not introduce an exception, but they confirm the refusal of Jesus regarding every repudiation, «also in the case of unchastity», as in Dt 24:1.\textsuperscript{150}

\begin{footnotes}
\item[149] Cf. \textit{L. Sabbarese}, \textit{Il Matrimonio Canonico Nell’Ordine della Natura e della Grazia}, cit., p. 121: «una terza interpretazione fa dipendere il senso dell’inciso dal contesto, che in ogni caso esclude il significato di eccezione alla norma pronunciata da Gesù».
\end{footnotes}
The common modern Catholic and non-Catholic exegesis holds with sufficient certainty, that truly Jesus never provided exceptions to his halakkah on the indissolubility of marriage.\footnote{L. Sabbarese, *Il Matrimonio Canonico Nell’Ordine della Natura e della Grazia*, cit., p. 122. Sabbarese asserts that, «every exception is incompatible with the clear refusal of Jesus concerning any cause of repudiation; if admitted , it will be in contradiction to what Jesus himself affirmed in verse 8: ‘it was because you were unteachable that Moses allowed you to divorce your wives, but it was not like this from the beginning’; above all, the whole passage would not have had meaning, from the moment that Jesus establishes his refusal basing it on the affirmation of the Creator in contrast with the Mosaic exception. It would have been difficult to understand the amazement expressed by the Apostles: ‘if that is how things are between husband and wife, it is not advisable to marry’ (vs. 10), which is explained in the case where Jesus had practically excluded every possibility of dissolution of the matrimonial bond».}

The clause is an explanatory and an applicative addition of Matthew. In the parallel passages (Mk 10:11; Lc 16:18; 1Cor 7:10-11), the logion of Jesus is always referred to in the absolute form and without clauses. Matthew’s characteristic is explaining and applying the words of Jesus to the demands of life of his community even with ample textual commentaries as seen for example in the parables.\footnote{Cf. A. Tosato, *Il matrimonio nel Giudaismo Antico e nel Nuovo Testamento*, cit., p. 42.} This opinion is also reaffirmed by Daquino, when he asserts that, the clause could be an addition of Matthew also in 5:32a, in order to explain well the force of the prohibition of repudiation.\footnote{These clauses are considered as an editorial addition (in both passages of matthew) by Bultmann, Dibelius and others. They are very old additions, since their Greek text is from the critical point of view certain and sure. They are not posterior notes done by the actual Matthew, but the textual and editorial criticism confirm their belonging to the first Gospel from which they arrived.} The repudiation of one’s wife was something that was tried again, but this exception continued to exist. In this manner Matthew wanted to respond in a precise way to some pertinent problem, which was existing in the Christian community to which he dedicated his gospel.\footnote{Cf. P. Daquino, *Storia del Matrimonio Cristiano alla luce della Bibbia*, Vol/2, *Inseparabilità e Monogamia*, Brescia 1984, p. 64.}

As we have analysed already above, the doctrine of Matthew on the indissolubility of marriage would have been very clear if this clause was not
Chapter III: The Juridical Doctrine regarding Indissolubility

present: «mè epi porneia = nisi ob fornicationem (Mt 19:9)». The principal difficulty stems from the meaning which has to be attributed to the word porneia. Confronting the passages in which this word has been used, it seems that it is to be attributed to «quemlibet illegitimum veneris usum… etiam adulterium vel incestum». This indicates an illegal behavior of a woman in the sphere of sex. In this regard Jesus uses a word which is more general since it is not possible to enumerate all the unpleasant situations which can be verified in the modality of life which is in continuous evolution.

After having examined the different interpretations and opinions regarding the clause of Matthew which seemed to have raised certain misunderstandings and doubts in the minds of some authors, we shall now embark at this juncture on clarifying what Matthew really intended in his clause. The principal idea of Matthew was that repudiation is not admitted. But given the fragility of human beings, repudiation occurs and since this happens it will be important at this point to understand in which cases this is permitted, so as not to injure or offend the divine law regarding indissolubility. Matthew

155 Cf. G. DAMIZIA, Fondamento teologico dell'indissolubilità del matrimonio, cit., p. 52.
157 Cf. G. DAMIZIA, Il fondamento dell’indissolubilità del matrimonio, cit., p. 52.
158 Ibid. Damizia goes further to explain that, «in chapter 5: 31-32 of Matthew this question of repudiation is also tackled. In this passage, it clearly puts in evidence the antithesis between the Old and the New Testament. The central idea is focused on repudiation: any man who repudiates his proper wife renders her adulterer, that is, in a way that commits adultery either for psychological or practical reasons. An abandoned woman especially during that period, was in need of support and she could only find this in another marriage. Jesus does not want to say here that, the act of repudiation is already an adultery, but that it is an occasion for the woman to contract a new marriage, and if this should happen, she will be committing adultery since the first marriage is still valid. Due to such a motive, whoever marries a divorced wife will be committing adultery. The predominant concept is that man does not have to repudiate his
here talks of the true and proper repudiation of one’s wife and not of the repudiation of a concubine or a woman who is not deign to be attributed the title of wife, otherwise the words, “anyone who divorces his wife” will not have had a specific meaning. This divorce as Jesus explained can only happen in the case of porneia.  

proper wife, since repudiation is against the will of God, as expressed in creation: and if he repudiates her he will be going against the wish of God because he does not want that the ‘una caro’ be divided. In the affirmation of Jesus we see indistinctly the betrayal of repudiation: the repudiated wife is expelled to adultery. Even the misery in which the divorced wife would have found herself, will not be a valid reason not to observe the divine law. The social and juridical point of view is substituted by the ethical: the man is accused of being responsible for the adultery of the woman, if she contracts a new marriage. Therefore repudiation, is recognized implicitly in the woman a personality which is morally equal to that of the man. They have the same responsibilities, since the discrimination of the sexes does not exist. In conclusion Matthew in this passage emphasizes principally the effects of repudiation, but not the sufficient motives that could authorize it. The motives which could authorize repudiation are well-defined in the clause parektos logon porneias, which has a generic sense, because the case study could change from age to age. Therefore man could repudiate his proper wife, but only in the case where she is a victim of the crime of porneia, but such repudiation does not give the authorization to contract a new wedding. In fact, if they contract they commit adultery and whoever marries a divorced wife commits adultery. The new marriage cannot annul the bond that was created between the two. Therefore the clause parektos logon porneias specifies when is repudiation permitted and in such a case adultery of the spouse is not accused to the husband. It does not seem then that to the word porneia could only be attributed the meaning of adultery, without that it is excluded, because it will be a contradiction to affirm that a woman already adulterer, be expelled to adultery (all’ adulterio). Its meaning has to be more wide. It should then be considered that, if the clause contained an exception, there will no longer be the antithesis with the Old Testament. Therefore, in this passage, we have also the confirmation of the indissolubility of marriage. Ibid., pp. 52-53. The translation is mine.

159 Ibid., p. 53; as we saw already before, «the word mè epi porneia are referred to the divorce of one’s proper wife which is the principal idea from the beginning, but not to other unions which are not marital unions. The two passages ‘anyone who divorces his wife’ and ‘except the case of porneia have intimate connection. The second explains the first, and they cannot be separated without distorting their meaning. The principal idea here being repudiation, Jesus explains that this can happen only in the case of porneia and in this regard he [Jesus] is in conformity with Moses; but anyone who divorces cannot pass to a second wedding. This is the novelty introduced by Jesus himself.’ In this manner, Jesus responds to the question asked by the Pharisees: ‘if it is advisable for a man to divorce his wife for any motive.’ In this regard, the Matthean clause, confirms the indissolubility of marriage. Juridically, the clause explains the
Thus, what Jesus wants to prohibit here are second weddings which should never be celebrated if one does not want to incur adultery. This is the most important consequence of repudiation as conceived by Christ. Repudiation being different from that of Moses, does not demand any formality since it does not authorize second weddings; the presence of porneia is enough.\(^{160}\)

Christ could not talk of legal separation because during that time this institute was not existing. It was obligatory to talk of repudiation because it was the unique legal institute that one could separate himself from the woman; and if he had spoken in another way those who were listening to him would not have understood. It is the same thing happening today in those countries where only divorce exists: if legal separation is spoken of, no one understands.\(^{161}\)

After having explained succinctly above, we shall now bring out the general reasons which do not permit the interpretation of the two clauses of Matthew as an exception to the law of indissolubility. 1) The disciples understood fully well the intransigence of Jesus, and they understood that, he did not admit any exception. The clause of Matthew did not constitute derogation for them (disciples). Their immediate reaction can then be understood. The Pharisees would have certainly murmured if Jesus had admitted any exception. 2) Jesus did not give to marriage a different order from that given by God in Genesis. Therefore it was useless to appeal to the Sacred Scripture if he had admitted an exception. It would have been enough to interpret the precept of Moses. 3) The two clauses of Matthew are ignored by Mk 10:2 and Lc 16:18 and by St. Paul in 1Cor 7:10: It is not possible that an important teaching like this one could be ignored by two evangelists and by St. Paul. 4) It cannot be assumed that Christ should contradict himself. In verse 6 he (Christ) takes away from man every power on marriage, while in verse 8 he confers it to him (man) anew. 5) Admitting an exception to the norm of

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\(^{160}\) Cf. G. DAMIZIA, *Fondamento teologico dell’indissolubilità del matrimonio*, cit., p. 54.

\(^{161}\) *Ibid.*
indissolubility, the Catholic Church would be the most pro-divorce society of the world, because this will not require any formality for divorce.\footnote{162} In this light, the phrase ‘what God has joined together let no one separate’ means that, ‘Jesus bases his stress on the permanent union of the married couple on the original will of the Creator’.\footnote{163}

In the Old Testament there exist some cases of divorce such as in Exodus where Moses assisted in the case of divorce of Zipporah (cf. Ex 18:2). Another text which also presents a similar case of this nature is found in Chronicles where Shaharaim divorced two wives, Hishim and Baara (cf. I Chr 8:8). From these two scriptural passages could we then conclude that divorce is authorized? Can we find in these biblical passages arguments which are in favor of the dissolution of marriage? Nothing absolutely can permit or convince us in order to conclude as such.

It will be indispensable at this juncture for us to examine some other scriptural passages which are precisely in favor of the indissolubility of marriage. We can say that the dissolubility of marriage stems from the social exploitation, and not from a predominant and preesistent natural norm.\footnote{164}

Mark on his part refers essentially to the doctrine of Matthew on indissolubility, but his version contains differences.\footnote{165} Here Mark feels that the

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\footnote{162} Cf. G. DAMIZIA, \textit{Fondamento teologico dell'indissolubilità del matrimonio}, cit., pp. 54-55.


\footnote{165} In Mark and Matthew we can bring out the following divergences: 1) In Matthew the question of divorce is following the Hebrew mentality and this whole reasoning follows a logical rabbinic trend; in Mark is exposed a law which is more human, and more close to the human reality. 2) The question posed by the Pharisees is different in the two Gospels. Matthew puts it thus: «Is it against the law for a man to divorce his wife on any pretext whatsoever?». Mark puts this question in an indirect conversation without making reference to the motives: the question is general. The question referred by Matthew was incomprehensible for the Romans. 3) Matthew made reference directly to the Sacred Scripture, but Mark referred to the words of sacred Scripture without citing them. 4) In Matthew the words «for this reason man will leave his father etc» were pronounced by God, but in Mark they are only referred, without
\end{footnotesize}
Pharisees probably had some suspect on the orthodoxy of the doctrine of Jesus on marriage. Christ abolishing divorce, takes away the discrimination between the two sexes, giving back to the human couple the equality established by God in creation (cf. Gal 3:28); it is put against the Old Testament in force of its messianic power, declaring that, the precept of divorce does not correspond to the ethical law, given by God and given to the first human couple which implicitly deprives of any juridic value the rabbinic questions on the justifiable causes of divorce and abolish divorce and polygamy in all its forms. Mark also unites the two texts of the first and second chapters of Genesis: the fusion of the two texts is presented as a logical succession of ideas without any interruption. These two passages are cited as one unique context in order to emphasize the intimate connection that unites them: the creation of the first human couple and its ultimate end.166

noting or specifying who pronounced them. The said words are referred in an integral way by Matthew, but it doesn’t seem Mark referred them integrally. 5) In Matthew, they were the pharisees that appealed to the authority of Moses: «then why did Moses command that a writ of dismissal should be given». In Mark it is Jesus who asked: «what did Moses command you». In Mark the following words are missing: «but it was not like this from the beginning», which are repeated by Matthew in 19:8. In Matthew the succession of the response of Jesus is coherent to the first question which was asked to him. The object of the dispute is the interpretation of the passage of Deuteronomy 24:1. Jesus’ response brings to light the supremacy of the wish of God, that is the law put by God for the first couple. In Mark it is Jesus who asked directly what Moses had commanded. 7) In Matthew, verse 10 of Mark is omitted. 8) In Matthew verse 9 is directed to the Pharisees; but in Mark verse 11 and 12 are addressed to the disciples. 9) verse 12 of Mark is omitted by Matthew. Divorce on the part of the woman is not also mentioned by Matthew. 10) In Matthew the libel of divorce is presented by the Pharisees as a command of Moses; in Mark as a permission. 11) The surprise of the disciples does not exist in Mark. 12) It seems that the text of Matthew is more exact and refers the original version. Mark probably adapted the text to the Roman mentality. Cf. M. J. LAGRANGE, Evangile selon saint Marc, Paris 1929, p. 256; J. HUBY, Evangile selon saint Marc, cit., pp. 247-252; J. SCHMID, L’Evangolo secondo Marco, Torino 1966, p. 437; J. KNABENBAUER, Evangelium secundum S. Marcum, Paris 1907, p. 262; D. DAUBE, Evangelisten und Rabbinen, «Zeitschrift für Die Neutestamentliche Wissenschaft», 48 (1957), pp. 119-126. The translation is mine.

Mark is not very much interested in who pronounced the words «This is why a man leaves his father and mother, (and will unite with his wife), and the two become one flesh» (Mk 10:7), because they remain the words of God always. Marriage is inclined to the fusion of the two beings and God wanted it this way and this is the immediate scope of marriage. The conjugal society, wished by God, is that through which is realized the union of the sexes. In this way, Christ as the sovereign interpreter of the mind of God, reestablishes matrimony in its primitive entirety: monogamy and indissolubility, according to the end which God proposed in creation. According to him [God] man can find only in woman his adequate completion, and not in his parents, because only with her can he form one complete being.

The disciples baffled by the words, which abolished a practice that was commonly accepted by the Hebrew people who had as favor the authority of Moses, questioned him again privately. Given the surprise of the disciples, who found it difficult to accept the teaching of Jesus, the Lord would have had to be precise if an exception could be attached to the general norm; but he instead confirmed the principle of absolute indissolubility of marriage: «Whoever divorces his wife and marries another is guilty of adultery against her. And if a woman divorces her husband and marries another she is guilty of adultery too» (Mk 10:11). Christ in order to take away every doubt makes a hypothesis on both the part of the man and the woman. In this way either the man or the woman are considered equal. The iron law of indissolubility does not need to create fear for those who believe, because God himself is the guarantor of the indissoluble union between a man and a woman: therefore neither man, neither the society can break the unity that God has inserted in the same nature of man and woman.

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168 Ibid. He concludes that: «Since no one can oppose to such a divine will, it then follows that, ‘what therefore, God has united, human being must not divide».

169 Cf. G. Damizia, Fondamento teologico dell’indissolubilità del matrimonio, cit., p. 58


171 Cf. Regarding divorce on the part of the woman, P. Bonfante, Istituzioni de diritto romano, Torino 1957, p. 191, writes: «For woman the state of dependence in which they live in that first
confirmation by the Lord. He could not allow his disciples to be in doubt because the doctrine on marriage is an essential part of his teaching.\textsuperscript{172}

In the second chapter of Genesis as well as in the Gospel of Matthew and Mark\textsuperscript{173}, the indissolubility of marriage is founded on \textit{one flesh}, and not on the offspring. It is the complete and reciprocal donation that imprints an indelible seal on one’s proper personality: the two personalities interpenetrate deeper into their being and they feel bounded in themselves by an indissoluble bond which gives rise to a new being. At this point, fidelity is a logical consequence of indissolubility. It is not mentioned in the above-mentioned texts of Sacred Scripture. In fact, man is not able to give himself completely to many persons.\textsuperscript{174} Without offspring marriage can be conceived or understood, but without \textit{“one flesh”} it has no reason to exist because the characteristic note

\textsuperscript{172} In a context that is all different from that of Matthew and Mark, Luke recalls the indissolubility of marriage with a generic sentence, which expresses the genuine thought of Jesus: «Everyone who divorces his wife and marries another is guilty of adultery, and the man who marries a woman divorced by her husband commits adultery» (Lk 16:18). Such a crime exists because the indissoluble bond that exists between man and woman which also includes reciprocal fidelity cannot be destroyed by divorce. It is only in observing such a quality of marriage that, the spouses can sanctify themselves. For Luke, there does not exist any exception to the law of indissolubility: with a generic and scriptural formula there is the possibility of avoiding every polemic and refers to the essence of the teaching of Jesus, which was defined in formulas Cf. A. VALENSIN-J. HUBY, \textit{Evangile selon saint Luc}, Paris 1952, p. 475.

\textsuperscript{173} St Paul in the Letter to the Ephesians 5:22-32, does not mention these words, but base his reasoning on love which realizes \textit{one flesh}.

that distinguishes it is lacking. We need to consider that the offspring although it comes from marriage, it is not an element which is part of the personalistic relationship between the spouses. The offspring finds its realization and development outside the essence of marriage.\textsuperscript{175}

In the Church of Corinth the doctrine of the indissolubility of marriage faced a series of difficulties, given the environment in which the people were living.\textsuperscript{176} In this light, St. Paul responded to their difficulties transmitting to them the oldest tradition of the Church on the indissolubility of marriage. He was the first to apply the principle of the indissolubility to concrete cases, he was the first interpreter of the law on indissolubility. St. Paul together with the twelve apostles, taught faithfully the teaching of Jesus Christ. Reference is always made to him in presenting the complete doctrine of the indissolubility of marriage between Christians. «To the married I give this ruling, and this is not mine but the Lord’s: a wife must not separate from the husband — or if she has already left him, she must remain unmarried or else be reconciled to her husband» (1Cor. 7:10).\textsuperscript{177} The bond created by marriage cannot be broken by any human authority. This is in contrast with the Jewish law and that of the pagans, but a Christian should prefer the law of God to that of men (Acts 4:19; 5:29). The link that is created by marital union cannot be broken except by death (1Cor 7:39): since paternity cannot be destroyed by the fact that, a father does not want to recognize his proper son.

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\textsuperscript{175} Cf. G. Damizia, Fondamento teologico dell’indissolubilità del matrimonio, cit., p. 61.
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\textsuperscript{176} Ibid. He precises that: «There were Jews, who received from Moses the legal faculty to send back their proper wives: there were pagans, to whom were given the initiative of divorce to both spouses: the union between slaves were not guaranteed by law: there were unions in which one part was in a servile condition, and with this the bond was not very solid: the ‘simplex fornicatio’ was permitted: homosexuality was wildly spread: divorces were numerous. We should not then be surprise if some Christians were induced to ask for divorce or were perplexed on the decisions to take».
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\textsuperscript{177} Cf. E. B. Allo, Saint Paul première épitre aux Corinthiens, Paris 1956, p. 164. «This norm is put by the apostolic authority but is strictly linked to the authority of God: it does not come from any rational reasoning or from human convinience. It is a divine norm, which has its justification in the same divine will, that does not admit discussions. May be due to this St. Paul does not bring forward reasons to justify the norm of indissolubility».
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In this regard, in order to express better the indissolubility of matrimony, St. Paul remembers that properly following the law a woman is bound to the husband. He does not say this explicitly, but from the context it is deduced that, we have to talk in regard to the divine law that regulates marriage, otherwise his comparison will not have the effectiveness that he wants to give. In fact, the human law can be dispensed but the law of marriage cannot neither be changed nor raised ineffective by human will, but only by the legislator who in this case is God. It ceases only with the death of one of the spouses (Rom 7:1-3). For St. Paul, it is of maximum importance to put in evidence the principle of the indissolubility of marriage.

In a second reflection St. Paul puts in evidence the foundation of the bond that unites the two spouses: it is hidden in love. The love of the spouses has to be perfect as the love that Jesus had for his Church. Like Christ, loving the Church, he sanctified and purified her (Church), in the same way the bridegroom has to love her bride in a way that, in all their actions there should always be a motive of sanctification: where there is true love, there God is found (Mt 18:20). Therefore, as Christ communicates his life to the Church, so also the spouses have to complete in their being in such a way that they both become part of one another. Each one of them has to transform in the other his or her proper specific qualities, in such a way that life becomes renewed continually. Their relation has to be so intimate that it can be compared to the union between the head and the body (1Cor. 11:3). For this reason, the

178 Cf. R. CORNELY, Epistola ad Romanus, Paris 1896, p. 364: «Verum a paulo hic, sicut plus quam semel a rabinis, ad veterem Legem divinitus datam applicator, quipped de qua (uti de lege naturali) strictiore sensu valeat. Namque humanis legibus, quam in certa dumtaxat terra vigent atque a legislatoribus pro libitu mutantur vel ad tempus solvuntur aut removentur etc., homines ante mortem suam facile se subtrahunt; lex autem vetus, utpote divina, quum ab hominibus neque ullo modo ad tempus dissolvit vel irrita reddi potest, omnes eos, qui semel ei erant subiecti, usque ad mortem ligabat. This opinion seems that it can be supported by the same St. Paul, who talks certainly of the divine law which presides at marriage, when he talks of second wedding: «Mulier alligata est legi quanto tempore vir eius vivit. Quod si dormierit vir eius, librate est: cui vult nubat: tantum in Domino» (1Cor. 7:39). M. M. SALES, Il Nuovo Testamento, vol. II: Le Lettere degli Apostoli – L’Apocalisse, Torino 1933, p. 49. This same thinking is expressed in: Cf. G. HUBY – S. LYONNET, San Paolo, Epistola ai Romani, Roma 1961, p. 199; M. J. LAGRANGE, Saint Paul Épître aux Romains, Paris 1950, p. 161; G. SACCO, L’epistola ai Romani, Roma 1935, p. 36.
husband has to love his proper wife as he loves his proper body, because she through her complete donation has constituted with him one being. As we form one person in Christ, and we being his members, so also the spouses have to form one person. As it is inborn in the human nature, that each one should love himself, so also in marriage, the husband has to love the wife as himself because she has become part of his body: the woman has become part of the man. This is founded in the nature of marriage, which God has instituted creating the first human couple (cf. Eph. 5:22-32).  

St. Paul explains that Christian marriage represents in its specific reality the union between Christ and the Church. This symbol becomes perfect if it fulfills the essential characteristics of the mystical body: unity and indissolubility, not leaving out sanctity. Christ communicating himself to his Church creates an indissoluble bond of grace so also the matrimonial bond, representing concretely the union between Christ and the Church has to be of the same supernatural nature of that which it represents. This is possible through the grace of the sacrament which elevates the same sexual relationship in the supernatural sphere, in such a way that the full blending or fusion of bodies, of actions and sentiments occurs under the dazzling light of the grace of God. The ideal of complete fidelity between Christ and his Church can be proposed to the spouses only under the force of divine grace.

After having examined how the synoptic Gospels treat the theme of indissolubility, we shall now present some salient points concerning the teaching of Jesus on the matrimonial bond. Excluding the Matthean clause of exception, the synoptic texts which we have examined above (Mk 10:2; Mt. 5:31-32; 19:3-9; Lk 16:18), present Jesus as one who always teaches monogamy and the indissolubility of the matrimonial bond. In reference to the texts of the Old Testament of Gen 1:27 and 2:24 (Mk 10:6-7 and Mt 19:4-5), Jesus places marriage in the order of creation. Therefore, unity and indissolubility


180 Cf. G. DAMIZIA, Fondamento teologico dell’indissolubilità del matrimonio, cit., p. 64.

which are essential properties of marriage, correspond to the divine design of marriage already established by the Creator at the beginning of creation. Unity and indissolubility which presuppose the equality of the spouses in the conjugal life (cf. Mk 10:12), signifies that, husband and wife uniting in “one flesh” attain perfection in this way.\footnote{182}

There is no exception to the divine design. Concerning the clauses of exception in Mt. 5:32 and 19:9 interpreters and commentators consider it generally as an addition typical of Matthew. There, the Matthean clause should not be confused with the authentic words of Jesus. It should be considered as a solution of Matthew in response to the concrete situation of his community, very much linked to Judaism and to the pro-divorce tradition.\footnote{183} In this case the stability of the matrimonial bond lasts for the whole life of the spouses. The teaching of Jesus on the conjugal bond represents an ideal marriage\footnote{184} which regards all, and not only Christians. In the above cited texts, Jesus does not make reference to any determined or particular marriage (Christian marriage), but speaks of a prohibition to divorce and to re-marry, which regards, therefore, any kind of marriage. Pius XII, writing on this point, said that, the words of Christ «what God has united, man should not separate» regard every marriage, even non sacramental marriage.\footnote{185} Consequently, the


\footnote{185} Cf. PIUS XII, Encyclical Letter, Casti Connubii, cit., 573: «Et haec Christi verba quodcumque respiciunt matrimonium, etiam naturale tantum et legitimum; omni enim vero matrimonio
prohibition taught by Jesus is to be intended for all married “men” – baptized or non-baptized without any distinction. Jesus said both to the Pharisees and disciples that all are to observe his teaching, since such a teaching contains a fundamental principle on the indissolubility of marriage: no “man” has the powers to dissolve the matrimonial bond (Mk 10:9 and Mt. 19:6).

3.3. The juridical doctrine of indissolubility in the new Code of canon law

The new Code of canon law of 1983, in its totality and in particular in the material concerning marriage and the family, has to be interpreted in the light of the life of the Church and in very close connections with biblical text. As we can note from all that has been said right up to this point, marriage has an end and two essential properties which together constitute the bona matrimonii. The good of the sacrament coincide with the indissolubility of marriage. Such a property is recalled in a very close way in canons 1056, 1057 §2, 1085, 1096, 1101§2, 1134, and 1141 as mentioned already above.

3.3.1. Parallel with the 1917 code and the code of the Oriental Churches

«The Code of 1983 uses the term Proprietas in two distinct ambits: in the context of ecclesiastical goods (cann. 706, 1° and 1284§2, 2°) and in the marriage context where these properties are being qualified with an adjective as essentiales (cann. 1056 and 1125 §3).» The essential properties of marriage are those qualities which characterize the essence of marriage by its nature in such


a way that, without them marriage will not exist.\textsuperscript{188} Based on the CIC 1917, commentators explained that «unitas et indissolubilitas dicuntur proprietates essentiales matrimonii, quia sponte ac necessario ita profluent ex ipsa coniugii natura, ut sine iisdem matrimonium nec subsistere necque concipi posset».\textsuperscript{189}

Properties as in the case of marriage indicates a reality which is qualified as essential, nevertheless, it does not constitute the essence although it remains joined to it.\textsuperscript{190} In other words, «an essence would not be what it is, if it does not possess certain and determinate properties. Moreover, the essential properties, as quality, are lacking of autonomy and they always need the essence that characterized them [...]».\textsuperscript{191} Concerning the indissolubility and unity the new Code stated in can. 1056 that they are essential properties of every marriage even the natural marriage, but in a Christian marriage they add a particular firmness due to sacramentality.\textsuperscript{192} The formulation of this canon is identical to can 1013§2 of the Code of Pio-benedettino, except for a linguistic transposition which is not relevant from the juridical point of view. In comparison this seems evident:\textsuperscript{193}

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\textcopyright\textsuperscript{188} See S. ARDITO, Natura del matrimonio canonico e sua preparazione, (a cura di E. CAPPELLINI), in Il matrimonio canonico in Italia, Brescia 1992, pp. 275-284.
\textcopyright\textsuperscript{192} Cf. M. C. FORCONI, Anthropologia cristiana come fondamento dell’unità e dell’indissolubilità del patto matrimonia le, cit., p. 132.
\textcopyright\textsuperscript{193} In order to distinguish the canons of the new Code from those of the old Code, we shall use Corsivo.
\end{flushright}
The doctrine remains the same, affirming both unity and indissolubility derived from the sacrament, which the Church for centuries affirms. In sustaining such a position, the new Code refers to *Casti Connubii*, as the pre-conciliar source, and to *Gaudium et Spes, Humanae Vitae* and *Ordo celebrandii matrimonii* as the most recent documents.194 Also the same discipline in the new Code of The Oriental Churches, revised after the Code of the Latin Church had been published, in can. 776§3 reaffirms with the same words the unity and indissolubility of the matrimonial bond.

<table>
<thead>
<tr>
<th>Code of 1917</th>
<th>Code of 1983</th>
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<tbody>
<tr>
<td>Can. 1013</td>
<td>Can. 1056</td>
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<tr>
<td>Essentiales matrimonii proprietates sunt unitas ac indissolubilitas, quae in matrimonio christiano peculiarem obtinent firmitatem ratione sacramenti.</td>
<td>Essentiales matrimonii proprietates Sunt unitas et indissolubilitas, quae in matrimonio christiano, ratione sacramenti peculiarem obtinent firmitatem.</td>
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We can observe that, the Code in these canons, tries to translate in juridical category the philosophical-theological teachings of the Church on marriage. The above cited canons inform us immediately of the deep concept of indissolubility and what it entails. Indissolubility unlike unity, is seen as something which springs from the same nature of marriage, as an intrinsic

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194 See Pius XI, *Casti Connubii*, nos. 546-556; GS, no. 48; PAOLO VI; *Humanae vitae*, no. 25; *Ordo celebrandii matrimonii*, (March 19, 1969), no. 2.

exigency of its essence. In the light of Christian anthropology and faith, marriage appears to be the wise institution of the Creator to realize in mankind His design of love (cf. *Humane vitae*, no. 8). The philosophical and theological context in which can. 1056 is contextualized appears more clearly if it is interpreted in connection to Can. 1055 which takes again the doctrine and terminology of the Second Vatican Council and in particular of *Gaudium et Spes*. Marriage in fact, is defined as «totius vitae consortium», it has, as noted by Caffarra, a peculiar importance due to the essence of the conjugal state: «what specifies “the conjugal consortium” in comparison with the others, is that, it regards the whole life. It is the totality which specifies the conjugal union. [...] It must be total (totius vitae), exclusive and definitive (cf. can. 1056)». The point of departure for the above cited canons, therefore, is that, sacramental marriage is indissoluble. For the sacramental marriage, the Code affirms indissolubility which comes from the sacrament, that is, from the irrevocable consent which once given is no more in the powers of the spouses, but in the same hands of God, through his Church.

In Can. 1061§1 the new Code explains the difference between matrimony ratum tantum and matrimony ratum et consummatum which we have already explained above. This canon refers to can. 1015§1 of the Code of 1917 and to *Gaudium et Spes*, no. 49. Can. 1015 of CIC 1917 states: «matrimonium baptizatorum validum dicitur ratum, si nondum consummatum completum est; ratum et consummatum si inter coiuges locum habuerit coniugalis actus, ad quem natura sua ordinatur contractus matrimonialis et quo coniuges fiunt una caro». In this regard, if the formulation of the new Code is not distance from the old Code, the difference is based on the “*humano modo*” with which consummation

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198 Can. 1134.

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has to occur. The commission for the revision of the Code had to refer to GS\textsuperscript{200} which in no. 49 underlines that:

Married love is an eminently human love because it is an affection between two persons rooted in the will and it embraces the good of the whole person; it enriches the sentiments of the spirit and their physical expression with a unique dignity and enables them as the special elements and signs of the friendship proper to marriage.\textsuperscript{201}


«Etsi maior pars Consultorum censet verba "\textit{humano modo}" addenda esse in determination consummationis matrimonii, una tamen omnium est sentential ut inter unicos ponantur, ut inde appareat ipsorum dubitatio circa hanc materiam. «In canone 1015 §1 igitur haec proponuntur, ut verba: Matrimonium baptizatorum validum dicitur… ratum et consummatum si coniuges inter se (\textit{humano modo}) posuerunt coniugalem actum per se aptum ad prolis generationem». \textit{Communicationes}, V (1973), p. 79.

«De verbis, "\textit{humano modo}" longe maior pars respensionum Organorum consultationis indicant favorem pro conservatione illorum verborum in textu canonis, ita ut clare appareat non haberi actum coniugalem nisi ponatur modo humano. Animadversum est tamen aliquis illa verba in contextu hodierno esse superflua, quia nemo admittit haberi actum coniugalem quando non peractus sit modo humano; doctrina contraria, non abstante responso S. Officii diei 2 februarii 1949, superata est, nec videtur necessarium ut inserantur in textu verba "\textit{humano modo}" ad illam doctrinam reiicedam. Ex alia parte ansa detur pro multiplicatione in infinitum casuum de dispensatione super ratum et non consummatum. Tandem non desunt qui, actum coniugale muti exercitium iuris considerantes, cesent verba "\textit{humano modo}" esse omnino delenda». «Consultores, post amplam discussionem, sententiam exprimunt per se illa verba deleri posse, quia nihil addunt doctrinae quae tenet matrimonium non consummari nisi per actum humanum ab ambobus sponsis voluitum. Tamen quotia illa Organa consultationis, quae suppressionem illorum verborum petierunt, aliquantulum videntur indulgere doctrinae contrariae, ipsi Consultores censent, salvo iudicio altioris instantiae». \textit{Communicationes}, IX (1977), p. 129.


\textsuperscript{201} «Ille autem amor, utpote eminenter humanus, cum a persona in personam voluntatis affect dirigatur, totius personae bonum complectitur ideoque corporis animaque expressiones
The will and bodily element are integrated in the full sense. In the sacrament, human love is healed, perfected and elevated to that which is divine. Hence, the acts, in marriage by which the intimate and chaste union of the spouses take place are noble and honorable, and when performed in a truly human way (*modo vere humano*), foster the self-giving which they signify.\(^{202}\)

The *vere humano* reaffirmed by the code underlines the dignity and chastity of conjugal union which Casti Connubii had already mentioned. In the preparation of the Canon, the inclusion of *humano modo* clause was seen as absolutely necessary «for the same nature of marriage»\(^ {203}\) which demands a union of love that is free, that is, «wanted by the two spouses».\(^ {204}\) The progress of this point is quite evident.\(^ {205}\) Thus the principle of unity, body-spirit, contributes to explain the indissoluble link which stems from the valid bond between two baptized persons and is reflected in a state of life that is permanent as canon 1134 states: «Ex valido matrimonio enascitur inter coniuges vinculum natura sua perpetuum et esclusivum». What is founded at this point on divine law is the permanent state, *matrimonium in facto esse*, which according to its nature is indivisible and indissoluble. Here we are being referred to an anthropological vision in which man is redeemed and raised, by grace to a level which permits him to accomplish according to divine demands his proper state. In respect to the Code of 1917 can. 1081, §2 spoke of the mutual exchange of the *ius in corpus*, in terms of contract. Here there is a theological thorough examination. This does not imply that, the canonical concept of contract *sui generis* has been abandoned, or is to be abandoned, given that the tradition of the Church right up to date knows how to conserve the peculiarity of this sacrament. Canon 1081 §2 of the code of 1917 has identified the object of consent with *ius in corpus* which is attributed both to

\(^{202}\) «Actus proinde, quibus coniuges intime et caste inter se inintur, honesti et digni sunt, et modo vere humano exerciti, donationem mutuam significant et fovent» (GS, no. 49).


\(^{204}\) See *Communicationes*, IX (1977), p. 129.

man and woman, acknowledging that both have the same rights and duties in respect to the state or marriage life. In this manner the intuition of St. Paul in 1Cor 7:4 concretizes the theological content of sacramentum of Eph 5:21-33 in terms which can be defined as juridical: “the wife does not have authority over her body, but the husband does; and in the same way the husband does not have authority over his body, but the wife does”.

This reciprocal power from which emanates the juridic bond of the spouses to conclude an indissoluble and unique marriage, was the novelty of the Christian message regarding marriage in respect to all the cultures in which it is confronted with, a novelty which recognized the same juridical obligations to the spouses in ordo charitatis of the marriage state. Connecting this underlined fact of the Code of 1917 with the concept of the new code which the anthropology of Gaudium et Spes recognized, the conjugal relationship assumes a more complete configuration. This conjugal reality takes the juridic form in the indissoluble bond which is carried out during the whole life of the existence of the spouses.

3.4. Marriage as the communion of persons

Man made in God’s image, resembles him in both his spiritual and social nature. In this way union in truth and charity is the ultimate expression of the community of individuals. This union merits the name communion (communio) which signifies more than community (communitas). The Latin word communio denotes a relationship between persons that is, a relationship that is proper to them alone; and it indicates the good that they do to one another. That giving and receiving within their mutual relationship. This according to Wojtyla is a

206 Cf. M. C. Forconi, Antropologia Cristiana come fondamento dell’unità e dell’indissolubilità del patto matrimoniale, cit., pp. 136-137
207 Cf. St. Agostino, De bono conjugali, I, 4.
very “ancient theme which has taken a genuinely new aspect.” The category of
the communion of persons helps us then to be able to understand what
marriage is and what it should be.

Communio personarum very often forms two subjects. In their personal
relationship, the “You” is included as another “I.” Wojtyla declares that, love
is the communion of persons, that is, forming the content of the relationship
“I – You” which stands at the base of communio personarum. In this way the
meaning of man’s original unity through masculinity and femininity expresses
itself as an overcoming of the frontier of solitude and at the same time as an
affirmation- for both human beings- of everything in solitude that constitutes
“man”. In the biblical account, solitude is the way that leads to the unity that
we can define, following Vat. II, as communio personarum. «The man’s solitude
in the Yahwist account presents itself to us not only as the first discovery of
the characteristic transcendence proper to the person, but also as the discovery
of an adequate relation to the person, and thus as opening toward and waiting
for a “communion of persons”».

215 «But God did not create man abandoning him alone, for from the beginning ‘male and female he created them’ (Gen 1:27), and their union constitutes the first form of the
communion of persons [communionis personarum] (GS 12)».
The *familial communion of persons* reflects the Trinitarian communion of persons because the irrevocable will-acts of the married partners, establishing a mutual self-surrender, mirror the unbreakable fidelity of God to himself within the Trinity and to those whom he loves (us) outside the Trinity. 217 This is also reflected in *Christifidelis Laici* 218 which states that: «The communion of Christians with Jesus has the communion of God as Trinity, namely, the unity of the Son to the Father in the gift of the Holy Spirit, as its model and source, and is itself the means to achieve this communion: united to the Son in the Spirit’s bond of love, Christians are united to the Father». 219 John Paul II also lays emphasizes on the fact that, as a unity of the two, men and women are called to live in a communion of love and to mirror the love of the Trinity in the world. This Trinitarian likeness is both inscribed in man’s being and also given to him as a task. This is expressed in its fullness in the “*ethos*” of the New Testament - the commandment to love. 220 The gift of man and woman to one another in marriage must be indissoluble as long as both live. They both surrender themselves to one another in order to be able to receive the other in return. Once this gift is given, it may never be withdrawn and once received, the gift of the other may never be rejected. As FC states: «the indissolubility of marriage… is a sign and a requirement of the absolutely faithful love that God has for man and that the Lord Jesus has for his Church». 221

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217 *Ibid.*, p. 42. «He never will cease loving himself or us because he has chosen to do so and His will-acts are, as those of married partners ought to be, irrevocable».

218 Cf. JOHN PAUL II, Apostolic Exhortation *Christifideles Laici*, (December 30, 1988), in AAS 81 (1989), pp. 393-521. Here after this will be cited as CL.

219 *CL*, no. 18.

220 MD, no. 7.

221 FC, no. 20; «In other words, God’s love is always characterised by perfect fidelity. Human love, since it is to be a reflection of God’s love, must also be fruitful forever. God is always faithful in His love because anything less would not be a total self-surrender. A gift, if it is total, is not bounded in degree or in time. To give oneself only for a period of time and not forever (at least, for as long as the marriage is possible, i.e., until the death of one of the spouses) is to limit the gift». Cf. R. M. HOGAN AND J. M. LEVOIR, *Covenant of love*, cit., p. 43.
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An article which Wojtyla published in 1974 called ‘The Family as a community of persons’\textsuperscript{222} points out the intimate connection between his theological and philosophical anthropology particularly regarding man’s social dimension. In this sense, he describes the teaching of Vatican II on the human being ‘as a synthesis of a long heritage of thought that seeks its light in revelation. This theological anthropology Wojtyla believes, ‘captures as though the very essence of the human reality of the family.’ Every husband and wife seeks to realize this truth for themselves, and every child also seeks this from the moment of conception.\textsuperscript{223} ‘Human beings are made in the image of God also because of their ‘capacity for community with other persons.’ It is not enough to say that human beings have a capacity for social life or that the family is the smallest social unit.’\textsuperscript{224} Due to human nature, human persons are capable of rational community as communio. It then follows that any theological analysis of the family must begin from the category of communio.\textsuperscript{225} The specific characteristic of communio is not a being and acting together of persons in common but of doing so in such a way that they mutually confirm and affirm one another as persons. In order that a true community of persons can exist (communio personarum), the gift must be received ‘in the whole of its authenticity.’

The word communio is a key concept to understanding the family theologically.\textsuperscript{226} By approaching marriage as a communio, Wojtyla highlights the whole interpersonal relationship and also shows how this is given as a task. What is specific to the disinterested gift of self in marriage is sexual and bodily

\textsuperscript{222} See \textit{The Family as the communion of persons} in K. Wojtyla, \textit{Person and community}, New York 1993.

\textsuperscript{223} \textit{The Family as the communion of persons} in K. Wojtyla, \textit{Person and community}, cit., pp. 315-317.

\textsuperscript{224} M. Shivanandan, \textit{Crossing the threshold of love, A new vision of marriage}, Washington D.C 1999, p. 80 note 40. ‘Wojtyla asserts here that, the family does not just have value as a social entity in itself but it is the place where the person can become a disinterested gift to another and receive another as a disinterested gift’.

\textsuperscript{225}\textit{Ibid.}, p. 81. ‘Taking all of these into consideration it then follows that, the human being as a person is capable of community with others in the sense of rational community of communio. Such an ability is recognized by the tradition of Christian thought, which is based on revelation’.

\textsuperscript{226} \textit{The Family as the communion of persons} in K. Wojtyla, \textit{Person and community}, cit., pp. 321-323.
difference and union. Furthermore, the family is a communion of persons which is based on procreation. The different categories of persons are essential for the understanding of marriage, especially conjugal intercourse which is a true union of persons, and not just a union of bodies. The marital community is a unique *communio personarum* and because of that, it carries with it obligations to safeguard both the marital bond and parenthood which originate in the bond.\(^{227}\) Marriage in this context finds its natural fruit and fulfillment in the creation of a new human person and this extends the *communio personarum*. Wojtyla in his analysis of participation and *communio personarum*, especially as it relates to marriage, feels that openness to the other is essential in this regard and in particular this reveals an essential aspect of original solitude. In one of his articles on the ‘family as a community of persons,’ he looks at parenthood within the context of *communio personarum*.\(^{228}\) «Living in relation ‘confirms to the innermost being of man and woman, to their innate and authentic dignity as persons’».\(^{229}\)

John Paul II states that: «The inner principle of that task, its permanent power and its final goal is love: without love the family is not a community of persons and, in the same way, without love the family cannot live, grow and

\(^{227}\) Cf. M. SHIVANANDAN, *Crossing the threshold of love, A new vision of marriage*, cit., p. 82.

\(^{228}\) Cf. K. WOJTYLA, *Parenthood as a community of persons*, in K. WOJTYLA, *Person and community*, New York 1993, pp. 329-342. «In keeping with his emphasis on interiority, wojtyla points out that parenthood is both an external and internal fact. The man and woman enter the state of parenthood which marks them internally and adds a new dimension to their communion personarum. Parenthood calls for awareness and acceptance, especially on the part of the woman or motherhood but also on the part of the father or fatherhood. Without this acceptance the communio personarum is distorted. The necessity for this acceptance of parenthood is essential in the theology of marriage, but it can also be argued on purely rational grounds (*fides quarens intellectum*). Wojtyla asserts that the concepts of an adequate anthropology of the person, gift and *communio personarum* are required criteria for a marriage within the context of faith. ‘*A communio personarum always requires the affirmation of parenthood* in conjugal intercourse- at least potential parenthood... The rejection of such an awareness and readiness endangers their interpersonal relationship, their communio personarum, which forms the very essence of their mutual relationship’» *Ibid.*, pp. 329-332.

\(^{229}\) LF, no. 8.
perfect itself as a community of persons.\textsuperscript{230} Furthermore, the Lord Jesus, when praying to the father ‘that they may all be one…even as we are one’ (Jn. 17:21-22) had opened up new horizons that were closed to human reason and which implied that, there is a certain parallel between the union existing among the divine persons and the union of the sons of God in truth and love. It follows then that, if man is the only creature on earth that God wanted, man can fully discover his true self only in a sincere giving of himself.\textsuperscript{231}

3.4.1. The intimate community of life and of love

The principal purpose of Vatican II in presenting the Pastoral Constitution GS was to engage in a kind of dialogue with the world in a language that is intelligible to human kind regarding the dignity of the human person and the role of the human person in the world as well as to present to the world those things which call forth special attention to marriage and the family. In view of these deeply pastoral concerns, the Council Fathers saw the need for describing marriage in these basic human terms: “an intimate community of conjugal life and love.”\textsuperscript{232} This expression has profound biblical connotation as

\textsuperscript{230} FC, no. 18. Here he specifies that: «Man cannot live without love. He remains a being that is incomprehensible for himself, his life is senseless, if love is not revealed to him, if he does not encounter love, if he does not experience it and make it his own, if he does not participate intimately in it» (RH, no. 10).

«The love between husband and wife and in a derivatory and broader way, the love between members of the same family – between parents and children, brothers and sisters and relatives and members of the household – is given life and sustenance by an unceasing inner dynamism leading the family to ever deeper and more intense communion, which is the foundation and the soul of the community of marriage and the family» Ibid; See J. R. MARITAIN, Matrimonio Amore e Amicizia: Per una spiritualità della vita coniugale, Milano 1990, pp. 51-71.

\textsuperscript{231} Gaudium et Spes (ed., W. A. ABBOT), The Documents of Vatican II, New York 1966, p. 223. It would be difficult to find any encyclical or apostolic exhortation of John Paul II where he has not cited Gaudium et Spes, nos. 22 or 24. For example this occurs in Dives in Misericordia, (November 30), 1980, in the very first section, no. 1, in Redemptor Hominis, no. 13, in Mulieris Dignitatem, no. 30 and in Veritatis Splendor, no. 2 etc.

the union of spouses is described in the Bible using the terms: “the two become one flesh” (Gen. 2:18), and a natural institution ordered to partnership and to procreation. Mendonça comments on the intimate community of conjugal life and love in the following words:

This underlying concept expresses the equality between partners and a permanent union principally of minds and hearts of the spouses. In the context of the New Testament, the complementarity or partnership aspect of conjugal life linked intrinsically to permanency is seen as the Creator willed at the beginning. This Biblical notion reaffirmed by Gaudium et Spes was intended by the Legislator to be incorporated into the new Code.

In his study of the above mentioned, Huber concludes that, the term *coniunctio* denotes union of both bodies and mind (a personal fusion), that is *matrimonium consummatum* while the *communion*, which is a term used in the new Code to describe theological relations, includes the totality of rights and duties of marriage, common living, communion of minds, excluding communion of bodies. Certainly the said term could have been used in the description of marriage in order to express the totality of all marital rights and duties. Thus, its use in other canons would have given rise to greater confusion. On the other hand, “*consortium*” denotes communion of goods, of life, and of fortune, which has to be maintained perpetually. The aspect of indissolubility and perpetuity of the essential rights and obligations of marriage

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233 The gospel teaching on marriage and divorce (Mt. 5:31-32; 19:3-9; Lk. 16:18; Mk. 10:2-12) reaffirms the truth revealed in Gn 1:27; 2:18-24. Marriage is seen here as a covenant between equal partners and thus it can be said that, the gospels implicitly contain the partnership notion which the Roman Law called *consortium*. Explicitly, the Gospels maintain that such partnership is permanent, for the whole life of both spouses.


235 In the New Code of Canon Law, the term “*consortium*” is used four times: cann. 1055, §1; 1096, §1; 1098 and 1135. It is used in reference to marriage only whereas, “*communio*” is present approximately in 53 places to signify a theological reality other than marriage, for example the communion of the Church, ecclesiastical communion, the Eucharistic communion, etc. See X. OCHOA, *Index verborum ac locitionum Codicis Iuris Canonici*, ed. 2a et complete, Città del Vaticano 1984, p. 106; H. ZAPP. *Codex Iuris Canonici*: Lemmata Stichwortverzeichnis, Freiburg, Verlag Rombach 1986, p. 160.
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would be included in this concept. In all its aspects, therefore, Huber says that the term *consortium* is best suited to describe marital state juridically. And since marriage itself is a natural, human reality, the meaning and elements of consortium must be understood and interpreted according to the culture and customs of the people. Therefore, we can say that, the concept of *consortium* remains open-ended so that doctrine and jurisprudence will have ample scope to gradually identify its constitutive elements. In this same regard, Navarrete expresses accurately the mind of the Code Commission when he says that, the concept underlying the term *consortium* stands for marriage itself or for the totality of the rights and obligations of marriage.

He stresses that, taken in this total sense, as in can. 1055, §1, consortium would include two things: a) *communion of bodies*, that is, the exclusive and perpetual right over the body for acts which are naturally apt for the generation of offspring with all rights and duties related to it; b) *communion of souls* (of persons), that is, the right to *mutuum adiutorium* understood in its more profound biblical sense. In this communion of souls the communion of affective, psychological, and spiritual dimensions of the spouses involved takes place. This contemporary fusion or integration of spouses is what Navarrete calls *mutuum adiutorium* understood in the biblical sense. This interpersonal integration or union which takes place at the core of their being is *communio*.

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vitae.\textsuperscript{240} Anné in one of his most cited decisions affirms that, «the formulation of Vatican II, that is, \textit{intima communitas vitae et amoris coniugalis}, looks not to the mere fact of establishing a community of life, but to the right and obligation to it, whose specific element and intimate union of persons confirms that marriage, in its foundation, is a personal relationship».\textsuperscript{241}

These two expressions [community or communion of life] are both from the magisterial teaching of the Church. The first is from Vatican II\textsuperscript{242}, and the second from John Paul II.\textsuperscript{243} Communion is the internal union, it is understood as love meanwhile community expresses union before other communities: other families, civil communities, the state. The Code of Canon Law prefers «\textit{the community of the whole life}», that is the «\textit{totius vitæ consortium}».\textsuperscript{244} This expression which is translated as the community of the whole life, designates the same marriage. This signifies the totality of rights and duties of

\textsuperscript{240} It seems to have been the intention of the Code Commission to view the \textit{communio vitæ} as one of the elements of \textit{consortium vitæ}. See U. NAVARRETE, \textit{De Iure ad vitae communionem}, cit., pp. 205-206. «On the juridical level, therefore, \textit{consortium vitæ} stands for \textit{matrimonium in facto esse} (marital community) or for the sum total of all other rights and obligations essential to matrimonial institution. In other words, the right to interpersonal relationship» (\textit{communio vitæ}) is the first essential element of \textit{consortium}. Jurisprudence seems to have confirmed this principle. (\textit{Ibid.}, p. 208).


\textsuperscript{242} GS, no. 48. «The formulation of Vatican II, «\textit{Intima communitas vitae et amoris coniugalis… instauratur…actu humano quo coniuges sese mutuo tradunt et accipiunt}» ("The intimate sharing of marital life and love…is created …by a human act in which the spouses mutually give over and accept one another") has juridical significance. For it looks, not to mere fact of inaugurating a community of life, but to the right and obligation to this intimate community of life, which has as its most specific element an intimate union of persons by which man and woman become one flesh, a union to which, as its summit, that community of life tends. This points out that marriage is a most personal relationship and that matrimonial consent is an act of the will whereby the spouses “mutually hand over and receive each other». T. MACKIN, \textit{What is marriage?}, cit., p. 300 note 28.

\textsuperscript{243} FC, no. 18. «The family which is founded and given life by love, is a community of persons: of husband and wife, of parents and children, of relatives. It’s first task is to live with fidelity the reality of communion in a constant effort to develop an authentic community of persons».

\textsuperscript{244} CIC, can. 1055.
marriage. The word “consortium”, used by pagans and Christians, brings to light
the natural institute of marriage, which Christ elevated to the dignity of a
sacrament for the baptized.\textsuperscript{245} The said expression is more in accordance with
the doctrine of the Second Vatican Council.\textsuperscript{246} In the light of the conciliar
formula, the adjective \textit{coniugalis} has a very specific relationship (\textit{communio vitae})
implied in \textit{consortium} which is specifically “conjugal”, that is, “an intimate
relationship between two sexually distinct persons as spouses”\textsuperscript{247}.

In order to understand better the force of these expressions, our point of
departure will be the subjects in marriage. They are two human beings, two
persons equal in dignity and having equal rights. They are complementary but
remain two distinct subjects and not only sexually different. These two subjects
do have respective wills, differences in character with specific personalities,
having desires and proper ideals. These two persons, getting married, give
origin to an intimate community or communion of life. In this case they cease
from living an autonomous life [single life] and assume the life of a “couple.”
This life of a couple is not a “life of two” but a “life lived in two.”\textsuperscript{248}
Therefore, “the partners in marriage engage in the mutual and constant flow of
giving and receiving of self and all that they have, an exchange which not only
enriches them more and more as individual persons, but draws the best out of
them in their effort to please and satisfy the partner”.\textsuperscript{249} The spouses have a
model of community-communion indicated by God himself. It is God who
orders the spouses to unite themselves in matrimony, to form “one flesh”, or
rather, a total fusion, a unique entity. In the biblical language this expression
does not only refer to physical union, to bodily union. Its real meaning
embraces totally and radically the two beings of man and woman with their
personalities, their spiritual richness, intellectual, moral, physical faculties, their

\textsuperscript{245} Cf. F. Bersini, \textit{Il diritto canonico matrimoniale}, cit., pp. 9-10; This same thought is expressed by
\textsuperscript{247} Cf. A. Mendonça, \textit{The theological and juridical aspects of marriage}, cit., pp. 275-276.
\textsuperscript{249} E. Maurice, \textit{Theology of the Family}, Malta 1994, p. 65.
projects, ideals, sentiments, aspirations, just to mention a few. The communion of life is absolute and total (absolute and total in conjugal dimensions, but not in every aspect of life) and this implies that, it excludes the possibility of being partial, temporal, unilateral or one-sided. For it to be a true, real community, both spouses must do all to realize it. This cannot be realized if only one partner is available and dedicated while the other is less interested. Both have to cooperate in order to build this community of life and love.\(^{250}\) This community of life and love has its origin in God, who is a community of persons bonded by love and a reflection of divine communion on earth.\(^{251}\) This is reaffirmed also in the following words:

> The fundamental mystery of our faith, the mystery of the Blessed Trinity, is the cornerstone of social theology. Every community has its starting point in the Triune life of God, which is its model and ultimate goal […]. The family is the most intimate and most vigorous community of love. Proper love between the spouses and their children is the most perfect earthly representation of the Trinitarian love. Hence, physical love between the spouses and the blood-tie between parents and children are embodied in the highest and most self-sacrificing form of love and are inspired and formed by it.\(^{252}\)

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\(^{250}\) Cf. G. CONCETTI, Sessualità, amore, procreazione, cit., p. 87. «The community is a reciprocal enrichment. Each subject, leaving out individualism and isolation, can together with the other build this community with the other, but not to cancel or dominate the other. The communion of life does not demand this, instead it refuses this as a counterfeit, as a negation. The two spouses enter into community of life with their dignity, their rights, their attributes and they conserve their proper specific values. Only that each one of them puts at the disposition of the other his/her proper values, and between them, deliberately, generously, consciously give origine to a community-communion of life in which they are both fully, vitally involved and with equal responsibility».

«In the social, economic, political life there is no profound community-communion known that is peculiar like that which exists in the conjugal state. Even the religious life, which is the school of perfection and sanctity and in which the evangelic counsels are the norms of life, do not offer a community equal to that which is spousal».


In conjugal communion, unity is the work of the Holy Spirit\textsuperscript{253}: «like the heart of the Church and every cell of hers, the Holy Spirit is the great author of unity: unites man and woman and continuously renews and perfects this union, reinforcing it through the children».\textsuperscript{254} The vision which forms the essence of the design of God is the key to Christian anthropology. Man and woman are meant to live in communion, as beings that remain in mutual relation between themselves, open to God and to other human beings. When this is forgotten there arises the tendency of one thinking only of himself or herself.\textsuperscript{255} The communion of life and love finds its unifying vocation in the unifying vocation of the apostles of Jesus Christ: «So there is no difference between Jews and Gentiles, between men and women; you are all one in union with Christ Jesus».\textsuperscript{256}

When we talk of a couple we are referring to that form of communion between a man and a woman, which amongst all, the possible forms of interpersonal relationships can be conceived as the most radical, total and complete relationship between the two persons. It is that form of communion which the Christian tradition intends when it talks of marriage and the goods which accompanies it. The substance of this communion is love, intended not as a superficial attraction that can be nourished by a person that one encounters, but as an orientation of the will of the person to the other, a way of journeying together in life.\textsuperscript{257} In this case the fidelity of God precedes the promise of man’s fidelity in this relationship. It is because God is faithful that man on his part can be faithful, it is because God’s love goes across the ages that the love of man and woman can tackle with faithfulness in the temporal

\textsuperscript{253} Cf. K. Majdanski, Comunione di vita e d’amore, Teologia del matrimonio e della famiglia, Milano 1980, p. 92.

\textsuperscript{254} A. Marranzani, Comunione trinitaria e matrimonio cristiano, in AA.VV., Evangelizzazione e matrimonio, (a cura di S. Cipriano), Napoli 1975, p. 229. The translation is mine.

\textsuperscript{255} Cf. B. Maggioni, La donna nella Bibbia, in Donna – Presenza e vocazione, Milano 1976, pp. 55ff.

\textsuperscript{256} X. Leon-Dufour – J. Duplacy (a cura di), Stownik teologii biblijnej (Dizionario di teologia biblica), Poznan-Warsawa, Torino 1967, p. 380.

dimension. The possible communion between the couple has possibilities of growth which are almost indefinite.\footnote{258}

The covenant which is based on the free election of the spouses, involves an interpersonal relationship which is total, that is, involving their spiritual, emotional and physical joining. With the help of God’s grace, the two are able to give themselves to one another on a day-to-day basis, thus bringing the object of the covenant, the community of the whole life, into reality.\footnote{259} Marriage as the community of life and love should reflect that sacrament and divine natural institution, despite the difficulties present and should conserve always in itself that source of formidable energies (FC no. 43).\footnote{260} Christ destroying sin and recreating humanity, constituted a communion of life radically new, which has its highest and definitive expression in the eschatological kingdom. The Spirit which he pours in his followers inserts in them the conjugal communion.\footnote{261} «In a brief but systematic study of the evolution of Can. 1101,§2, of the new Code, Sheehy concludes that, “the right to communion of life” is an essential element of marriage and the exclusion of this right by a positive act of the will invalidates marriage».\footnote{262}

The spouses, therefore, are aware that they are with Christ from whom they receive the strength and dynamism to grow and to persevere in the communion of life. The community of life is based on and needs total human fidelity for its existence and growth. This is not simply the absence of extramarital sexual involvement but fidelity to the interpersonal relationship. This total gift in itself cannot therefore be divided. It has to be given and continuously expressed to one person. Fidelity is not possible without unity, that is, one partner with whom to share one’s life.

\footnote{258} Cf. \textit{Ibid.}, pp. 52/72.


3.5. Matrimony in fieri and in facto esse

Concerning the indissolubility of marriage, John Paul II asserts that, «Marriage is indissoluble: this property expresses a dimension of its objective being; it is not a mere subjective fact. Consequently the good of indissolubility is the good of marriage itself». The fact that indissolubility belongs to the essence of every marriage, implies that it has a real, universal and permanent valency, and this is not only an ethical demand or a disciplinary disposition. Huber maintains that, sometimes people affirm indissolubility, but this is seen more as an ideal tendency which the conjugal union as a reality of justice constitutes and it is deep-rooted in the same gift of the spouses. Regarding the entire question concerning the essential properties of marriage the following could be very useful. In fact, considering indissolubility not as a juridical natural norm but as a simple ideal, empties the sense of the unequivocal

declaration of Jesus Christ, who absolutely refused divorce, because «from the beginning it was not like this» (Mt. 19:18).267

«Indissolubility before being a positive norm, is an intrinsic natural ordinatio of every donation that is truly conjugal».268 If indissolubility is seen only as that which is imposed by an extrinsic positive law and not as a requirement of justice that stems from conjugal donation, this is justifiable only as long as this can be given.269 Indissolubility as an essential property is a good of marriage.270 The desiring of a permanent conjugal union possesses in itself something which is deeply or profoundly natural. Indissolubility does not only constitute an obligation of justice, but has its origin in the same human nature, because it represents a value, a good, for those who are having the normal vision of human life.271 In this context unity and indissolubility are going to be regarded not as limits or demands which prevent the free human development,272 but as values of marriage in which human love (the unique force that inclines to nuptial gift) finds its most perfect realization.273 This then sets the basis for us to be able to look at matrimony «in fieri» and matrimony

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267 Cf. JOHN PAUL II, Allocation to the Roman Rota, (February 1, 2001), cit., no. 4; On the interpretation of this text we could Cf. IDEM, Man and Woman be Created Them, cit., pp. 62-64; F. DELPHINI, Indissolubilità matrimoniale e divorzio del I al XII secolo, Milano 1979.


269 Cf. G. LO CASTRO, Tre studi sul matrimonio, cit., p. 34.

270 Following the original sense which St. Augustine used in explaining this, amongst others we could see, L. DATRINO, Il matrimonio secondo Agostino, Milano 1995.

271 Cf. C. BURKE, L’Oggetto del consenso matrimoniale, Torino 1997, p. 34.


“in facto esse.” In marriage, the essential properties are considered attentively in the relation of causality highlighted by can. 1057, §1 which binds marriage “in fieri” to marriage “in facto esse.”

In this perspective, therefore, the essential properties of matrimony “in facto esse” cannot but be at the potential state, the essential properties of matrimony “in fieri” are virtual principles with different words, and the elements from which are born the essential properties of the state of marriage life. They are the essential properties of the constitutive moment of marriage. Such a relation between matrimony “in fieri” and matrimony “in facto esse” is going to be considered with reference to finality. Amongst both of them, there exists the relationship of cause and effect which is well illumined by can. 1057, §1 of CIC. It can then be concluded that, the only immediate unique end of the constitutive moment of matrimony, is to bring into being the state of matrimonial life, whose ends will be that of mediation, (through the constitution of marriage relation) for matrimony “in fieri.”

3.5.1. Indissolubility and marriage “in fieri”

According to Can. 1055 §1, marriage in fieri is a matrimonial foedus (pact or alliance). The Conjugal pact is an exchange of consent, which makes the partners become husband and wife. The exchange of the matrimonial consent is the efficient cause of marriage. Consent is regarded as the constitutive

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276 The efficient cause is the «principium cuius operatione a liquid transit de non esse ad esse» and it is distinguished from the other causes because it is the unique cause that «per operationem infuit esse in alium». See U. Navarrete, Matrimonio, Contratto e Sacramento, in Il matrimonio sacramento nell’ordinamento canonico vigente, Città del Vaticano 1993, p. 96.

moment of marriage in its initial act: *consensus facit matrimonium*. In life, there does not exist any concrete marriage without marital consent. In the same way canon 1057§1 establishes that, the consent manifested by persons who are juridically capable, constitutes marriage. In matrimonial consent a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage (can. 1057§2). The conjugal consent is the act of the will of the contracting persons, through which they give and accept themselves in a total, exclusive and definitive way. From the XI

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278 Cf. R. RUBIYATMOKO, *Competenza della Chiesa nello scioglimento del vincolo del matrimonio non sacramentale*, cit., p. 15.


century right to Vatican II, marriage in fieri was defined as a contract.\textsuperscript{281} For example Wernz\textsuperscript{282} and Gaspari\textsuperscript{283} presents marriage \textit{in fieri} as a legitimate contract between a man and a woman, which firmly maintains the indivisible custom of life.

Regarding indissolubility and marriage \textit{“in fieri”}, we can consider that, an act of marital will which does not exhaust one’s self-donation in the dimension of time cannot be complete; it cannot exhaust the sphere of conjugality and cannot be fully anchored in one’s personal character. The richness of the person is such, and the ontic structure which makes marriage possible is so rooted in it, that it is so difficult to give oneself while reserving the duration of the bond. At this point, what gives rise to the conjugal pact is precisely a relationship, such as filiation, motherhood and fatherhood, sustained in this structure which exists in the order of being.\textsuperscript{284} He asserts that: «To want dissolubility is to seek to remain as master of the donation which has been effected, which, consequently, is not a full donation. It is, at the root, wanting to have the very existence of the bond, regarding its end, to depend

\textit{the Code of Canon Law}, cit., p. 372: «The object of marriage consent is the “giving and accepting of each other” (material object) “in order to form a marriage” (formal object)».


Vicissim matrimonium, si usu communi et etiam theologis et canonistis proprio sumatur pro vinculo vel societate permanente, definitur: Coniunctio legitima et individuus maris atque feminae ad generandam et educandam prolem, vil brevius: Mari set feminae individua societasconiugalis sive maritalis».


\textsuperscript{284} Cf. J. I. BAñARES, \textit{Commentary on Canon 1056} in (ed. E. CAPARROS), in \textit{Exegetical Commentary of the Code of Canon Law}, cit., p. 1060. He emphasizes that: «the marital will does not consist in wanting to “play the role of a spouse,” but rather in wanting to “be a spouse,” and relationships established in the order of being are fixed in the person and perdure in him». 
upon one’s own exclusive will, and as if it were a subjective right.\textsuperscript{285} Therefore, consent is a juridical act of the will by which the spouses decide to love each other, to constitute a new identity with the bond. And for this reason it is said to be irrevocable. (can. 1057).

3.5.2. Indissolubility and marriage “in facto esse”

In the perspective of marriage “in facto esse,” the motives which correspond to the essence and the ends of marriage can be commented upon separately. In this way, Bañares states that:

The bond, in fact, although originated exclusively by the will of the parties, once established cannot be broken by the will of the spouses themselves or by others. The reason for this is that, the object of the pact does not consist in an arbitrary choice determined by the contracting parties or by the positive law, but rather is established by the very structure of the person, and it is established through putting into action a potency of nature. Certainly one is completely free to effect or not the actualization of this “union of natures,” but once it has come into being, the bond is constituted with the force and necessity of nature itself (cann. 1134, 1141).\textsuperscript{286}

Examining this from the point of view of the good of the spouses, note should be taken of the fact that the process of collaboration in the perfecting of the other, and of one’s own perfection in carrying out the task, cannot exist with the alleged dissolution of the bond and the ceasing of the condition of being spouses.\textsuperscript{287} For this reason this end of marriage, in as much as it is an ordination to an essence requires indissolubility. When the conjugal life collapses all together, neither the essence of the relationship established between the spouses nor its ordination or end is modified.\textsuperscript{288} The maintenance

\textsuperscript{285} Ibid.


\textsuperscript{288} Cf. Cann. 1151-1155.
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of the bond, in spite of everything constitutes what is known as a greater good, given that even the situation of collapse in mutual marital life does not suppose an absolute failure of the person as such, but it can rather be lived according to the dignity of the personal subject and the breaking of the bond at this point, does not respect this dignity.\footnote{Cf. J. I. Bañares, Commentary on Canon 1056 in \textit{(ed. E., Caparrós)}, in \textit{Exegetical Commentary of the Code of Canon Law}, cit., p. 1061.}


Thus, marriage \textit{in facto esse} is the same conjugal bond, and not the way of living as spouses.

3.5.3. Unity and Indissolubility

Marriage has for its proper nature an essential structure which is made concrete in two properties or fundamental law: Unity and indissolubility. The first parent of the human race expressed the perpetual and indissoluble bond of matrimony under the influence of the divine Spirit, when he said: «This is
now bone of my bone and flesh of my flesh». Also for the essential properties the canonical concept of marriage begins from the natural design of God and integrates it with revealed dates, as it has been interpreted by the constant reflection of the Church. The Church has always defended the unity of marriage and St. Augustine adds his proper argument because he wants to see in marriage the sign of the union of the soul with God. These properties are such in the being which qualifies them and marriage has a juridical, moral and even mystical being, and this is reflected in its properties. For sacramental marriage, monogamy is essential since it is the symbol of the union of Christ with the Church, and there exist only one Church where Christ is the bride. Unity and indissolubility are both essential properties of marriage according to Can. 1056. An essential property is a quality of the essence of a thing it is so much part of the essence, that without it there is no marriage. This canon is therefore formulated in scholastic categories; it assumes that marriage has an essence and this essence includes in its very nature unity and indissolubility.

The recognition of the fundamental aspects of marriage become complete with an indication to those which are traditionally designed as the essential properties of this institute, that is unity and indissolubility. These essential properties are then reaffirmed by can. 1056 which add that Christian

292 See DS, nos. 1797-1798.
293 Cf. B. Maggioni, Il matrimonio nella Bibbia, in Nuovo enciclopedia del matrimonio, Brescia 1975, pp. 145-171. «Unity and indissolubility are two pillars on which are founded every authentic marriage, but which finds as affirmed by can. 1056 in the grace of the sacrament, a particular solidity and firmness».
296 Cf. A. C. Jemolo, Il matrimonio nel diritto canonico, Dal Concilio di Trento al Codice del 1917, Bologna 1993, p. 120.
297 Can. 1056: «Essentiales matrimonii proprietates sunt unitas et indissolubilitas, quae in matrimonio christiano ratione sacramenti peculiarem obtinent firmitatem».
298 Cf. L. Örsy, Marriage in Canon Law, cit., p. 58.
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marriage possesses a special stability “peculiarem firmitatem” due to the sacrament.²⁹⁹ Canon 1056 deals directly with the unity and indissolubility of marriage while can. 1055 is a dogmatic canon that is, a canon which expresses a general principle. Beside this canon, therefore, there are other canons, where these two essential properties, are considered, and under different aspects. These canons are: can. 1057 §2 (for indissolubility), can. 1099 (on the two properties), can. 1101§2 (on the two properties), can. 1134 (on the two properties) and can 1141 (on indissolubility).³⁰⁰ Regarding the other canons mentioned above, we can say the following: in can. 1057§2, we find the property which can. 1055 calls indissolubility, but with another name. In fact, can. 1057, referring itself to foedus matrimoniale, qualifies it irrevocable. So then, if a reality is irrevocable, then it is indissoluble. Can. 1099 considers directly the error that does not determine the will. Due to this error, the canon affirms that, when it weighs on the essential properties, it does not vitiate the matrimonial consent. In can. 1101§2 we find a vice called exclusio o simulatio. The norm is very clear. The exclusio of the essential properties, made with a positive act of the will, renders invalid the matrimony. Can. 1134 deals with the first juridical effect of marriage celebrated validly. Such effect is none other than the rise of a perpetual and exclusive bond, that is, a unique and indissoluble bond. Finally, can. 1141, considers directly the absolute indissolubility of ratified and consummated marriage.³⁰¹

They are properties which are derived from the same specific nature of marriage and consequently they correspond to every marriage either between baptized or non baptized persons.³⁰² As the Council affirms, «the richness of

²⁹⁹ Cf. P. MONETA, Il Matrimonio, in AA.VV., Il diritto nel mistero della Chiesa III, Roma 1988, p. 182. «These two properties to be formally distinct, are strictly connected as two faces of the same medal. Indissolubility is nothing else but the fullness of unity. The capacity to be husband and wife unfolds in the relationship with a single woman and a single man, in such a way that, only death exclusively puts a limit to such a capacity». Ibid., pp. 182-183.


³⁰¹ Ibid., p. 85.

³⁰² Cf. F. BERSINI, Il Diritto Canonico Matrimoniale, Commento Giuridico – Teologico – Pastorale, Torino 1994, p. 15; Here after this text will be cited as Il Diritto canonico matrimoniale. He asserts that, «these essential properties can only be excluded if the marriage was contracted
marriage is in these properties, which are both important values of the family and they guarantee the dignity and stability also for the good of the society (cf. GS nos. 49 and 50)».

This essential property of unity which the Legislator treats in cann. 1056 and 1099 consists in the fact that, a true canonical marriage is possible uniquely between one man and one woman, who then become husband and wife. The foundation of unity is found in the natural global opposition to polygamy to the essence or above all to the institutional ends of marriage defined by can. 1055. Due to the consequent and uncertain determination of the father, polyandry opposes directly to the end of the education of the children while polygeny (poliginia) opposes more directly to the end of the good of the spouses and in particular at the level of sexual dialogue and renders difficult the realization of the partnership of the whole life and specifically in the totius vitae consortium of can. 1055 §1. The foundation of the unity of canonical marriage is found in the same revealed divine will.

Unity means one partner and no more, either simultaneously or successively; hence polygamy, polyandry, remarriage after divorce while the

invalidly. For this reason civil divorce cannot dissolve the matrimonial bond, even if this is established by the law; the divorced cannot contract a new marriage if the first spouse is still living». Ibid; See, L. CHAPPETTA, Il manuale del Parroco, cit., p. 557. But Chiappetta adds that, «unity and indissolubility are essential properties of any marriage contracted validly, either Christian marriage, between baptized persons, or marriage simply natural or civil, between non-baptized persons». Cf. A. N. DACANAY, Canon Law on Marriage, Introductory Notes and Comments, Philippines, 2000, p. 2.


Cf. L. SABBARESE, Il Matrimonio Canonico Nell’Ordine della Natura e della Grazia, cit., p. 111.

«Matrimonii unitas in eo consistit, ut sit coniugium unius cum una»: F. M. CAPELLO, Tractatus canonico-moralis de sacramentis, Vol. V., De matrimonio, cit., p. 36; Capello brings out the distinction between perfect unity, if, one of the spouse is dead, the other cannot pass to a new wedding, and imperfect, if, instead, a spouse after the death of the other partner, contracts a new marriage. This is also sustained by, F. X. WERNZ – P. VIDAL, Ius Canonicum, Tom. V, V, Ius matrimonial, edition altera emendate et aucta, Apud aedes Universitas Gregorianae, Romae, 1928, p. 30.

Cf. L. SABBARESE, Il Matrimonio Canonico Nell’Ordine della Natura e della Grazia, cit., p. 111.
first party is still alive, are all excluded. Unity qualifies the conjugal relationship as monogamic which unites only one man and one woman, with the exclusion of any other person. This property is opposed to those models of marriage, which are known and which are still now in practice among some populations, which accept the contemporary presence of many wives (polygamy) or more husbands (polyandry). The significance of unity goes beyond this institutional aspect and is able to invest the same mode on the life of the spouses, not giving chance to another person to participate in that particular relationship which unites them. In this light unity becomes then the synonym of conjugal fidelity and is opposed to adultery, to any other extra-conjugal relationship which brings man or woman to have with another person that physical relationship which has to be reserved only to the spouses. Unity excludes unfaithfulness since fidelity (bonum fidei) is a direct consequence of unity. By the virtue of the covenant of married love, spouses are called to grow continually in their communion through day-to-day fidelity to their marriage promise of total self-giving. This unity of marriage is then exalted in a special way in the case of those who celebrate the sacrament of matrimony: «the Holy Spirit who poured out in the sacramental celebration offers Christian couples the gift of a new communion of love that is the living and real image of that unique unity which makes the Church the indivisible Mystical Body of the Lord Jesus».

307 Cf. L. Örsy, Marriage in Canon Law, cit., p. 58. According to the author this first clause refers to any marriage. This same thinking is reflected in the words of F. Bersini, Il Diritto canonico matrimoniale, cit., p. 15.


310 Cf. L. Chiappetta, Il Manuale del Parroco, Commento giuridico – Pastorale, Roma 1997, p. 557; IDEM, Il Codice di diritto Canonicco, Commento giuridico-pastorale II, Napoli, 1988, p. 169. Chiappetta affirms that, «Polyandry is very rare today in the world. ‘Poligynia’ is still practiced by mohammedans, by mormons and by various primitive populations. Divorce is diffused alot everywhere, and it is admitted formally by almost all the civil legislations». Ibid., p. 170.

311 J. McAReavy, Canon law of marriage and the family, London 1997, p. 39
Indissolubility in this case means different things: it may refer to a *moral obligation*, to the duty to uphold the permanence of marriage or it may also refer to the *nature of the bond*, meaning that, it is permanent and cannot be dissolved.\textsuperscript{312} The text of this canon indicates that unity and indissolubility are properties of marriage by natural law and they are therefore common to every marriage.\textsuperscript{313} Monogamy and indissolubility belong to marriage since it is founded on the recognition of the value of the person rather than on an interest founded only on sexual and affective values. Thus, both unity and indissolubility are the consequences of the totality of conjugal donation as enduring and lasting. Moreover, it is in the stability of the union of the father and the mother that man finds his first point of sure orientation for a balanced and authentic development of his personal existence.\textsuperscript{314} Indissolubility on the other hand qualifies the conjugal relation in the temporal sense rendering it perpetual and subjecting it in its existence to the will of the same spouses and of any other person or authority. Indissolubility in this regard is opposed to divorce, intended as dissolution, as resolution of the conjugal bond, with the consequent recovery of the free state on the part of the spouses, and renders the reciprocal duty assumed to the act of the irrevocable nuptial celebration right to the death of one of the spouses, no matter the vicissitudes of the marriage life.\textsuperscript{315}

\textsuperscript{312} Cf. L. Örsy, *Marriage in Canon Law*, cit., p. 58., The author states: «This issue of indissolubility is explained in greater detail in the comments on can. 1134». The author specifies that this second clause refers specifically to Christian marriage, as distinct from a natural marriage.

\textsuperscript{313} Cf. *Code of Canon Law Annotated*, Montréal 2004, p. 807. The commentary also makes explicit the fact that, «In accordance with GS, no. 48, these properties are required both for the good of the children and because of the nature of the partnership formed by the two spouses (see Mt 19:6). And since these properties are considered essential, their exclusion from consent renders the marriage null and void. For the same reason, civil divorce does not dissolve the marriage bond, despite the law’s provisions on this subject; consequently, divorced persons may not enter into a new valid marriage *coram Ecclesia* while the first spouse is still alive».

\textsuperscript{314} Cf. R. Buttiglione, *L’Uomo e la famiglia*, cit., p. 144.

\textsuperscript{315} P. Moneta, *Il Matrimonio*, in *Il diritto nel mistero della Chiesa III*, Roma 1988, p. 183. These two properties of marriage (unity and indissolubility) resulting from the dispositions of Can. 1056,
In this light we can then assert that, in a Christian marriage, the qualities of unity and indissolubility are said to acquire a particular firmness; by implication the same qualities must be less than specially firm in a natural marriage. This is a distinction which is difficult to explain because neither unity nor indissolubility admits degree. But the subtle qualification is there in order to account for the dissolution of certain types of marriages.316 «Indeed the Church regards only sacramental consummated marriages as absolutely indissoluble ‘by any human power’».317 This can be considered as affirming that, there is a moral obligation to uphold the unity and indissolubility of all marriages, natural or sacramental, consummated or not. Again the firmness, that is, the binding force of this obligation has degrees; in some cases it may even allow the dissolution of the bond, but when it reaches a ‘particular firmness’ that is, in sacramental consummated marriage, the bond cannot therefore be broken.318

Unity is interiorized in order to embrace the being of man and woman: “you have heard what was said, do not commit adultery, but I tell you: anybody who looks at a woman in a way to desire her has already committed adultery with her in his heart (Mt 5: 27). Indissolubility imposes itself in all its peremptory absoluteness which is convenient to a union which arises from the symbol of the unfailing love between Christ and the Church: «for married people I have a comma which is not my own but the Lord’s: a wife must not leave her husband».319 The principle of indissolubility is absolutely inderogatory characterize marriage as an institute of natural right and they belong to the original model of marriage which the Creator wanted and instituted for men.

316 Cf. L. Örsy, Marriage in Canon Law, cit., p. 59.

317 Can. 1141; Örsy emphasizes that, «Canon law offers various ways and means for dissolving the natural bond between two unbaptized persons whenever the Catholic cause would benefit from this dissolution, that is, ‘for the sake of the faith’. Also the bond between a baptized and a non-baptized person can be dissolved in similar circumstances. Further, the sacramental bond between two baptized believers can be dissolved if the marriage has not been consummated».

318 Ibid., p. 59.

319 1Cor 7:10. «This absoluteness which no human power can mitigate, can be possessed only when the intervened pact between man and woman has had at least an essential principle of

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in marriage which has been validly contracted between two baptized parties (matrimony that is *rato*, according to a terminology expressly maintained also by the new code, see can. 1061), in which sexual union took place (consummated marriage).

«Since Christ did not abandon neither humanity nor the Church when he was being nailed on the cross, in the same way every marriage contracted ‘in the Lord’ conserves the indissolubility of the bond between Christ and the Church, also when it became a crucifixion».  

Thus, the exclusion of unity and indissolubility on the part of the contractants renders marriage null (can. 1101, §2).  

The indissolubility of marriage, like its unity, is based on the nature of marriage itself; the spouses personal decision is accepted, protected, and reinforced by the society itself and in particular by the ecclesial community. This then is for the good of the spouses, the good of their children as well as the common good.  

In this very light Kasper affirms that, «this unity and indissolubility, already an essential part of marriage as a reality, are given an ultimate and unambiguous meaning in the Old Testament by the insertion of the order of creation into God’s plan of salvation (see Ex 34:6; Ps 99:5)».  

Faithfulness in marriage is seen as an image of God’s faithfulness in the covenant. A permanent union is precisely what a couple intends when they marry. If they do not, then they intend something else other than marriage. In fact, indissolubility is nothing other than the good of marriage itself. Two people who intend to marry intend to give themselves to one another not partially, but entirely. And a total self-giving will necessarily include the giving of one’s body, since the human person is a unity of spirit and matter. This is more the reason why marriage is a joining of two into a one-flesh union.


Chapter III: The Juridical Doctrine regarding Indissolubility

3.5.3.1. The Bonum coniugum and the Bonum prolis: Ends or properties of marriage?\(^{324}\)

Canon 1055 of CIC 1983 presents marriage as being directed to two ends: «...and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children». One thing which is glaring here is the fact that, while the natural ordering of marriage to procreation is clearly stated by GS in two places\(^{325}\), the conciliar documents nowhere mention that marriage is ordered to the bonum coniugum.\(^{326}\) The good of the spouses is mentioned in GS, 48 but in relation to the indissolubility of the marriage bond, and in GS, 50 regarding responsible parenthood.\(^{327}\) This similar reference had been made by Casti Connubii in connection with indissolubility and the bonum coniugum.\(^{328}\) These two terms were revisited in 1977 by the consultors of the Pontifical commission for the Revision of the Code of Canon Law. «Unlike the suggestion to incorporate a ius ad communionem vitae, the bonum coniugum seems to have provoked no debate, and it was immediately and unanimously accepted into the draft for the new canon describing the nature of the marriage».\(^{329}\) On the one hand, it has been noticed that this term is mentioned rarely in rotal jurisprudence of the following years,\(^{330}\) and very little effort has been made to analyze its juridical content.


\(^{325}\) Cf. GS, nos. 48 and 50.


\(^{327}\) Cf. C. BURKE, *The bonum coniugum and the bonum prolis: Ends or properties of marriage?* cit., p. 704.

\(^{328}\) Cf. Casti Connubii, 553.

\(^{329}\) Cf. *Communications*, 9 (1977), 123.

\(^{330}\) Cf. C. BURKE, *The bonum coniugum and the bonum prolis: Ends or properties of marriage?*, cit., p. 704, note 3. We could see for example. Coram PINTO, (December 18, 1979); Coram PINTO, (February 12, 1982); Coram PINTO, (November 9, 1984); Coram GIANNECCHINI, (June 22, 1984); Coram STANKIEWICZ, (January 28, 1985); Coram POMPEDDA, (January 29, 1985); Coram HUOT, (October 2, 1986).
Looking at *bonum coniugum* as an end and not a property of marriage, it has been suggested\(^{331}\) that, the *bonum coniugum* should be regarded as a fourth *bonum* that is, the good or value of marriage. Which needs to be added to the other three *bona* distinguished by St. Augustine: the *bonum fidei*, the *bonum sacramenti* and the *bonum prolis*. In this way, Burke feels that, this suggestion would clearly place the *bonum coniugum* among the properties of marriage.\(^{332}\) Burke is clearly convinced that:

This analysis does not seem acceptable, as I think emerges from a consideration of St. Augustine’s doctrine of the *bona matrimonalia*. In the Augustinian view, the three matrimonial *bona* refer to “goods” of the married state: they are positive features or values of matrimony that give it dignity. Marriage is good because it is characterized by faithfulness, permanence and fruitfulness.\(^{333}\)

“This goodness of matrimony,” says St. Augustine, «has a three fold expression: exclusiveness, offspring, permanence».\(^{334}\) In another passage he writes, «these are the good qualities that make marriage good: offsprings, exclusiveness, permanence».\(^{335}\) Each of these bonum is predicated of or it is attributed to marriage. Offspring is a *bonum matrimonii* and so also exclusiveness or permanence. Therefore, one can see glaringly that, St. Augustine is speaking not of ends or finalities of marriage, but of its values: its essential properties. It


\(^{332}\) Cf. C. BURKE, *The bonum coniugum and the bonum prolis* Ends or properties of marriage?, cit., p. 705. «The new Code did not resolve the inconsistency which exists between legislation and jurisprudence. Legislation has continued to present a scheme of two essential properties of matrimony (can. 1056), while jurisprudence has preferred to analyze matrimony from the view point of the three Augustinian *bona*. However, as we could see, jurisprudential practice came to treat exclusion of fidelity or indissolubility as the exclusion of an essential property, and the exclusion of offspring as the exclusion of an end. The present situation is a not too satisfactory blending of scholastic and Augustinian analysis. Augustine speaks of the *bona* as the scholastics speak of properties. According to this article of Burke, a *bonum* is taken to be in effect an essential property».

\(^{333}\) Ibid.

\(^{334}\) *De Genesis ad Litteram*, Lib. IX, cap. 7, n. 12.

\(^{335}\) *De bono coningali*, cap. 24, n. 32.
is evident here according to Bersini that, *bonum coniugum* does not express a value or property of marriage.\textsuperscript{336} Thus, the *bonum* of this new term is then referred not to marriage (as if it were a value that makes marriage good), but to the spouses (as involving something that is good for them). It denotes not a property of marriage, that is, a *bonum matrimonii*, but something which regards the good or the welfare of the spouses which marriage should lead to. Seemingly, *bonum coniugum* is in the line not of property but of finality. It is interesting to note here that, the sentence coram Pinto of December 1979, states that rights and obligations which make up the good of the spouses should go under the heading of mutual help and remedy for concupiscence in CIC 17; or in the draft of the marriage law in the new Code under right to communion of life which embraces those rights belonging to the essential interpersonal relations between the spouses.\textsuperscript{337} Since the proposed ‘*ius ad vitae communionem*’ was not in fact accepted into the new Code,\textsuperscript{338} it does not seem clear for one to build an analysis of the *bonum coniugum* on this basis. In any case, as far as the *communio coniugalis vitae* is equivalent to marriage itself, this *communio* is clearly ordered to the *bonum coniugum*.\textsuperscript{339} It can reasonably be assumed that, in the Legislator’s intention, the *bonum coniugum* is meant to include the former secondary ends of marriage,\textsuperscript{340} the *mutuum adiutorium* and the *remedium concupiscientiae*, which are not mentioned in CIC 83.\textsuperscript{341}

Regarding *bonum prolis*: Matrimony is good not only due to exclusiveness or permanence, but also due to the *bonum prolis* which is the good

\textsuperscript{336} Cf. F. Bersini, *Il nuovo diritto Canonico Matrimoniale*, Turin 1985, p. 10. The *bonum coniugum* for him has nothing to do with the Augustina *bona*.

\textsuperscript{337} Cf. C. Burke, *The bonum coniugum and the bonum prolis Ends or properties of marriage?*, cit., p. 706.


\textsuperscript{339} For P. A. Bonnet the *communio vitae* is the realization of the *ordinatio ad bonum coniugum*, which is understood as an essential property of marriage; See *Communio di vita, ‘ordinatio ad bonum coniugum’ e ‘honor matrimonii’*, in *Il Diritto Ecclesiastico*, 93/2 (1982), pp. 550, 552, 558.


of the offspring. In this light, GS expresses itself on several occasions in this way. It states that: “it is for the good of the children”, as well as that of the spouses and the society, that the bond of marriage no longer depends on human decisions (GS, 48); and «the nature of marriage as an indissoluble covenant and the good of the children demand that the mutual love of the spouses [...] grow and mature».

What seems to be confusing here is the fact that, offspring can be considered not just as a matrimonial good or value but also as an end of marriage. From the above explanations, it seems St Augustine’s main concern was to defend the goodness of marriage. His presentation of the ends of marriage, however, is not as systematic as that of St. Thomas. In Supplementum, q. 65, St. Thomas says that: «Matrimony has the procreation and education of the offspring as its principal end». St. Thomas continues on in this same article in order to relate this and other ends of marriage to the tria bona. In q. 41 St Thomas mentions that: «matrimony is natural, in the first place because of its main end which is the bonum prolis», and later on, he repeats this same idea in the same terms: «Matrimony is ordered to its principal end, which is the bonum prolis».

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342 C. BURKE, The bonum coniugum and the bonum prolis Ends or properties of marriage?, cit., p. 710. Burke asserts the following: «Now it is important to bear in mind that the expression bonum prolis can be used in a quite different sense. One infact changes the whole meaning of the expression if one uses the word ‘bonum’ in the sense in which it is used precisely in that other expression, bonum coniugum, which we have been examining. It is possible in other words, to use bonum prolis in order to express not a value of marriage, but the ‘good’ (the welfare or interest) of the offspring itself».

343 GS, no. 50; Cf. GS, no. 51: «Ubi intima vita coniugalis abrumpitur, bonum fidei non raro in discrimen vocari et bonum prolis pessumdari possunt».


346 Supplementum, q. 65, art. 1; cf. q. 49, art. 3: “prolis et matrimonii finis.”

347 Ibid., q. 41, art. 1.

348 Ibid., q. 65. Art. 5.
At this juncture Burke explains that: «Can. 1055 avoids any inexactness on this point. It does not say that marriage is ordered to the *bonum prolis*, to the good or value of offspring; it properly says (in full accord with St. Thomas in q. 65) that marriage is ordered to the ‘procreation and education of the offspring’. The term *bonum prolis* is therefore rightly used in order to describe a property of marriage, but it is not used in all exactness to describe that end of marriage which is procreation. The precision of terminology in other words, demands that we distinguish *proles* as finality from *proles* as property or that which distinguishes procreation (end) from procreativity (property). Burke then thinks that: «We can find clear support for this argument in that very important passage of the *Supplementum* where St. Thomas himself speaks of *proles* in two senses: offspring ‘in its principles’ (*proles in suis principiis*) and offspring ‘in itself’ (*proles in seipsa*) (*Supplementum*, q. 49, art. 3)». We follow the thoughts of St. Thomas when we distinguish between procreativity (*prolis in suis principiis*), and actual procreation (*proles in seipsa*). Procreativity which expresses the “intention of the offspring” or the “openness to offspring”, should never be absent from marital consent, since marriage cannot exist without its essential properties. However, actual procreation, although an end of marriage, is not essential to marriage for marriage does not always necessarily achieve its end.

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349 C. Burke, *The bonum coniugum and the bonum prolis Ends or properties of marriage?*, cit., p. 711. In note 28 Burke highlights that: «One can evidently say that, the *bonum* of the *prolis* is a part of the end of marriage, if by *bonum* one refers to the life, education, happiness, etc of the children. But then, as we saw above, we are using the *bonum prolis* in its more modern sense of the welfare of the children and not in the Augustinian sense of a good or value of marriage».


351 Ibid., p. 712.

352 Ibid. In note 31 he states: «It seems evident that the “principles” of offspring, to which St. Thomas refers are the two principles of masculinity and femininity, which are proper to the spouses. The *bonum prolis* which each spouse confers on the other hand is the potential for fatherhood and motherhood, as the case may be».

In note 32 he affirms: «so there exist a ‘ius ad procretivitatem’- to what the other can give- because the willingness to procreate lies within the other party’s power; but there is no ‘ius ad prolem’
The use of *bonum prolis* to describe an end rather than a property of marriage led to an unsatisfactory and strongly controverted question of the nature and scope of the exclusion of the *bonum prolis* invalidating marriage. According to rotal jurisprudence and the common view, *bonum prolis* is identified with the physical copula considered in isolation: it therefore identified the exclusion of the *bonum prolis* with the exclusion of the “*omne ius ad coniugum actum*” of the former can. 1081§2. On the other hand, as far as the conjugal act in itself was properly performed, this view declined to regard a permanent intention to frustrate that act’s natural result as being contrary to the *bonum prolis*. Many rightly felt that this view could not correspond to justice, but at the same time they faced difficulties under the old code in finding juridic support for their thesis that, the permanent intention to frustrate the conjugal act’s natural effects implied an exclusion of the *bonum prolis* and so invalidated the marriage.354

The answer to these difficulties is that *bonum prolis* is essentially integrated into marriage, as a property and not as an end. In other words, procreativity enters the essence of marriage as one of its integral elements; actual procreation does not. Regarding canon 1056, it should therefore be observed that, there is nothing in the Latin text to indicate that, the enumeration of the essential properties is meant to be exhaustive. The vernacular translations do tend to give this impression.355

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354 Cf. O. C. FUMAGALLI, *Il matrimonio canonico dopo il Concilio*, Milano 1978, pp. 74-76ff. «The *ius in corpus* being regarded as the essential object of matrimonial consent, it was felt that to take cognizance of the possible effects of the conjugal act, was equivalent to making the end of marriage enter into its essence».

355 Cf. C. BURKE, *The bonum coniugum and the bonum prolis Ends or properties of marriage?*, cit., pp. 713. «It might eventually prove opportune to rephrase the latin so as to avoid any impression that the third augustinian "bonum" is not to be ranked among the essential properties of matrimony. Thus legislation would be brought more in line with theological thinking. For its part, jurisprudence, which is already at home with the scheme of the triple "bona", may well wish to tighten its understanding of the "bonum prolis".»

Clothilde Wanki
3.5.3.2. The goods or blessings of marriage: bonum prolis, bonum fidei and bonum sacramenti

Augustine’s theory of the three benefits was designed to demonstrate the essential goodness of marriage. At the base of the teaching of St. Augustine, canonical doctrine identifies three goods of marriage: bonum prolis consists in the duty to be open to offspring and to educate them; bonum fidei, includes unity and faithfulness. It is the right of each spouse to remain faithful to the other partner in regard to matrimonial duties and conjugal exclusivity; bonum sacramenti consists in the indissolubility of the bond. These bona of marriage certainly conserved their validity even after the reform in the 1983 Code.

Citing St. Augustine, Pius XI identifies the three blessings of marriage as children, mutual fidelity, and the dignity of a sacrament.

Bonum prolis: the generation and education of bonum prolis has its reason of being an end in marriage and confers goodness to it, since through it the spouses are being called to a particular and special participation to the love of the Creator. The first and primary blessing is the procreation of children. With the begetting of children, husband and wife become intimate cooperators with God in propagating the human race. They take upon themselves the task of rearing and educating their children. The noble nature of marriage leaves

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357 Cf. A. ABATE, Il matrimonio nella nuova legislazione canonica, cit., p. 28.

358 Cf. St. AUGUSTINE, De Genesi ad litteram, bk. 9, chap. 7, no. 12.

359 Cf. Casti Connubii, no. 10 Here after this document will be cited as CC.

360 Cf. A. MIRALLES, Il matrimonio teologia e vita, cit., p. 80.

361 CC, nos. 11-18; see Gen. 1:28; 1 Tim. 5:14.
God’s new children in their parents’ hands. The blessing of offspring, however, is not completed by the mere begetting of children, but something else must be added, namely the proper education of the offspring. For God would have failed to make sufficient provision for children that had been born for the whole human race, if He had not given to those to whom He had entrusted the power and right to beget them, the power also and the right to educate them.

*Bonum fidei* or the good of fidelity is the word that translates *fides* as a good of marriage. There is a long and strong tradition in rotal jurisprudence, identifying the "*bonum fidei*" with unity, i.e. with the fact that each partner accepts the other as only spouse. This view maintains that the "*bonum fidei*" is excluded only if, in consent, the right to conjugal intercourse is not reserved exclusively to one’s spouse, but is extendable also to others. The Second Vatican Council is of the view that, the intimate union, as a mutual self-gift of two persons, and the good of children demand total fidelity from the spouses [...] In this statement the Council places the element of fidelity in conjugal relationship at the very heart of the *consortium totius vitae*. In other words, conjugal fidelity is essential to the good of the spouses and the good of the children. And as a sign of Christ’s union with the Church, conjugal fidelity is at the same time law and ideal, and demands an equal commitment from both spouses.

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363 Regarding this point we could See H. Franceschi, *Il bonum prolis nello stato di vita matrimoniale e le conseguenze canoniche in caso di separazione o di nullità matrimoniale*, in AA.VV., *Prole e matrimonio canonico*, città del Vaticano 2003, pp. 29-64.


367 GS, no. 48.

Matrimonial fidelity demands that they love one another with a special, holy and pure love; not as adulterers love one another but as Christ loves his Church. This is the rule which the apostle Paul laid down when he says: «husbands, love your wives as Christ loved the Church» (Eph. 5:25). Conjugal fidelity includes the loyal fulfillment of all the obligations which are involved in the matrimonial contract: «the principal obligations imposed by the divine natural law and secondary stipulations freely agreed upon by the parties». The first obligation is keeping the complete unity of matrimony which the Creator himself laid down at the beginning when he wished it to be between a man and a woman. As St. Paul says of marriage: it is a love which is total, that very special form of personal friendship in which husband and wife generously share everything, allowing no unreasonable exceptions and not thinking solely of their own convenience. Whoever really loves his partner loves not only for what he receives, but loves that partner for the partner’s own sake, content to be able to enrich the other with the gift of himself. «To make possible the fidelity of heart to one's spouse, even in the hardest cases, one must have recourse to God in the certainty of receiving assistance. The way of mutual fidelity passes, moreover, through an openness to Christ's charity, which "bears all things, believes all things, hopes all things, endures all things» (I Cor 13,7). In every marriage the mystery of redemption becomes present, brought about by a real participation in the Cross of the Savior, accepting the Christian paradox that joins happiness with the bearing of suffering in the spirit of faith.

Bonum sacramenti: The third blessing of marriage is called the bonum sacramenti, that is to say, the indissoluble bond of marriage. Thus bonum sacramenti signifies two things: «indissolubility of the conjugal bond and the elevation of

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370 Cf. O. LIEBARD, Love and Sexuality, cit., p. 29 par. 46.
371 HV, no. 9.
372 JOHN PAUL II, Allocation to the Roman Rota, (January 30, 2003), cit.
marriage to the dignity of a sacrament of the New Law. In effect, Christ has elevated Christian marriage to the state of a sacrament and it has become the “efficacious sign of grace.” The sacramentality of marriage becomes then, the foundation for the indissolubility of Christian marriage. Therefore, if a marriage as a sacrament represents the union of Christ with his Church, it also necessarily follows that just as Christ never separates Himself from His Church, so in like manner the wife should never be separated from her husband as far as this regards the marriage bond. This sacramentality does not only represent an appendix that is added to an already constituted marriage, but reinforces the marriage. Sacramentality is the specific form of marriage between the baptized. According to St Augustine to whom the theology of the three matrimonial bona owes its origin, bonum sacramenti essentially meant “inseparability and indissolubility” of marriage. For him even a natural marriage contract was sacred, that is, the bonum sacramenti denoted the sacred character which every marriage enjoyed. Therefore following St. Augustine, doctrine and jurisprudence have consistently understood and expounded on bonum sacramenti as “indissolubility of marriage.”

3.5.4. Indissolubility of marriage in the light of the concept of person

It is impossible to reflect on the person without thinking of the juridical reality of the person’s personal being. Due to this I will explain why talking of personal right means talking of that which a person has a right to as a person, and in this way we will develop briefly the juridical concept of person in the

373 A. VERMEERSCH, What is Marriage?, cit., p. 25. In the Latin usage, the word sacramentum designates an obligatory bond, a consecration, a binding promise.

374 Cf. O. LIEBARD, Love and Sexuality, cit., p. 33 par. 57. «Quo eius denotatur et vinculi indissolubilitas et contractus in efficax gratiae signum per Christum facta elation atque consecratio». In AAS 22 (1930), p. 550.


order of specific ends to those that regard his same origin.  

The concrete man is not an abstract subject but a subject which is at the same time a created being, and therefore an object, and manifests his complexity in action - this is Wojtyla's point of departure.  

Christ being the true center of the cosmos and human history, is also at the same time the revelation of the truth about God and the truth about man. In fact, man is himself a mystery which is made clear only in the great mystery of God. Man is a person that is, a being that is structurally conscious of himself only in relationship to others, in that meeting of another man. Every meeting with another person provokes and enriches a person. The ultimate and definitive profundity of the person is manifested in an ultimate and final meeting with another who is an absolute person, one who has the capacity of being faithful without limits and being receptive without limits. Man is not a thing, like other living things on earth, but is a person having intelligence and liberty. Revealing the personal being of God, Jesus also permits man to deepen the sense of his being-person. This is the root of Christian anthropology which culminates in the positive values discovered by men and by nations in their pilgrimage on earth and in history. In this regard, the unity of man which cannot be divided artificially in spirit and body, but is in every action both subject and object, also makes it in a way that, the meeting with another human person and with God, can only happen through the elevation of the natural aspects of the being and human behavior to a personal

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379 Cf. R. BUTTIGLIONE, The Thought of the Man who became John Paul II, Cambridge U.K., p. 120: «By choosing the person as the point of departure, Wojtyla is able to work out a philosophy which is a reflection on experience and which finds its criterion of truth in the recognition and in the confirmation which it brings to the experience of the other, of the reader as of every human being. It is, therefore, neither a reflection on the history of philosophy nor the attempt to force assent through abstract argumentation but, rather, an articulated discourse on the fundamental structure of the experience of life which solicits every person to reflect on his own self to confirm and to enrich the author's reflection…».


level. The encyclical *Laborem Exercens* with its fundamental distinction between the objective and subjective meaning of work, teaches us to search man’s roots in the sphere of culture.

A man and a woman who choose marriage, choose the free acceptance and reciprocal donation of themselves; marriage does not admit another possibility which is not the freedom of gift. This relation of justice with love, is manifested in an evident way in the indissolubility of marriage in which is implicit not only a principle of justice but also the recognition of a relation that cannot be alienated or destroyed by any behavior. It is in the indissolubility of marriage that we discover many other virtues: fidelity which begins with self, that is, being faithful to the proper identity of the spouse. The freedom of this gift is not only born of solidarity, but above all, an act of auto domination, an act of justice founded in love. Every human being possesses a nature which belongs to him in an alienable way. Every human being becomes conscious of his proper dignity and becomes also conscious of his proper values as man only through the relationship with others and precisely when another human being assumes towards him an attitude which corresponds to the value of a person. We can see almost from afar, the value of human society only when we see and appreciate the value of each member separately.

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385 *Laborem Exercens*, cit., no. 2.6.


387 Cf. R. Buttiglione, *L’Uomo e la Famiglia*, Roma 1991, p. 125: «Love intended here in the general sense and not exclusively sexual is an affective respond of the entire person, which involves the recognition of the dignity of the other, the affective amazement and contemplation of his dignity and greatness from which is born the availability to engage himself in order to defend such a dignity, beauty or handsomeness and to accompany it towards adequate realisation».

The incarnation is a demonstrative lesson regarding every human person, since it represents a very high value of God. The measure of man’s value, his dignity, is the act through which God disposed himself for man by sending his only begotten Son into the world for our redemption. This was the final act on the part of God himself to convince man of his importance. God finally reveals himself to man in order to reveal man to man (rivelare l’uomo all’uomo).\textsuperscript{389} Scheler mentions that: «when love is developed right to the point that it touches the other, then is its for ever».\textsuperscript{390} This according to Buttiglione is the reason of the indissolubility of the conjugal pact which is a pact of reciprocal donation founded on the recognition of the value of the human person.\textsuperscript{391} «The gift of a person demands that it should be durable and irrevocable by nature. The indissolubility of marriage is derived primarily from the essence of this gift: the gift of the person to a person».\textsuperscript{392} Caffarra affirms that: «the truth of our vision of the human person will decide the truth of our vision of marriage».\textsuperscript{393} A true matrimonial personalism, patrimony of Christian anthropology places its roots in the conviction of personal donation: «the gift of the person to a person». The indissolubility of marriage is explained juridically from this conviction for its intrinsic content of justice. This truth of the beginning, this anthropological and theological truth, finds its explanation and foundation in sacred scripture, in the magisterium and in tradition and has to express itself canonically with a correct and integral vision of man.

3.5.5. Indissolubility of marriage in the light of the concept of family relationship

The family finds its origin in conjugal communion. This root of the family in marriage has to be deeply perceived. The family as founded on marriage corresponds to the design of the Creator right from the beginning

\textsuperscript{389} Ibid., pp. 139-140.
\textsuperscript{390} M. SCHELER, Essenza e forma della simpatia, Roma 1980, p. 255ff.
\textsuperscript{392} Letter to Families, cit., no. 10.
\textsuperscript{393} C. CAFFARRA, La teologia del matrimonio con riferimento al C.J.C., in A.A.VV., Teologia e diritto canonico, Città del vaticano 1987, p. 163.
(Mt. 19:4). This same family community is born from the pact of alliance of the spouses. Marriage which stems from this pact of conjugal love is not a creation of public power but from a natural institution.\textsuperscript{394} The point of departure here is the understanding of the sacramentality of marriage.\textsuperscript{395} The family is a personal institution stemming from the free decision of persons where people live in intimacy.\textsuperscript{396} Since conjugal communion is at the base of the family, we can then say that, through the sacrament of marriage, the family is based and rooted in the act of donation which Christ accomplished on the cross; which is the christological foundation. The pneumatological foundation: through the sacrament of marriage, the family is founded and rooted in the presence of the Holy Spirit that lives in the hearts of the spouses and pour in them love. The Eucharistic foundation: through the real (and not only ritual) participation in the Eucharist, the spouses receive the Spirit that communicates to them the charity of Christ.\textsuperscript{397} The family is the school of love and life and the love of the spouses is transformed into the love of parents.\textsuperscript{398} The Creator made the family as the origin and foundation of the human society. The presence of Christ in the union of love between two baptized persons who give themselves one to the other for the community of life is source of permanent grace and redemption.\textsuperscript{399}

Since family relationships constitutes the main outline of the identity of a person, they could be called intrapersonal: either because they invest and

\textsuperscript{394} Cf. Pontificio Consiglio per la Famiglia, Famiglia, matrimonio e “Unioni di fatto”, (July 26, 2000), in Enchiridion Vaticanum 19/604-651 (bilingual text); This same thought is represented in Council of Vatican II, Decree on the Apostolate of Lay People Apostolicam actuositatem, (November 18, 1965), no. 11, in AAS 58 (1966), pp. 837-864.


\textsuperscript{399} Cf. Comitato per la Famiglia, Matrimonio Sacramento, (September 1975), in Enchiridion Vaticanum 5/ p. 899 (bilingual text).
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incorporate all the aspects of the human being – organic, affective and spiritual – it is fundamental because such relations constitute certainly the way through which the person as subject being called to communion leaves in this relationship a certain sign which we could define as indelible. Every family name is correlated to the other person and for this reason, it is not enough to say that, fundamental relational bonds are inter-personal. The relationship which unites the members of a family acquire proper ontological rationality, ethical and juridical, under which it takes its family character and really stands out from the other interpersonal relationships, which are situated in a certain way at the peripheral level that does not affect their own identity. In family relationships, interpersonality situates itself at a deeper level, since they constitute boundaries of personal indentities. The personal “texture or tissue” of the individual, by virtue of his awareness of being a concrete “I”, that is, of having a determined identity, thus constitutes part of the family relationships, which cannot disappear as they form part of the self. As well as interpersonal, family relationships are also intrapersonal (in the concrete sense of the above mentioned). Therefore, the intrapersonal character of family relationships,

400 Cf. J. Carreras - H. Franceschi – M. A. Ortiz, Diritto canonico del matrimonio e della famiglia I e II parte, cit., pp. 28-29 note 44. «Even if the death of one of the subjects united by the family relationship makes him disappear, it is not due to this that the personal aspects of the person will disappear. Amongst others, we do not need to omit the eschatological question relative to the existence of the family relationships of the blessed».

401 Ibid., p. 29. They mention that study of family relationships from the ontological perspective can be found in AA.VV., Metafisica de la familia (a cura di C. Cruz), Pamplona 1995.

402 Ibid. Besides this intrapersonal character of family relationships which is the first of five characteristics, there are also four others which we shall only make mention of here.

- **Biographical character** which indicates that every family relationship has its development along with time.

- **Interdependent, complementary and systematic character**: family relationships are intergrated into a system of cultural parentage or kinship.

- **Irreducible and essential character**: that is, the norm founding the family is the prohibition of incest.

- **Communal character**: all family relationships are called to be lived in communion. (all these other four aspects have also been taken from). Ibid., pp. 30-31.
identify persons, who are spouse constitutively. He does not act as a spouse but he is truly.

It is worth noting that, the fullness of marital and family life is part of a dimension of the fullness towards which every Christian is oriented by virtue of the universal call to holiness. And the Church being the salt of the earth, the light of the world (Mt 5:13-14), desires that, through the sacrament of marriage, men might form one family and one people of God. Therefore, the magisterium of the Church treats this subject in many documents, and it belongs, in turn to the sphere of the freedom which is proper to the condition of being children of God. «Marriage – says the Roman Pontiff – remains the usual vocation of man, which is embraced by the great majority of the people of God». It is quite clear then that this fullness cannot be restricted to juridical terms as it greatly transcends them. Particularly, since Vatican II, it has become glaring that, «Christian marriage is not just a social institution, much less a mere remedy for human weakness […] Husband and wife are called to sanctify their married life and to sanctify themselves in it. It would be a serious mistake if they were to exclude family life from their spiritual development».

The family has a special role to play throughout the life of its members, that is, from birth to death. The family is truly «the sanctuary of life: the place in which life – the gift of God – can be properly welcomed and protected against the many attacks to which it is exposed, and can develop in accordance with what constitutes authentic human growth». The family being the domestic Church, is summoned to proclaim, celebrate and serve the Gospel of life. In

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405 LF, no. 18.


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the apostolic exhortation Evangelii Nuntiandi, it is said that, «in every Christian family the different aspects of the entire Church are supposed to meet (no. 71)». This responsibility regards first and foremost married couples, called to be givers of life, on the basis of an ever greater awareness of the meaning of procreation as a unique event which clearly reveals that human life is a gift received in order then to be given as a gift. Thus, in giving origin to new life, parents recognize that the child, as the fruit of their mutual gift of love, is in turn, a gift for both of them, a gift which flows from them.

The relationship between the two realities marriage and the family is not extrinsic, but dynamic and intrinsic. The conjugal relationship is already a familial relationship from the moment in which the spouses exchange their consent. This truth always defended by the Church helps to overcome the subjective and egoistic vision of marriage, and indicates the most intimate nature of the conjugal relationship which deals with family relationship. The conjugal bond has as its support a relationship which can only be understood in the internal system of relationships. One of the sciences of man which has received major impulse in our century is anthropology. The family has occupied the first position in the studies of anthropologists, sociologists

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408 Cf. Paul VI, Apostolic Exhortation Evangelii Nuntiandi, (December 8, 1975), in AAS 58 (1966), pp. 467-472. Here after this will be cited as EN.

409 D. Tettamanzi, La famiglia via della Chiesa, Milano 1987, cit., p. 60.

410 Cf. John Paul II, Address to Participants in the Seventh Symposium of European Bishops, on the theme of “Contemporary Attitudes towards Life and Death: a Challenge for Evangelization”, (October 17, 1989), no. 5: in Insegnamenti di Giovanni Paolo II, XII. 2 (1989), p. 945. «Children are presented in the Biblical tradition precisely as God’s gift (Cf. Ps. 127:3) and as a sign of his blessing on those who walk in his ways (Cf. Ps. 128:3-4)»; EV, no. 92.

411 Cf. P. M. Alzate, Fundamentación Jurídica de la Indisolubilidad del Matrimonio (Hacia una inculturación de la Verdad del Principio, cit., p. 168.

412 The traditional doctrine of the hierarchy of the ends of marriage constitutes an undoubtable example, the validity and the indissolubility of marriage contracted among elderly persons or in general among sterile persons.

413 Among others we can cite C. Levi-Strauss, Antropología Strutturale, Milano 1966, IDEM, Le Strutture elementari della parentela, Milano 1966; B. Mali-Nowsky, Teoria scientifica della cultura,
and historians. When marriage is constituted, the family is also created which makes the spouses to become potentially parents, it creates their identity and this reinforces the indissolubility of their union. Thus, in a certain sense marriage is indissoluble as filiation and in both cases persons acquire an identity which accompanies them during the course of their life, till death separates them. The bond of justice which constitutes family relationships is dissolved in a natural way only by death. From the eschatological point of view, if marriage relationship is considered as having a family nature, it is also called to survive in the glory of the saints. Indissolubility is demanded from the good of the family, since the conjugal bond is the first family relationship.

Therefore, We can see that indissolubility is the key of the whole conciliar doctrine on marriage and the family. This property of the bond can only be understood deeply if all the elements of the system are understood and above all the whole personalistic logic. Without indissolubility these bonds will


make no sense. The intimate relation between the concept of indissolubility and this new terminology forms part of the canonical matrimonial regulation.

3.5.6. Indissolubility of marriage in view of the concept of conjugal communion

Marriage is the conjugal union between a man and a woman. Conjugal then, is the term we apply to that union which is the fruit of free decision, by whose virtue the man can truly say that the woman belongs to him (not in the sense of property but in the sense of a bond of interconjugal justice) and the woman can truly say that the man also belongs to her, in such a way that, they are no longer two but rather one common unity in what is conjugal. In this regard, therefore, that they truly belong to each other means that in justice they owe each other to one another. For this reason they are united by a bond of justice. This is the origin of the centuries-old idea whereby doctrine has spoken of marriage as a “juridical” bond (that is, of justice).

Through the bond the conjugal aspects of the man (virility) and of the woman (femininity) are no longer two things which solely ‘are related’ or ‘come together’; through the bond, the man and the woman, in what is conjugable, are one single unity which is owed in perpetuity. So they are not two things that ‘are related’ but which nonetheless remain in their duality, but rather one flesh. To come together, to relate, to live together and so on are types of contact which are a consequence of being a single unity in what is conjugable. For this reason through the conjugal bond the man is no longer a man but rather a husband and the woman is no longer a woman but rather a wife.

418 Cf. P. J. Viladrich, The Agony of Legal Marriage, Pamplona 1992, p. 179. «This union in what is conjugable is extraordinarily profound because ‘what is conjugable’ in a man and in a woman refers to the totality and plenitude of the dual sexual modalization which by nature contains a radical and complementariness and inclines towards a basic generative unity. The relation of complementariness and unity between the sexes is not invented by the lovers but rather is placed by human nature and it is placed in a most profound manner: it is not just any kind of union, but rather the unity by which-granted that there exists consent-a man and a woman become one flesh» Cf. Ibid., p. 180.

419 Ibid., p. 181. He therefore goes ahead to emphasize that: «this unity in what is conjugable of two married persons has in the history of thought – the same as in daily reality of so many
The origin of the family is found in conjugal communion, in marriage. This root of the family in marriage has to be deeply perceived. The love of Christ is the supreme perfection, the fullness of love. The spouses participate in this same love and they receive the capacity to be able to love as Christ loved and this enables them to live fully their conjugal communion. The sacrament of marriage is not in the first place a human task. It is the gift of God. Therefore, it is the same love of Christ that lives in the heart of the spouses. There is no difference between the love of Christ and conjugal love, in the sense that, they are two realities which are similar: it is the same love. This diversity consists only in the degree: one is full, unlimited, perfect; the other is measured, limited, imperfect. But one interesting fact here is that, through the ritual celebration, the Holy Spirit inflames the heart of the spouses, purifies them, sanctifies them, that is, renders them sharers of the same love of Christ. This is the profound base on which the family is rooted and on which conjugal communion has its foundation.

The Letter to the Hebrews (Heb. 9:14) reveals that, at the origin of Christ offering of himself on the cross the Holy Spirit was present. It is this same Holy Spirit that is at the origin of conjugal communion of Christian spouses, since it is in him that the spouses are sharers of the same love of Christ. The Holy Spirit that pushed Christ to offer himself on the cross is the same Holy Spirit that inserts the conjugal donation in the event of the cross. On the cross, Christ reveals his love to the Father in the Spirit: deeply conjugal communion is rooted in the Trinitarian mystery of the divine life. It is the love of Christ that resides in conjugal love.

marriages – been underlined with the very deep intuition that the rupture of authentic marriage would be tantamount more or less to splitting up a single body in two parts. And what occurs is that granted that by means of a pact the spouses have decided to belong to one another in the conjugable, separation is the same as dividing one’s own body». Ibid., pp. 181-182.

420 Ibid., p. 11.

421 Cf. PONTIFICIO CONSIGLIO PER LA FAMIGLIA: Famiglia e questioni etiche, cit., p. 12.
3.5.7. Indissolubility of marriage in regard to the concept of the conjugal pact

Regarding the act which constitutes marriage and the family, there are two canons which treat the conjugal pact. These are canons 1055§1 and 1057§1. Therefore, while can. 1055 talks of the founding act that is, the celebration of the wedding; can. 1057 talks of matrimonial consent. The wedding is normally the constituting act of matrimony and it belongs to the same nature of the conjugal pact. The wedding is that social and liturgical act in which is celebrated the union between a man and a woman, in which through the conjugal pact they become spouses and in this way they constitute the first family relation. The juridical value of the wedding leans therefore, in an absolute way on the validity of the conjugal pact. Before examining the conjugal pact, it is important to distinguish the notion we have just given from two relative concepts to the form in which such a celebration is presented in the present Code of Canon Law: one thing is the form of the emission (issue) of the conjugal pact (can. 1104), and another which is quite different, is

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423 Can. 1055§1: «The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptized, been raised by Christ the lord to the dignity of a sacrament».

424 Can. 1057§1: «A marriage is brought into being by the lawfully manifested consent of persons who are legally capable. This consent cannot be supplied by any human power». Here the word consent is used with a distinct valency (Value): in the first §1 this term is equivalent to that of conjugal pact, that is to that objective, bilateral and reciprocal reality which a couple puts in act. In §2 the consent is intended as a subjective reality: the internal will of the spouses with which each of them contributes in order to give life to the conjugal pact. (Cf. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, *Diritto Canonico del Matrimonio e della Familia*, cit., pp. 41-42; P. J. VILADRICH, *Commentary to canon 1101* in (ed. E. CAPARROS), in *Exegetical Commentary of the Code of Canon Law*, cit., p. 1333.

the form in which such an exchange of “words or equivalent signs” is recognized by the Church as being valid and efficacious (can. 1108 and ff).

Marriage has always been considered as a public reality having the following dimensions: the festive dimension which is social; the liturgical dimension which is sacramental and the interpersonal dimension. What constitutes the heart of the nuptial celebration is the conjugal pact and the consent with which man and woman establish a marriage. The heart of this is constituted by the interpersonal dimension: the act through which the spouses give themselves mutually. If this consent is missing, the marriage is inexistent or invalid.

Looking at the irreplaceable efficient cause of marriage, we can define the conjugal pact as «that act of love which is the foundation of marriage and without this act, love will not be able to go across the frontiers which leads to the constitution of the union of two persons in the unity of nature. Without this act, it will not be possible to transmit love in terms of justice, it will not generate any juridical bond and will not have anything to do with the origin of conjugal rights and duties.» Regarding the consent as the irreplaceable efficient cause of marriage, we can say that, the efficient cause of marriage in this case is the consent present and not the promise. This consent can be intended in two ways: the pact as a unique juridical act (can. 1057§1) and the internal act of the will (can. 1057§2). The characteristics of this pact are:

1. The conjugal pact is a bilateral juridical act (can. 1057§1). Despite the fact that, from the psychological point of view there are two acts of the will (consent), since the contracting parties are two, from the ontological and juridical point of view, consent is a unique act: «the act of contracting marriage is not the sum of two distinct acts, that of the man and the woman. There is one unique act, which demands two wills, but which is only one act. Therefore, there are no two juridical acts, but one; there are instead two subjects. The act

426 Ibid., p. 41.
is unique and its effect is unique: It is matrimony or unity formed by man and woman. In other words, it is a bilateral juridical act.\footnote{Cf. J. Hervada, El Derecho del pueblo de Dios. III. Hacia un sistema de Derecho matrimonial, Pamplona 1973, p. 319. This was quoted in Carreras – H. Franceschi – M. A. Ortiz, Diritto Canonico del Matrimonio e della Famiglia, cit., p. 42.}

2. The conjugal pact is a reciprocal act of love. This demands donation and acceptance from both spouses. «In the conjugal pact, the contracting parties exchange nothing. They unite their nature and their persons, integrating in a union by assuming freely the responsibility inherent to it and engage in fidelity towards the other, which then becomes a duty in justice. For this reason, the conjugal pact is a juridic act, a juridic exchange.\footnote{Cf. J. Hervada, El Derecho del Pueblo de Dios, cit., p. 322.}

3. For the validity of the act, it is necessary that the contracting parties be present at the same place, either by themselves or by means of a proxy.\footnote{Can. 1104 CIC: §1. «To contract marriage validly it is necessary that the contracting parties be present together, either personally or by proxy. §2 The spouses are to express their matrimonial consent in words; if, however, they cannot speak, then by equivalent signs».} In this context, the canonical tradition has singled out the irreplaceable value of consent which should be an expression of the internal will. Secondly it has also emphasized the necessity that during the nuptial ceremony there should be a moment so that the spouses could say to one another or communicate to one another through words or equivalent signs their internal wills. If this is absent the act will be considered to be ineffective or invalid.\footnote{Cf. Carreras – H. Franceschi – M. A. Ortiz, Diritto Canonico del Matrimonio e della Famiglia, cit., p. 43.}

The nuptial sign deduced by cann. 1057§1 and 1104 plays an important role in canonical matrimonial system: 1) it serves as the first measure of consensual capacity: can 1095§1 declares incapable of contracting marriage «those who lack sufficient use of reason», which means that, they are incapable

\footnote{P. J. Viladrich, Commentary to Canon 1101, in (ed. E. Caparros), in Exegetical Commentary of the Code of Canon Law, cit., p. 1332.}
of understanding the meaning of the nuptial sign. 2) Can. 1101 §1 establishes the following presumption: «The internal consent of the mind is presumed to conform to the words or the signs used in the celebration of a marriage». This indicates that, the sign alone without the internal will of the party is absolutely inefficacious. This is what often happens in the simulation of consent: one or both parties intend simply the appearance created by the sign, but not the reality. Such dichotomy between the sign and the meaning is a pathological issue which is difficult to prove: 433 «if, however, either or both of the parties should by a positive act of the will exclude marriage itself or any essential element of marriage or any essential property, such party contracts invalidly (can. 1101§2)».

Marriage represents the form and nature of personal donation for which man and woman were made. 434 From all that has been said above regarding the conjugal pact, we can therefore draw the conclusion that, the conjugal pact demands that marriage remains an indissoluble bond. Without indissolubility this bond will make no sense and will have no meaning. Thus, indissolubility is an intrinsic property of the conjugal bond. True love indicates the sincere gift of self and the gift of the person demands for its nature to be lasting and irrevocable. When love is developed in a manner which touches the other person deeply, then it is forever. It is here the reason for the indissolubility of the conjugal pact which is an agreement of reciprocal donation founded on the recognition of the value of the person. 435 In this regard, for this to be accomplished, it is necessary that it passes from the simple attraction (l’amor complacentiae of the medievals), to the true and proper love (amor benevolentiae). Finally this pact also transforms the person of the spouses.

433 Cf. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, Diritto Canonico del Matrimonio e della Famiglia, cit., p. 44.
3.5.8. Indissolubility of marriage in the light of the concept of “Bonum Coniugum”

The expression bonum coniugum is applied to the properties and the essential finality of marriage in a context which is purely juridical.\textsuperscript{436} The *bonum coniugum*\textsuperscript{437} is the object of matrimonial consent and acquires immediately an absolute central role in the internal canonical matrimonial system. Whoever tries to deny the juridical value of bonum coniugum, because it seems apparently less determined in its content and difficult to translate into concrete juridical services, but we cannot deny that this concept resolves directly the problem of the intrinsic indissolubility of the conjugal pact. It is not by chance that this expression is used in the conciliar text; it brings out clearly the close connection between the indissolubility of marriage and the good in which its foundation is found.\textsuperscript{438} The good of the spouses includes every element that is


naturally necessary to realize the reciprocal good of the parties.⁴³⁹ According to Burke,⁴⁴⁰

God could have created the human race in a unisex - sexless - pattern, and provided for its continuation otherwise than by sex. Genesis seems to make it clear that creation would have been less good if he had done so; "it is not good for man - or woman - to be alone". So sexuality appears in the Bible as part of a plan for personal fulfillment, a factor meant to contribute to the perfecting of the human being. The basic anthropological point is that the human person is not self-sufficient, but needs others, with a special need for an "other", a partner, a spouse.⁴⁴¹

Each human person, in the awareness of his or her contingency, wishes to be loved: to be in some way unique for someone.⁴⁴² Therefore, one can and should find a natural and vital connection between the two ideas – "good of the spouses" and marital "giving/accepting". In this light, marital consent means not just to "give" oneself, but also to accept one's partner – with his or her limitation. This is not easy, least of all for a lifetime. But if this is tackled


⁴⁴¹ Ibid., p. 342.

⁴⁴² Ibid., p. 343. Here he emphasizes the following: «Each one, if he or she does not find anyone to love him or her, is haunted by the temptation to feel worthless. Further, it is not enough to be loved; it is necessary to love. A person who is loved can be unhappy if he or she is unable to love. Everyone is loved (at least by God); not everyone learns to love. To learn to love is as great a human need as to know oneself loved; only so can a person be saved from self-pity or self-isolation, or from both».

«To learn to love, love demands coming out of self: through firm dedication - in good times and bad - to another, to others. What a person has to learn is not passing love, but committed love. We all stand in need of a commitment to love. Such is the priesthood, or a life dedicated directly to God. And such is marriage, the dedication to which God calls the majority. To bind people to the process of learning to love was God's original design for marriage, confirmed by Our Lord (Mt 19, 8ss). The married commitment is by nature something demanding. This is brought out by the words with which the spouses express their mutual acceptance of one another, "for better or for worse, for richer or for poorer, in sickness and in health... all the days of my life». (Cf. Ordo celebrandi matrimonium, no. 25).
with the help of grace, it can be achieved. And such a mutual and demanding commitment powerfully matures the spouses — from which develops the *good* implied in the "*bonum coniugum*". This is where many others seem to pay insufficient attention to the precise wording of the canon in describing the scope of marital consent: "*sese mutuo tradunt et accipiant*": the spouses "give and accept each other". The *giving* of self proper to marriage is complemented by the *acceptance* of the self of the other. Each one gives as he or she is, defects and all; and has the conjugal right to be accepted also just as the commitment of each involves the conjugal duty to accept the other as he or she is, defects and all. The gift of a defective self has its noble marital complement and correspondence in the acceptance of a defective other.\(^{443}\)

The good of the spouses is identified here in three specific areas, namely in their interior life (emotional and psychological integration), in their spiritual life (growth in their personal relationship with God), and finally in their social life as well (extension of their personal integration to the society).\(^{444}\) This personal and interpersonal growth or perfection of the spouses, Pius XI feels, is the «primary cause and reason of marriage». He further states:

> This mutual interior formation of the spouses, this serious effort to perfect each other, can in all truth be said to be as the Roman Catechism teaches, the *primary cause and reason* for marriage, if marriage is to be considered not in the stricter sense as an institution for the procreation and education of offspring, but in a wider meaning of a communion of every aspect of life, a community, a society.\(^{445}\)

It is worth noting that, the theologically based prescriptions of the New Code on marriage no doubt reflect the spirit and doctrine of *Gaudium et Spes* concerning the juridical recognition of *bonum coniugum*. The Code Commission deliberately rejected the request that the hierarchy of the ends be restored in the new Code and moreover it also dismissed the objections against the introduction of *bonum coniugum* in can. 1055,§1 affirming that, its basis is found

\(^{443}\) Cf. C. Burke, *Amore Coniugale & Indissolubility*, in *Studi Cattolici*, cit., p. 342.


\(^{445}\) *Casti Connubii*, pp. 548-549.
in the conciliar teaching on marriage as a covenant, a term which is very rich in interpersonal meaning. In this regard Cardinal Felici responded as follows: «The expression “for the good of the spouses” must remain. The ordering of the marriage to the good of the spouses is indeed an essential element of the matrimonial covenant and not the subjective end of those marrying». On the other hand the Legislator explicitly endorses the juridical relevance of the “good of the spouses” (bonum coniugum) by explicitly listing it in the first place noting therefore, that the partnership of the whole life is “by its very nature ordered to the good of the spouses and the procreation and education of the offspring.” Canonical writers have begun then to study the nature and implications of this bonum coniugum to jurisprudence. There is agreement among the authors regarding the juridical value of bonum coniugum.

Since the promulgation of the 1983 Code, canonical jurisprudence, has quietly and steadily stressed the fact that, the good of the spouses, is an end of marriage whose content is distinct from the three traditional goods. In its insistence that the interpersonal dimension is essential to a valid marriage, jurisprudence has left her door ajar for further precision of the nature of the good of the spouses. The good of the spouses should not be identified with the subject the happiness of the spouses, sense of fulfillment, or achievement of personal aspirations. Nor the lack of personal harmony among them due

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to their differences of character, nature, perspective on life, individual sensibility, grade of particular love, or other accidental aspects of married life to be equated with incapacity for or exclusion of the good of the spouses. The very good of the spouses is more than the «communion of heart, table and cohabitation». For the spouses to be able to realize their own good, they must enjoy the minimum psychosexual integration «without which [...] the very communion of conjugal life would become impossible». This psychosexual integration presupposes that the spouses possess at least the minimum affective maturity for marriage. The spouses must have the capacity for and the willingness to engage in genuine interpersonal communication, so as to establish a mutually satisfactory sexual relationship, and to be able to establish at least that minimum “tolerable” personal relationship.

In the same manner Ragni posits that:

As far as the essential obligations of marriage are concerned [...] they are expressed in the current Code of Canon law in this way: a) exclusive and perpetual consortium of life (can. 1056); b) the good of the spouses (can. 1055 §1); c) the consortium of life between a man and a woman who are capable by law (cann. 1055 and 1057); the generation and education of children, or the good of the children (cann. 1055 §1 and 1101 §2). It should be noted here that according to traditional doctrine the essential obligations of marriage are contained in the threefold goods of marriage (children, sacrament and fidelity). In the current Code, however, one also finds the good of the spouses

455 Ibid., pp. 746-749.
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(Can. 1055 §1) which includes several elements including the right to a communion of life.  

Ragni underlines the aspect that, the good of the spouses is also vital to the communion of life between the spouses. According to Turnaturi:

The capacity to assume the conjugal obligations does not concern only the three essential goods of marriage; namely, fidelity, children, and sacrament, but also the ability to establish a consortium of the whole of life directed at the good of the spouses, which is an essential element of marriage entailing the intra personal psychic capacity of establishing an interpersonal relationship with one’s partner that is at least tolerable.

For Bruno: «the good of the spouses embraces the acceptance and fulfillment of all the obligations that make real the intimate conjoining and integration of persons in mutual assistance in the spiritual, material and social order such that a true conjugal life can be established and peacefully and progressively carried out». Huber is of the opinion that:

Not a few authors call on the teaching of the Second Vatican Council when trying to establish what are the essential elements of the right to a community of life. The Council defined marriage as an intimate community, the giving of two persons one to the other. From this description of marriage it can be difficult to draw out the essential elements of the right to a communion of life. Yet, these elements seem to be handed down through this text: ‘Thus a man and a woman, who by their compact of conjugal love ‘are no longer two, but one flesh’ (Mt 19:ff), render mutual help and service to each other through an intimate union of their persons and of their actions. Through this union they experience the meaning of their oneness and attain to it with growing perfection day by day (GS, 48). There is no one who considers the notion of ‘mutual help’ to include only assistance in matters domestic and sexual. Rather, it is a question of that profound

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assistance which leads the spouses to realize a better and more blessed life, and a union in which each one completes the other.\textsuperscript{461}

Lopez establishes that, the key moment in establishing and carrying out the good of the spouses is the capacity of the spouses to engage in sexual relations in a way skillfully described and thoroughly taught by the Supreme Pontiff, John Paul II, with these words:

Consequently sexuality, by means of which man and woman give themselves to one another through the acts which are proper and exclusive to the spouses, is by no means something purely biological, but concerns the innermost being of the human person as such. It is realized in a truly human way only if it is an integral part of the love by which a man and a woman commit themselves totally to one another until death. […] If the person were to withhold something or reserve the possibility of deciding otherwise in the future, by this very fact he or she would not be giving totally (FC, 11).\textsuperscript{462}

Boccafola affirms:

After the Second Vatican Council, the teaching was solidified which required [of the spouses] not only the capacity to assume the three obligations [of marriage] but also the ability to enter and sustain a consortium of life directed at the good of the spouses. This obligation has been considered by some to be the fourth good and by others to be an essential element in line with can. 1101, n. 2.\textsuperscript{463}

We can quickly understand from the above explanations that, \textit{bonum coniugum} assumes a notable juridical valency, because it offers convincing motives so that, the rights of persons should be admitted to celebrate the indissoluble conjugal pact and so that it can be recognized by civil authority. Not recognizing this right would be an intollerable discrimination in the pluralist regime. It should be well noted that, the conjugal pact is not equivalent to a contract of a triangulate structure with a clause added to

\textsuperscript{461} Cf. Coram HUBER, (July 3, 1996), RRDec., 88:497, no. 5.


\textsuperscript{463} Cf. Coram BOCCAFOLA, (December 12, 1996), RRDec., 88:796-797, no. 5.
indissolubility. Instead, it is intrinsically indissoluble, so that the good wanted by the parts is not only useful but coincides with their personal good.\footnote{Cf. J. Carreras, Il «bonum coniugum» oggetto del consenso matrimoniale, in Ius Ecclesiae, 6 (1994), p. 153.}

\subsection*{3.5.9. Indissolubility of marriage in the light of the concept of “bonum familiae”}

The conjugal bond itself is a family relationship: on the one hand this implies that, the personal identity in it and by it constituted is a unique and single, irrepeatable and irreversible identity\footnote{Cf. P. J. Viladrich, Commentary on canon 1101, in (ed. E. Caparros), in Exegetical Commentary of the Code of Canon Law, cit., p. 1370.} which lasts while the members of this relationship stay in life; and on the other hand the personal identity of the son (the genealogy of the person) finds its proper foundation in the identity of the spouses that become parents only in the fact in which they are spouses.\footnote{Ibid., p. 1365; Cf. J. Carreras – H. Franceschi – M. A. Ortiz, Diritto Canonomico del Matrimonio e della Famiglia, cit., p. 83.}

The good of the family is the guide of the spouses and it is this good that structures their entire juridical relationship. The matrimonial consent has as the “natural” object conjugality, that is, the family relationship which unites man and woman in their respective identity of husband and wife. The proper dynamism of conjugality is that of constituting a community of persons that transcends the same spouses and which at the end of their normal development, they become not only parents but eventually also grand parents and great-grand parents.\footnote{Cf. J. Carreras – H. Franceschi – M. A. Ortiz, Diritto Canonomico del Matrimonio e della Famiglia, cit., p. 63.} In this light we can say that «the words of consent define the common good of the couple and the family».\footnote{LF, no. 10.}

This does not imply that consent and the personal good of the spouses are subordinated to that of the institution, almost as if marriage had an instrumental value regarding the family. Marriage and the family are

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\item \textsuperscript{465} Cf. P. J. Viladrich, Commentary on canon 1101, in (ed. E. Caparros), in Exegetical Commentary of the Code of Canon Law, cit., p. 1370.
\item \textsuperscript{466} Ibid., p. 1365; Cf. J. Carreras – H. Franceschi – M. A. Ortiz, Diritto Canonomico del Matrimonio e della Famiglia, cit., p. 83.
\item \textsuperscript{467} Cf. J. Carreras – H. Franceschi – M. A. Ortiz, Diritto Canonomico del Matrimonio e della Famiglia, cit., p. 63.
\item \textsuperscript{468} LF, no. 10.
\end{itemize}
“institutions”, but not in the sense that they exist outside of persons, since they are by definition “community of persons.” Therefore, there should not be any real conflict between the “good of the family” and the “good of the spouses” although sometimes it could become subjectively difficult to the spouses to determine in what consists *hic et nunc* both goods. The concept of the good of the family has the value of being reduced to unity preventing it also from separation, what has been traditionally called the “ends of marriage.” John Paul II, finally affirms that «The family that prays together stays together». The Holy Rosary, by ancient tradition, has shown itself particularly effective as a prayer which brings the family together.

### 3.5.10. Indissolubility and the common good

«The common good is the end or purpose common to a society’s individual members and their actions. A society only exists as long as that common purpose is respected, for society itself is ‘a sort of permanent

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469 Cf. J. Carreras – H. Franceschi – M. A. Ortiz, *Diritto Canonico del Matrimonio e della Famiglia*, cit., p. 63, note 105: They say that the following affirmation of John Paul II in his *Letter to the Family*, no. 11 will be very useful: «yes! Man is the common good: a common good of the family and of humanity, of individual groups and of different communities. But there are significant distinctions of degree and modality in this regard. Man is a common good, for example, of the Nation to which he belongs and of the State of which he is a citizen; but in a much more concrete, unique and unrepeatable way he is a common good of his family. He is such not only as an individual who is part of the multitude of humanity, but rather as “the individual”. God the Creator calls him into existence “for himself”; and in coming into the world he begins, in the family, his “great adventure”, the adventure of human life. “The man” has, in every instance, the right to fulfill himself on the basis of his human dignity. It is precisely the dignity which establishes a person’s place among others, and above all, in the family. The family is indeed more than any other human reality - the place where an individual can exist “for himself” through the sincere gift of self. This is why it remains a social institution which neither can nor should be replaced: it is the “sanctuary of life”».


common seeking, a permanent common striving after a good. The family is understood as referring to a social group formed by a married man and woman, having their own children. In this light the Christian tradition represents monogamy as more than one among many equally valid ways of organizing the human society. Christ spoke of restoring some that had been lost, an original unity between man and woman that existed in the beginning. This is becoming increasingly clear to Catholic theologians that the sacrament on which the ideal family is founded, that is, the sacrament of marriage, cannot be based on any questionable generalizations about human nature and psychology. Thus, the true foundation for Christian marriage is a revelation of the purpose and destiny of human beings. God is truly the creator of mankind and of families and he wills that we all have the common good not only of the family but also that of the society as well. The perfect community is a “whole composed of wholes”; that is, of persons, each of which transcends all spiritual reality. In our day to day normal life, justice is that cardinal virtue through which the others are directed towards the common good of “all and each.” Individualism may reduce this to a sum of goods to be enjoyed by

473 AA.VV., Marriage and the Common Good, (edit. by Kenneth D. White), Deerfield U.S.A. 1999, p. 19: «The society is an accidental rather than a “substantial” entity in the Thomistic terms, since it is held together or comes into being through the will – the will to do belong to that society, to seek the common good. However this will to belong depends on love».

474 Ibid., p. 17: «The archetypal union that is divine and human, of which the union of the sexes on earth is a symbol and manifestation, is itself rooted in the unity without confusion of self and the other in the divine Trinity. The three divine persons are one, and yet eternally distinct. It is their infinite self-giving love that almost requires the existence of the sexes to give it expression in the creation. This is the reason why Christianity always made such a thing about monogamy».

475 Cf. J. Maritain, The person and the common good, Milano 1966, pp. 57 and 61. Maritain’s notion of the common good presupposes the distinction between ‘individual’ and ‘person’: for nominalism, the distinction rapidly becomes meaningless.

476 Cf. John Paul II, Encyclical Letter Fides et Ratio, (September 14, 1998), in AAS 91 (1999), pp. 5-88. In this encyclical he invites us to recover our confidence in ‘the power of human reason’ and ‘our passion for ultimate truth’ (no. 56). With that recovery will come a recovery of the precious concept of the common good. In order to fulfill its mission, the Pope writes, «moral theology must turn to a philosophical ethics which looks to the truth of the good, to an ethics which is neither subjectivist nor utilitarian» (no. 98).
individuals, but Christian personalism claims that, the well-being of persons is achieved only in relationship, literally, then, in a common good or goal.\footnote{Cf. A.A.VV., \textit{Marriage and the Common Good}, cit., p. 19.}

Human society is therefore a union brought about by love, the love for the common good of persons. Since we are told by St. Paul that love "will never come to an end," our earthly society too is genuinely founded on love, it opens onto an eternal horizon, in a heavenly kingdom. In this sense, the key in order to reclaim the notion of the common good from shadows to which nominalism and individualism have consigned it lies close at hand. This is as close as the experience of family life and human love which, more than all other experiences is still capable of introducing us to the truth of our own nature as persons, and the reality of a community is more than the sum of its parts.\footnote{Ibid., p. 20.}

Man is capable of attaining the possession of infinite good through his intelligence and will: this is the transcendent common good but the society is the natural means for man to attain his final goal. There is also the immanent good, namely that of society – a society so organized and functioning that it can facilitate the attainment of the final goal or the last end of man. But how is this immanent good to be promoted? This common good depends on two things: on the individual effort of each one, and on the group effort. But all these efforts have to be \textit{coordinated} by an overall agency (government), without unduly curtailing individual and group liberty and creativity: harmonizing, coordinating and refreeing, not taking over what can be done on them.\footnote{Cf. J.M. DE TORRE, \textit{Informal talks on Family and Society}, Philippines 1990, p. 56.}

In regard to the common good, John XXIII\footnote{Cf. JOHN XXIII, Encycl. Letter \textit{Pacem in Terris}, no. 55, (April 11, 1963), in AAS 55 (1963), pp. 257-304.} affirms that, the ethnic characteristics of the various human groups are to be respected as constituent elements of the common good,\footnote{Cf. PIUS XII, Encyl. \textit{Summi Pontificatus}, in AAS 31 (1939), pp. 412-453.} but these values and characteristics by no
means exhaust the content of the common good. For the common good since it is intimately bound up with human nature cannot therefore exist fully and completely unless the human person is taken into consideration and the essential nature and realization of the common good be kept in mind.\footnote{John Paul II in the Letter to the Families affirms that: «The family has always been considered the first and basic expression of man’s social nature».\footnote{Cf. LF, no. 7.}} The family is a community of persons living together in that communion of which only persons are capable. This communion is a reality that originates not in a mere contract, but in a covenant, which is a sharing of life founded on self-gift.\footnote{Cf. T. R. Rourke, \textit{A conscience as Large as the World}, Lanham, MD 1997, p. 94: «According to Rourke, the Thomist thinker Yves R. Simon defines the common good as “not an addition of individual goods but a good that is enjoyed by all members and that is brought about by their common intention».\footnote{«I, N., take you, N., to be my wife/husband. I promise to be true to you in good times and in bad, in sickness and in health: I will love you and honor you all the days of my life» (\textit{Rituale Romanum, Ordo celebrandi Matrimonium}, no. 62). The translation is mine.\footnote{LF, no. 10.}}}

Thus, the common good by its very nature, both unites individual persons and ensures the true good of each. If the Church and (the State) receives the consent which the spouses express in the words cited already, she does so because that consent is “written in their hearts” (Roms 2:15). The words of consent in this
regard, express what is essential to the common good of the spouses, and they indicate what ought to be done for the common good and the future family.

3.6. The Exclusion of indissolubility

Regarding the question of the exclusion of indissolubility we can say that, all marriages are indissoluble and when all is inserted in Christ through baptism indissolubility is reinforced in an indestructible way. We shall not develop this topic but we shall only recall it simply. In this regard, we want to underline that, to want with a positive act a marriage lacking or devoid of indissolubility is a non matrimonial will. In the same way that the indissolubility of marriage does not have to be part of the object of consent in an implicit way, (it is not necessary “to want an indissoluble marriage”, it is enough to want a marriage that is indissoluble always), it will not be invalid a marriage of one who did not want indissolubility; it will be null instead if only he/she wanted positively a marriage without the property of indissolubility.

The perpetuity of marriage refers to its indissolubility. It has been called the bonum sacramenti because of that special perpetuity enjoyed by consummated marriage. Nevertheless, it is a property of all marriages, even non sacramental ones, since perpetuity belongs to the very essence of marriage.\(^\text{487}\) The stable

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reality between a man and a woman is the fruit of a happy union of two personalities that find in one another that which is needed to realize themselves. Fidelity to the word that has been given and acquired duties is a virtue which is intimately connected with justice in all its manifestations. Faithfulness is always important, but when the promise is changeable, as it happens with material things or due services, it is obvious that the engagement can cease. In this regard, fidelity in marriage is not only personal as a virtue of a person that is conscious of a determined bond with another, but it is also in the object of the same fidelity. It is then necessary to understand that one cannot be a husband *ad tempus*. Human love with its promises *forever* correspond to a profound structure of our being as human persons naturally sexual and being united in correspondent complementarity to this sexual dimension. This implies that, there doesn’t exist any substantial change in the conjugal dimension which justifies the act of putting an end to a union.\(^{488}\)

Perpetuity is an indivisible notion because it does not admit degrees. A thing cannot be moderately perpetual or somewhat indissoluble. If it is even one degree less than perpetual it is no longer perpetual.\(^{489}\) Can. 1101§2 which


\(^{489}\) L. G. WRENN, *The Invalid Marriage*, Washington D.C. 1998, p. 137. «If one intentionally hedges on perpetuity or indissolubility, the intention is automatically drawn into the covenant itself. If one decides that one will enter something less than an indissoluble, perpetual marriage, that decision or the intention stands in direct and diametric contradiction to the terms of the marriage covenant. One cannot simultaneously intend on the one hand to enter an indissoluble...”
Chapter III: The Juridical Doctrine regarding Indissolubility

states that— «If, however, either or both of the parties should by a positive act of the will exclude marriage itself or any essential element of marriage or any essential property, such party contracts invalidly». Indissolubility in ratified and consummated marriage is the specific force of power to unite which the bond possesses, in virtue by which except the death of one of the spouses, no other power, circumstance, intrinsic or extrinsic event can weaken or suppress it. The bond is in such a way that the persons are always one for the other that is, husband and wife. In this way it unites the spouses for the whole life in the intimate identity of mutual belonging. Although the law implies a distinction between ‘total’ and ‘partial’ simulation, jurisprudence has traditionally differentiated between these two types of simulation. Total simulation occurs when the content of marital consent itself is excluded through a ‘positive act of the will’ (canons 1055§1, 1057). Partial simulation occurs when some essential property or element of marriage is excluded through a ‘positive act of the will’.

The content of the term “positive act of the will” in the ambit of simulation is characterized by three elements: “the will”, “the act of the will” and the “positive act”. These elements are found in the same canon 1101§2. These three elements must be present at the same time in order to have an invalidating effect of an act. The “will” is not the intellect and its specific emanations, such as ideas, opinions, errors, etc. It should become an act of the will. We may say that this is the passage from inertia into movement: from the conceptual level to the practical concrete act with a deliberate will. Therefore, the central point of simulation is the actual mind of the person: whether by a positive act of the will one really excluded an essential aspect of marriage and on the other hand to enter a marriage that can be dissolved. One intention must necessarily cancel out the other. The two cannot exist side by side. A man cannot simultaneously give his wife a perpetual right to himself on the one hand and a terminable right on the other. The two are incompatible». Ibid., pp. 137-138.


marriage is the question to be answered. Hence, examining the intention of the alleged simulator, considering his or her judicial or extra-judicial confession, or from an analysis of the cause of exclusion, with special attention to the character of the person, or from the circumstances, one seeks to discern whether or not he or she really gave himself to the other in entering the conjugal alliance.\footnote{Coram Serrano, (December 6, 1998): RRDec., 80:724.} According to Viladrich:

\begin{quote}
The positive act of the will is an elementary requisite that is required for a true consent of which the simulating will is the film negative, in such a way that without the willfulness to simulate there is no simulation understood as the \textit{caput nullitatis}. To say in practical terms, the aspirations, desires, motives, concerns, ends, or interests which the person may enjoy or endure are not acts of the will and are not, therefore, positive acts of simulation. Those states of mind can explain the person's inducement to simulate but they are not, in and by themselves, acts of the will and are not able to prove that the person has simulated. The same can be said of those personal dispositions that may appear as willful but are not so, properly speaking, such as moods and emotions which the person experiences as feelings, delight in the the thought of pretending or simulating, yearnings, or other inducements which are not “willful”, in the strict sense, because the person “labors under” them as a passive subject, that is, to say, experiencing their inducement without however, being so actively implicated, by himself or herself, in that stimulus as to have converted it in his or her “own act”.\footnote{P. J. Viladrich, \textit{Commentary on Canon 1101} in (Caparros E., ed.), in \textit{Exegetical Commentary of the Code of Canon Law}, cit., p. 1339.}
\end{quote}

Recent jurisprudence has tried to recognize invalidating force to the exclusion of sacramentality carried out by the contracting parties with a positive act of the will and independently from the prevalence of such an exclusion on the matrimonial will. In this regard, a will that is contrary to
sacramentality can invalidate marriage either by *error determinans* or by the *positive exclusion* of the sacramental dignity.\(^{495}\)

Exclusion takes place when one of the contracting parties contracts marriage refusing the property of indissolubility.\(^{496}\) This happens if the subject at the moment of celebration, is wedding with the intention to make use of civil divorce or to obtain with preconcerted fraudulent means before the wedding, the declaration of nullity in the canonical office if in case his union turns out to be unhappy.\(^{497}\) It is relevant therefore, an exclusion of indissolubility formulated in a hypothetic way (“*si casus feral*”);\(^{498}\) and this hypothesis that is often connected with the exclusion of indissolubility and of the offspring.\(^{499}\) It should be noted that, indissolubility is presented as an element that is formal, so therefore, it is possible to make a hypothesis of the distinction between exclusion of right and exclusion of law, that is, between the exclusion of obligation and the exclusion of its fulfillment.\(^{500}\)

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The Second Vatican Council affirming the total fidelity of marriage between the spouses also stresses the unbreakable unity between them. This unbreakable unity is demanded by both the intimate union of the spouses as a mutual self gift of two persons, and also the good of the children. Thus the conciliar teaching reconfirms the intrinsic relationship between the three essential bona of marriage. In the *Catechism of the Catholic Church*, reference is made to the indissolubility of marriage within the context of unity and fidelity, thus, reaffirming the Conciliar teaching on the intrinsic relationship between all the elements of marriage.

Canon 1101, §1 (CCEO can. 824,§1), states that the internal consent of the mind is presumed to be in agreement with words and signs used in celebrating marriage. This prescription contains the presumption that, the external words or signs are an indication of assent or intention “of doing what the Church does.” Paragraph two of this same canon states that, a positive act of the will excluding an essential property, for example indissolubility, invalidates marriage. The central problem present in every case regarding simulation and particularly evident in the case of *bonum sacramenti*, is that of determining at what point the positive act of the will, or the personal state of the mind of the simulator required by can. 1101, §2 (CCEO can. 824, §2), prevails over the legal presumption contained in the same canon.


502 «…utpote mutu dualarum personarum donation, sicut et bonum liberorum […] atque indissolubilem eorum unitatem urgent» (GS, no. 48).


504 CCC, no. 1644.

505 Ibid.

506 Cf. L. DE LUCA, *The New Law on Marriage*, in *The New Canon Law*, (eds. MICHEL THERIAULT and JEAN THORN), Ottawa 1986, Vol. 2, p. 844. He then goes on to explain that: «In the past, Canonical jurisprudence has made the neat distinction between the sphere of the intellect and the sphere of the will (based on can. 1084 of the 1917 code), and required a positive act of the will against the substance of marriage before a marriage could be declared null. But the present
Canon 1099 states: provided it does not determine the will, error concerning the unity and indissolubility or the sacramental dignity of marriage does not vitiate matrimonial consent. This admission is based on the psychological fact that, because of the unity of the human spirit, a person normally wishes that which he/she truly believes. Therefore, even if the external words seem contrary to such an inner disposition of the mind, the content of his/her intent will be marriage as he conceives it to be. In such a situation, the concept of marriage in the mind of the spouse would be the content of his or her intent. Many cases which of truly conscientious adherence to a religious belief, philosophy of life, cultural values, the exclusion of trend in jurisprudence is to weigh first the state of the mind of the person at the time of contracting marriage rather than start with the legal presumption that the party had contracted a true marriage. This approach is particularly applicable to people who live in certain cultural, spiritual (religious), and social contexts which foster marital values contrary to those taught by the Church. By focusing on error pervicax rather than error simplex, jurisprudence has moved beyond the prescription of can. 1084 of the 1917 code with regard to indissolubility. In other words, error pervicax is now regarded as identical to a positive act of the will. *Ibid.*, pp. 845-846.


509 De MUELENAERE, concluding his study on marital fidelity among the Bantu of South Africa, affirms: “the social attitudes of male dominance and the polygamous mentality do not encourage an understanding of marriage as an exclusive relationship, and they thus make it difficult for a man to make a personal commitment to marital fidelity…should the person have become so accustomed to the prevailing male prerogatives and the polygamous mentality that they become almost second nature to him, he could possibly have become unable to assume the obligations of an exclusive relationship. His marriage would then be invalid due to this incapacity to assume the obligation of fidelity”. De MUELENAERE, *The “bonum fidei” in an African Context,”* pp. 230-231; See A. MENDONÇA, *Exclusion of the sacramentality of marriage*, in AA.VV., *Simulation of Marriage Consent, Doctrine*, cit., p. 109.
indissolubility that is, the will to break the bond, results always to the nullity of matrimony.

3.7. Résumé

In this chapter we have discussed and established that indissolubility is that property of marriage through which the bond enjoys a unitive force in such a way that, outside of the exceptions admitted by the Church, the spouses are called to live the exigencies of the proper communion of their identity as spouses and they cannot celebrate another wedding while the previous is still in force. This means that indissolubility is an essential property of marriage. Indissolubility of marriage deals with a lasting bond till the death of one of the spouses. Indissolubility is not a characteristic of the marriage of believers only. Though Christian marriage has been raised by Christ to the dignity of a sacrament, such an elevation does not render it substantially different. In other words, indissolubility is the natural dimension of the union and, more concretely, the nature of man created by God himself that provides the indispensible key for interpreting this essential property of marriage. As a natural aspect of marriage, indissolubility is therefore intrinsic to marriage.

Further, this indissolubility of marriage is found in divine law positively revealed in the project of the Creator (cf. Gen. 2:24), authoritatively confirmed by Christ (Mt. 19: 3-9) deepened by Paul (Eph. 5:31) in relation to the mystery of the Church and its union with Christ, and continuously taught by the Church. Furthermore, the indissolubility of marriage can also be derived from the understanding of the nature and being of the human person. A Man and a woman who choose marriage, choose the free acceptance and reciprocal donation of themselves; marriage does not admit another possibility which is not the freedom of gift. From that act is born love which is “due in justice.”

This relation is manifested in an evident way in the indissolubility of marriage in which is implicit not only a principle of justice but also the recognition of a relation that cannot be alienated or destroyed by any behavior. It is in the indissolubility of marriage that we discover many other virtues: fidelity which begins with self, that is, being faithful to the proper identity of the spouse. The freedom of this gift is not only born of solidarity, but above all, an act of auto domination, an act of justice founded in love. Every human
being possesses a nature which belongs to him in an alienable way. Every human being becomes conscious of his proper dignity and becomes also conscious of his proper values as man only through the relationship with others and precisely when another human being assumes towards him an attitude which corresponds to the value of a person. In the context of marriage, this dignity of the human person is brought to bear on the acts of marriage.
CHAPTER IV: THE RELATIONSHIP BETWEEN THE INDISSOLUBILITY AND SACRAMENTALITY OF MARRIAGE

The second clause that closes the text of can. 1056, is a relative clause whose antecedent is the set of essential properties of marriage which is the object of our study. Can. 1056 states regarding these properties that: «...in Christian marriage they acquire a distinct firmness by reason of the sacrament». This is because it deals with a certain intrinsic requirement of the same essence of the institution, of something which regards the same nature, and not of an extrinsic law put by human authority in order to defend marriage from egoism and human passions. The Catechism of the Catholic Church affirms that: «through the sacrament, the indissolubility of marriage receives a new and deeper meaning». Marriage as a divine institution has been raised by Christ to the dignity of a sacrament. In this way the creating act of God becomes the sacrament of the new covenant. Christian marriage is a permanent consecration and this concept can be understood in relation to the Eucharist.

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3 Cf. U. NAVARRETE, Indissolubilità del matrimonio, cit., p. 577.

4 CCC, no. 1647.

5 COMMITATO PER LA FAMIGLIA, Matrimonio Sacramento (September 1975), in Enchiridion Vaticanum 5/892-917 (bilingual text).
In comparism with the Eucharist, this logically brings us to the consideration of the indissolubility of the conjugal bond. This is equally emphasized by Benedict XVI, when he states that:

The Eucharist, as the sacrament of charity, has a particular relationship with the love of man and woman united in marriage. A deeper understanding of this relationship is needed at the present time. Pope John Paul II frequently spoke of the nuptial character of the Eucharist and its special relationship with the sacrament of Matrimony: "The Eucharist is the sacrament of our redemption. It is the sacrament of the Bridgroom and of the Bride." Moreover, "the entire Christian life bears the mark of the spousal love of Christ and the Church. Already Baptism, the entry into the People of God, is a nuptial mystery; it is so to speak the nuptial bath (Eph 5:26-27) which precedes the wedding feast, the Eucharist." The Eucharist inexhaustibly strengthens the indissoluble unity and love of every Christian marriage.\(^8\)

This same line of thought is further developed by Caffarra when he asserts that, the specific difference between conjugal love and any other form of love consist in the gift of oneself that the married person performs and receives. Every form of love involves the gift of self in one way or the other.


\(^7\) CCC, 1617.

\(^8\) BENEDICT XVI, Post-Synodal Apostolic Exhortation *Sacramentum Caritatis*, (February 22, 2007), no. 27, in AAS 95 (2007), pp. 433-475. He goes on to affirm that: «In the light of this intrinsic relationship between marriage, the family and the Eucharist, we can turn to several pastoral problems. The indissoluble, exclusive and faithful bond uniting Christ and the Church, which finds sacramental expression in the Eucharist, corresponds to the basic anthropological fact that man is meant to be definitively united to one woman and vice versa (cf. Gen 2:24, Mt 19:5). With this in mind, the Synod of Bishops addressed the question of pastoral practice regarding people who come to the Gospel from cultures in which polygamy is practiced. Those living in this situation who open themselves to Christian faith need to be helped to integrate their life-plan into the radical newness of Christ. During the catechumenate, Christ encounters them in their specific circumstances and calls them to embrace the full truth of love, making whatever sacrifices are necessary in order to arrive at perfect ecclesial communion. The Church accompanies them with a pastoral care that is gentle yet firm, (cf. Propositio 9.) above all by showing them the light shed by the Christian mysteries on nature and on human affections». *Ibid.*, no. 28.
But in the conjugal community, this gift is literally complete and definitive. The person donates his/her whole reality and in such a way the person belongs totally to the other reciprocally. The person of the other is the object of interpersonal communion. The act of knowledge through which man sees the other as worthy of the gift of himself precisely is seen in its unique and complete personal reality. The human conjugal love is worth in itself and for itself. It consists in the reciprocal gift of two persons. This conjugal love can cooperate with the creative love of God. It is only due to this intrinsic dignity that it possesses the intrinsic capacity to cooperate with the creative love of God. The connection between the love of God and the happiness of man is so tight that the first cannot be given without the second. The connection between conjugal love and its ability to cooperate with God the Creator is so tight that one cannot be given without the other.⁹

After having looked at marriage in the order of creation Caffarra goes now to examine marriage in the order of redemption. Inseparability is the same conjugal love that is raised to sacrament or in other words that, sacramentality is not added extrinsically to conjugal love but is intrinsically connected to it. This is in such a way that, between two baptized this cannot give a true conjugal love which is not in itself a sacrament. If it is true that the sacramental raising of conjugal love is due exclusively to a positive act of the will of Christ, it is therefore, equally true that the marriage of creation has in itself a sort of “potentia oboedientialis” for this elevation.¹⁰ Faith tells us that, the perfect sacrament of the love of the Father in our visible universe is the redemptive act of Christ: that act through which the Son gives himself to man. And therefore, a sacrament in the full sense is the Eucharist. Between the primordial sacrament – the conjugal love – and the eschatological sacrament – the redemptive act of Christ is always eucharistically present. If conjugal love seen in the order of creation is already so great, then the fact that it is raised to a sacrament gives it a dignity, whose greatness is intuitable with difficulty, given

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its immensity. The code’s synthetic vision of marriage deals with a personalistic vision. A vision which sees marriage as an act of the person, as communion between persons, instituted and permanent from and in that the person makes of himself.

The *consortium totius vitae* stems from the certainty that, the human person is able to establish a communion in and through the gift of self. The reveal act of the mystery of a person is a free act. A free act is a constitutive act of the person, but it is an act that supremely reveals his mystery. This free act reveals that the survival of the person is different: it is endowed with superior intensity. In this light, on the one hand canonical law considers marriage as *consortium totius vitae*, while on the other hand a metaphysics of the person shows the intimate essence in its independence, in its existence, in its incommunicability.

The primordial theological teaching affirms that, the alliance with God in Christ through the Spirit is the revelation of the sense of marriage. This implies that God operates in marriage *ex opere operato* with the Trinitarian life which expresses love. This theological view is an affirmation of what marriage is and consequently there doesn’t exist marriage other than this. The participation in the Trinitarian love is the only form of conjugal love between man and woman that makes them participants through baptism and the grace of Christ.

The content of sacramental marriage – the covenant of life and the union between Christ and the Church – cannot be simply ruined or broken. According to the laws of sacramental order, this covenant exists as long as there exist the signs which it is tied up to, that is, the two persons living this pact. The conviction of the indissolubility of marriage precedes in time and under certain aspects which are objective to the knowledge of its sacramentality. The relationship between sacramentality and the indissolubility

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11 *Ibid.*, p. 161. He affirms that: «the new code has reaffirmed this inseparability: it is the central point of marriage doctrine, since it is connected with the relationship Creation-Christ. The new code defines the conjugal state as a relation of love that is consistent in the total, exclusive and definitive gift which the spouse does for the other spouse».


of marriage is not focused evidently only on one direction, but the two points
of the teaching of the Church are founded and they enlighten one another
reciprocally. In its historic development, the theme on the indissolubility of
marriage surely has priority in respect to faith in the sacramentality of the same
marriage. The Church declared regarding the principle of the indissolubility of
marriage already many centuries before qualifying it in the XII century that,
marriage is one of the seven sacraments. Instead, the indissolubility of marriage
The theme on the sacramentality of marriage is not only based on the unique
passage of the Bible, that is, Eph. 5:32, but has a series of numerous points to
Between indissolubility and the sacramentality of marriage is established a circle: the indissolubility of marriage is the foundation for the
recognition of the sacramentality and vice versa. Original sacramentality
explains the indissolubility of every marriage.\footnote{It has been noted that V. STEININGER neglected this connection of this reciprocal
foundation; Cf. V. STEININGER, *Divorzio anche per chi accetta il Vangelo?*, Brescia 1969, p. 33.}

From the sacramentality of marriage is derived the fact that all marriages
are indissoluble, and that Christian marriages possess a particular degree of
indissolubility. Sacramentality does not truly exclude the natural foundations of
the indissolubility of marriage, but includes them in itself, and brings
indissolubility to its ultimate foundation, that is, to the definitive pact of Christ
with the Church. Sacramentality clarifies also why the indissolubility of
marriage signifies an interior engagement of the spouses to fidelity and why at
the same time it is correlated to the juridic order of the society and in particular
of the Church. Therefore, the sacramentality of marriage constitutes the
appropriate principle from which can be clarified the question of absolute
indissolubility of marriage.

This last chapter of our work shall examine the relationship which exists
between indissolubility and sacramentality. We shall therefore do this by
examining the following: the doctrinal and magisterial development of marriage, the great mystery and the sacramentality of the family, the primordial sacramentality of marriage, marriage contract-sacrament, the natural and Christian sacrament, Sacramentality in constituting itself and its permanence, the good of the sacrament and indissolubility, the inseparability between the created reality and the sacrament, indissolubility within the sacrament, indissolubility and sacramentality, the dissolution of the matrimonial bond.

4.1. Historical synthesis of the doctrinal and magisterial development on the sacramentality of matrimony

During the first centuries of the Church, there was no theological formulation regarding the concept of sacrament in general, neither was the word sacrament used in the limited sense with which it is used at the moment to designate the seven sacraments of the new law. Therefore, it will be out of place to expect from the Fathers of the Church and ecclesiastical writers of the first centuries an affirmation where marriage is one of the seven sacraments of the new law. The term sacrament was only used after the twelfth century. There are some testimonies that manifest how the Church did not consider matrimony of Christians as a secular event, but contrary, it was put under the vigilance of ecclesiastical heads. At the beginning of the second century, Saint Ignatius wrote to Polycarp: «It is right then for those to get married and for those who have to be married, that with the opinion of the bishop they make this union in a way that, it is according to the Lord Jesus and not according to passion».

Regarding the obligatoriness to ask and follow the opinion of the


bishops, the text does not seem quite clear. It was a practice that was offered to the good behavior of Christians, made also possible by the fact that, Christian communities during that period were not yet formed by an elevated number of faithful.\textsuperscript{20} The vigilance of the bishop was to guarantee that matrimony did not put in danger the faith and honesty of the customs, which corresponded to the reality of being Christian and which was not to be dictated by worldly desires. The norm given by St. Ignatius does not find opposition with other writers and therefore cannot be thought as too generic, nevertheless, it is to demonstrate the consideration not merely secular in which matrimony was held or regarded.\textsuperscript{21}

Another proof in which marriage was not held as absolutely secular is constituted from the nuptial benediction imparted by the priest to the newly wedded spouses during the wedding. From this it does not seem openly demonstrated the sacramentality of matrimony, but its sacred nature is quite transparent. The existence of a similar benediction was sufficiently witnessed for the last ten years of the fourth century. Before that century it was noted that, the testimonies were many and uncertain, since liturgist seemed to be particularly skeptical on the existence of the nuptial benediction for that period.\textsuperscript{22} In any case, the examination of such testimonies pushed the way forward for a positive response to the interrogative regarding the existence of the nuptial benediction before the fourth century.\textsuperscript{23}

In this light, the testimony of Tertullian seems very clear, in contrast to the difficulties of marriage of a Christian with a pagan. Here Tertullian exults the happiness of marriage between two Christians: «how can we ever succeed in describing the beatitudes of that marriage that is combined by the Church, confirmed by the Eucharistic offering and sealed by the prayer of benediction!


\textsuperscript{21} Cf. A. MIRALLES, \textit{Il matrimonio teologia e vita}, cit., p. 114.


The angels do note this and the Father do ratify it.\textsuperscript{24} From the five relative prepositions, the first three (\textit{ecclesia conciliat et confirmat ablatio et obsignat benedictio}) are referred to realized action here on earth; then the angels do announce it in heaven, where the father ratifies marriage.\textsuperscript{25} \textit{Ecclesia conciliat} indicates that the Christian community during that time had not yet grown: it favoured and promoted marriage between Christians, preventing mixed marriages with pagans. Oblation makes reference to the Eucharistic celebration and therefore the benediction is to be intended as given by the bishop or by priests.\textsuperscript{26}

The participation of a priest in a wedding is testified by canon 7 of the Council of Neocesarea (during the fourth century), which prohibited them from participating in wedding banquets for those who were getting married for the second time. They were not allowed to see nor approve of this kind of weddings.\textsuperscript{27} There is no mention of their benediction but their presence makes one to presume. In the last ten years of the fourth century the use of nuptial benediction is well attested. St John Chrysostom talks of «wedding mysteries»,
priests are called and they intervene with prayers and blessings in order to tighten the harmony of matrimony.28

None of the Fathers and ecclesiastical writers of the first centuries worked out a theology regarding the sacramentality of marriage involving the concept of sacrament well outlined as that from Peter Lombard onward which then became common amongst theologians. In any case, in the first centuries of the patristic period, marriage was specified by holiness, as a Christian reality, and well affirmed and for which it can be rightly said that it was very far from being considered a res profana.29 This is also affirmed by John Paul II, when he states that, the text of the Letter to the Ephesians (Eph. 5:21-33) speaks of the sacraments of the Church – and in particular of Baptism and the Eucharist – but only in an indirect and, in a certain sense by allusion, when it develops the analogy of marriage in reference to Christ and the Church. Even though the Letter to the Ephesians does not speak directly and immediately of marriage as one of the sacraments of the Church, the sacramentality of marriage is especially confirmed and closely examined in it. In the great sacrament of Christ and of the Church, Christian spouses are called upon to model their lives and their vocation on the sacramental foundation.30


29 Cf. A. Miralles, Il matrimonio teologia e vita, cit., p. 121.

30 Cf. John Paul II, General Audience, (October 27, 1982), in Man and Woman He Created Them, cit., p. 514. He therefore affirms that: «One sees, however, that neither in the first nor second case can we speak of a well-developed sacramental theology. One cannot speak about it even when treating of the sacrament of marriage as one of the sacraments of the Church. Expressing the spousal relationship of Christ to the Church, the Letter to the Ephesians lets it be understood that on the basis of this relationship the Church itself is the "great sacrament." It is the new sign of the covenant and of grace, which draws its roots from the depths of the sacrament of redemption, just as from the depths of the sacrament of creation marriage has emerged, a primordial sign of the covenant and of grace. The author of the Letter to the Ephesians proclaims that primordial sacrament is realized in a new way in the sacrament of Christ and of the Church. For this reason also, in the same classic text of the Letter to the Ephesians 5:21-33, the Apostle urges spouses to be "subject to one another out of reverence for Christ" (5:21) and model their conjugal life by basing it on the sacrament instituted at the beginning by the
It is baptism that confers a particular sanctity to the conjugal union of the baptized. The importance of baptism regarding marriage was properly underlined by St. Ambrose. In a context where he exalted the idea of avoiding mixed marriage with non Christians and heretics, he insisted on the harmony of the faith. This peculiar holiness of Christian marriage is underlined by St. Ambrose and they affirm that, it is sanctified by the priest’s prayer of benediction.

With St. Augustine, the holiness of marriage is evidenced through the use of the vocabulary sacramentum. Augustine uses expressions such as connubii sacramentum and coniuncionis inseparabilis sacramentum, matrimonii sacramentum sanctitas sacramenti (which indicates one of the fruits of the wedding). With this vocabulary Augustine intends to express the indissolubility of the bond which unites Christian spouses. The vocabulary sacrament referred to marriage underlines both the holiness and meaning of a salvific fact which has been raised. The word same sacramentum, derived from the root sac-, indicates a certain holiness, and sometimes it is remarked by St. Augustine when we talk of the sanctitas sacramenti in reference to matrimony. The sacrament is such because it conveys a sacred meaning. In the case of sacramentum nuptiarum the

Creator. This sacrament found its definitive greatness and holiness in the spousal covenant of grace between Christ and the Church.


32 «Nam cum ipsum coniugium velamine sacerdotali et benedictione sanctificari oporteat, quomodo potest coniugium dici, ubi non est fidei concordia?»: Epistula 62, 7, (a cura di M. ZELZER), CSEL 82/2, p. 124.


36 Cf. De bono coniugali, 18, 21; 24, 32, (a cura di I. ZYCHA), CSEL 41, pp. 214 and 227.


38 Cf. De bono coniugali, 18, 21, 24, 32, (a cura di I. ZYCHA), CSEL 41, pp. 214 and 217.
first res of the sacrament is constituted from the conjugal inseparability.\footnote{Cf. De nuptiis et concupiscentia, I, 10, 11, (a cura di C. F. URBA – I. ZYCHA), CSEL 42, p. 222.} The holiness of Christian marriage emerges in the thoughts of the Fathers of the Church in reference to marriage as a stable fact \((in\ facto\ esse)\), not in a more or less liturgical way of celebration. If in examining the first centuries of the Church, attention is based on the \textit{fieri} of matrimony, there is a risk of not understanding the sacramentality\footnote{Cf. E. SCHILDEECKX, Realtà terrena e mistero di salvezza, Roma 1986, pp. 214-315.}, also because only the nuptial blessing is an element common to all the matrimonial liturgies and the other elements vary so much between the West and the East, and neither liturgies presents uniformity of nuptial rites.\footnote{Cf. K. RITZER, Le mariage dans les Églises chrétiennes du Ier au XIe siècle cit., pp. 125-371; P. DACQUINO, Storia del matrimonio cristiano alla luce della Bibbia, cit., pp. 189-349; A. MIRALLES, Il matrimonio teologia e vita, cit., p. 126.}

Towards the middle of the twelfth century, theology arrived at preciseing the specific notion of sacrament of the new law. And for the first time marriage was included in the list of the seven sacraments. The most precise definition which also became common was precised by Peter Lombard, but some years before him the anonymous author of the \textit{Summa Sententiariarum} proposed a definition which was as much unequivocal.\footnote{«Sacramentum est visibilis forma invisibilis gratiae in eo collatae, quam scilicet confert ipsum sacramentum»: Summa Sententiariarum, tr. IV, cap. 1: PL 176, p. 117, amongst the works of Ugo di San Vittore.} Peter Lombard does not provide a list of the sacraments of the new law, but after the treatise on sacraments in general, he goes further to treat in particular the sacraments of baptism, confirmation, the Eucharist, penitence, anointing of the sick and marriage.\footnote{The title of the VII treatise is De sacramento coniugi (col. 154).} He mentioned little of the sacramentality of the spouses: it is called sacrament because it is the sign of something sacred, that is, of the inseparable connection between Christ and the Church.\footnote{«Bonum nuptiarum tripartitum est: fides, proles, sacramentum. […]; in sacramento [attenditur] ut coniugium non separetur, et dimissus aut dimissa nec causa prolist alteri coniugatur. Et attende quod tertium bonum ideo vocatur sacramentum, quia signum est sacræ
Looking at the sacramentality of marriage in the magisterium of the Church, this was mentioned in the first place when it exposed the doctrine on the seven sacraments. In this regard, three documents were cited: 1) the profession of faith prescribed by Clement IV (a. 1267) and by Gregory X (a. 1272) to the Eastern emperor Michael VIII Paleologo, in view of the union with the Roman Church which they accepted fully through his ambassadors during the Council of Lyon (a. 1274); 2) the Bull of Union of the Armenians of the Council of Florence (a. 1439) 3) the first of the canons of Trent on sacraments in general, published in the 7th session. We shall not enter into all the details regarding this for they have already been treated in chapter 1, points 2.3 and 2.4.

Thus, the Catechism of the Catholic Church summarizes the doctrine of the Catholic faith on the sacramentality of matrimony in the following words: «this grace of Christian marriage is the fruit of Christ’s cross, the source of all Christian life. [...] Christian marriage in its turn becomes an efficacious sign, the sacrament of the covenant of Christ and the Church. Since it signifies and communicates grace, marriage between baptized persons is a true sacrament of the new covenant».

The Council of Trent echoed arguments raised by the theories of Scot, Gaetano and Cano. At that time, in order to put an end to these controversies the Fathers together unanimously with their general decisions affirmed above all the truthfulness of Catholic doctrine against that of the Protestants. They

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45 Cf. Mansi 24, coll. 56-49. 70-74.

46 «Novae Legis septem sunt sacramenta: videlicet baptismus, confirmation, eucharistia, paenitentia, extrema unctio, ordo et matrimonium» Bolla Exsultate Deo, (November 22, 1439), DS, no. 1310.

47 «Si quis dixerit, sacramenta novae Legis non fuisses omnia a Iesu Christo Domino nostro instituta, aut esse plura vel pauciora, quam septem, vide licet baptismum, confirmationem, Eucharistiam, penitentiam, estrema unctionem, ordinem et matrimonium, aut etiam aliquod horum septem non esse vere e proprie sacramentum: anathema sit»: COUNCIL OF TRENT., Can. 1 de sacramentis in genere, DS, no. 1601.

48 CCC nos. 1615 and 1617.
did not favour any of the two sentences in the two documents in which the question surfaced: that is, regarding the first dogmatic canon and regarding the introduction of the obligation to observe ad validitatem the so-called canonical form with the finality of preventing clandestine marriages.

In the next successive centuries leading to the Council of Trent, the theological context changed considerably. The separation between contract and sacrament became an argument often adopted to defend the competence of civil power in matrimonial questions. The Church had to defend inseparability especially against regalism and secularization which was generated by enlightenment. In this light, regalism during the XVII-XVIII centuries tried to justify the legislative and judiciary interventions of the state concerning matrimony, making distinctions between contract as a natural and political reality, whose discipline regards civil competence, and sacrament as a religious reality, whose competence will be the Church. The sacramental reality was


50 Cf. LATERAN COUNCIL IV, 1.II. 3.d. The prohibition of clandestine marriages decreed by Lateran Council IV was revealed insufficient and the majority of the Tridentine Fathers did seem to see another solution other than invalidating such marriages (clandestine marriages). The question was posed whether such regards the competence of the Church, since it concerned the validity of a sacrament. Different Fathers, in order to justify that this was possible, based their reasons on the separability between contract and sacrament while others did not accept this. But prevailed the idea of introducing the obligatoriness of the canonical form declaring incapable of contracting marriage those who attempt to do so without observing the canonical form, and without any reference to the possibility of vary non sacramental marriages between Christians. Cf. E. TAJERO, El matrimonio, misterio y signo. Siglos XIV-XVI, Pamplona 1971, pp. 327-346; E. SALDON, El matrimonio misterio y signo, del siglo I a San Augustín, España 1971; C. CAFFARRA, Le mariage, réalité de la Création et le mariage, sacrement, in COMMISSION THEOLOGIQUE INTERNATIONAL, Problèmes doctrinaux du mariage Chrétien, Louvain-la-Neuve 1979, pp. 236-240; A. DUVAL, Le concile de Trente et la distinction entre le contrat et le sacrement du mariage, in Revue des Sciences Philosophiques et Théologiques, 65 (1981), pp. 286-294; J. B. SEQUEIRA, Tout mariage entre baptisés est-il nécessairement sacrement? Paris 1985, pp. 193-217; J. F. MUNNOZ GARCÍA, El matrimonio misterio y signo, Siglos XVII y XVIII, Pamplona 1982.

51 Cf. A. MIRALLES, Il matrimonio teologia e vita, cit., p. 136.

52 Regarding the regalist text in this context we could consult the following: Cf. J. F. MUNNOZ GARCÍA, El matrimonio, misterio y signo, Siglos XVII y XVIII, Pamplona 1982, pp. 397-424; J. B.
almost identified with the external solemnity of the marriage celebration. To these regalist ideas were added those of the period of enlightenment which contributed decisively to the progressive secularization of laws on marriage.53 We can say that these were some contrary teachings regarding the sacramentality of marriage and to this effect the magisterium of the Church had to address and clarify them.

The first magisterial response regarding this question is found in the letter of Pius VI (a. 1788) to the bishop of Motula, in Naples: «because the matrimonial contract is properly one of the seven sacraments of the evangelic law».54 The sacrament is not considered as something additional to the contract, but as the same contract that has been elevated to a sacrament.55 It was then Pius IX who gave a direct and precise response to the question. In his letter of 1855 to king Victor Emmanuel, he tackled this theme linking the doctrine of the inseparability to the dogma of the sacramentality of marriage: «It is a dogma of faith that marriage was raised by our Lord Jesus Christ to the dignity of sacrament, and it is the doctrine of the Catholic Church that the sacrament is not an accidental quality added to contract, but is of essence to the same marriage, so the conjugal union between Christians is not legitimate, if not in a sacramental marriage, and outside of this would be a pure concubinage».56 This same doctrine was proposed by Pius IX in the consistory of September 27 the same year.57

In the final analysis, the question found a precise response in Arcanum of Leo XIII. To reject the errors of regalists, Leo XIII reaffirmed the doctrine of

54 PIUS VI, Epistula Deessemus nobis, (September 16, 1788), DS, no. 2598.
55 Cf. A. MIRALLES, Il matrimonio teologia e vita, cit., p. 137.

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the inseparability between contract and the sacrament basing this on two truths: 1) the Lord raised to the dignity of sacrament the same marriage, that is, the contract\textsuperscript{58}; 2) Matrimony is a sacrament because it is a sacred sign which produces grace and symbolizes the spiritual wedding of Christ with the Church. This is symbolized by the conjugal bond which is nothing other than the same marriage.\textsuperscript{59} The conclusion was expressed in an undoubted way. The legitimate conjugal union between Christians is in itself and for itself sacrament, which is not like an adorned addition to contract or an extrinsic property that can separate itself from contract due to man’s will.\textsuperscript{60}

The reasons sustaining this truth are above the defense of the Catholic doctrine in front of the claims of regalism wanting to take away matrimony causes from the competence of the Church. They do not appear circumscribed within the limits of the errors to be rejected, but draw their immediate value from the dogma of the sacramentality of matrimony. Pius VI, Pius IX and Leo XIII taught the inseparability between the contract and sacrament as an immediate consequence of the fact that, matrimony is a sacrament. Leo XIII explains therefore, that these two aspects are not dissociable, because Christ raised the contract to the dignity of a sacrament. And above all because matrimony that is the bond that unites the spouses, is a permanent sign of the nuptial union between Christ and the Church.\textsuperscript{61}

\textsuperscript{58} «Non potest huiusmodi distinctio, seu verius distractio, probari; cum exploratum sit, in matrimonio christiano contractum a sacramento non esse dissociabilem; atque ideo non posse contractum verum et legitimum consistere, quin sit eo ipso sacramentum. Nam Christus Dominus dignitate sacramenti auxit matrimonium; matrimonium autem est ipse contractus, si modo sit factus iure». DS, no. 3145.

\textsuperscript{59} «Huc accedit, quod ob hanc causam matrimonium est sacramentum, quia est sacram signum et efficiens gratiam, et imaginem referens mysticarum nuptiarum Christi cum Ecclesia. Istarum autem forma et figura illo ipso exprimitur summae coniunctionis vinculo, quo vir et mulier inter se conligantur, quodque aliud nihil est, nisi ipsum matrimonium». DS, no. 3145.

\textsuperscript{60} «Itaque apparet, omne inter christianos iustum coniugium in se et per se esse sacramentum: nihilque magis abhorrire a veritate, quam esse sacramentum decus quoddam adiunctum, aut proprietatem allapsam extrinsecus, quae a contractu disiungi ac disparari hominum arbitratu queat». Ibid.

\textsuperscript{61} Cf. A. MIRALLES, Il matrimonio teologia e vita, cit., pp. 138-139.
This undoubted teaching of Leo XIII dissolved the debate and was then adapted in the 1917 Code of canon Law, and this was then echoed by Pius XI in the encyclical Casti Connubii. Other magisterial interventions regard the new discussions on the question that immediately followed at the Second Vatican Council. In the document in which Vatican II fully treats marriage, the chapter on marriage and family in the pastoral Constitution Gaudium et Spes, the theme on the inseparability between the contract and sacrament or that equivalent to the existence or not of true non sacramental marriages between the baptized is not tackled. But within the sixties a new pastoral challenge gave rise to a new discussion, very much heated right to the publication of the apostolic exhortation Familiaris Consortio.

Such a challenge was constituted by the growing number of baptized Catholics, who though were not declared were practically manifest non believers. Some of them for mere authenticity, refused to marry before the Church and unite themselves only civilly, but desired a certain recognition from the part of the ecclesial community of at least the human legitimacy of their union. Others united themselves only civilly without refusing the perspective of marriage before the Church, in future. To this behavior also corresponded the reaction of some pastors who in such cases insisted on delaying the sacramental celebration of marriage and the full recognition of human values of civil marriages, or the celebration in stages, in which the first stage is civil union, after a journey of preparation, comes the celebration of sacramental marriage.

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62 «Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum» (can. 1012 §2).

63 DS, no. 3713.

64 Information regarding this debate and its theological and pastoral implications could be found in the following: Cf. T. RINCON PEREZ, Implicaciones doctrinales del matrimonio civil de los católicos, in Ius Canonicum, 19-38 (1979), pp. 77-158; G. B. GUZZETTI, Il nesso contratto-sacramento nel matrimonio dei battezzati in un recente dibattito, in La Scuola Cattolica, 110 (1982), pp. 211-253; D. BAUDOT, L’inséparabilité entre le contrat et le sacrement du mariage. La discussion après le Concile Vatican II, Roma 1987.

65 A. MIRALLES, Il matrimonio teologia e vita, cit., pp. 140.
The debate reproposed in a new way the arguments which emerged in the previous controversies between the XIVth and XIXth centuries, but opened also new perspectives. In this case, a preliminary difficulty rose before those who proposed the recognition of civil union of the so-called Catholic non-believers as true marriages although non sacramental. Such a proposal collided with the teachings of Pius IX, Leo XIII and Pius XI on the inseparability between contract and sacrament. In this case it was quite important and necessary to reaffirm the verification or teaching that was made previously. The reasons adopted by the Pontiffs in support of the inseparability are far more above the defense of Catholic doctrine in front of the claims of regalism to take away matrimonial cases from the competence of the Church. They therefore immediately drew their force from the dogma of the sacramentality of matrimony. The doctrine was given in universal terms; it was not just a simple response to the errors of that time.\(^{66}\) To reinforce this teaching of the magisterium of the various Popes, García De Haro asserts the following:

One of the signs of the divine nature of the Church is the imperturbable courage with which the Magisterium defends the truth received from Christ, even when world powers contest it. Both doctrines opposed to her teachings and the establishment of legal ordinances that ignore her serve as an occasion for the Church to investigate more deeply the scared character of marriage (even as an institution of nature) and the unbreakable unity, willed by God for the baptized, between the conjugal pact and the sacrament.\(^{67}\)

This is clear that, there is no marriage between the baptized that is not in itself a sacrament:


\(^{67}\) R. García De Haro, *Marriage and the Family in the documents of the Magisterium*, cit., p. 87.
No Catholic is ignorant, nor can be ignorant, of the fact that marriage is truly and properly one of the seven sacraments of the law of the gospel established by Christ our Lord. And therefore, among the faithful there can be no marriage without being at one and the same time a sacrament. Every union among Christian men and women outside the sacrament is nothing else than a base and deadly concubinage, repeatedly condemned by the Church. The sacrament can never be separated from the conjugal covenant (coniugali foedere).  

Thus regarding the doctrine of Vatican II on the sacramentality of marriage, amongst the magisterial teachings we have: the dogmatic constitution Lumen Gentium, no. 11; the pastoral constitution Gaudium e Spes, no. 48; the apostolic exhortation Familiaris Consortio, no. 13 and 68.

Regarding the subsequent magisterial interventions concerning the pastoral problems of those Christians who were united only civilly and the so-called baptized non believers, these were fully treated in the synod of bishops of 1980 and the theological debate which went on for over a decade found vast echo. Before the Synod of bishops of 1980, this theme was treated in the document the propositiones of the International Theological Commission of 1977 which affirmed the traditional doctrine on the inseparability between marriage and sacrament.

This is in such a way that, «inter duo baptizatos non existit matrimonium naturale a sacramento separatum, sed tantum matrimonium naturale

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68 Pius IX, Allocution Acebissimum vobiscum, (September 27, 1852), cit.,


70 «Hoc ipsum matrimonium inter duos baptizatos celebratum evectum est ad significandum atque participandum amorem sponsalem Christi cum Ecclesia» (Commission Theologica Internationalis-International Theological Commission, Propositiones cit., no. 3.1, p. 220. «Inter duos baptizatos matrimonium ut institutum Creationis, scindi nequit matrimonio sacramento. Nam baptizatorum coniugi sacramentalitas non est ei accidentalis, ita ut adesse vel absesse possit, sed eius essentiae ita inhaeret ut ab eo separari non possit» (propositiones, no. 3.2, p. 222). This text has been taken from the article of M. A. Ortiz, L’Esclusione della dignità sacramentale: la retta intenzione e la disposizione per credere, in Ius Ecclesiae, 22 (2010), p. 92.
Every marriage between the baptized is a sacrament. Drawing a conclusion from Sacrosanctum concilium no. 59\textsuperscript{72} the international Theological Commission makes two affirmations which are not easily reconcilable. On the one hand, it affirms that, faith is presupposed as the “regulating cause” of the fruitful effect of the sacrament, but the validity of the sacrament does not depend on its fruitfulness. On the other hand, it states that the problem of marriage intention should not be confused with that of the faith of the contracting parties\textsuperscript{73}, «tamen non totaliter separari possunt»\textsuperscript{74}.

This proposal of the International Theological Commission was meant to look for a medium between the sacramental automatism and the importance of lack of faith in the case of Christian non-believers. Deeply this makes dependent the intention requested by faith:

Intentio vera ultimatum fide viva nascitur et nutritur. Ubi ergo nullum vestigium fidei qua tali et nullum desiderium gratiae et salutis inventur, dubium facti ortur, utrum, supradicta intentio generalis et vere sacramentalis reapse adsit, et matrimonium contractum validum sit an non. Fides personalis contrahentium per se, ut ostensum est, non constituit sacramentalitatem matrimonii, sed sine ulla fide personali validitas sacramenti infirmaretur.\textsuperscript{75}

In this regard Lehmann who was the spokesman of these series of propositiones concluded that: «at this point we need to follow that, only one trace of belief is necessary not only for fruitful reception but also for the valid

\textsuperscript{71} Propositiones, no. 3.5, p. 224; M. A. ORTIZ, L’Esclusione della dignità sacramentale: la retta intenzione e la disposizione per credere, cit., p. 92.

\textsuperscript{72} «Sacramenta ordinantur ad sanctificationem hominum, ad aedificationem Corporis Christi, ad cultum denique Deo reddendum; ut signa vero etiam ad instructionem pertinent. Fidem non solum supponunt, sed verbis et rebus etiam alunt, roborant, exprimunt; quare fidei sacramenta dicuntur».

\textsuperscript{73} Cf. M. A. ORTIZ, L’Esclusione della dignità sacramentale: la retta intenzione e la disposizione per credere, cit., p. 92.

\textsuperscript{74} Propositiones, no. 2.3, p. 218.

\textsuperscript{75} Ibid. Cf. M. A. ORTIZ, L’Esclusione della dignità sacramentale: la retta intenzione e la disposizione per credere, cit., p. 92.
reception of the sacrament». The attempt of the International Theological Commission to harmonize those opposed positions brought the Commission to conclude the radical sufficiency of baptism, but of a baptism *per quod homini “credentes” membra Corporis Christi fiunt*. The natural marriage intention is not enough, but a specific sacramental intention is requested, which is found only in a person who has sufficient faith in order for the marriage to be a sacrament.

In this light, the post synodal exhortation *Familiaris Consortio*, states that, «the Church has solemnly taught and continues to teach that the marriage of baptized persons is one of the seven sacraments of the New covenant». In the section dedicated to the pastoral care of the family, are considered cases of baptized non believers, and those Catholics who are united only in civil marriages.

In summary, when we affirm the sacramentality of marriage, the first thing we are thinking of is the consort between two baptized persons. It is an institution by the Creator which has been renewed by Christ and raised in the economy of salvation to the dignity of a sacrament, that is, as a sign and instrument of grace. It is concluded that, it is above all something that is “sacred”, since it is instituted by the Creator, worthy of respect on the part of everyone; but above all “holy” as a sacrament. At the moment of celebration, what happens is that, the two are inserted in the work of redemption against the forces of sin, for the future of the Church. Definitely, marriage is a source of grace.

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78 FC, no. 13; Cf. Council of Trent, Session XXIV, can. 1: I.D.Mansi, *SacroRum Conciliorum Nova et Amplissima Collecti*, 33, pp. 149-150.

79 FC, no. 68.

80 FC. No. 82.

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4.2. The great mystery and the sacramentality of the family

The expression “great mystery” belongs to the Letter of St. Paul to the Ephesians, which is commonly considered as the *carta magna* of the sacramentality of marriage. St Paul asserts in the following words that: «No one, in fact ever hates his own flesh, but he nourishes and cares for it, as Christ does with the Church, because we are members of his body» (Eph. 5:29-30). «This is why a man leaves his father and mother and becomes attached to his wife, and they become one flesh» (Gen. 2:24). «This mystery has great significance, but I am applying it to Christ and the Church» (Eph. 5:29-32).

Thus the analogy that permeates Eph. 5:22-33 has therefore, its ultimate basis in God’s saving plan. Thus, in the overall context of Ephesians and further in the wider context of the words of Sacred Scripture, which reveal God’s salvific plan “from the beginning”, one can see here that the term “*mysterion*” signifies the mystery first hidden in God’s mind and which was later revealed in man’s history. Given its importance, the mystery is in some sense the central theme of the whole of revelation, its central reality. It is what God as Creator and Father wishes above all to transmit to mankind in his word. John Paul II emphasizes that:


The point is not only to transmit the good news about salvation, but to begin at the same time the work of salvation, as the fruit of grace that sanctifies man for eternal life in union with God. Precisely on the path of this revelation and realization, St. Paul highlights the continuity which exists between the most ancient covenant which God established by constituting marriage already in the work of creation, and the definitive covenant in which Christ, having loved the Church and given himself for her, unites with her in a spousal way, that is, corresponding to the image of the spouses. The continuity of God’s salvific initiative constitutes the essential basis of the great analogy contained in Ephesians.\textsuperscript{84}

Thus, when one considers the passage of Ephesians analyzed here with these particular words: «this great mystery; I say this with reference to Christ and the Church», then one must observe that the author of the letter writes not only about the great mystery that is hidden in God, but also and above all about the mystery that is brought into being by the fact that Christ who in an act of redemptive love, has loved the Church and given himself for her, united in the same act in a spousal way with the Church, husband and wife who are reciprocally united in marriage instituted by the Creator. The words of Ephesians are a sufficient reason for what we read at the very beginning of \textit{Lumen Gentium}: «The Church is in Christ like a sacrament or a sign and instrument of intimate union with God and of the unity of the whole human race».\textsuperscript{85} This text of Vatican II does not say, “the Church is sacrament”, but, “it is like a sacrament”, thereby indicating that, when we speak about the sacramentality of the Church, we must speak analogically? analogously, not in a manner that is identical to what we mean when we speak about the seven sacraments administered by the Church on the basis of their institution by Christ. If there are reasons for speaking about the Church as a sacrament, these

\textsuperscript{84} \textit{Ibid}, p. 488. «Is it possible to understand that “great mystery” as a sacrament? In the text we quoted, does the author of Ephesians speak about the sacrament of marriage? If he does not speak about it directly and in the strict sense – here one must agree with the rather widespread opinion of the scholars and theologians – it seems nevertheless that in this biblical text he speaks about the bases of the sacramentality of the whole of Christian life and in particular about the bases of the sacramentality of marriage. In an indirect way, and yet at the same time in the most fundamental way possible, he speaks about the sacramentality of all Christian existence in the Church and especially the sacramentality of marriage».

\textsuperscript{85} \textit{LG}, no. 1.
reasons are for the most part indicated precisely in Ephesians.\footnote{This text of the letter to the Ephesians has often been interpreted in reference to the Christian sacrament of marriage. The sacramentality of the family has been reinforced in relation to this great mystery, as both family and Church as affirmed by John Paul II in the \textit{Letter to the family:}}

The Church cannot therefore be understood as the mystical body of Christ, as the sign of man’s covenant with God in Christ, or as the universal sacrament of salvation, unless we keep in mind the great mystery involved in the creation of man as male and female and the vocation of both the conjugal love, to fatherhood and to motherhood. The great mystery, which is the Church and humanity of Christ, does not exist apart from the great mystery expressed in the “one flesh” (cf. Gen. 2:24; Eph. 5:31-32), that is, in the reality of marriage and the family. The family itself is the great mystery of God. As the “domestic Church”, it is the bride of Christ.\footnote{This passage of John Paul II will therefore help us in our understanding of the sacramentality of marriage in relation to the great mystery.}

\textbf{4.2.1. The primordial sacramentality of marriage}\footnote{Before we begin this part the first thing we need to ask ourselves is whether it is permitted to talk of the sacramentality of natural marriage? Our}

\begin{footnotes}
\item[88] LF, no. 19.
\end{footnotes}
response is in the affirmative\textsuperscript{90} but in another sense, it will be preferable to reserve the expression “sacrament” in order to refer it to matrimony celebrated between Christians. It is therefore absolutely necessary at this point to make explicit the two main concepts used in this context which are “mystery and sacrament.”\textsuperscript{91}

“Sacrament” is not synonymous with “mystery.” The mystery remains, in fact, “hidden” – concealed in God himself – in such a way that even after its proclamation (or revelation) it does not cease to be called “mystery”, and it is also preached as a mystery. The sacrament presupposes the revelation of the mystery and presupposes that man also accepts it by faith. Still, it is at the same time something more than the proclamation of the mystery and the acceptance of the same mystery by faith. The sacrament consists in “manifesting” that \textit{mystery in a sign} that serves not only to proclaim the mystery but also to \textit{accomplish it} in man. The sacrament is a visible and efficacious sign of grace. It is a means for accomplishing in man the mystery hidden from all eternity in God, about which Ephesians speaks immediately at the beginning (see Eph. 1:9) – the mystery of God calling man to holiness in Christ and the mystery of man’s predestination to become an adoptive son.\textsuperscript{92}

Thus, what unites Christian marriage with that lived by men according to the design of God established in their bodies is the “great mystery” of divine love in whom men participate. In both cases the spouses become “\textit{one flesh}” and through fidelity to this new identity (of spouses and parents) they participate truly in the mystery of Christ and the Church.\textsuperscript{93} What distinguishes

\textsuperscript{90} Ibid., p. 88, note 183: In the encyclical \textit{Arcanum} of LEO XIII we read: «Quodcirca Innocentius (X.4.19.8) et Honorius III (X.1.36.11) decessores Nostri, non iniuria nec temere affirmare potuerunt apud fideles et infideles existire Sacramentum coniugi» [AAS 12, (1879-80), p. 388ff].

\textsuperscript{91} Ibid., p. 89. The translation is mine.


\textsuperscript{93} Cf. J. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, \textit{Diritto Canonico del matrimonio e della Famiglia I e II}, cit., p. 89 note no. 185. They affirm that: «neither Christian marriage nor that which is “primordial” would be sacrament if they were not “ordained to Christ” nevertheless,
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the marriage of Christians from the union of non baptized is not very much what they are – the “great mystery” but the fact that Christian marriage adds a specific character of sacrament, that is to say, the notable and efficacious sign of grace. After the fall of our first parents, the sacramentality of marriage and the family was deeply ruined in such a way that, the holiness of marriage and the family presents more the aspect of “mystery” than “sacrament”, and thus, it remained gravely upset in its dimension of “sign”.  

The primordial sacrament is constituted, understood as a sign that efficaciously transmits in the visible world the invisible mystery which is hidden in God from all eternity. This is the mystery of truth and love, the mystery of divine life in which man really participates. It is original innocence that begins this participation. In this way one can say that marriage, as the

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95 Tob. 19:4, Cf. JOHN PAUL II, General Audience, (October 6, 1982), in Man and Woman He Created Them, cit., p. 503. He therefore expresses that: «this sign has in addition, its own efficaciousness, as I likewise said, ‘original innocence connected with the experience of the spousal meaning of the body,’ has the effect that ‘in his body as man and woman, man senses himself as a subject of holiness’ (Tob. 19:5). This holiness, which the Creator conferred on man from the beginning, belongs to the reality of the sacrament of creation. The words of Gen. 2:24 ‘the man will …unite his wife, and the two will become one flesh,’ spoken on the background of this original reality in the theological sense, constitute marriage as an integral part and in some sense the central part of the sacrament of creation.’ They constitute or perhaps, rather, they simply confirm the character of its origin. According to these words, marriage is a sacrament inasmuch as it is an integral part and central point – of the sacrament of creation. In this sense, it is the primordial sacrament». Ibid., p. 506.
primordial sacrament, was deprived of the supernatural efficaciousness it drew at the moment of its institution from the sacrament of creation in its totality.\endnote{96}

Thus, the sacramentality of the Church is constituted by all the sacraments, through which she fulfills her sanctifying mission. In the final analysis, the sacramentality of the Church remains in a particular relationship with marriage, the most ancient sacrament.\endnote{97} From the social point of view, laws and matrimonial practices of different cultures, both ancient non-Christian laws do not reflect the “great mystery”, and sometimes hides it or overshadows it. More undefended will be the essential properties of marriage – unity and indissolubility. And more easily overshadowed, the “great mystery”, could imply the story of the salvation, as the vocational call of the majority of men and woman.\endnote{98} From the personal point of view, the fact that this mystery is hidden that is, not proclaimed prevents many people from discovering and being conscious of the fact that, since the sacramentality of marriage and the family is rooted in the “sacramentality of the body”, every man and woman who love one another according to the original design of God and are faithful to the “beautiful love” that unites them fulfill in the world holiness. Acts truly conjugal sanctifies the spouses, in the measure in which they are the authentic expression of the gift of the person.\endnote{99} Marriage gives origin to a permanent bond. Indissolubility is a term which is referred to the impossibility of dissolving a marriage which is valid, sacramental and consummated.\endnote{100}

Christ appeals to the indissoluble character of marriage as the primordial sacrament and, by confirming this sacrament on the basis of the mystery of redemption, draws from it conclusions of an ethical nature:

\begin{quote}
\textit{...}
\end{quote}

\begin{thebibliography}{99}
\item \endnote{96} John Paul II, \textit{General Audience}, (October 13, 1982), in \textit{Man and Woman He Created Them}, cit., p. 507.
\item \endnote{97} Cf. John Paul II, \textit{General Audience}, (September 8, 1982), in \textit{Man and Woman He Created Them}, cit., p. 491.
\item \endnote{98} Cf. J. Carreras – H. Franceschi – M. A. Ortiz, \textit{Diritto Canonic del matrimonio e della Famiglia I e II}, cit., p. 90.
\item \endnote{99} Ibid.
\item \endnote{100} Cf. L. E. Mick, \textit{Matrimonio}, Padova 2007, p. 27.
\end{thebibliography}
«Whoever divorces his wife and marries another commits adultery against her; and if the woman divorces her husband and marries another, she commits adultery» (Mk. 10:11-12). One can then say that, in this way redemption is given to man as the grace of the New Covenant with God in Christ and at the same time it is assigned to him as *ethos*, as a form of morality which corresponds to the action of God in the mystery of redemption. Thus, if marriage as a sacrament is an efficacious sign of God’s salvific action from the beginning, then at the same time – in the light of the words of Christ meditated upon – this sacrament is also an *exhortation* addressed to man, *male and female*, that they might conscientiously share in the redemption of the body.101

Marriage as a sacrament springing from the mystery of redemption, is given to historical man as both grace and *ethos* which determines the character of marriage as one of the sacraments of the Church. As we will see later the indissolubility of marriage is reinforced by the sacrament. As a sacrament of the Church, it is also a word of the spirit exhorting man and woman to shape their whole life together by drawing strength from the mystery of the redemption of the body.102 On the basis of such a hope, one can master the concupiscence of the flesh as the source of the tendency toward an egotistical satisfaction, and in the sacramental covenant of the masculinity and femininity, "flesh" itself becomes the specific "substratum" of a lasting and indissoluble communion of persons (*communio personarum*) in a manner worthy of persons.103

103 Cf. JOHN PAUL II, *General Audience*, (December 1, 1982), in *Man and Woman He Created Them*, cit., p. 522. He goes further by explaining that: «As the primordial sacrament and at the same time as the sacrament born in the mystery of the redemption of the body from the spousal love of Christ and the Church, marriage comes from the Father. It is not from the world, but from the Father. Consequently, as a sacrament, marriage also constitutes the basis of hope for the person, for the man and the woman, for the parents and the children, for the human generations. On the one hand, 'the world passes away with its concupiscence,' and on the other hand, 'the one who does the will of God will remain in eternity' (1Jn 2:17). Man’s origin in the world is linked with marriage as a sacrament, and his coming to be is inscribed in
Finally, marriage in this sense, as a sacrament also bears within itself the germ of man’s eschatological future. This implies the perspective of the redemption of the body in that dimension of eschatological hope, to which Christ’s words about the resurrection correspond: «in the resurrection they take neither wife nor husband» (Mt 22:30); moreover, those who, «being sons of the resurrection […] are equal to the angels and … sons of God» (Lk 20:36), owe their origin in the invisible temporal world to the marriage and procreation of man and woman. Therefore, as a sacrament of the human beginning, as a sacrament of the temporality of historical man, marriage thus performs an irreplaceable service with regard to man’s extra-temporal future, with regard to the mystery of the redemptive body in the eschatological dimension of hope.

4.2.2. Canonical consequences of the primordial sacramentality of marriage

Looking at the canonical consequence of the primordial sacramentality of marriage one thing we must always have in mind is the fact that, neither the sacramentality of marriage nor the family is due to the action of men, to the ecclesial or social recognition, but they are in themselves manifestations of the “great mystery”. This is expressed in three important consequences of canon law:

104 Cf. JOHN PAUL II, General Audience, (December 1, 1982), in Man and Woman He Created Them, cit., p. 525.


106 Ibid.
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a) The Church extends her jurisdiction to the whole humanity without limit of space and time.

Due to the primordial sacrament every legitimate marriage belongs to the divine design of salvation. Every marriage is intrinsically called to become a Christian sacrament, as the consequence of the universal ordination of humanity to the Church. The Church has a visible dimension which is made through baptism. For this, the Church’s power of jurisdiction divided in the triple functions: legislative, administrative and judiciary supposes a “point of connection” between the person asking the juridical judgement and the Church. Thus, the jurisdiction of the Church on marriage and the family finds its foundation in the original sacramentality of these two natural institutions and in their concrete ordering to the Church.

107 According to J. Carreras, H. Franceschi and M. A. Ortiz, «legitimate marriage is often intended as the matrimonial union celebrated by non baptized persons, according to their proper civil law». See note 193.

108 Cf. J. Carreras – H. Franceschi – M. A. Ortiz, Diritto Canonico del matrimonio e della Famiglia I e II, cit., p. 91. They specify that: «when two unbaptized spouses are baptized, their bond become ipso facto sacrament of the New Alliance, without the necessity of repeating any rite or ceremony» See note 194.

109 Ibid., p. 92 and we could also consult J. Hervada, El derecho del pueblo de Dios, cit., pp. 264-273.

110 Ibid., note 196. They affirm that: «since they are also social, the Church can leave her regulation to the civil society. In this way, for example, the Church has respected for centuries (right to the Council of Trent) the social nuptial customs keeping them for Catholic faithful, without demanding their proper requisites of validity. Moreover, this norm is still in vigor today according to which ‘children who have been adopted in accordance with the civil law are considered the children of that person or those persons who have adopted them’ (can. 110 CIC). The remission to civil regulation is not, therefore, absolute and has to be considered implicit the second clause in which are excluded the contrary dispositions of divine law. Also canon 1692 §2 of CIC referring itself to the processes of conjugal separation manente vincolo establishes that, “where the ecclesiastical decision does not produce civil effects, or if it is foreseen that there will be a civil judgment not contrary to the divine law, the Bishop of the diocese in which the spouses are living can, in the light of their particular circumstances, give them permission to approach the civil courts”. Instead, article 55 of the general decree of November 5, 1990 of C.E.I. establish that “according to norm the cause of separation between spouses be treated before the civil judiciary authority, except in every case the right of the
In this regard, affirming the jurisdiction of the Church on marriages of those who have not been baptized is not an intolerable intrusion by the Church into social affairs. In order to affirm this jurisdiction, there is a need for a point of connection between the regulation that it is dealing with and the juridic object of judgement. It could be thought that, the Church extends more than due, her area of competence in judging marriages of non baptized, that are not “personae in Ecclesia” (can. 96). The Church, in fact, has sometimes to judge the matrimonial and family cases of non baptized persons in the Catholic Church. In these cases, there is a double foundation which we spoke already above: on the one hand, the original sacramentality of marriage; and on the other hand, the existence of a point of connection between these persons and canonical regulations.

b) The core of sacramentality is common to Christian matrimony and that which is natural.

The primordial sacramentality of marriage will help the canonist to be able to evaluate in the right way “the sacrament of matrimony” as affirmed by FC 68 that: «the sacrament of matrimony has the specific element that distinguishes it from all the other sacraments. It is the sacrament of something that is part of the very economy of creation. It is the very conjugal covenant instituted by the Creator in the beginnings». When a canonist is in front of faithful to have access to ecclesiastical jurisdiction...”. The relations between canonical regulations and those of the state could be varied, depending also from the compatibility of civil laws with natural law. The translation is ours.

111 In this case there exist two canonical institutions regarding the marriages of non baptized persons: the dissolution of marriage in favour of the faith (cann. 1143-1150) which we have already treated in chapter 3 of this thesis and the impediment of disparity of cult (can. 1086).


113 FC, no. 68. The same text states again that: «Therefore the decision of man and a 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 obedience to the will of God, an attitude which cannot exist without God’s grace. They have thus already begun what it is in a true and proper sense a journey towards salvation, a journey which the celebration of the sacrament and the immediate preparation for it can complement and bring to completion, given the uprightness of their intention».

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Christian marriage which is celebrated between two persons, the primordial sacramentality is present and acts even if the faith of the spouses is imperfect.114

c) The family is a sovereign society, both inside the national and international community and inside the Church-community.

John Paul II’s Letter to the family is entirely dedicated to studying the relationships between the family and the society. Thus, underlining that, the family is a “sovereign society.”115 It does not hesitate to affirm that, what family institution expects from the society is «first of all to be recognized in its identity and accepted in its social subjectivity».116 Presently today, the sovereignty of the family does not exhaust her effectiveness in the secular sphere, but is manifested also in the canonical dispositions.117 The

114 Cf. J. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, Diritto Canonico del matrimonio e della Famiglia I e II, cit., p. 93; JOHN PAUL II, Allocation to the Roman Rota, (January 30, 2003), no. 8. «The importance of the sacramentality of marriage, and the need of faith for knowing and living fully this dimension, could give rise to some misunderstandings either regarding the admission to the celebration of marriage or judgments about the validity of marriage. The church does not refuse to celebrate a marriage for the person who is well disposed, even if he is imperfectly prepared from the supernatural point of view, provided the person has the right intention to marry according to the natural reality of marriage. In fact, alongside natural marriage, one cannot describe another model of Christian marriage with specific supernatural requisites».

115 LF, no. 17: «As a community of love and life, the family is a firmly grounded social reality. It is also, in a new way entirely its own, a sovereign society, albeit conditioned in certain ways. This affirmation of the family’s sovereignty as an institution and the recognition of the various ways in which it is conditioned naturally leads to the subject of the family rights. In this regard, the Holy See published in 1983 the Charter of the Rights of the family; even today this document has lost none of its relevance». Cf. J. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, Diritto Canonico del matrimonio e della Famiglia I e II, cit., p. 93; P. J. VILADRICH, La famiglia «sovrana», in Ins Ecclesiae, 7 (1995), pp. 539-550.

116 Ibid.

consideration of such sovereignty is to make sure that, it takes root in the consciousness that, if the Church has jurisdiction on every family it is because «the family is first and most important for the Church». At such, jurisdiction here is intended not as an instrument of control and power, but as service. This consciousness should also have canonical consequences, in a similar way like the awareness of the rights of the faithful. Regarding the lay faithful, the chance of an intense flowering of canonical studies should be given to them.

4.2.3. Marriage, Sacrament of the New Covenant

Being called by God to enter in a covenant and to share the communion of love between Jesus Christ, men responding to the reception of faith, are inserted in this new reality of grace through the sacraments. «Go out to the
whole world, proclaim the gospel to all creation. Whoever believes and is baptized will be saved; whoever does not believe will be condemned» (Mk 16:15-16). In this light Benedict XVI underlines that:

The mystery of the Covenant expresses this relationship between God who calls man with his word, and man who responds, albeit making clear that it is not a matter of a meeting of two peers; what we call the Old and New Covenant is not a contract between two equal parties, but a pure gift of God. By this gift of his love God bridges every distance and truly makes us his “partners”, in order to bring about the nuptial mystery of the love between Christ and the Church. In this vision every man and woman appear as someone to whom the word speaks, challenges and calls to enter this dialogue of love through a free response. Each of us is thus enabled by God to bear and respond to his word.122

The beginning and the foundation of this covenant of salvation takes place in baptism, its perfecting in confirmation and its summit in the Eucharist. These in fact, as the renovation of covenant, «perfect the faithful in unity with

122 BENEDICT XVI, Post-Syndal Apostolic Exhortation Verbum Domini, (September 30, 2010), in www.vatican.va.
God and themselves»,
rendering them always, participants of the love of donation and communion of Christ with his Church. The Church in the light of the word of God and under the continuous guidance of the Holy Spirit, believes and teaches that marriage is one of the seven sacraments of the new covenant. «Just as of old God encountered his people on earth with a covenant of love and fidelity (cf. Hos. 2; Jer 3:6-13; Ezek. 16 and 23; Is 54), so our Saviour, the spouse of the Church (cf. Mt 9:15; Mk 2:19-20; Lk 5:34-35; Jn 3:29; 2 Cor. 11.2; Eph. 5:27; Apoc 19:7-8; 21:2 and 9) now encounters Christian spouses through the sacrament of marriage».

Marriage is therefore, in its celebration an expressive and sanctifying sign which draws its capacity of grace from the Paschal Mystery of the Lord and through him the human love of the spouses is raised, unity and indissolubility is perfected and their relationship is introduced in the way of purification and sanctification. The spouses participate in Christian love in an original and proper way, not as single persons, but together since they form a couple. In this way, the Christian couple is not only sustained for the natural existing complementarity between man and woman, neither is held uniquely on the will of communion of the spouses; but has its original source in that bond which indissolubly unites the Saviour to his Church and his last matrix in the mystery of the Trinitarian communion.

In such a way, the Christian newness signified and confirmed by matrimony-sacrament does not exclude, but assumes in fullness love according to all its values and demands. Thus, Christian spouses are being aided by the sacramental grace to live the following: to purify themselves, the typical

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123 Cf. COUNCIL OF VATICAN II, Constitution on the Sacred Liturgy Sacrosanctum Concilium, no. 48, (December 4, 1963), in AAS 56 (1964), pp. 97-138. Here after this will be cited as SC.
124 GS, no. 48.
125 Cf. COUNCIL OF TRENT, Session XXIV.
126 Cf. CONFERENZA EPISCOPALE ITALIANA, Evangelizzazione e sacramento del matrimonio, Milano 1975, p. 22.
127 Ibid., p. 23: «The spouses then participates together to Christian love with that reality which characterizes their daily existence with conjugal love.
dimensions of conjugal love, a love that is capable of establishing in harmonious synthesis the values of the spirit, of affectivity, of a unique love, which the spouses constitute in a profound and exclusive friendship and renders them one soul and one body. An indissoluble and faithful love that is binding forever in reciprocal personal promotion, of a fruitful love, which puts them at the service of life in order to enrich the human and Christian community.\textsuperscript{128}

The Church represents the people of the new covenant and in this light it is irrevocable «mysterion-sacramentum» in which and through which the God of alliance, «the God of Abraham, of Isaac and Jacob, the God of Moses, the God of Jesus Christ» accomplish irrevocably his work of salvation. It is in this essential datum that resides the foundation of the indefectible, of the holiness of the Church, of the infallibility which was given and the objective effectiveness of sacraments. These are all realities derived only from the power of God and not from human power, they are fruits of her irrevocable covenant and is conserved indestructibly in the Church beginning from those who are her members, from their holiness or from their sins. The sacrament of marriage is placed in this same ambit, as an event of the marriage covenant realized as the exclusive gift of God and which renders the spouses participants in the spousal covenant between Christ and the Church.\textsuperscript{129}

From all that has been said, it is glaring that the expression used by the Legislator in can. 1055 §1 CIC is not intended in the sense that marriage has passed from the category of human affair, profane, to that proper dignity of sacred and supernatural things. It is not the question of levels, since natural marriage is always the “great mystery” and belongs to the supernatural order. There is need for God’s grace in order to contract marriage and also the grace of being faithful always to the gift that the spouses make to each other.\textsuperscript{130} This

\textsuperscript{128} Cf. PAUL VI, Encyclical \textit{Humanae Vitae}, no. 9; CONFERENZA EPISCOPALE ITALIANA, \textit{Evangelizzazione e sacramento del matrimonio}, Milano 1975, p. 23.


\textsuperscript{130} Cf. J. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, \textit{Diritto Canonico del matrimonio e della Famiglia I e II}, cit., p. 95; FC, no. 68.
expression of the Code has great importance since it underlines the fact that, Christ wanted to number matrimony amongst these seven sacraments instituted by him, which springs from the sacramentality of the Church. «We can say that the sacramentality of the Church is constituted by all the sacraments by means which she performs her sanctifying mission».

From this expression of the Legislator three points are quite pertinent here which we shall now examine.

a) What Christ has “elevated” is the same matrimony-mystery, entrusting to the Church the specification of sign.

«What therefore God has joined man should not separate» (Mt. 19:6). The action of God cannot be produced without the free assistance of the newly wedded, as ministers of the sacrament since it is the conjugal consent that confers reciprocally the sacrament. The pact and the conjugal bond are therefore, what Christ has assumed. In any case, the determination of what

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131 Ibid; Giovanni Paolo II, Uomo e Donna, cit., p. 365.

132 Cf. J. Carreras – H. Franceschi – M. A. Ortiz, Diritto Canonomico del matrimonio e della Famiglia I e II, cit., p. 95 note 210. «On this point, there exist a certain difference between the Eastern non catholic tradition and that of Catholics especially the Latin Church. The Latin sacramental theology has always sustained that the ministers of matrimony are the same spouses; instead, ‘according to the doctrine of the Eastern non Catholics, the minister of the sacrament […] is a priest. The sacrament as the action Christ and the Church can be fulfilled only through the priest (priest or bishop) that performs the nuptial rite’ (J. Prader, La forma di celebrazione del matrimonio, in AA.VV., Il matrimonio nel Codice dei Canoni delle Chiese Orientali, Città del Vaticano 1994, p. 288). The catechism of the Catholic Church wanted in some way to take into consideration the Eastern tradition without saying, that the minister is a priest: ‘According to the Latin tradition, they are the spouses as, ministers of the grace of Christ, to confer to themselves mutually the sacrament of matrimony expressing before the Church their consent. In the traditions of the Eastern Churches, priests, bishops or presbyters, are testimonies of the reciprocal consent exchanged between the spouses but also their blessing is necessary for the validity of the sacrament’ (CCC, 1623 n. v.). Canon 828 §2 CCEO (equivalent to can. 1108 CIC) indicate that, ‘it is intended here as a sacred rite the intervention of the priest assisting and his blessing’. The blessing of the priest, for the faithful subject to CCEO, is therefore, a requisite for validity, integrated the ordinary form of celebration».

the pact consists in, the elements and the requisites for its juridical validity are entrusted to the Church. In this regard, the sacrament is nothing other than the same “social-ecclesial sign”, that is, the wedding and the bond that arises from the conjugal consent.\textsuperscript{134}

b) That Christ elevated marriage to the dignity of sacrament between the baptized implies that this new sign participates effectively in the property of the union of Christ and the Church and is the sign of the gift of Christ as spouse to Christian spouses.

«Christ wills and he communicates the indissolubility of marriage as a fruit, a sign and a requirement of the absolutely faithful love that God has for man and that the Lord Jesus has for the Church».\textsuperscript{135} In this regard, we can understand the profundity of the expression “\textit{bonum sacramenti}” used by St. Augustine as being referred to every marriage but in a very specific way to Christian marriage. Christ promised his grace to the Christian faithful in order that, they should be faithful to their vocation. Here this coincides with being faithful to their new identity of spouses and parents.\textsuperscript{136} In this light Viladrich asserts that:

As can. 226 points out, sacramental marriage is a specific way of sharing in the building up of the Church because, as sacrament, it has been incorporated into the economy of redemption. Its indissolubility is a sign of the unfailing spousal love of Christ and of the unchanging efficacy of the redemptive power of Christ – Spouse who, through every favorable or arduous incident of marriage life, acknowledges the Christian spouses as ‘his spouse’.\textsuperscript{137}


\textsuperscript{135} FC, no. 20.


\textsuperscript{137} P. J. VILADRICH, \textit{Commentary on can. 1101}, in (ed. E. CAPARROS), \textit{Exegetical Commentary of the Code of Canon Law}, cit., p. 1375; J. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, \textit{Diritto Canonico del matrimonio e della Famiglia I e II}, cit., p. 97. Regarding this FC number 20 affirms that: «To bear witness to the inestimable value of the indissolubility and fidelity of marriage is one of the

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Thus, the most important part of this engagement is the certainty with which the sacrament operates, since it presupposes the true will of the spouses. The marriage is in virtue of the baptism of the two spouses an *ex opere operato* sacrament of the new covenant. The following then are requested:

- **There must be a true matrimonial will:** «Therefore the decision of a man and a 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 in a fully conscious way, an attitude which cannot exist without God’s grace. They have thus already begun what is in a true and proper sense a journey towards salvation, a journey which the celebration of the sacrament and the immediate preparation for it can complement and bring to completion, given the uprightness of their intention».

- **That both must have been previously baptized.** *Familiaris Consortio* notes that: «Indeed, by means of baptism, man and woman are definitively placed within the new and eternal covenant, in the spousal covenant of Christ with the Church. And it is because of this indestructible insertion that the intimate community of conjugal life and love, founded by the Creator, is elevated and assumed into the most precious and most urgent tasks of Christian couples in our time. So, with all my brothers who participated in the Synod of Bishops, I praise and encourage those numerous couples who, though encountering no small difficulty, preserve and develop the value of indissolubility: thus, in a humble and courageous manner, they perform the role committed to them of being in the world a ‘sign’ – a small and precious sign, sometimes also subjected to temptation, but always renewed – of the unfailing fidelity with which God and Jesus Christ love each other and every human being. But it is also proper to recognize the value of the witness of those spouses who, even when abandoned by their partner, with the strength of faith and of Christian hope have not entered a new union: these spouses too give an authentic witness to fidelity, of which the world today has a great need. For this reason they must be encouraged and helped by the pastors and the faithful of the Church».

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139 FC, no. 68.
spousal charity of Christ, sustained and enriched by His redeeming power».\textsuperscript{140}

It does not request, instead:

- **Neither a special degree of faith in the engaged couples**: For “matrimonial will” there should be right will for which each of the engaged persons “gives himself/herself” and receives the other. «It implies really, a behavior of profound obedience to the will of God that cannot give itself without his grace».\textsuperscript{141}

- **Neither a new act of the will towards the sacramentality of marriage**: It is enough that the contracting partners, being baptized, have “the marriage will,” that is, they decide to constitute a conjugal relation that makes them spouses, so that, the bond constituted by them be necessarily «sign of the union between Christ and the Church».\textsuperscript{142} Thus, since the sign of the sacrament of marriage is the conjugal bond which unites man and woman, there is a radical connection between the object of consent and the sacramental sign. What the engaged persons want is to constitute conjugality, and being the indissoluble bond, (that is, as part of their personal co-identity), this becomes the sign of their mutual belonging and their co-identity with Christ-spouse.\textsuperscript{143}

c) For marriage to be an efficacious sign it is also necessary that the Church-Spouse preserves the gift that Christ-Spouse offers to Christian spouses.

For their “hardness of hearts”, the essential properties of marriage although being the extrinsic demand of the dignity of the married person – could not be understood exactly from God at the moment that the society was


\textsuperscript{141} FC, no. 68.


not able to understand their rationality. The “truth of the beginning” which Jesus refers in his dialogue with the Pharisees provokes in his disciples profound amazement\textsuperscript{144} which generates in the successive generations of Christians the necessity to understand the precept of their master. In this regard, during the first millennium, there were two moments of defense of juridic nature which were the prohibition of second weddings while the spouses are still living and with great precision from the XII\textsuperscript{th} century, the determination of the “bond” as a diriment impediment which could render the spouses unqualified to contract new weddings \textit{eo manente}.\textsuperscript{145}

It is evident that the principle of indissolubility received by the Church was of great importance in canonical matrimonial law, the force that helped canonist and theologians to be able to determine what truly is the pact and the conjugal bond, when does the bond begin and when is it absolutely indissoluble, what does indissolubility mean, what is the difference that exist between the cause of nullity (there is no marriage because the conjugal pact is null) and the causes of the dissolution of the conjugal bond (the marriage exist

\textsuperscript{144} Cf. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, \textit{Diritto Canonico del matrimonio e della Famiglia I e II}, cit., p. 100 note 228 in which they express that: «At the base of this amazement there is without doubt, the difficulty and novelty of what Jesus proposes – ‘if this is how it is between a man and his wife, it is better not to marry’ (Mt 19:10) but also the wonder in front of the meaning that is quickly attributed to the novelty (novità) of the precept of Jesus. The astonishment that man feels before “the truth of the beginning” is not different from the astonishment which John Paul II refers in his first encyclical \textit{Redemptor hominis}, no. 10: ‘In reality, the name for that deep amazement at man's worth and dignity is the Gospel, that is to say: the Good News. It is also called Christianity. This amazement determines the Church’s mission in the world and, perhaps even more so, “in the modern world”. This amazement, which is also a conviction and a certitude-at its deepest root is the certainty of faith, but in a hidden and mysterious way it vivifies every aspect of authentic humanism-is closely connected with Christ’. Concerning this we could also consult Cf. P. M. ALZATE, \textit{Fundamentación juridical de la indisolubilidad del matrimonio}, cit., pp. 23-33; A. SCOLA, \textit{Questioni di antropologia teologica}, Milano 1996, pp. 39-40.

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but could be dissolved in some cases).\footnote{146} In this regard, a concrete case is that of the divorced and remarried faithful and having urged the Christian community to be charitable towards these persons\footnote{147} FC asserts that: «However, the Church reaffirms her practice, which is based upon Sacred Scripture, of not admitting to the Eucharistic Communion divorced persons who have remarried. They are unable to be admitted thereto from the fact that their state and condition of life objectively contradicts that union of love between Christ and the Church which is signified and effected by the Eucharist».\footnote{148} If the Eucharist expresses the irrevocable nature of God's love in Christ for his Church, we can then understand why it implies, with regard to the sacrament of Matrimony, that indissolubility to which all true love necessarily aspires. This is affirmed by Benedict XVI when he stressed very strongly that:

There was good reason for the pastoral attention that the Synod gave to the painful situations experienced by some of the faithful who, having celebrated the sacrament of Matrimony, then divorced and remarried. This represents a complex and troubling pastoral problem, a real scourge for contemporary society, and one which increasingly affects the Catholic community as well. The Church's pastors, out of love for the truth, are obliged to discern different situations carefully, in order to be able to offer appropriate spiritual guidance to the

\footnote{146} Cf. J. CARRERAS – H. FRANCESCHI – M. A. ORTIZ, Diritto Canonico del matrimonio e della Famiglia I e II, cit., p. 101. In this context FC makes explicit that, it is the duty of everyone to defend indissolubility especially the spouses as we could see from nos. 80-85.

\footnote{147} FC, no. 84. John Paul II then states explicitly that: «Together with the Synod, I earnestly call upon pastors and the whole community of the faithful to help the divorced, and with solicitous care to make sure that they do not consider themselves as separated from the Church, for as baptized persons they can, and indeed must, share in her life. They should be encouraged to listen to the word of God, to attend the Sacrifice of the Mass, to persevere in prayer, to contribute to works of charity and to community efforts in favor of justice, to bring up their children in the Christian faith, to cultivate the spirit and practice of penance and thus implore, day by day, God’s grace. Let the Church pray for them, encourage them and show herself a merciful mother, and thus sustain them in faith and hope».

\footnote{148} Ibid.
faithful involved. The Synod of Bishops confirmed the Church’s practice, based on Sacred Scripture (cf. Mk 10:2–12), of not admitting the divorced and remarried to the sacraments, since their state and their condition of life objectively contradict the loving union of Christ and the Church signified and made present in the Eucharist. Yet the divorced and remarried continue to belong to the Church, which accompanies them with special concern and encourages them to live as fully as possible the Christian life through regular participation at Mass, albeit without receiving communion, listening to the word of God, Eucharistic adoration, prayer, participation in the life of the community… honest dialogue with a priest or spiritual director, dedication to the life of charity, works of penance, and commitment to the education of their children.

It is quite evident here that, if the Church was not faithful to this duty before his bridegroom, Christian marriage will lose in great measure its capacity to mean (to manifest, to implement and to reveal) the “great mystery”, the union, that is, of Christ and his Church. This consciousness is at the base of the pastoral decisions which the Church has taken in the last decades in order to avoid the growing secularization of marriage in the western world, as that, for example, of maintaining in vigor the canonical form of the celebration of Christian marriage.

The sacramentum magnum is indeed a new sacrament in Christ and in the Church: the sacrament of man and of the world, just as the creation of man, male and female, in the image of God was the original sacrament of man and of the world (Tob 19:5). Marriage is organically inscribed in this new sacrament of redemption, just as it was inscribed in the original sacrament of creation. Through the “great mystery” which we have discussed in Ephesians, also

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150 BENEDICT XVI, Post-Synodal Apostolic Exhortation, Sacramentum Caritatis, (February 22, 2007), cit., no. 29.

through the new covenant of Christ with the Church, marriage is therefore, inscribed anew in the sacrament of man, which in effect embraces the universe; it is inscribed in the sacrament of man and of the world. It is formed according to the spousal love of Christ and of the Church, until the measure of definitive fulfillment is reached in the kingdom of the Father. Marriage as a sacrament remains then a living and life-giving part of this salvific process.\textsuperscript{152}

From this understanding of marriage as a covenant within the new covenant, we may infer that covenant provides us with an inclusive and descriptive frame of reference for marriage. This may be summarized in a simple way. The sacrament of marriage is derived from the “great mystery”. Within the “great mystery”, the new covenant is established, a new relationship between God and his people. Therefore, marriage reflects that permanent covenant relationship in its own abiding structure as a personal covenant relationship between man and woman.\textsuperscript{153}

The covenant is not only to be intended simply as an effect of marriage, but as its supporting structure. With baptism man and woman are already inserted in the new and eternal covenant of Christ with the Church and structured interiorly by it. Thus, the spouses are placed in a specific relation of alliance which God carries out in them and with them; a relation which completes and determines the baptismal covenant, implementing the commitment of God towards the spouses and creating between them an indissoluble bond.

4.3. Marriage contract-sacrament

In the Old Testament marriage symbolizes the covenant between God and his people. In the New Testament it maintains its symbolic valence which now represents the mystical union between Christ and his Church and becomes in the perspective of redemption the instrument of salvation or rather sacrament. As such matrimony has the peculiarity of being, for its nature, “sacer

\textsuperscript{152} J\OHN P\AUL II, \textit{General Audience}, (December 15, 1982), in \textit{Man and Woman He Created Them}, cit., pp. 528-529.

\textsuperscript{153} P. J. E\LLIOTT, \textit{What God has Joined}, cit., p. 176.
et religiosus”, distinguishing itself in this way from every other contract.\(^{154}\) In this regard, under this view point, can. 1055 CIC 83 confirmed the principle that: «a valid marriage contract cannot exist between baptized persons without its being by that very fact a sacrament». Contract and sacrament are so united between them that, in the marriage of the baptized they form one thing. The sacramental outline is not an accidental, external or added quality to the matrimonial contract, but it is part of the same essence of the bond.\(^{155}\)

Marriage is not only a contract, but between the baptized, possesses a new dimension that cannot be understood if not by somebody who has faith.


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It is also a sacrament. This second aspect does not alter in any way the first aspect, which remains complete in its natural reality and its human values which assumed in the sacrament are not being impoverished, but they acquire a more rich and meaningful significance. Conferring to marriage the sacramental character, Christ incorporated it in the supernatural order of grace, making it the sign and expression of her nuptial mystical union with the Church and rendering the spouses participants (cf. Eph 5:32; LG, no. 11; GS, no. 48). Contract and sacrament form one unique reality, they are two aspects or dimensions, one natural and the other supernatural of the same reality, for which the Sacrament cannot be considered as something additional or accessory to contract and therefore separable from it. The identity between them is perfect, and the sacrament is carried out at the same moment that the spouses exchange the consent in the prescribed form, that is, “coram Ecclesia”, except that they, in contracting marriage, excludes the sacrament with a positive act of the will (positive voluntatis actu) in the sense of can. 1101, §2.

So, as a sacrament, marriage is a means of grace: every time that is put in act by subjects who are members of the Church, it is ex opere operato, that is, by its proper virtue, it produces in the engaged persons the effects of sacramental grace. This explains why for the existence of the sacrament of matrimony, there is need that there be a complete agreement between the true will and the manifested will. Properly from the sacramental nature of marriage the Church derives her legislative and jurisdictional power in

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157 Cf. L. CHIAPPETTA, Il Matrimonio nella nuova legislazione canonica e concordataria, cit., pp. 37-38, note 45: «The sacramental character of marriage was defined dogmatically in the Council of Verona, at. 1184 (DENZINGER-SCHÖNMETZER, no. 761); in the COUNCIL OF LION, at. 1274 (DS, no. 860); in the COUNCIL OF FLORENCE, at. 1439 (DS, nos. 1310 and 1327); COUNCIL OF TRENT, at. 1547 (DS, no. 1601); and at 1563 (DS, no. 18019. Regarding the teaching of Vatican II, we could see in particular the Pastoral Constitution, GS, no. 48 and Familiaris Consortio, no. 13.

158 Cf. E. VITALI – S. BERLINGO, Il matrimonio canonico, cit., p. 9. He explains that, «if there is a defect of consents, the contract will not be valid and so also the sacrament; therefore the conjugal relation will only be apparent (that is, a mere living together) since in reality it did not take place; for which, instead of being a means of salvation or means of avoiding sin, it becomes a nutritive sin». 
matrimonial matters relative to the baptized, except obviously the power of the state regarding the civil effects of the bond (cann. 1059, 1671, 1672).\(^{159}\)

To the sacramental nature of marriage is closely connected the indissolubility of the same and the indissolubility of the contents of the bond. This is not only in the sense that, the consent given by the engaged couples is irrevocable and this implies that, once marriage has been validly constituted, the partners can no longer revoke the consent or demand that the bond be dissolved. But they have not been given any liberty of choice regarding the nature, the quality and the same exercise of the rights and duties deriving from that which has been put in act.\(^{160}\)

At this juncture, it is quite important to underline the fact that, according to the norm of the cited can. 1055, the sacramental nature of marriage depends on the fact that, the engaged persons have received baptism, even if they do not engage themselves to an effective profession of faith. In order to have access to matrimony *coram Ecclesia*, in other words, it is sufficient formally that they have received baptism although they do not assist in an assiduous religious practice.\(^{161}\) Thus, this does not mean that the new code is disinterested in the spiritual formation of the engaged couples: instead, the care of this study is being emphasized in the norms in vigor in respect to the previous.\(^{162}\)

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Hervada states explicitly that: «the inseparability between contract and sacrament is an immediate conclusion drawn from the dogmatic declarations on the sacramentality of marriage. The Popes also in condemning the argument regarding separability taught that, such an argument is a falseness that is based on a dogmatic error». The inseparability between the *institutum naturale* that is, the contract, according to the most diffuse terminology and the sacrament, is a truth that is firmly rooted in the tradition and the constant teaching of the Church. He then quotes Esmein in the following words: «it was the ancient tradition and the constant doctrine of old canonists, that it was impossible in the marriage of Christians, to separate the contract from the sacrament. That the contract itself was elevated by the new law to the dignity of a sacrament, and absorbed by the sacrament, and the fact that we can no longer conserve one without the other». In this regard, it will be timely to distinguish between the explicit and nominal references to inseparability or to separability, and the implicit references to it, that is, the formulation of the dogma of sacramentality in which contract and sacrament are intended as inseparable.

The explicit condemnation of separability is recently pertinent. The argument of inseparability is the constant doctrine of the Church, implicitly contained in the ecclesiastical tradition right from the first centuries, in the formulations of the solemn and ordinary magisterium, and in the common and clear doctrine of the majority of authors. The focal point of this question stands in the fact that, the sacrament of matrimony is not something added to the matrimonial institute; the sacrament is the same marriage celebrated...
between baptized persons; *ipse contractus, ipsa institutio matrimonialis, ipsum coniugium*. This therefore, signifies that, it is the same marriage, being constituted as the sign of the union of Christ with the Church. This indicates that marriage has received the institution of Christ, a supernatural dimension of grace. This supernatural elevation is not something that is added to every marriage in force of the circumstances or facts that weigh heavily on single marriages (celebration before the priest, blessing, liturgical rites etc), but it is a fact that regards the same institution, that is, its institution on the part of God.\(^{166}\) Hervada expresses that two things are supposed in the expression *ipse contractus matrimonialis est vere et propriè unum ex septem Legis evangelicae Sacramentis*: a) That the sanctifying, elevating, action of Christ regarding the same institution of marriage (the institutional process, through the elevation of marriage to the rank of a sacrament), through which the matrimonial institute, remaining identical in its essence (grace which perfects nature, does not destroy it) passes to a new state; b) that every valid marriage between baptized persons is *eo ipso* sacrament and produces – if the contracting parties do not put obstacles – grace *ex opere operato*.\(^{167}\) What needs to be inseparable is nature and grace in the marriage of baptized persons. These two distinct dimensions: nature and grace are united inseparably in the *sacramentum coniugii*, in such a way that this is *ipse contractus* signified by Christ, because to the natural dimension is united inseparably the supernatural dimension. This is because in the marriage of baptized persons grace and nature are inseparable and they touch on the


\(^{167}\) *Ibid.* These two affirmations are both of Hervada. He goes further to ask the question why do we talk of inseparability and in this light affirms the following: «The term has the inconvenience of raising the idea of two things, indissolubly united and in this sense could seem less appropriate if it is not well understood, because all along we have been trying to indicate that marriage and sacrament are two realities that are united. Among baptized persons, marriage and sacrament are one unique and the same reality, they are the same thing. Thus, the term *real identity*, which expresses more exactly and dealing with one unique reality, has the inconvenience of not leaving out transparent the distinction between nature and grace. In this regard, it prefers the term inseparability». 

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unique reality which is marriage. Thus, it is not possible to affirm that contract and sacrament are two distinct and separable things.\textsuperscript{168}

At this point it will be necessary to look at a pontifical text which condemns separability. In his allocution \textit{Acerbissimum vobiscum} of September 27, 1852 Pius IX affirms succinctly that:

> We say nothing about that other decree in which, after completely despising the mystery, dignity, and sanctity of the sacrament of matrimony; after utterly ignoring and distorting its institution and nature; and after completely spurning the power of the Church over the same sacrament, it was proposed, according to the already condemned errors of heretics, and against the teaching of the Catholic Church, that marriage should be considered as a civil contract only, and that divorce, strikingly speaking, should be sanctioned in various cases and that all matrimonial cases should be deferred to lay tribunals and be judged by them; because no Catholic is ignorant or cannot know that matrimony is truly and properly one of the seven sacraments of the evangelical law, instituted by Christ the Lord, and that for that reason, there can be no marriage between the faithful without there being at one and the same time a sacrament, and that, therefore, any other union of the man and woman among Christians, except the sacramental union, even if contracted under the power of any civil law, is nothing else than a disgraceful and death-bearing concubinage very frequently condemned by the Church, and, hence, that the sacrament can never be separated from the conjugal agreement, and that it pertains absolutely to the power of the Church to discern those things which can pertain in any way to the same matrimony.\textsuperscript{169}
Again in the *Syllabus* of December 8, 1864, the following affirmations were condemned: «66. The sacrament of matrimony is nothing but an appendage to the contract and separable from it, and the sacrament itself consists merely in the nuptial blessing. 73- A true marriage can exist between Christians by virtue of a purely civil contract; and it is false to assert that the contract of marriage between Christians is always a sacrament; or, that there is no contract if the sacrament is excluded». And in the letter to the king of Sardegna of September 9, 1852, the same Pontiff wrote:

> It is the dogma of faith that matrimony was elevated to the dignity of a sacrament by Our Lord Jesus Christ and it is the doctrine of the Catholic Church that the sacrament is not an accidental quality added to the contract, but is of essence to the same marriage, so that the conjugal union between Christians is not legitimate, if not in a sacramental marriage, outside of which it will only be a pure concubinage.

Leon XIII in his encyclical *Arcanum divinae sapientiae* of February 10, 1880, gave an ample and precise response to the question. In order to reject some of these errors, Leo XIII affirmed after the explanation of the biblical foundation that, the Lord raised marriage to the dignity of a sacrament: that is, the contract which in a Christian marriage cannot be distinct from the sacrament and that a true and legitimate contract cannot exist without it being

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170 DS, no. 1766 and 1773 (2966 and 2973); J. Hervada, *Studi sull'essenza del matrimonio*, cit., p. 352


at the same time a sacrament.\textsuperscript{173} Marriage is a sacrament because it is a sacred sign that produces grace and renders the image of the mystical wedding of Christ with the Church, which are being represented by the conjugal bond, which is nothing other than the same marriage.\textsuperscript{174} The conclusion then expresses in a certain way, that is, every right union between Christians has to be in itself and for itself sacrament and there is nothing more contrary to the truth of this.\textsuperscript{175} Such a teaching of Leo XIII was received in the Code of 1917, where the words of the Pope constituted the foundation of can. 1012 §2 CIC 1917.\textsuperscript{176}

Later on, after the introduction of the 1917 Code, Pius XI, in his encyclical \textit{Casti Connubii}, explained the fact that, for the first Christians the same valid matrimonial consent between the baptized, cannot be given in marriage which is not in itself a sacrament.\textsuperscript{177} Therefore, when the faithful give

\textsuperscript{173} «Non potest huismodi distinctio, seu verius distinctio, probari; cum exploratum sit, in matrimonio cristicano contractum a sacramento non esse dissociabilem; atque ideo non posse contractum verum et legitimum consistere, quin sit eo ipso sacramentum. Nam Christus Dominus dignitate sacramenti auxit matrimonium; matrimonium autem est ipse contractus, si modo sit factus iure». DS, no. 3145.

\textsuperscript{174} «Huc accedit, quod ob hanc causam matrimonium est sacramentum, quia est sacrum signum et efficis gratiam, et imaginem referens mysticarum nuptiarum Christi cum Ecclesia. Istarum autem forma et figura illo ipso exprimitur summae coniunctionis vinculo, quo vir et mulier inter se conligantur, quod alud nihil est, nisi ipsum matrimonium». DS, no. 3146.

\textsuperscript{175} «Itaque appareat, omne inter christianos iustum coniugium in se et per se esse sacramentum: nihilque magis abhorrire a veritate, quam esse sacramentum decus quoddam adiunctum, aut propriatatem allapsam extrinsecus, quae a contractu disiungi ac dispari hominum arbitratu queat». DS, no. 3146.

\textsuperscript{176} \textit{Arcanum divinae sapientiae}: «[…] non posse contractum verum et legitimum consistere, quin sit eo ipso sacramentum». DS, no. 3146.


\textsuperscript{177} «Et quotiam Christus ipsum coniugalem inter fideles validum consensum signum gratiae constituit, ratio sacramentum cum christiano coniugio tam intime coniungitur, ut nullum inter
with a sincere heart such consent, they open for themselves the treasure of the sacramental grace.\textsuperscript{178} \textit{Familiaris Consortio}, on the section dedicated to the pastoral care of the family where it considers cases of baptized non believers (no. 68) and Catholics united only with civil marriage (no. 82), exposes the principles of pastoral action which fully correspond to the doctrine of the inseparability between the contract and the sacrament.\textsuperscript{179} Following the Catholic doctrine, for the baptized, the sacrament is identified with the manifestation of the matrimonial consent at the moment of the celebration of the marriage, that is, the sacrament of marriage is the same reality of the natural contract, assumed by Christ as the efficacious sign of grace. This affirmation involves the inseparability between the contract and sacrament in the sense that, the contract cannot exist without the sacrament. The contract and sacrament are absolutely inseparable.\textsuperscript{180} Thus, doctrine rejecting every real distinction between contract and sacrament practically negates that, the essence of the sacrament of marriage is to be inquired, in all or in part, in any rite different from the manifestation of consent. Consequently, the perfect identity between the sacrament and the contract presupposes the exchange of consent, as the efficacious sign of grace.

Therefore, it is the Catholic and divine dogma that marriage is one of the seven sacraments instituted by Christ as already mentioned before. Despite the contestations of\textsuperscript{181} many points of the traditional doctrine on marriage during these years, this dogmatic truth regarding the sacramental dignity of marriage has not been an object of open intraecclesial contradiction. The

\textsuperscript{178} «Hoc enim sacramentum, in iis, qui obicem, ut aiunt, non opponunt, non solum permanens vitae supernaturalis principium, gratiam scilicet sanctificatem, auget, sed etiam peculiaaria addit dona, bonos animi motus, gratiae germina, naturae vires augendo ac perficiendo […]». DS 3714.

\textsuperscript{179} Cf. A. Miralles, \textit{Il matrimonio teologia e vita}, cit., pp. 142-143.

\textsuperscript{180} Cf. P. Adnès, \textit{Il matrimonio}, cit., p. 146.

discourses have assumed this as the undisputed point of departure, which obviously appears essential in the optics of the Catholic faith.

4.4. The good of the sacrament and indissolubility

Besides the proper goodness that is due to marriage as a natural institution determined by the good of the offspring and of fidelity, there exists another third goodness of marriage which comes from the sacrament.\(^{182}\) This good brought from the good of the sacrament is not found at the same level with the other two goods, but is “ontologice a posteriori” and presupposes the natural goodness already constituted.\(^{183}\)

The content of the good of the sacrament which was almost exclusively identified with the indissolubility of marriage has in St. Thomas all the richness of the “\textit{res significata}” for which marriage is a sign. And therefore, does not only indicate indissolubility, but all that marriage acquires in order to be the sign of the union of Christ and the Church,\(^{184}\) that is, all that enters in its sacramental significance.\(^{185}\) In this light, the good of the sacrament designating commonly the indissolubility of the marriage bond as well as its unity, since this flows from marriage as the sign of that sacred union.\(^{186}\) Unity and indissolubility,
required in part from the same nature of marriage,\textsuperscript{187} belong to the content of the "\textit{res signifcata}”, and therefore, to the good of the sacrament. Thus, St. Thomas argues that: «Since, the union of husband and wife indicates the union of Christ and the Church it is convenient that the figure correspond to the meaning.\textsuperscript{188} The union in fact, of Christ and the Church indicates the union of one man and one woman united for ever. It is therefore necessary that marriage as a sacrament of the Church be that of one man and one woman indivisibly united. In this way, unity and indissolubility as institutional properties, obtain from the good of the sacrament their ultimate justification and absolute firmness.

«According to St. Augustine, to whom the theology of the three matrimonial \textit{bona} owes its origin, \textit{bonum sacramenti} essentially meant ‘inseparability and indissolubility’ of marriage. For him, even a natural marriage contract was sacred, that is, the \textit{bonum sacramenti} denoted the sacred character which every marriage enjoyed.\textsuperscript{189} Following the teaching of St. Augustine therefore, doctrine and jurisprudence has always expounded on \textit{bonum sacramenti} as “indissolubility of marriage.” The essence of \textit{bonum sacramenti} regards the indissolubility of the marriage bond. So many questions have been raised regarding this \textit{bonum} and the \textit{sacramentality} of marriage. For some authors, indissolubility and sacramentality are contained in \textit{bonum sacramenti} for Christians. On the other hand, others maintain that, \textit{bonum sacramenti} consists only of indissolubility and, therefore, they exclude from it the sacramentality of marriage.\textsuperscript{190} Canonical jurisprudence has then followed this position and has

\begin{footnotes}
\textsuperscript{187} «Matrimonium ex intentio naturae ordinatur ad educationem prolis non solum per aliquod tempus sed per totam vitam prolis. Unde de lege naturae est quod parentes filiiis thesaurizent, et filii parentum heredes sint; et ideo, cum proles sit commune bonum viri et uxoris, oportet eorum societatem perpetuo permanere indivisam secundum legis naturae dictamen: et sic inseparabilitas matrimonii est de lage naturae». S. THOMAS, IV Sent., d. 33, q. 2, a. 1 in c.

\textsuperscript{188} Cf. F. GIL HELLIN, \textit{Il matrimonio e la vita coniugale}, cit., p. 48.


\end{footnotes}
centered its investigation on indissolubility as being the essence of *bonum sacramenti*. In this way, Grocholewski insightfully points out that:

Sacramentality is a unique element between two Christians and, therefore, it should be a *bonum* of the Christian marriage in its own right. For Christians, the sacramentality of marriage is the means of sanctification. According to this view, therefore, the essence of *bonum sacramenti* is the ‘indissolubility of the bond’, which he calls ‘*bonum vinculi*’ or ‘*bonum indissolubilitatis*’ which is essentially distinct from sacramentality».

CIC 1983 reaffirms that, indissolubility is an essential property of marriage and whoever excludes this property either by placing a term on the marriage or by placing a resolutive clause, contracts invalidly even if he or she intends to terminate the marriage through divorce.

4.5. The natural and Christian sacrament

In chapter three and also above, we already mentioned of the good of the sacrament while treating the three goods or blessings of marriage. Here we shall only highlight or bring out those points regarding the natural and sacramental marriage which were not mentioned in that section of our work. Previously we have seen the good of the sacrament as being and specific to Christian marriage and nevertheless not at all foreign from the marriage of pagans. This is because the *bonum sacramenti* belongs to all marriages since all marriages (of baptized persons or less) are sacred realities. In this light St. Augustine offers us a synthesis: the good of the sacrament, which belongs to

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191 Z. GROCHOLEWSKI, *De exclusione indissolubilitatis ex consensu matrimoniali eiusque probatione: considerationes super recentiores sententias rotales*, cit., p. 41.

192 See can 1056 CIC; Can 776§3 CCEO.

193 See can. 1101, §2 CIC; can. 824, §2 CCEO.

194 Cf. A. MENDONÇA, *Exclusion of the essential properties of marriage*, in AA.VV., *Simulation of Marriage Consent. Doctrine*, cit., p. 109. «This principle was in *toto* the old CIC 17 (can. 1086,§2) and there is nothing new in the new code regarding this point. However, there is a significant change in the connection between the exclusion of *bonum sacramenti* and “error” of law». 

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every marriage, is in a singular way proper of Christian marriage. Augustine then affirms that: «I have also perceived a third good which regards the spouses, especially those who are part of the people of God, something that is like a sacrament».

In this context, the commentary of St. Augustine to the Gospel of St John, in the passage narrating the wedding at Cana, offers us a more complete explanation. Every marriage possesses the good of the sacrament and at the same time, this good is proper and specific of Christian marriage. Augustine mentions that there are two things which the Lord wants to manifest in the wedding at Cana: the first he wants to confirm that he is the same author of marriage; the second, is to reveal the mystery – sacrament – hidden in marriage, since already the bridegroom of that wedding represented his same person.

Naturally, according to creation, marriage as the union of man and woman, is related to God, as to its Creator, and therefore, a religious character. In Christian marriage the union of man and woman receives a new dimension. This implies its relationship to God, other than Creator, is also like the savior of men. Thus, the union of Christian marriage has a special relation to the

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196 «Adverti etiam tertium bonum quod esse in coniugi bus debet, maxime pertinentibus ad populum Dei, quod mihi visum est esse aliquod sacramentum». S. Augustine, *Contra Iulianum Pelagianum*, c. 12, n. 46, PL 44, p. 830.


mystery of Christ and the Church. This is what we can term the good of the sacrament. That is, the religious character of every marriage,\textsuperscript{200} which establishes a bond between the spouses and with God.\textsuperscript{201} Therefore, it is precisely for preeminence and perfection that this religious character has in Christian marriage that we want to affirm, the good of the sacrament is what specifies it. Consequently, the good of the sacrament demands the indissolubility of every marriage, though at different levels, whether it deals with natural marriage nor Christian marriage.\textsuperscript{202}

Returning to the comment of St. Augustine, Christ’s presence at the wedding at Cana, revealed the \textit{sacramentum} of marriage which is the symbol of Christ union with the Church.\textsuperscript{203} And at the same time, he illustrated and purified the same natural institution,\textsuperscript{204} confirming that he himself is the author of marriage. The religious natural character of every marriage is transformed in Christian marriage, into a property that is specifically Christian;\textsuperscript{205} the natural institution receives the mission of symbolizing the sacred union of Christ with the Church.\textsuperscript{206} Despite the fact that St. Augustine did not explicitly conceive

\begin{footnotesize}
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\item Cf. F. \textsc{Gil Hellín}, \textit{Il matrimonio e la vita coniugale}, cit., p. 32; B. A. \textsc{Pareira}, \textit{La doctrine du mariage selon Saint Augustin}, Beauchesne 1930, pp. 117 and 198.
\item «The marriage of the ancient people of Israel had a symbolism in relation to the incarnation of the Son of God and his mystical union with souls» B. A. \textsc{Pareira}, \textit{La doctrine du mariage selon Saint Augustin}, cit., p. 186.
\item Cf. F. \textsc{Gil Hellín}, \textit{Il matrimonio e la vita coniugale}, cit., p. 32.
\item Cf. \textit{De bono coniugali}, 21, p. 23. «Marriage is holy, he explains, because it is the “sacramentum”, the symbol of the union of Christ with his Church. And it was by assisting at the wedding feast of Cana, that the Saviour unveiled this symbolism: “Dominus invitat us venit…”, in John 9:2». P. \textsc{Pourrat}, \textit{Theology of the sacraments}, London 1914, p. 323; B. A. \textsc{Pereira}, \textit{La doctrine du mariage selon Saint Augustin}, cit., p. 199.
\item Cf. A. \textsc{Reuter}, \textit{Sancti Aurelii Augustini doctrina de bonis matrimonii}, cit., p. 239 «Lex indissolubilis connubii, sacramento nuptiarum primitus instituta, plenam recuperavit vim et efficacitatem ipsa lege Evangelii, qua id quod a legibus huius saeculi violatum et velut obtentum erat sacramentum nuptiarum, clarius apertum fideliter et sancte observatur».
\item Cf. B. A. \textsc{Pareira}, \textit{La doctrine du mariage selon Saint Augustin}, cit., p. 177.
\item \textit{Ibid.}, p. 206. «The union of Jesus Christ with the Church is a religious and supernatural fact, therefore, marriage is a symbol».
\end{enumerate}
\end{footnotesize}
this symbolism as the instrument of sanctifying grace, it is not for this that, it
could be concluded that such a symbolism is deprived of efficaciousness since
already he expanded his influence on the properties of unity and indissolubility.
Effectively, the religious character which is specifically Christian gives force to
the fundamental properties of natural marriage, unity and indissolubility, imposing consequently to the spouses certain duties which are required then
with more force for the only natural institution.\textsuperscript{207} Therefore, the unity and
indissolubility of marriage, properties already required in the same natural
institution,\textsuperscript{208} acquire according to him [Augustine] the force of the essential
properties of Christian marriage;\textsuperscript{209} in order to be the symbol of the union of
Christ and the Church.\textsuperscript{210}

Summarising the thought of St. Augustine we can say that, the analysis
of Augustine regarding the “bona” is the explanation of the formal aspects that
integrates the good of marriage. For him the good of marriage is in fact,
indicated with unitary \textit{confederation conjugal} formular,\textsuperscript{211} with the other regarding
the natural society of man and woman,\textsuperscript{212} and those others which manifest
explicitly its intrinsic finality: \textit{the union of man and woman for the generation, and
society of man and woman for generation}.\textsuperscript{213} This is also expressed with those
\begin{footnotesize}
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\item Cf. B. A. PAREIRA, \textit{La doctrine du mariage selon Saint Augustin}, cit., p. 199. He admits that: «The symbolism of marriage according to St. Augustine, is a religious character or the supernatural order which precises and reinforces the fundamental properties of natural marriage, and imposes consequently to the spouses an attitude which is equal to certain duties which could only be demanded from a conjugal contract».\textsuperscript{207}
\item Cf. \textit{Ibid.}, p. 233: «Unity and indissolubility belongs to marriage which is considered simply a natural contract».\textsuperscript{208}
\item Cf. \textit{Ibid.}, p. 232ff
\item Cf. P. POURRAT, \textit{Theology of the sacraments}, cit., p. 65. He affirms that: «St. Augustine calls the indissoluble bond “sacramentum”, because it is the figure, the symbol of the union of Jesus Christ with his Church. It is in order to secure that most holy symbolism that Christian marriage has for its essential characters unity and indissolubility \textit{(De bono coniugali, 32)}».\textsuperscript{210}
\item Cf. S. AUGUSTINE, \textit{De bono coniugali}, c. 3, n. 3, PL 40, p. 375; c. 7, n. 7, PL 40, p. 378.\textsuperscript{211}
\item Cf. S. AUGUSTINE, \textit{De bono coniugale}, c. 3, n. 3, PL 40, p. 375.\textsuperscript{212}
\item Cf. S. AUGUSTINE, \textit{De nupt. et concupiscentia}, c. 4, n. 5, PL 44, p. 416.\textsuperscript{213}
\end{enumerate}
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passages that, besides the intrinsic finality, indicate explicitly the properties of unity and indissolubility which are essential to conjugal union. The religious aspect in which consists this good, is found in the symbolism which marriage contains of the relation of man with God: the union of God with humanity, of Yahweh with Israel, or of Christ with the Church.

### 4.6. Sacramentality in constituting itself and its permanence

With consent and the first sexual copulation, which through the richness of human values are involved and can be qualified as being interpersonal, this conjugal relationship is carried out with difference which constitutes marriage as a state of life. In this state, the spouses relate reciprocally giving life to the unitary dimension of “we” which transforms them mutually in a “you” and concretize them in such a way respectively as husband and as wife. In this way is realized in a very rich way between them a relationship which involves their whole existence expressing and including sexual intimacy, that complex and articulated “conversatio coniugalis” which is marriage.

Such a matrimonial state is truly included in all its richness, in the light of the fundamental Pauline parallelism with the great mystery of Christ and the Church, extending from marriage “in fieri” to marriage “in facto esse”. According to Sheeben, Christian marriage is a real relation, essential, organically

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214 Cf. S. AUGUSTINE, De bono coniugali, c. 5, n. 5, PL 40, p. 376. «Solet enim quaeri, cum masculus et femina, nec ille maritus nec illa uxor alterius, sirime non filiorum procreando rum, sed propter incontinentiam solius concubitus causa copulantur, ea fide media, ut nec ille cum altera, nec illa cum altero id faciat utrum nuptiae sint vocandae. Et potest quidem fortasse non absurd hoc appellari connubium, si usque ad mortem alterius eorum id inter eos placuerit, et prolis generationem, quamvis non ea causaconiuncti sint, non tamen vitaverint».

215 F. GIL HELLÍN, Il matrimonio e la vita coniugale, cit., pp. 36-37.

216 Regarding such a qualification of sexual copula and more in a general way, concerning the richness of human values contained in them, we could Cf. P. A. BONNET, L’impedimento di impotenza, in AA.VV., Gli impedimenti al matrimonio canonico. Scritti in memoria di Ermanno Graziani, Città del Vaticano 1989, pp. 95-158.

intertwined with it and therefore, participates of its nature and supernatural character.\footnote{Cf. M. J. Scheeben, I misteri del cristianesimo, cit., p. 594.} In this prospective, Pius XI reinforcing with the authority of his magisterium an authoritative opinion\footnote{P. A. Bonnet, Essenza, proprietà essenziali, fini e sacramentalità (can. 1055-1056), in AA.VV., Diritto matrimoniale canonico, vol. I, cit., pp. 134-135 note 204. For example before and after the great piana encyclical, besides M. J. Scheeben, I misteri del cristianesimo, cit., pp. 548-604; D. Palmieri, Tractatus de matrimonio cristiano, Prati 1897, pp. 66-104; E. Boissard, Questions théologiques sur le mariage, Paris 1948, pp. 66-70; C. Colombo, Il matrimonio sacramento, cit., pp. 445-491; L. F. Gerke, Christian marriage: a permanent sacrament, Washington D.C. 1965; G. Baldanza, Il matrimonio come sacramento permanente, in AA.VV., Realtà e valori del sacramento del matrimonio. Convegno di aggiornamento, Roma, Facoltà di teologia dell’Università Pontificia Salesiana, 1-4 novembre 1975, Roma 1976, pp. 81-102; J. Martínez de Lahidalga Adurral, A propósito del matrimonio cristiano?, in Lumen vitae, 27 (1978), pp. 137-165; L. Ligier, Il matrimonio. Questioni teologiche e pastorali, Roma 1988, pp. 199-215; T. Rincón-Pérez, El matrimonio cristiano. Sacramento de la creación y de la redención. Claves de un debate teológico. Estudios canónicos, vol I, Pamplona 1997, pp. 459-468.} taught in his famous encyclical on Christian marriage that: «the spouses should assiduously recall that they were sanctified and fortified, in the duties and dignity of their state, by means of a special sacrament whose effective virtue does not only imprint a character but makes it all the same permanent. Looking at these words of consolation of Cardinal Bellarmine\footnote{Cf. R. Cardinalis Bellarmin, De controversiis christianae fidei ad versus huius temporis haereticos, tom. III, De sacramento matrimonii liber unicus, chap. 6, in Roberti Cardinalis Bellarmini Opera omnia, tom. III, Milano 1859, p. 790.} other authoritative theologians wrote the following: «the sacrament of marriage can be looked at in two ways: the first while it celebrates; the second while it lasts after it has been celebrated. Already it is a sacrament similar to the Eucharist for which it is a sacrament not only while it is being done, but also while it lasts, because as long as the spouses live their union remains always the sacrament of Christ and the Church».\footnote{See Casti Connubii, in AAS 22 (1930), p. 583.} These words lead us to believe that marriage persists in the “conjugal relationship” (the bond, res et sacramentum), incarnated by a togetherness of acts and gestures.
amongst which a place of great relevance is reserved undoubtedly to the interpersonal copulatory process.\textsuperscript{222}

Being sanctified by the sacraments of baptism and matrimony in its constitutive moment, these same manifestive acts and gestures of conjugal relation could be considered as the expressions and causes of grace which in marriage have a double value, leaving and above all perfecting: «the Lord is deigned to heal, to perfection and to raise this love with a special gift of grace and charity».\textsuperscript{223} From this comparison with the Eucharist it can be affirmed that, «the presence of Christ in the spouses is true, real and substantial. This is what is sufficient: if the spouses desire the presence, the substantial presence of Christ, they can find him in the Eucharistic Communion».\textsuperscript{224}

John Paul II citing the conciliar teachings\textsuperscript{225} added the following:

\begin{quote}
The sacrament of marriage gives to the educational role the dignity and vocation of being really and truly a “ministry” of the Church at the service of the building up of her members. So great and splendid is the educational ministry of Christian parents that Saint Thomas has no hesitation in comparing it with the ministry of priests: ‘some only propagate and guard spiritual life by a spiritual ministry: this is the role of the sacrament of Orders: others do this for both corporal and spiritual life, and this is brought about by the sacrament of marriage, by which a man and a woman join in order to beget offspring and bring them up to worship God.’\textsuperscript{226}

From the magisterial teachings, it is explained the centrality of the gift of the state of matrimonial life which the Second Vatican Council, repeating a formulation which goes back to the origins of the life of the Church\textsuperscript{227}, has
\end{quote}

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\textsuperscript{222} P. A. Bonnet, \textit{Essenza, proprietà essenziali, fini e sacramentalità} (cann. 1055-1056), in AA.VV., \textit{Diritto matrimoniale canonico}, vol. I., cit., p. 135.
\textsuperscript{223} GS, no. 49.
\textsuperscript{224} L. Ligier, \textit{Il matrimonio. Questioni teologiche e pastorali}, cit., p. 215. The translation is mine.
\textsuperscript{225} Cf. GS, no. 50.
\textsuperscript{226} FC, no. 38; St. Thomas Aquinas, \textit{Summa contra Gentiles}, IV, 58.
\end{flushright}
significantly been called the domestic Church. Such a Church, where a double ministry is being carried out, reciprocally perfectioned, sanctified and unitary, generative and educative of the offspring, finds its proper foundation in the sacrament of marriage. Thus, the sacrament of marriage does not finish or exhaust with the act of its celebration neither with its consummation, but is extended to the whole life of the spouses and is prolonged in the family founded with their marriage. In this regard, the entire existence of the consorts is edified on the sacrament received, which remains present and active in their persons, it becomes a new and unique reality, “one flesh”. The spouses are the ministers of this sacrament and of the respective graces not only in the act of the nuptial celebration but during the entire duration of their lifes.

4.7. The inseparability between the created reality and the sacrament

The sacramental conception of marriage is very rich and articulated. A very efficacious and enlightening synthesis of its very important fundamental teaching can be found in these words of John Paul II in *Familiaris Consortio* which it seems opportuned to recall:

> By virtue of the sacramentality of their marriage, spouses are bound to one another in the most profoundly indissoluble manner. Their belonging to each other is the real representation, by means of the sacramental sign, of the very relationship of Christ with the Church. [...] Like each of the seven sacraments, so also marriage is a real symbol of the event of salvation, but in its own way. “The spouses participate in it as spouses, together, as a couple, so that the first and immediate effect of marriage (*res et sacramentum*) is not supernatural grace itself, but the Christian conjugal bond [...] This represents the mystery of Christ’s incarnation and the mystery of his covenant.”

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228 Cf. LG, no. 11.


230 FC, no. 13.
Chapter IV: Relationship between Indissolubility and Sacramentality

With sacramentality is implemented an elevation from the level of creation to that of redemption. This can be understood if we consider that there exists a profound unity in the absolute diversity between the old man, not touched by the grace of God, and the new man, in which «efficiamini divinae consortes naturae» (cf. 2 Pet. 1:4). Affirming this unity between the natural and supernatural is to testify better, with distinction, the same dissimilarity.231

This discontinuity in continuity can be humanly understood better recalling the famous Thomistic expression232 according to which «gratia non tollat naturam, sed perficiat»,233 considering matrimonial sacramentality, not an element that is distinguishable in its added features from outside, but a created entity, which Christ did not want to modify in its visible material but to transform in its interior reality.234

That which with the sacrament is qualitatively and together interiorly transformed is therefore, precisely as the rest results from all that we have discussed and developed right up to this point – the same matrimonial reality born with creation and therefore preexistent to its sacramentalization. Sacramentality not being therefore an accidental or added “quid”, as such, individuable and therefore separable, cannot give itself between the baptized a valid marriage which is not at the same time sacramental.235


233 Summa Theologica, I, q. 1, a. 8, ad chap. 6, p. 791.


235 Cf. COMMISSIONE TEOLOGICA INTERNAZIONALE, De matrimonio christiano, II, These de doctrina matrimonii cristiani, 3, De relatione inter matrimonium creationis et matrimonium sacramentum, EV, 4, pp. 495-496; 385-387; D. BAUDOT, L’inséparabilité entre le contrat, cit., pp. 351-354.
4.8. Indissolubility within the sacrament

The history of the indissolubility of marriage which we have already examined in chapter one of this thesis shows us a principle: indissolubility is inseparable of the same marriage. Sacrament is in the broad sense. And from this principle we may derive another proposition that, a sacramental marriage must be indissoluble. We can say that St. Augustine’s understanding of sacramentality focused on this indissoluble quality of the bond of Christian marriage. This view persisted among the scholastics. St. Thomas provided prudential natural law arguments in favour of indissolubility as serving the goods of stable procreation and the education of the children and mutual fidelity. Likewise he sees the good of the sacrament in St. Augustine’s sense as the better argument for indissolubility “…indissolubility benefits marriage inasmuch as it is a sign of the perpetual union of Christ and his Church, and inasmuch as it is required as an obligation of nature itself for the good of the children”.

Thus, in accord with his concept of nature and grace, there is perfect harmony between the prudential and the sacramental requirement of indissolubility. «The sacramental theology sees indissolubility within the “great mystery” Jesus Christ the bridegroom united to his beloved spouse forever. This sublime archetype is derived, as we have seen, from the unity of the Holy


237 ST. THOMAS AQUINAS, opera Omnia, in IV. Sententiarum, 33. 2. Ra. 2., p. 600 (s. 67.1. ad.2): “…inseparabilitas competit matrimonio secundum quod est signum perpetuae coniunctionis Christie et ecclesiae, et secundum quod est in officium naturae ad bonum prolis ordinatum».
Trinity and realized in the hypostatic union, the inseparable unity of the divine nature and the human nature in Christ». Therefore, if Christian spouses recapitulate that divine espousal in the sacrament of marriage, the inherent good of the sacrament of indissolubility is the divinely imparted quality of the bond. Just as the first sin against the bond, adultery, is a sin against the sacramental good of fidelity, “\textit{fides}”, so the second sin against the bond of divorce – a sin against the sacramental good of indissolubility. Those who therefore divorce or have the intention of making divorce, are therefore, falsifying the signification of the sacrament, saying, as it were, that Christ can separate himself from this bridegroom. Just as the language of the body is falsified in adultery, a denial of Christ’s abiding fidelity to his Church, so the \textit{“one flesh”} of the bond is apparently sundered by human power in the act of divorce. Thus, no human power can dissolve a sacramental marriage which is ratified and consummated. «The Church cannot have any power over the reality of a conjugal union that has passed into the power of whose mystery she must announce and never hinder». In the west, there is a mainstream of consistent papal policy which favoured the indissolubility of marriage and this is quite evident from the 5\textsuperscript{th} -12\textsuperscript{th} centuries, when this good of the sacrament was under cultural and political threat. In this regard, much of this policy may be explained in terms of law which is at the same time based on fidelity to the teaching of Our Lord on marriage. But the policy was reinforced by the growing awareness of the sacramentality of marriage especially after the 12\textsuperscript{th} century during the period of Scholastic theologians. Thus, including our

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\textsuperscript{238} Cf. P. J. Elliott, \textit{What God has joined}, cit., p. 164. \\
\textsuperscript{239} Cf. P. J. Elliott, \textit{What God has joined}, cit., p.164. He then precise that: «This sin against the sacrament takes its most anti-sacramental form when the partner then proceeds to contract an invalid marriage, a further falsification of the \textit{“one flesh”}. If some religious rites are used for such a union, this may suggest that, Christ Bridegroom can find some new spouse, other than his beloved for whom he sacrificed himself». \\
\textsuperscript{241} Cf. E. Hamel, \textit{The indissolubility of completed marriage: Theological, Historical and Pastoral Reflections}, in I.T.C., cit., pp. 189-198. \\
\textsuperscript{242} Cf. P. J. Elliott, \textit{What God has joined}, cit., p.165. \\
\end{flushright}
reflections on the bond effected in the sacrament of marriage, it is important to understand indissolubility in the context of sacramentality.

4.9. Indissolubility and sacramentality

The firmly established doctrinal principle that "omne inter Christianos iustum coniugium in se et per se esse sacramentum"\(^{243}\) has been reflected in traditional rotal jurisprudence holding that if christian spouses exchange true marital consent, then their marriage is sacramental, independently of their faith or of their intention regarding sacramentality.\(^{244}\) As we read in a Sentence coram Stankiewicz: «It is undeniable that rotal jurisprudence has often stated that for a valid marriage, faith is not necessary, but consent alone».\(^{245}\)

In this light, «as long as the consent is given in the prescribed form, by that very fact (the other requirements being met), the sacrament is effected among baptized persons; because when they marry the cause of the sacrament between them depends not on their will but on the will of Christ».\(^{246}\) The sacramentality of Christian marriage becomes most evident if it is not separated from the mystery of the Church.\(^{247}\) It reveals the sign and instrument of the intimate union with God and the unity of the whole human race. The following could be noted concerning these words:

a) That Christian marriage is the same natural marriage, with its same essence and essential properties; b) that by Christian marriage is understood every marriage contracted by validly baptized members of the faithful; or every natural marriage when those who were not

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\(^{244}\) Cf. E. BOUCHET, Foi et Sacrements dans la Jursiprudence rotale, in Année Canonique, 24 (1980), p. 112 ; FC, no. 68.


\(^{247}\) Cf. COMMISSIONE TEOLOGICA INTERNAZIONALE, Doc. La sacramentalità du mariage chrétien, December 6, 1977, in Enchiridion Vaticanum 6/352-369 (Bilingual text).
baptized receive baptism; c) that the essential properties have a firmness, a stability, inherent in natural marriage: derived from natural marriage itself; d) that this firmness is operative for every natural marriage, that is in a marriage in which one of the parties has not validly received baptism; f) that every marriage between baptized persons is a sacrament, as Can. 1055 indicates; g) that this \textit{peculiaris firmitas} proceeds precisely from the fact that, when entered into by the baptized, marriage is constituted as a sacrament, as an original reality on the supernatural plane; and h) that there are no types of essential properties (one in natural marriage, and the other in marriage between the baptized), nor are there two firmness, distinct and added on (one in each type of marriage), but rather the properties themselves are strengthened in the firmness which they already have in themselves.\textsuperscript{248}

The sacrament of marriage for Christians guarantees grace, which is the participation to the same love of Christ for the Church.\textsuperscript{249} The grace of this sacrament provides specific assistance for the spouses to remain indissoluble.

Christian life and reflection find in this truth an inexhaustible fountain of light. In fact, the sacramentality of marriage is a fruitful way to investigate more deeply the mystery of the relationship between human nature and grace. In the fact that the marriage of old became in the NT the sign and instrument of the grace of Christ, one sees the evidence of the constitutive transcendence of all that belongs to the being of the human person and in particular to his natural relationality according to the distinction and complementarity of man and woman.

\textit{The human and the divine are interwoven in a wonderful way.}\textsuperscript{250}

According to Schillebeeckx, it is the spouses’ consent itself which is the center of a marriage’s permanence. This is so due to the fact that, the consent is irrevocable. It is their irrevocable promise to love one another. It must be irrevocable because it is essential for their marriage and makes visible the


\textsuperscript{249} Cf. F. GIL HELLÍN, \textit{Il matrimonio: struttura naturale e sacramento cristiano}, cit., p. 142. Here he assets that: «The grace of the sacrament reinforces for ever unity in conjugal donation to become the natural energy of the spouses for their mission as parents and formators». \textit{Ibid.}

\textsuperscript{250} JOHN PAUL II, \textit{Allocation to the Roman Rota}, (January 30, 2003), cit., no. 5.
unfailing love of Christ - in a word, for their marriage to be a sacrament. This irrevocable commitment to love one another is also the soul of their marital sexual expression. This is what makes this expression to be marital and it thus becomes in turn the expression of their lasting love relationship. It participates in the sacrament and it is at the same time a sacramental expression.\footnote{Cf. E. SCHILLEBEECKX, \textit{Marriage: Human Reality and Saving mystery}, New York 1965, pp. 309-391.} He asserts that, as an anthropological reality marriage is a man-woman relationship created and sustained by interpersonal, self-giving, caring love. The marriage indissolubility is a characteristic of this love.\footnote{Cf. E. SCHILLIBEECKX, \textit{Le mariage est un sacrement}, Louvain 1961, p. 52. «Thus indissolubility depends on the personal conviction of the two human beings who \textit{will} to construct their marriage as an unbreakable covenant; that covenant which existentially and from within itself excludes the very possibility of divorce, and this is precisely the reason that their interpersonal relationship has come to the point of union where existentially they can simply do nothing else than remain together in love».} In the same line, any marriage is ready to be a sacrament because any marriage is of its nature a sign, a manifestation. This sign is authentic when it really does contain and manifests the spouses’ love for one another. But at the same time, it can also be empty, inauthentic when it no longer contains and manifests their love.\footnote{Cf. K. RAHNER, \textit{Marriage as a Sacrament}, in \textit{Theological Investigations}, 10 (1973), pp. 202-203; Cf. T. MACKIN, \textit{The Marital Sacrament}, \textit{cit.}, p. 615.} Nevertheless, this mutual donation is the mystery hidden in the design of God. The capacity to love, to give oneself conjugally (naturally) is the revelation of the nuptial mystery of Christ.

The spouses in uniting themselves become the original sacrament in the sense that, they transmit effectively in the visible world the invisible mystery hidden in God from eternity. This is the mystery of truth and love, the mystery of the divine life to which man is called. But in force of what, original marriage has in itself this marvelous capacity? Not by itself, but in intrinsic relation to the relationship Christ-Church.\footnote{Cf. C. CAFFARRA, \textit{Le lien entre mariage-réalité de la creation et mariage-sacrement}, in \textit{Esprit et Vie}, 24 (1978), p. 376.} The sacramentality of marriage, therefore invites us to identify the deeper meaning of the marriage covenant experience...
as a grace-filled opportunity that can radically transform the couple and the Church.  

From these principles one can draw many practical consequences of a pastoral, moral and juridical nature. I will mention a few that are connected in a special way with your judicial activity. Above all, you can never forget that you have in your hands that great mystery St Paul spoke of (cf. Eph 5,32), both when you deal with a sacramental marriage in the strict sense and also when the marriage bears in itself the primordial sacred character, that is called to become a sacrament through the baptism of the spouses. The consideration of the sacramentality highlights the transcendence of your function, the bond that links it to the economy of salvation. The religious dimension should for this reason permeate all your work. From handling scientific studies on marriage to the daily activity of the administration of justice, there is no room in the Church for a vision of marriage that is merely immanent and profane, simply because such a vision is not true theologically and juridically.  

From the above explanations, it is clear that sacramental and natural marriage have the same essential properties, because these properties derive from what marriage is in itself, they are inherent to it (intrinsic indissolubility). Between indissolubility and sacramentality of matrimony

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256 JOHN PAUL II, Allocution 2003, cit., no. 6.

257 J. I. BAÑARES, Commentary on canon 1056 in (ed. E., CAPARROS), Exegetical Commentary of the Code of Canon Law, cit., p. 1065. Bañares affirms that can. 1134, in parallel with the canon we are commenting upon states: «from a valid marriage arises a bond between the spouses which by its very nature is perpetual and exclusive; furthermore, in a Christian marriage the spouses are strengthened and, as it were, consecrated for the duties and the dignity of their state by a special sacrament». «In the case of indissolubility of a natural marriage, although the bond cannot be dissolved by the will of the parties, or by the civil power, nor even by the ordinary power of the pastors of the Church, nevertheless the Roman Pontiff can, in determined cases dissolve the conjugal bond of the marriage, always and only infavor of the faith of a baptized person or of someone who wants to receive baptism (cf. Cann. 1143, 1148-1149), (this is not the place to treat this special prerogative of the supreme Pontiff). It is of interest here only to highlight the special firmness which the essential properties obtain in a marriage between the baptized: As will be
there exists one connection, that is, a constitutive reciprocal relationship. Indissolubility renders more evident the meaning of Christian marriage. Finally, there can be no matrimonial contract between baptized persons which is not a sacrament, and this independently of whatever the contracting parties feel or hold or believe; for the sacrament is brought about by the will of Christ, not by that of the parties, nor by their wishes or opinion or faith. Therefore any Christian, even if lacking in proper faith, even if scorning the sacrament, contracts validly and receives the true sacrament along with the contract, as often as he wishes what pertains to the essence of the contract, or does not positively exclude it. «In order to contract matrimony validly, faith is not needed, but consent alone. Therefore, whenever baptized persons get married, as long as they legitimately fulfil all the elements required by natural law, an indissoluble bond and the sacrament are produced. This depends not on the faith of the contracting parties nor on their will, but on the will of Christ. The fact is that there can be no contract between Christians without the sacrament being thereby confected». And if someone does not want the sacrament, but wants a true conjugal contract in the sight of the Church, he or she really – de facto – does not exclude the sacrament.

4.10. The dissolution of the matrimonial bond

In addition to the possibility of dissolving non-consummated marriages it is added also the privilege of the faith and the Pauline privilege as well as

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other cases in which non sacramental marriages could be dissolved, while other exceptions were not treated in the Codes of the Catholic Church.262 We are going to deal now with these kinds of dissolution, trying to explain them.

Can. 1142 states that: «Matrimonium non consummatum inter baptizatos vel inter partem baptizatam et partem non baptizatam a Romano Pontifice dissolve potest insta de causa, utraque parte rogante vel alterutra, etsi altera pars sit invita». This canon does not deal properly with nullity of marriage but the dissolution of a bond that, though essentially existing, has not attained that fullness and perfection to which marriage was destined by the divine will and for which the spouses become “one flesh.” The bond of a non-consummated sacramental marriage is not absolutely extrinsically indissoluble. This implies that, if the consent has not been consummated by sexual intercourse in a human mode, the Supreme Pontiff can dissolve the bond, permitting the parties to marry again. In doing so, the Pope uses his Vicariate powers which cannot be delegated. In this light, Fornés explains that: «Recent doctrine refers to the general exercise of the potestas sacra by the Pope, not the exercise of a specific vicarious power other than the sacred power the Pope possesses by virtue of his office».

263 «A non-consummated marriage between baptized persons or between a baptized party and an unbaptized party can be dissolved by the Roman Pontiff for a just reason, at the request of both parties or of either party, even if the other is unwilling». Some cross references regarding this canon are: cann. 1055, 1056, 1061, 1085, 1141, 1143-1150, 1697-1706. Cf. Exegetical commentary on the Code of Canon Law, cit., p. 1544.


indicates that, every power which the Roman Pontiff possesses is Vicarious since he is properly Christ’s vicar on earth. The Roman Pontiff is the supreme active subject and the unique Vicar of Christ, who has all the sacred powers. On this same subject Vatican I declared that:

...Holy See and the Roman Pontiff have supremacy on the whole earth and that the same Roman Pontiff is the successor of Blessed Peter, prince of the Apostles, and true Vicar of Christ, head of the

267 Cf. J. Fornés, Commentary to Canon 1142, in (ed. E., Caparros), Exegetical Commentary of the Code of Canon Law, cit., p. 1544. Fornés asserts that: «One sector of doctrine has paid particular attention to these issues, while trying to harmonize it with the broad vision of the canonists and the theologians of the Middle ages and the 16th century. It speaks of considering the Pope as the Vicar of God the Creator and of Christ the Redeemer, who has a particular relationship with all men, as creatures of God and as the redeemed of Christ, and with natural law, in that he is its custodian and interpreter, with the faculty to be able to dispense with it in particular cases, if required for the good of the souls». U. Navarrete, Privilegio de la fe: Constituciones pastorales del siglo XVI. Evolución posterior de la práctica de la Iglesia en la disolución del matrimonio de infieles, in AA.VV., El vínculo matrimonial. Divorcio o indissolubilidad? Madrid 1978, p. 303.

«Theological and juridical doctrine has not provided an explanation that treats all the points questioned in this specific supposition of dissolution of marriage and others regulated in this article of the Code. It would not be easy to do, if one attempts to take into consideration only the information on the scientific-technical plane or the historic plane. In this regard, various decretals of Alexander III are cited, some of them subject to study and discussions due to their doubtful interpretation». The translation is mine. (E. Saurwein, Der Ursprung des Rechtsinstitutes der päpstlichen Dispens von der nicht vollzonden Ehe, Rome 1980; J. Fornés, Commentary to Canon 1142, in (ed. E., Caparros), Exegetical Commentary of the Code of Canon Law, cit., p. 1545.) «It is a subject in which information characteristic of faith, which rests on the safe guidance of the Magisterium and of the Church practice, comes into play. Thus, the true reason for these suppositions of the dissolution is their constant practice on the part of the Pope; all the other reasons provided are entirely consistent». (L. Miguélez, Commentary on cann. 1118-1127, in A. Alonso-L. Miguélez-S. Alonso, Comentarios al Código de Derecho canónico, II, Madrid 1963, p. 690.)

«After the controversies on the Roman Pontiff’s power to dissolve a non-comsummated marriage, Clement VIII appointed a special commission, made up of Cardinals Ascoli, Bianchetti, Mantica, Arrigone, Visconti, d’Ossat, Borghese and Belarmino, the Rotal auditors Pamphili, Pegna and Mellino, and the Jesuits Giustiani and Costa. The opinion submitted on July 16, 1599 was a unanimous declaration that the Pope possesses this power». (G. H. Joyce, Christian marriage: an historical and doctrinal study, London 1948, p. 449).


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whole Church, father and doctor of all Christians; that to him, in the person of Blessed Peter, was given by the Lord Jesus Christ the full power to lead, to rule and govern the universal Church.\textsuperscript{269}

Even the Congregation for the doctrine of Faith, on December 6, 1973 and following the disposition of Paul VI, after having studied «the solutions of non-sacramental marriages» from the year 1968 right to October 26, 1973, synthesized the doctrinal material on the dissolution of the natural bond with a declaration which states: «Connubia inter catholicos, quorum saltem alter baptizatus non sit, valido quidem censenda sunt, at in favorem fidei salutemque animarum, ubi determinatae graves concurrant condicioes, a Summo Pontifice dissolve possunt».\textsuperscript{270} The norms of 2001 replaced those of 1973.

The points which are raised by doctrine\textsuperscript{271} regarding the Roman Pontiff’s power to dissolve marriages are:

1) The Roman Pontiff may dissolve a marriage between two baptized persons or between a baptized person and a non-baptized person, if it has not been consummated, and a marriage between two non-baptized persons. 2) A sacramental marriage that has been consummated is absolutely indissoluble. 3) As to why the Roman Pontiff is the only authority that can dissolve a marriage, «the answer, always according to Catholic doctrine, is this: the Pope possesses double authority,

\textsuperscript{269} CONCILIO VATICANO I, Sess. IV, Cost. dogmatica I *Pastor aeternus* de Ecclesia Christi, (18 Iulii 1870), in DS 3059: «…sanctum Apostolicam Sedem, et Romanum Pontificem in universum orbem tenere primatum, et ipsum Pontificem Romanum successorem esse beati Petri, principis Apostolorum, et verum christi vicarium totiusque Ecclesiae caput et omnium Christianorum patrem ac doctorem existire; et ipsi in beato Petro pascendi, regendi ac gubernandi universalem Ecclesiam a Domino nostro Iesu Christo plenam potestam traditam esse…». This text was then taken up again by the CONC. FLORENTIONO, *Bulla unionis Graecorum Laetentus caeli*, (6 Iulii 1439), in DS 1307. Cf. U. NAVARRETE, *Potestas vicaria ecclesiae*, cit., p. 446.


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conferred by Christ: on the one hand, he is the head of the Church founded by Christ, and as a result, he governs the members of the Church; on the other hand, he is the vicar of God on earth to exercise in His name the authority that God possesses over all men, whether or not they are baptized, whether or not they believe in him. It is by virtue of this second power that the Pope interprets natural law, which is the law for all humanity; and it is by virtue of this second power that he dissolves the marriage of those who do not belong to the Church, because the law of indissolubility, with its exceptions, is not an ecclesiastical, but a natural law». 272

4) Regarding the limit of the Papal power for the dissolution of marriage, this limit is the consummated sacramental marriage. This is based on two important facts: the practice of the exercise of pontifical power and the repeated doctrinal and magisterial formulations regarding the absolute indissolubility of ratified and consummated marriage. 5) With respect to the basis of the absolute indissolubility of a ratified and consummated marriage, in contrast to the possibility of dissolution on other marriages, the specialists have not yet offered an entirely satisfactory explanation. This is logical, if one bears in mind that this is a subject in which the sacramental nature of marriage comes into play and in which, therefore, there are facts of faith that exceed purely speculative human limits. We are in the very field of mystery, in which the magisterial teachings are decisive. 273


273 J. FORNÉS, Commentary to Canon 1142 in (ed. E. CAPARROS), Exegetical Commentary of the Code of Canon Law, cit., pp. 1546-1547. «Nevertheless, from a juridical point of view, some clues can be provided. The first highlights the importance of consummation in sacramental marriage by considering consummation as a juridical category (“a juridical fact, which strengthens the indissolubility of the bond”), See (J. HERVADA, El matrimonio canónico. Teoría general, in Derecho canónico, Pamplona 1975, p. 394), that affects sacramental marriage, to the extent that, it contributes to the sacramental symbol». Hervada stresses: «consummation is not a transaction but rather a sacramental consummation. The characteristics firmness that, due to the sacramental nature, is brought about by the first conjugal act is not in the order of the consummation of juridical transactions, but in a singular order of the efficacy that cannot be reduced to the usual categories of the effects of the consummation of real or consensual juridical transactions». (J. HERVADA-P. LOMBARDA, El Derecho del Pueblo de Dios, III/I, Derecho matrimonial Pamplona 1973, p. 303.)
4.10.1. Dissolution of non-consummated matrimonies

Before looking at the conditions for the dissolution of a non-consummated marriage, it is important to precise that, can. 1142 does not treat dispensation in the technical sense of a relaxation of a merely ecclesiastical law in a specific case (can. 85). This Canon instead deals with the dispensation super rato, in which the Roman Pontiff dissolves the conjugal bond by his vicarious power. Therefore, it is a dispensation in the broad and extensive sense, not in the strict or technical-juridical sense.\(^{274}\)

The fundamental requisites (cann. 1143-1147) which should be considered in the dissolution of a non-consummated marriage are:

1) It must be a marriage between two baptized persons or between a baptized party and a non-baptized party;\(^{275}\)

2) In every case there must be a just cause for the validity of the dissolution: in as much as the Roman Pontiff exercises a vicarious power.\(^{276}\)


\(^{275}\) Ibid.
power in the area of divine law, which is subject to this demand or requirement by its very nature.

3) The following could generally be considered just causes: a grave aversion in the marriage without hope of reconciliation; unintentional supervening impotence after the celebration of marriage; attempted civil marriage by one of the parties with a third person; a defect of form or consent; error of quality; hatred; danger of perversión; an impediment not sufficiently proven for the declaration of nullity; civil divorce with danger of incontinence; an incurable disease contracted after marriage etc. When the just cause is absent, the dissolution is invalid;

4) The act of non-consummation is a necessary presupposition, in the fact that, consummation is the human performance of the conjugal act suitable in itself to create offspring, for which marriage was designed by its very nature and through which the spouses become one flesh;

5) A ratified but unconsummated marriage can be dissolved at the request of both spouses or at the request of one of them. The Roman

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Pontiff does not dissolve unconsummated marriages without a petition from at least one spouse;

6) The procedure to be observed for the dispensation of non-consummated marriage is regulated by cann. 1697-1702. It is an administrative procedure and not judicial. The constitution Pastor Bonus indicates that this dispensation is reserved for the Congregation for Divine Worship and the Discipline of Sacraments. In order to obtain such a dissolution, it is done in two phases: through the diocesan Local Ordinary of the place and through the Congregation for Divine worship and the Discipline of the Sacraments, to whom the Roman Pontiff has entrusted the exclusive competence to examine the unconsummation and the existence of a just cause. The norms of the

281 JOHN PAUL II, Apostolic Constitution Pastor bonus, (June 28, 1988), art. 67, in AAS 80 (1988), pp. 841-912. Here after this text will be cited as PB; See CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF SACRAMENTS, Instructio Dispensationis matrimonii rati et non consummate, (March 7, 1972), in AAS 64 (1972), pp. 244-252 and in particular, p. 245: «Processus super matrimonio rato et non consummato non est iudicialis, sed administrativus, ac proinde differt a processu iudiciali pro causis nullitatis matrimonii. In processu, enim, super rato per suplicem petitionem imploratur gratia ex benigna Summi Pontificis concessione obtinenda» Here after this Congregation shall be cited as CDWDS.


PAOLO VI, Const. apost. Regimini Ecclesiae Universae, (August 15, 1967), in AAS 59 (1967), pp. 885-928, and in particular p. 904, no. 56§1: «Ipsa [Sacra Congregatione de disciplina Sacramenorum] conosci quoque et sola de facto inconsummationis matrimonii, etiam inter partem catholicam et acatholicam necnon inter partes baptizatas acatholicas, sive pertinente ad ritum latinum sive ad ritum orientalem, necnon de existentia causarum ad dispensationem concedendam deque omnibus quae cum his sunt conexa».

CDWDS, Instructio Dispensationis matrimonii rati e non consumati, (March 7, 1972), in AAS 64 (1972), pp. 244-252 and especially, p. 245: «Ad. S. Congregationem de disciplina Sacramentorum exclusive conosceretur spectat de facto inconsummationis matrimonii non tantum inter partes catholicas, sive ad latinum ritum sive ad orientales ritus pertinente, verum etiam inter partem catholicam et acatholicam baptizatam atque inter partes baptizatas acatholicas, necnon de iustae seu proportionaliter gravis causae existentia pro concessione pontificiae gratiae dispensationis». 
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Congregation of the Sacraments are contained in *Litterae* “*De processu super matrimonio rato et non consumato,*” of December 20, 1986. 283

4.10.2. Dissolution “in favor fidei” cases

At this point we shall present the privilege of the faith according to canon 1150: «*In re dubia privilegium fidei gaudet favore iuris.*” 284 Fornés states that:

In a broad sense, the privilege of the faith can be considered as a principle informing the entire canonical system, one that justifies the basis of certain exceptions to the indissolubility of marriage, an essential property of every marriage, not only Christian marriage (cann. 1056 and 1085). Exceptions vary from the Pauline privilege (cann. 1143-1147), to those derived from polygamous situations (can. 1148), an inability to reestablish cohabitation (can. 1149), or non-codified cases of dissolution of non-sacramental marriage by express concession of the Roman Pontiff (contemplated in the Sacred Congregation for the Doctrine of Faith instruction *Instructio pro solutione matrimonii in favorem fidei* of December 6, 1973) 285, which is accompanied by procedural norms. 286


284 «In a doubtful matter the privilege of the faith enjoys the favour of the law».


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He asserts that, in this case under the provisions of can. 1150, the protection of the faith takes priority over the protection of the principle of indissolubility in certain situations. This is because faith is also a determinant fact in marriage. In the strict sense, can. 1150 refers to the only exception to the principle of favor iuris enjoyed by marriage pursuant to can. 1060 according to which in a doubtful matter, the validity of marriage must be held unless it is proven otherwise. In this light, it is significant that the drafting of can. 1150 did not give rise to any objection in the preparatory work on the code: «De hoc canone factae non sunt animadversiones». «Therefore, the dissolution of marriage, which is then regulated in the preceding canons, is an exception to the general principle of indissolubility». In fact, it will not be consistent to maintain that dissolubility is the rule and indissolubility is the exception.

Therefore, the assumptions required for marriage to be dissolved are:

1. It has to do with a non-sacramental marriage
2. The intervention of the Roman Pontiff; the question is less problematic if one of the spouses is baptized. The foundation of the power is, according to

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289 Cf. *Communicationes* 10 (1978), p. 116 affirms that: «However, the Privilege of the Faith prevails over the principle of favor iuris, such that, in the case of doubt regarding the validity of a marriage contracted by two unbaptized persons, if one of them converts and is baptized, it is presumed that the marriage is invalid, so that the convert may enter marriage with a Christian. The exception has little relevance, as has been stressed in doctrine, if it is taken into account that, even if a marriage contracted by two unbaptized persons is valid, the second marriage would be possible through the Pauline privilege or dissolution *a iure* based on the vicarious or ministerial power of the Roman Pontiff. It is important to bear in mind that, in the case under consideration, the issue is not a dissolution of marriage, but a presumption of the invalidity of a marriage contracted by two unbaptized persons, through the application of the *favor fidei*. If this principle is the basis supporting a possible dissolution, it would also support a presumption *iuris tantum* of nullity».

doctrines, the vicarious power of the Roman Pontiff, as the interpreter of natural law.\textsuperscript{291}

In the same line the Pauline privilege as reflected in Can. 1143 states that: §1. «Matrimonium initium a duobus non baptizatis solvitur ex privilegio paulino in favorem fidei partis quae baptismum recepit, ipso facto quo novum matrimonium ab eadem parte contrahitur, dummodo pars non baptizata discedat». §2. «Discedere censetur pars non baptizata, si nolit cum parte baptizata coabitare vel coabitare sine contumelia Creatoris, nisi haec post baptismum receptum instam illi dederit discedendi causam».\textsuperscript{292}

This canon and canons 1144-1147 regulate the Pauline privilege.\textsuperscript{293} Abate affirms that right to the Pontificate of Pius XII, an authoritative doctrinal

\begin{footnotesize}
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\item\textsuperscript{291} Cf, J. CARRERAS - H. FRANCESCO - M. A. ORTIZ, Diritto canonico del matrimonio e della famiglia, part. II, lesson 25, cit., p. 4.
\item\textsuperscript{292} Can. 1143 : §1 «In virtue of the pauline privilege, a marriage entered into by two unbaptized persons is dissolved in favour of the faith of the party who received baptism, provided the unbaptized party departs».
\item\textsuperscript{293} This part of our work shall be developed following two articles of J. LLOBEILL, La giurisdizione della Chiesa sul matrimonio degli Acattolici, in J. CARRERAS (a cura di), La giurisdizione della Chiesa sul matrimonio e sulla famiglia, Milano 1988, pp. 77-126; IDEM, L’unitarieta dell’istituto matrimoniale e la rilevanza giuridica dell’«ordinamento fidei»: Sul carattere sussidiario dello «scioglimento» Pontificio del vincolo, in AA.VV., El matrimonio y su expresion canónica ante el III milenio. X Congreso internacional de Derecho Canónico, Pamplona 2000, pp. 1397-1412. The following publications amongst others could be useful Cf. J. C., CONDE CID, L’origine del “privilegio Paolino” 1Cor. 7:12-17\degree: Esegesi, storia dell’interpretazione e ricezione nel diritto della Chiesa, Roma 2009; M. PARMA, El favor fidei en el Decretum Gratiani, Roma 2009; A. MAKIANG, Le privilege Paulin dans les situations pluriculturelles : Le cas de L’église du Nord-Cameroun, Roma 2009, p. 1; M. LOPEZ ALARCÓN – R. NAVARRO VALLS, Curso de Derecho matrimonial canónico y concordado, Madrid 1992, pp. 303ff; U. NAVARRETE, Privilegio de la fe: Constituciones pastorales del siglo XVI. Evolución posterior de la práctica de la Iglesia en la disolución del matrimonio de infeles, in El vinculo matrimonial, Madrid 1978, pp. 142ff, which in p. 239 presents a bibliography on this issue and its interpretation in the Middle Ages; G. GROTTI, La procedura per lo scioglimento del matrimonio nella fattispecie del ‘privilegio paolino’, in I procedimenti speciali nel diritto canonico, Vatican City 1992, pp. 157ff; with bibliographical note on pp. 175-177; CORIDEN, The Code of Canon Law: A text and Commentary, cit., p. 814; U. NAVARRETE, De termino “privilegium petrinum” non “adhibendo”, cit., p. 349. Some authors to be considered in treating this section of our work, amongst others are, F. BERSINI, Il Diritto

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sector held that the Church lacks the juridic power on marriage of non baptized. Only baptism conferred the adequate juridic title for the exercise of ecclesiastical power including that of pontifical nature. Only the development of ecclesiology in the preceding years to Vatican Council II – a development which had its central moment in the encyclical Mystici corporis of 1943\textsuperscript{294} – permitted the affirmation of such a power. This power is founded, according to the juridic concept of Ottaviani, on the dynamic perception of the mission of the Church. Such a conception conferred to the Church power over every human person as part of the people of God. In this light, during the Pontificate of Pius XI and Pius XII, the Church recognized the authority of the Pope as the Vicar of Christ, to dissolve a non sacramental marriage bond since such a dissolution favoured the position of a non baptized who desired to enter the Church.\textsuperscript{295}

The recent character of the affirmations on the jurisdiction of the Church regarding the marriage of non Catholics could be referred best to the object of the exercise of such a jurisdiction and to single out cases in which it is exercised. The Pauline privilege is based on the solution offered by St. Paul (cf. 1Cor 7, 12-15) in order to resolve the grave and frequent juridic problem of the married person converted to Christianity, who due to his/her conversion

\textsuperscript{294} Cf. PIUS XII, Encyclical Letter, Mystici corporis, (June 29, 1943), in AAS 35 (1943), pp. 193-248.

\textsuperscript{295} Cf. A. ABATE, De dissoluzione matrimonii non baptizatorum utroque coniuge in infidelitate manente, in Periodica, 67 (1978), pp. 118-123; IDEM, La potestà indiretta della Chiesa, Roma 1957; IDEM, Il matrimonio nella nuova legislazione canonica, Brescia 1985; J. LLOBELL, La giurisdizione della Chiesa sul matrimonio degli Acattolici, cit., p. 11.
could no longer continue to cohabit with the other spouse who was a pagan. Regarding the interpretation of the above text we could confer Parma who explored the patristic interpretation of the Pauline text, concluding that, the thesis which sustains that 1Cor. 7:15 authorized the baptized spouse to remarry, dissolving the previous marriage celebrated in unfaithfulness, is not common in the Fathers (in fact, St. Augustine denies the possibility of celebrating a new marriage after separation). But it was admitted around the XII century following the attempt to defend the validity of marriage celebrated by unfaithfuls. In response to the interpretations of Ambrosiaster (sometimes attributed to Ambrose, to Augustine or to Gregory), the possibility of celebrating a new marriage was admitted in the fattispecie of the Pauline text, reaffirming the validity of marriage celebrated by unfaithfuls.

296 Cf. J. LLOBELL, La giurisdizione della Chiesa sul matrimonio degli Acattolici, cit., p. 12 note 25. He asserts that, «The pauline text, according to contemporary exegese and patristic tradition, permitted only the separation of the spouse (usually denominated “divortium”), not access to a new marriage. Such a separation caused the dissolution of the juridic conjugal bond in its patrimonial aspects, of family ties, etc., whose nature was prevalently private in the roman law. Nevertheless, such a dissolution did not give the right to celebrate a new wedding before the Church, according to the Pauline text and the interpretation of the Fathers (St. Augustine, St. John Chrysostom, etc). It was only an anonymous ecclesiatic writer of the IV century – known as Ambrosiaster, who was with St Ambrouse, and whose doctrine in matrimonial topics offered not little difficulties -, interpreted the Pauline passage as the right to celebrate a new marriage (Cf. H. CROUZEL, La indisolubilidad del matrimonio en los Padres de la Iglesia, in El vínculo matrimonial, cit., pp. 61-116, in particular pp. 104-106 and 115-116). This text of the Ambrosiaster was attributed to St. Gregory the Great. This false attribution, was included in different canonical collections and Decree of Gratian (Cf. C. 28, q. 2, c. 2, dictum) and founded the doctrine of the XII centuries either authors such as the Quantum decretals (X.4.19.7) and Gaudeamus (X.4.19.8) of Innocence III. Cf. J. FORNES, Commentary to cann. 1143-1147, in (ed. E. CAPARROS), Exegetical Commentary, cit., vol. 3/2, pp. 1549-1558; G. GIROTIT, La procedura per lo scioglimento del matrimonio nella fattispecie del “privilegio Paolino”, in I procedimenti speciali nel diritto canonico, Città del Vaticano, 1992, pp. 249-252; A. MIRALLES, Il matrimonio, teologia e vita, cit., pp. 249-252; U. NAVARRETE, Privilegio de la fe: constituciones pastorales del siglo XVI. Evolución posterior de la práctica de la Iglesia en la disolución del matrimonio de infeles, in El vínculo matrimonial, cit., pp. 242-247; R. TREVIGNANO, Matrimonio y divorcio en la Sagrada Escritura, in IDEM, cit., pp. 52-57».


This interpretation, formulated in the XII centuries by Gratian and Peter Lombard, assumed an official character in the magisterium and Pontifical legislation. Paul gave certain norms in order to protect such marriages and the rights of the non baptized but, in determinant situations, he permitted the baptized to celebrate another marriage, which at that moment was then going to dissolve the former or previous.\textsuperscript{299} Thus, the fact that, the Pauline institution in its medieval interpretation possessed juridic nature is more evident to that which referred to the conjugal separation or to a new marriage contracted – which could be celebrated with another non-baptized person – which at the same time dissolved the former bond. The object of the Pauline privilege is the right to contract a new bond in favour of the faith, whose celebration then dissolves the former bond. In this regard, it is obvious that the juridical Roman context of the community of Corinth and its ethical situation required a model of marriage which could permit the declaration of nullity of many of those cases. The concept of “declaration of nullity” was acquired by the canonical order only many centuries later, precisely when in the XII centuries, became generalized the said interpretation of the Pauline institution.

The authorities cited by Gratian in the \textit{Decretum} and his very \textit{dicta} concerning the Pauline privilege pointed out the dignity of natural marriage and the “non validity” of most of those unions, for not using such an expression.\textsuperscript{300} The evangelization of Latin America involved theological and canonical reposing of circumstances which in the first century, justified the exercise of the ecclesiastical jurisdiction on marriages of non-baptised persons. The juridic culture and customs of the native Americans did not seem better than the culture from which the first Christian communities originated. On the

\textsuperscript{299} Cf. J. LLOBELL, \textit{La giurisdizione della Chiesa sul matrimonio degli Acattolici}, cit., p. 12.

\textsuperscript{300} Cf. C. 28, q. 1. Regarding the historical analysis of this period we could Cf. M. PARMA, \textit{El favor fidei en el Decretum Gratiani}, Roma 2009, in which he concludes his research affirming that in none of the canonical collections previous to 1140 (date of the decree of Gratian) is admitted the possibility to celebrate a new marriage after the separation of the faithful spouse following the application of 1Cor 7:15; Cf. F. CANTELAR, \textit{La indisolubilidad en la doctrina e la Iglesia desde el siglo XII hasta Trento}, in \textit{El vínculo matrimonial}, cit., pp. 165-217; A. GARCÍA Y GARCÍA, \textit{La indisolubilidad matrimonial en el primer milenio, con especial referencia a los textos divorcistas}, in \textit{Ibid.}, pp. 117-164; J. LLOBELL, \textit{La giurisdizione della Chiesa sul matrimonio degli Acattolici}, cit., p. 13.
other hand, during the XVI centuries, canonical institutes experienced a notable growth and were sufficiently known by some European missionaries in America.\textsuperscript{301} Again the rapid growth of ecclesiastical jurisdictional structures in evangelized territories permitted opportunely the consciousness of the necessity of offering a solution to marriage problems of these new Christians. This is how the so-called Pauline privilege for the dissolution of the bond between the non-baptized originated.\textsuperscript{302} They consent a juridic qualification near to that of the declaration of nullity or to that of a simple verification of “attempted marriage”.\textsuperscript{303} According to Silvestrelli,\textsuperscript{304} from 1962 up till 1996 the privilege of Faith has been occupied by the office called the Holy office (Santo Ufficio)\textsuperscript{305}.

On the other hand, the baptism of those who due to slave trade, were being sent away definitively from their respective spouses who were not equally baptized, (cf. can. 1149) and the new impulse of evangelisers in Africa, Asia and the great immigration of Catholics in other countries and continents especially at the end of the XIX century\textsuperscript{306}, originated new situations. These new situations did not always coincide with the classical cases forseen by the

\textsuperscript{301} Cf. J. Llobell, L’unitarietà dell’istituto matrimoniale e la rilevanza giuridica «dell’ordinamento fidei»: Sul carattere sussidiario dello «scioglimento» Pontificio del vincolo, in AA.VV., El matrimonio y su expresión canonica ante el III milenio. X Congreso internacional de Derecho Canónico, Pamplona 2000, pp. 4-5.


\textsuperscript{304} A. Silvestrelli, Scioglimento del matrimonio in favorem fidei, in I procedimenti speciali nel diritto canonico, Città del vaticano 1992.


\textsuperscript{306} This question has been treated by the cited cost. Ap. Populis of Gregory XIII.
Pauline privilege or by the petrine privilege. This indicates how the dissolution “in favour of the Faith” arose. As consequence of various studies realized in order to solve this problem, the Congregation for the Doctrine of the Faith promulgated the Instruction of May 1, 1934, which was slightly modified five years later in 1939.

In one of his Allocution to the Rota Pius XII referred to the favor fidei. The Pope, besides affirming the absolute indissolubility of ratified and consummated marriage, distinguished between the other cases of marriages not ratified (non sacramental) or ratified but not consummated. He also distinguished between intrinsic and extrinsic indissolubility. Pius XII admonished those who failed to recognize such a power and affirmed that such positions were contrary to the divine mandate. Therefore, as a justification for the dissolution “in favour of the Faith”, the Pontiff talked not only of the salus animarum and the common good of the Church but mentioned explicitly his power to obtain the common good of the human consortium and that of every human person.

After the affirmation of Vatican II regarding the principle of decentralization of the Episcopal power, centralized in a significant manner on the part of the Roman Pontiff in the course of history, Paul VI pointed out in his m.p. De Episcoporum muneribus that, it remained the exclusive competence of the Pope to decide on those matters on which only the Pope, or the Episcopal

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310 Cf. PIUS XII, Allocation to the Roman Rota, (october 3, 1941), in AAS 33 (1941), pp. 421-426.

college acting as such had the powers. This meant that, those matters that were not previously centralized could not be decentralized in favour of bishops, because they do not belong to the proper powers of the diocesan bishops *uti singuli*. Among these matters were mentioned explicitly the dissolution of non ratified or non-consummated bond.\textsuperscript{312} Therefore, the relative process is that provided by the Pope directly or through the dicastery to whom has been given the determination, but not only for the “centralization of processual norm”\textsuperscript{313}, but because the diocesan bishops *uti singuli*, and their tribunals, do not have the power for such a dissolution. Despite this, recently the Apostolic Signature has denounced the practice of some diocesan tribunals that were given the power to grant the dissolution “in favour of the faith”, supplanting the authority of the Pontiff.\textsuperscript{314}

At a certain moment during the pontificate of Paul VI, the concession of dispense “in favour of the faith” was suspended. This was especially when the requesting party did not want to be baptized but wanted to contract marriage with a Catholic person. This possibility was discussed during the Pontificate of Pius XII and was applied, in an exceptional way, by John XXIII.\textsuperscript{315} The


doctrinal question which was the object of exam was the intention of being baptized in the Catholic Church – or being admitted, in the case of a person that is baptized in another Christian Church. Being married to another non-baptized constituted a necessary presupposition for the dispensation. In this light, at the end of 1973, the Congregation for the Doctrine of the Faith declared the following: a) the non-necessity of the intention of being baptized or of converting oneself; b) for the liceity of the dispensation, it is sufficient that the relationship with the Catholic Church of the future spouse, the one non requesting the grace in order to legitimize the position of the petitioner before the Church, be that of a catechumen; and c) the condition for the validity of the dispensation is that, the commitment of the non-catholic party has to respect the religious practice of the future spouse and the baptism and catholic education of the offspring. These norms of 1973 which were


316 Cf. A. ABATE, De dissoluzione, cit., p. 124; J. LLOBELLI, La giurisdizione della Chiesa sul matrimonio degli Acattolici, cit., p. 18.


replaced by those of 2001\footnote{Cf. CONGREGATIO PRO DOCTRINA FIDE, Normae “Potestas Ecclesiae” de conficiendo processu pro solutione vinculi matrimoniali in favorem fidei, (30 Aprile 2001), Città del Vaticano published in L. SABBARESE, Lo scioglimento dei matrimoni non sacramentali in favorem fidei, Roma 2005, pp. 103-106. Still before the norms of 1973 and 2001 there were also norms published in 1934 entitled Instructio “connubia inita”, Normae pro conficiendo processus in casibus solutionis vinculi matrimonialis in favorem fidei per supremam Summi Pontificis autoritatem, 1934, published in L. SABBARESE, Lo scioglimento dei matrimoni non sacramentali in favorem fidei, Roma 2005, pp. 103-106.} manifest that, the intention to contract marriage with a catechumen is considered sufficient “to legitimate” the party that does not want to be baptized to request the dissolution of the marriage bond. On the other hand the norms of 2001 states that, «if it is a marriage that has to be contracted on the part of a catechumen, the wedding has to be differed after baptism. If such cannot happen due to grave motives, there is moral certainty of the near reception of baptism» (Art. 8). The \emph{ratio legis} justifying the dissolution of ratified and non-consummated marriage resides in the perfect value of the \emph{copula} in confrontation with consent manifested only during the canonical celebration.\footnote{Cf. C. BURKE, Il processo di dispensa dal matrimonio rato e non consumato: la grazia pontificia e la sua natura, in \textit{I procedimenti speciali nel diritto canonico}, Città del vaticano 1992, pp. 135-144; O. BUTTINELLI, \textit{I procedimento di dispensa dal matrimonio rato e non consumato: la fase davanti al vescovo diocesano}, in \textit{I procedimenti speciali nel diritto canonico}, Città del vaticano 1992, pp. 107-124; R. MELLI, \textit{Il processo di dispensa dal matrimonio rato e non consumato: la fase davanti alla Congregazione}, in \textit{I procedimenti speciali nel diritto canonico}, Città del vaticano 1992, pp. 125-134.} The \emph{ratio legis} of the norm is founded on the protection of the faith of the catechumen and that of the eventual offspring. In effect, one of the three conditions for the validity of the dispensation is the commitment of the non baptized party (or of the baptized non-catholic) to respect the catholic faith of the future spouse and the offspring. Nevertheless, this condition can be satisfied only if the future spouse is catholic, or will be in future, in the case of the catechumen.\footnote{Cf. J. LLOBELL, \textit{La giurisdizione della Chiesa sul matrimonio degli Acattolici}, cit., p. 19.}

\subsection*{4.10.3. The need to avoid scandal}

The mentioned uniqueness of the institution of marriage and the consequence of “mass media” in typifying the concept of “canonical
dispensation" suggest the opportunity to repropose the most frequent use of dissolution in favour of the faith and dispensation super matrimonio rato et non consummato. They have to favour the salus animarum, with a harmonic balance between the common good and pastoral good.

The normative indications which recommend the dispensation super rato in the judicial cases of impotence manifest besides the Legislator’s awareness, the practical difficulty that involves the process of nullity of marriage, the

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323 Cf. J. Llobell, La giurisdizione della Chiesa sul matrimonio degli Acattolici, cit., p. 32.


problem of proof in regard to the perpetuity of impotency, the adjustment of mere declarative nature between the content of the decision and the reality (the so-called “favor veritatis” and “favor matrimonii” of can. 1060). Sometimes these favores are presented in contrast with the “favor fidei” declared in can. 1150, although such a contrast is fictitious.  

Llobell then drew from Betti the idea that,327 the said official of the Congregation for the Doctrine of the Faith, incharge of the discharge of formalities for the Pontiff’s dissolution “in favorem fidei” concluded a report in 1991, noting that: «many centuries passed before the power of the Holy Father to dissolve ratified and non-consummated marriage became the common doctrine».328

Llobell at this point asserts that he consider it more in agreement with an indebt study regarding the dignity of any marriage, made by John paul II, distinguishing different matters that, in a certain way, seem not sufficiently differentiated in the thinking of Silvestrelli.329

Firstly, the dissolution of a valid bond, be it sacramental or non-sacramental, is never to be used as a substitutive way for declaring the validity or nullity of marriage.

Secondly, Llobell agrees with the opinion of Silvestrelli on the fact that, in order that the dissolution in favour of the faith be accepted as common doctrine, it is necessary to continue to deepen the theological and juridic foundation of the power of the Roman Pontiff to dissolve a valid bond. Although he accepts fully the judgement of the Church which actually affirms

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328 A. SILVESTRELLI, Scioglimento del matrimonio in favorem fidei, in I procedimenti speciali nel diritto canonico, cit., p. 204.

329 Cf. J. LLOBELL, La giurisdizione della Chiesa sul matrimonio degli Acattolici, cit., p. 34.
the said pontifical power, such a widening could imply the negation of the same or the need that the exercise of this power be truly exceptional and maybe applicable only in a subsidiary way. That is, when maybe the declaration of nullity is not possible, it may be opportune the dissolution. Definitively, the difficulty of applying the canonical process of nullity of marriage or of ecclesial reception of the sentence of nullity of another ordinament should not weaken the coherent affirmation of the uniqueness of the marriage institution and its indissoluble character. In such an important question which potentially concerns any human person, the breaking of this principle could involve or imply lost of credibility of the Church and therefore, jeopardize the realization of the salus animarum, which is the finality for which it was instituted and on which is established the jurisdiction received from Christ. The exercise of the jurisdiction of the Church on the marriage of non-baptized persons underlines the sacredness of every conjugal union and the essential unity of the institution of marriage. Then derives the irreplaceable magisterial task of pastors as well as the responsibility of the Church to transmit faithfully and universally the principle of indissolubility.

Thirdly, the recourse or petition to the vicariate power of the Pope to dissolve a valid bond – «in his function of opening different ways to social relationships attributed to the “non-baptized” some faculties with the aim of

330 Ibid.
Chapter IV: Relationship between Indissolubility and Sacramentality

the salvation of souls"\textsuperscript{333} – recognizes to the Church a certain universal jurisdiction regarding the marriage bond. Nevertheless, the judiciary way – the mere declaration of the validity or nullity of any marriage, according to the natural law and the human legitimate norm which regulates it\textsuperscript{334} – expresses better the natural principle of indissolubility and the ministerial nature (at the service of the \textit{salus animarum} of all\textsuperscript{335}) of the ecclesiastical jurisdiction.\textsuperscript{336}

4.11. Résumé

Finally, to conclude this last chapter of our work, we have seen that, from the structure of spousal alliance, Christian marriage derives its indissolubility. Already in the order of creation, marriage was willed by God as an indissoluble reality, that man cannot divide (Mt. 19:6). Matrimony-sacrament confirms this indissolubility and ratifies it and introduces it into the mystery of the alliance of Christ with the Church. Marriage-sacrament is constituted as the sign and fulfillment of the wedding (spousal) bond with which Christ is bonded forever to the Church: a bond of love realized in the spouses as a participation in the bond of love that unites the \textit{Kyrios} to the Church. It is a definitive alliance like that in which they have been inserted.


\textsuperscript{335} «Cum autem Ecclesia sit in Christo veluti sacramentum seu signum et instrumentum intimaec cum Deo unionis totiusque generis humani unitatis, naturam missionemque suam universalem […]» Cost. dogn. \textit{Lumen gentium}, no. 1.

The two spouses lose the life of grace when they underestimate this bond or deny it, but they will never be able of cancelling the event of the alliance inscribed in them by the sacrament of marriage. And such is the indissolubility of marriage: a relation of reciprocal belonging that unites sacramentally the two spouses, introducing them to the bond that binds eschatologically Christ to the Church.

In other words the Church-spouse relationship of Christ and the Church is different from the spouse of the ancient economy. This is indelibly confirmed in the grace of the matrimonial union of the two baptized which is a sacrament. This sacrament of matrimony is constituted for its nature as an indissoluble event. Once this has been celebrated in the Lord, it participates in the irrevocable consent of Christ to the Father and is as such, an indestructible event. The indissolubility of marriage receives here the sacramental foundation which goes beyond a mere juridical fact. It is the ontological insertion of the spouses into a mysterion (an insertion rooted in baptism and carried out with the wedding in the Lord), which begets indissolubility not as something that is added to matrimony from outside, but as an internal demand and its form of realization. There subsists in this sense, a hermeneutic circle between sacramentality of matrimony and indissolubility: the sacramentality of matrimony represents the foundation of matrimonial indissolubility, matrimonial indissolubility is the foundation for the recognition of its sacramentality.

We have also seen that, the natural religious character of every marriage is transformed in Christian marriage, when the institution is celebrated in Christ the mission which symbolizes her proper union with the Church. Her religious supernatural character gives force and vigor to the end and to the properties of natural marriage – unity and indissolubility imposing, consequently, to the spouses the duties which corresponds to this Christian plan.
GENERAL CONCLUSIONS

In the light of all that we have discussed in this thesis, there is a strong need to affirm and promote in a synthetic way the Church’s Tradition, magisterium, recent canonical jurisprudence, the 1983 Code of canon law and relevant doctrinal documents regarding the indissolubility of marriage. In this light, marriage is a wonderful school of love and holiness. All those who choose this vocation are called to live an infinite love which manifests the presence of God in the hearts of spouses. This vocation is nonetheless not easy but it is an experience of the mystery of the cross of Christ through which the spouses are united. Anyone who wishes to reach the summit of charity has to begin from the school of the Holy Spirit through perseverance and which also helps the person to understand love. Created in the image of God, man and woman desire to live fully a communion of love amongst themselves, in the light of the richness of their baptism and confirmation. This makes them to be aware of their call to reflect the love of God on earth. The source of this love is found in the proper humanity of each of them. This will help them find peace in the divine vocation to holiness, which is the summit of christian life. This vocation is the participation to the priestly, prophetic and kingly functions of Christ. Through the sacrament of marriage, the spouses receive a ministry in the Church, that is, a mission in the name of Christ.

Before we move ahead to affirm the absolute indissolubility of ratified and consummated marriage it is important to recall once more that from Innocent III, the favor of the faith is presented as the motive which justifies the dissolution of non-ratified marriage. This historical note testifies how from centuries (after the Decree of gratian) the Church received the passage of Paul (1Cor. 7:12-16) as the foundation of the practice of dissolving the natural bond which of its nature is indissoluble where such an exercise allows to another
person to progress in the faith in the light of obtaining the *salus animarum*, which always remains the supreme law (cf. can. 1752). The favor of the faith has since been perceived as the extreme or superior motive which consent or allows a derogation to the general principle, an exception to the norm written in the natural law. The preeminence or supremacy of the faith justifies in this way an act of authority which derogates a principle of the natural law and which sanctifies the value which it contains in favor of a more higher value which is the faith, that is, the spiritual good of the person and lastly the person’s spiritual salvation. The value of the faith prevails not only on the properties of indissolubility of natural marriage, but also on the favor of the law which marriage enjoys as expressed in general in can. 1060. Even though not expressly declared, the interpretation in the life of the Church to the Pauline privilege ratify the superiority and prevalence of the *privilegium fidei* on the *favor matrimonii*, at the point of making it become *favor fidei*. Notwithstanding, the legislator does not mention a possible conflict between these two values, it is intended by the said normative the prevalence of the faith to the point of making subjected for its proper exigencies the value of marriage. Marriage enjoys the favor of the faith. But in certain cases the favor of the law takes precedence before the favor of the faith. Such cases does happen when the exercise of the *ius connubii* on the part of a faithful is destined to realize a benefit relative to the faith which the conjugal and family situation cannot bring.¹ In this case if the privilege truly exist, it is in favor of the life in Christ, whose importance for the Church can legitimately prevail on a conjugal life which could not and cannot effectively be consecrated to Christ by this couple.

The response to the conflict brought by the dominant theme of this present reflection, or how can we admit the indissolubility of natural marriage with the possibility of dissolving the same, has always been situated in the ambit of tradition and the power of the Church on the natural bond. The contentiousness between the concept of the indissolubility of natural marriage and the possibility of its dissolution in favor of the faith is resolved today only in the recourse to Tradition and in the power of the Church to perform this

General Conclusions

with the aim of safeguarding a value of superior respect to those connected to the preservation of matrimony as the value of faith is, an act of jurisdiction which involves or require the dissolution of the bond notwithstanding that such a bond is indissoluble due to natural law. In the Pauline privilege is also absent in an explicit way the act of jurisdiction, not being clear the authority granting it. The encounter-clash between the two values in play maintains open therefore the question which is close in part only in the recourse to the power of the Church. Recently the contentiousness of the two values is posed in the horizon of an intrinsic contrast to divine law and to natural law: regarding the natural law the bond between two non-baptized persons is indissoluble but for divine law the Church has the power to dissolve it.²

Despite the above mentioned praxis regarding non-consummated marriages, the Church has continually taught that marriage is a lasting relation between a man and a woman, following the teaching of Jesus in the gospel. Jesus repudiated the prevailing Jewish views of divorce and reasserted marriage as an indissoluble institution of Divine origin. Jesus was categorical about the indissoluble nature of marriage, when he quoted Genesis (cf. Mt 19: 5; Gen 2:24) and firmly stated that the married couple is so totally united as to become “one flesh”. He said, «what God has joined, let no one separate» (cf. Mk 10: 9). The words of Jesus in Scriptures abrogated the prescriptions of the Law of Moses concerning divorce and insisted on the unity and indissolubility of marriage. Since Christ raised marriage between the baptized to the dignity of a sacrament, marriage between baptized persons is absolutely indissoluble. The teaching on marriage reaches its climax in the letter of St. Paul to the Ephesians, where St. Paul compares the relationship of husband and wife to that between Christ and His Church and calls this relationship a mystery (Eph 5: 31- 32). In other words the infinite and faithful love of Christ for the Church in all its dimensions becomes effectively present in the marital relationship between two baptized Christians – man and woman. As Christ shares the same life with the Church, so do husband and wife share one life as well.

² Ibid., p. 394.
Indissolubility is demanded by the same nature of conjugal donation which is total and defines persons who become *one flesh* with another. Marriage is the basic institution of the human society. Marriage points towards that understanding of the conjugal bond and irrevocable fidelity of the spouses that is, unity and indissolubility which in the subsequent development of this teaching by the Church, contributes to the elaboration of the doctrine about the sacramental character of marriage. In this regard, Christian marriage becomes the concrete arena where the spouses realize their imitation of Christ.

Christian marriage is based on the natural law and in the same dynamics of conjugal love. This natural law is the same for all men and women since we all have the same nature. In this light we are reminded by St. Thomas Aquinas that, things which were assigned to nature when it was well established in the beginning belong to the law of nature and that the indissolubility of marriage is thus, one of these essential properties according to Sacred Scriptures. God who is the Creator has joined man and woman together right from the beginning and thus anything which is contrary to this plan is against the law of nature. The natural law requires that marriage be indissoluble, for only through a permanent union can the essential ends of marriage be adequately attained. The totality of this bond regards unity of natures. This means that, the union between a man and a woman totally embraces masculinity and femininity excluding at the same time any possible union with third persons.

In the modern society, there are people who see indissolubility as a limitation of the liberty of those involved and as a weight that is unbearable. In this study we wish to affirm the very fact that unity and indissolubility are essential properties of marriage. Indissolubility is a good for the spouses, for the offspring, for the Church and for the entire humanity. By means of the sacrament, Christian matrimony though it is of the order of grace, relies on the foundation of the natural law and such a natural law is based on two essential properties which are unity and indissolubility. These two basic and essential components of marriage are further fortified and perfected by the grace of Christian matrimony. The indissolubility of marriage pertains to both natural and divine law and every human law therefore has to reflect and protect these two laws which contain the liberating truth. Therefore, every civil legislation on marriage has to do everything it can in order to protect and promote the indissolubility of marriage, instead of considering this as an imposition by the
Church which is against human liberty and freedom. Thus, a positive presentation of the indissoluble union is important, in order to rediscover its goodness and beauty.

We must overcome the view of seeing indissolubility as a restriction of freedom of the contracting parties, and so as a burden that at times can become unbearable. Indissolubility, in this conception, is seen as a law that is extrinsic to marriage, as an "imposition" of a norm against the "legitimate" expectations of the further fulfilment of the person. Added to this is the widespread notion that indissoluble marriage is only for believers, who cannot try to "impose" it on the rest of civil society. The indissolubility of marriage is rooted in the very nature of the committed life-giving love of the spouses to one another. They express without any constraint their free will to live with each other until death. The concept of marriage therefore, expresses self-donation on the part of the spouses and this has to be total, wholly, renewed daily, irrevocable and mutual. Christian marriage comes to confirm and at the same time perfect that natural marriage. Thus, the indissolubility of Christian marriage is a confirmation and perfection of the indissolubility of natural marriage, since grace does not destroy nature but reinforces and perfects it.

This implies that what the Church is teaching is: once marriage has been contracted whether sacramental or natural it is indissoluble and the argument of this indissolubility is from the point of view of the human nature and in particular from the anthropological point of view. As a covenant between the spouses, the spouses have to live together in faithfulness to this promise. Divorce is therefore, an offence against God's original plan from the beginning and it also breaks the covenant of salvation of which sacramental marriage is a sign (CCC, no. 2384). The union of a man and a woman is quite different from every other union and it constitutes a singular reality which is based on the mutual gift of the partners which enables them to become one flesh (cf. Mt. 19:6; Gen 2:24).

In order to justify the juridical anthropological doctrine of the indissolubility of marriage, there is need to look at it from the theological, ecclesiological, Christological, Trinitarian and juridical points of view. From the theological point of view, it is clear that, in Christian marriage, the couple is married in Church and this wedding is blessed by the Triune God.
Ecclesiologically, we can take as our point of departure the doctrinal view of St. Paul which states that, since the head and the body are united to one single unit, and as Christ the head is the bridegroom, while the Church, his body, is the bride, and the Christian marriage as sacrament is sign and instrument of this marriage between Christ and the Church, then in Christian marriage, the man as husband and the woman as wife are to be united inseparably like the head and the body. The husband and wife are joined together as the head and the body, and this union should in no way be revoked or be dissolved. Therefore, the indissolubility of marriage and the need to abide by the principles governing sacramental marriage are standard precepts of the faith. The Christological justification of the indissolubility of marriage is based on the fact that, since Christ, as God and man, is the origin of the sacraments, therefore, the structure of every sacrament and in particular matrimony must be divine and human. These sacraments were instituted by the Incarnate Son of God who at the same time is operating and working in them through the power of the Holy Spirit. Besides, the doctrine of the Church affirms that matrimony was instituted by Jesus Christ as an indissoluble and irrevocable bond. It then follows that, Christian marriage being rooted in Christ and built on him and in conformity with his internal structure must remain indissoluble and the spouses should in no way give in to divorce but must stay together as “what God has united man must not divide.” (Mt 19:6; Mc 10:9).

The Trinitarian affirmation of marriage regards the fact that God is One and Triune and the revealed truth of the Holy Trinity is at the root of the Church’s living faith (CCC, no. 249). And therefore, the Church professes her belief in the Holy Trinity and since the three divine persons are united, on the other hand man and woman are created by God in his image masculine and feminine and thus, as spouses they have to live together till death do them part. From the juridical point of view, the indissolubility of marriage is based on these words of John Paul II, where he affirms the idea that unity and indissolubility of marriage are found in the same existence of marriage and are

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3 Cf. COUNCIL OF CHALCEDON (451), Definition of the two natures of Christ, in DS, no. 302.
4 Cf. COUNCIL OF TRENT, Decretum de Sacramentis, in DS, no. 1601.
not extrinsic to it. The properties of unity and indissolubility are exigencies either of the dignity of the person who realizes his self-donation or of the authenticity of the same gift. When one gives and accepts the gift of the other as a person, the demand of perpetuity is profoundly congruent with the truth of such a gift. There does not exist a real and true auto-donation that is not irrevocable. This unity of the marriage bond was equally given to human beings by divine-positive law. Indissolubility of marriage deals with a lasting bond. The matrimonial bond is not prolonged above the earthly life since in heaven one does not get married, but are like angels of God (Mt 22:30). The unity and indissolubility of matrimony are requested by natural law. This truth was also confirmed by the Second Vatican Council. The Council after having announced the fundamental idea that marriage is an institute of natural law willed by God, the author of nature, made explicit reference to the unity and indissolubility demanded for the good of the spouses and their children as goods of the family which is a natural institute.

Since marriage has to do with the common good of the Church, it «enjoys the favor of the law» (Can. 1060). Christian anthropology, enriched by the contribution of recent discoveries in psychology and psychiatry, considers the human person, under every aspect – terrestrial and eternal, natural and transcendent. In accordance with this integrated vision, humans, in their historical existence, appear internally wounded by sin, and at the same time redeemed by the sacrifice of Christ. Thus we are divided as St. Paul says – between spirit and flesh: «for what the flesh desires is opposed to the spirit, and what the spirit desires is opposed to the flesh». (Gal 5:17). At the same time we are called to overcome the flesh and to “live by the spirit” (Gal 5:16, 25). Furthermore, we are called to crucify the flesh “with its passions and desires.” (Gal 5:24) thus giving to this unavoidable struggle and to the suffering that it involves – and also to the above – mentioned limits of our effective liberty – a redemptive meaning (Rom 8:17-18). In this struggle, «the spirit helps us in our weakness» (Rom 8:26) and strengthens each couple in their daily struggles to live their marriage vocation in a more profound and dignified way. The Catechism of the Catholic Church also reminds us: «The divine image is present

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5 Cf. JOHN PAUL II, Allocution, (February 1, 2001), cit., no. 5.
in everyone. It shines forth in the communion of persons, in the likeness of the union of the divine, persons themselves» (CCC no 1702; Cf. nos. 27, 1701, 1703), so that – to return to the Council’s teaching «everything on earth is to be referred to humanity as its center and culmination» (GS, no. 12).

On the other hand, essential witness to the value of indissolubility is given through the married life of the spouses, in their fidelity to the bond, through all the joys and trials of life. However the value of indissolubility cannot be held to be just the object of a private choice: it concerns one of the cornerstones of all society. This truth about the indissolubility of marriage, like the entire Christian message, is addressed to the men and women of every time and place. In order to make that reality a testimony to that truth must be given by the Church and in particular by individual families as "domestic Churches" in which husband and wife recognize that they are bound to each other forever by a bond that demands a love that is ever renewed, generous and ready for sacrifice.

The citations of Genesis (1: 27; 2: 24) propose the matrimonial truth of the "principle", that truth whose fullness is found in connection with Christ's union with the Church (cf. Eph 5: 30-31) and was the object of such broad and deep reflections on the part of Pope John Paul II in his cycles of catecheses on human love in the divine design. On the basis of this dual unity of the human couple, it is possible to work out an authentic juridical anthropology of marriage. In this sense, Jesus' conclusive words are especially enlightening: «What therefore God has joined together, let no man put asunder». Every marriage is of course the result of the free consent of the man and the woman, but in practice their freedom expresses the natural capacity inherent in their masculinity and femininity. The union takes place by virtue of the very plan of God who created them male and female and gives them the power to unite for ever those natural and complementary dimensions of their persons. The indissolubility of marriage does not derive from the definitive commitment of those who contract it but is intrinsic in the nature of the "powerful bond established by the Creator."

In this context, unity disposes a conjugal bond between a man and a woman and excludes all kinds of polygamy found in various societies. This implies that, a total self-giving and a complete nurture of the offspring is
possible only in a community of life based on a total human fidelity which is continuously expressed to one person. In this light, fidelity in a monogamous bond is a direct consequence of the indissolubility of the conjugal bond. A total human fidelity cannot be expressed in a bond that is soluble. This is the main reason why indissolubility as an essential property necessarily demands the stability of the marital covenant. Hence, indissolubility means the perpetuity and inseparability of the conjugal bond.

That indissolubility is a characteristic of every true marriage is explicitly recalled by Jesus: «Have you not read that he who made them from the beginning made them male and female, and said, 'For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one'? So they are no longer two but one. What therefore God has joined together, let no man put asunder» (Mt 19:4-6). So even if human reasoning at times finds it hard to understand why "no divorce and remarriage" is God's law, trust in his wisdom, readiness to bear the Cross if necessary (Cf. CCC 1615) and the firm hope of gaining heaven by abiding by his will, should be sufficient to bring about determined acceptance of this law. If "no-divorce" is Our Lord's teaching, then he must provide the grace to make it possible for husband and wife either to live together despite their mutual differences, or else to separate but still to respect the marriage bond. Those who seek his grace, through prayer and the sacraments, will live up to his law and merit a special reward in heaven.

The Congregation for the doctrine of faith affirmed that: «This sacred congregation has the duty of defending the doctrine of faith and customs in the whole catholic world, with vigilant attention in examining the diffusions of new opinions which searches to deny or put in doubt the doctrine about the indissolubility of marriage constantly proposed by the magisterium of the Church». Due to the force of the indissoluble union of the two dimensions of Christian love it must be admitted that to every vocation corresponds a mission.

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The magisterium following the teachings of Jesus Christ and the Apostles on marriage especially its indissolubility, has consistently proclaimed and defended the indissolubility of the matrimonial bond, and equally insists on the Christian doctrine of marriage as willed by God and taught by Jesus Christ. The attitude of the magisterium is characterized by the abiding conviction that, the marriage bond is indissoluble, hence, her unrelenting opposition to divorce and remarriage. The Church therefore continues to proclaim this Christian doctrine concerning the indissolubility of marriage. Despite the problems of divorce and remarriage which seem to plague various opinions, customs, legislations and our society of today, the indissolubility of marriage must be protected, and these problems are to be resolved according to God’s justice and mercy for the salus animarum. Therefore, the new Code of Canon Law on marriage reflects the Church’s faithfulness to Christ’s will and her relentless effort to affirm the indissolubility of marriage and to safeguard the salus animarum (cf. can. 1752) of many spouses.

The topic on indissolubility constitutes a true theme which permits us to judge the correctness, anthropological and personal consistence of the juridical construction of marriage. Therefore, any concept of love that is incapable of justifying ab intrinseco the indissolubility of the conjugal bond is to be held inadequate not only on the theological basis but eminently anthropological. The challenge consists in justifying how marriage could be at the same and without contradictions a “bond of love” and “a bond of law”, without falling in the excesses of a romantic sentimentalism or of a positivistic juridicism. Indissolubility is a gift made for couples by the Creator, and it demands a certain exigency. Conjugal love demands indissolubility and fidelity in the definitive reciprocal donation. Indissolubility is an expression for couples, a moral radicalism for the kingdom (FC, no. 13).

Thus, the specific reality of marriage has to lead us to a real alternative radicalism: or to an indissoluble marriage or to a free cohabitation which is more or less durable. The solution of this is found strictly in the personal nature of marriage: that which is given and accepted which is reciprocally due in marriage life, that is, the same persons of the spouses. This is because marriage unites persons in their natural dimension of conjugality. Indissolubility is completely inseparable from the truth of marriage which is regarded as the bond and commitment of faithful love. In this light, Hervada asserts that: «Marriage is not only a bond of union that exists between a man
and a woman; marriage is a man and woman united together.\textsuperscript{7} \textit{Indissolubility} as the culmination of the bond’s stability and perpetuity is based on the nature of marriage as a union between persons. Indissolubility verifies the real and irreversible power of freedom to generate the mutual identity of the spouses and their reciprocal, personal self-making when they assume, through the giving and acceptance of self, the \textit{una caro (one flesh)}, or the capacity for unity which is entailed in the dual complementariness of human sexuality.

Indissolubility indicates that marriage is not just a fact which concerns the human nature and its procreative end or, a matter which belongs to the order “of the species and its reproduction” but it should also be noted that marriage contains, in a deep and more profound level, a specific interpersonal attainment with reference to the spousal nature of human sexuality and procreation. In fact, the obligation to conserve the matrimonial bond leads already to the quality of sacramentum used in the Augustinian expression of “\textit{bonum sacrament}”, which reflects the ancient meaning of an engagement for the whole life.\textsuperscript{8} The good of the spouses demands that the bond created by them remains indissoluble, since it is the good that they have engaged themselves to promote.\textsuperscript{9}

Errázuriz is of the opinion that, there are many valid reasons which favours the indissolubility of marriage against divorce. We could understand this at the level of the ends of marriage. This can be clearly understood from the point of view of the constitution of the family and the good of the offsprings. There also exist negative and grave effects regarding divorce. In this light, the point on the common good seems the strongest against divorce. Indissolubility is completely inseparable from the truth of marriage. Anyone who defends divorce directly or with equivocal terms such as petitions a reality that is essentially different from that

\textsuperscript{7} J. Hervada, \textit{Studi sull’essenza del matrimonio}, cit., p. 124.


\textsuperscript{9} Cf. J. Carreras – H. Franceschi – M. A. Ortiz, \textit{Diritto canonico del matrimonio e della famiglia}, cit., p. 84.
of marriage as the bond and engagement of faithful love is out of order. It is important here that we all make the effort constantly of discovering and to rediscover the significance of the truth regarding marriage and to help the spouses above all through good example in acquiring this fundamental conviction. In this light, «what God has united, human beings must not separate». Thus, the sacramentality of marriage of the New covenant established by Christ includes a specific reinforcement or strengthening of indissolubility as the sign and efficacious participation to the indissoluble union of Christ with the Church.\(^{10}\) The indissolubility of marriage protects the family as the primary community of love. The inherent permanence of the marital union is necessary for the realization of the basic values of a civilized society.

Finally, the Church's fundamental duty is «to reaffirm strongly, as the Synod Fathers did, the doctrine of the absolute indissolubility of ratified and consummated marriage as \textit{definitive truth}» (FC. n. 20). Remaining faithful to Christ, the Church must firmly stress the good news of the definitive nature of that conjugal love that has in Christ its foundation and strength (cf. \textit{Eph} 5:25). The indissolubility of marriage finds its ultimate truth in the plan that God has manifested in his revelation: he wills and he communicates the indissolubility of marriage as a fruit, a sign and a requirement of the absolutely faithful love that God has for man and that the Lord Jesus has for the Church (\textit{Familiaris consortio}, n. 20).\(^{11}\)


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