

The Theology of Marriage after Vatican II: Theological and Canonical Perspectives

Research Report

INTAMS

International Academy for Marital Spirituality



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Foreword

It is now ten years since Pope Francis published *Amoris laetitia* (“The Joy of Love”) following the promising 2014-15 Bishops’ Synod on the Family and its foundation in marriage. Both of these events were of great significance to our *International Academy for Marital Spirituality* (INTAMS) and have inspired this work.

Since I founded our organisation in 1989, we have engaged intensively – from theological, pastoral, and spiritual perspectives – with all issues relating to marriage, including those that were still considered taboo in the early years. We have organised numerous colloquia and symposia on these themes and have systematically published each of the academic and pastoral topics in our international journal *Marriage, Families & Spirituality*.

After years of reflection, dialogue, discernment, and research, one pressing issue was particularly close to my heart: one that had not yet been sufficiently explored, namely the understanding of marriage from the perspective of theology and canon law. Both theologians and canonists have played a key role in shaping the theology of marriage in line with the concept developed at the Second Vatican Council, with most of them agreeing on their view of marriage, albeit not always in the same way. In 2018, we brought together a group of theologians and canonists from various European countries to discuss how the theology of marriage can be further developed to better address the challenges of our time. With a core team comprising two theologians, Thomas Knieps-Port le Roi and Johan De Tavernier, both from the Catholic University of Leuven in Belgium, and the canonists Kevin Schembri from the University of Malta and Astrid Kaptijn from the University of Fribourg in Switzerland, we launched our joint research project. You will find the results of this work in the present Research Report.

The integral and holistic approach we have embraced over the last six years of our research responds to the call for a further development of the contemporary theology of marriage. Under the guidance of the Holy Spirit (Jn 14:26), our Church, in its constant process of “development”, is constantly seeking better ways to put its message into practice and to adapt its means accordingly, in order to ever reinforce the link “between faith and life” (Pope Francis).

I am delighted that this study demonstrates that theology and canon law not only complement one another, but that creative dialogue between these two disciplines is mutually fruitful. We have acted in accordance with the *sensus fidei fidelium*, according to which the entirety of the faithful, including lay people, is called to participate as co-decision-makers in the Church.

I believe that this work can help strengthen many marriages and families. In particular, I offer it for those who have gone through a difficult time following a divorce. In their love for God and for our Church, these children of God continue to long to experience their inherent dignity in their new relations and newly composed family lives. May they be given full integration in order to persevere in their faith with joy and community, and find fulfilment.

In the belief that humanity achieves integrity in harmony, after thorough reflection, our study group recognised that – speaking out of its essential spirituality – marriage is indeed crucially a “covenant” between the married couple and God, and not only a juridical “contract”.



Artist: Salvatore Sciascia

As the title *The Theology of Marriage after Vatican II: Theological and Canonical Perspectives* of the Report expresses, we remain faithful to the vision of Vatican II and the Pastoral Constitution *Gaudium et spes*. Our international and interdisciplinary group of theologians and canonists hopes that, by offering this document, we have made a modest contribution for the development of the magisterium.

While our Research Report is clearly written from a Western perspective, our hope and intent are that this document will be a first step and provide a foundation upon which other continents and cultures can build within a universal scope.

In February 2026, we completed this important work as a culmination of great knowledge and perseverance. Therefore, I would particularly like to express my gratitude to Thomas Knieps-Port le Roi, Kevin Schembri, and Johan De Tavernier. I would never have been able to achieve this without their great professional commitment.

My gratitude also goes out to all the precious members of the Advisory Expert Group and to the External Experts who were consulted.

May the Lord “guide the beginning of our work, direct the progress, and perfect the achievement” (St Thomas of Aquinas).

*Aldegonde Brenninkmeijer-Werhahn
Sint-Genesius-Rode, Easter 2026*

Executive Summary

The contemporary theology of marriage cannot be understood without reference to the vision of the Second Vatican Council. As an “intimate partnership of life and love”, as aptly defined by the Pastoral Constitution *Gaudium et spes* (GS), marriage is a covenant between the married couple and God, to which all other properties – such as procreation, fidelity, and indissolubility – are subordinate. Such conjugal love, which unites the human and the divine, leads the spouses to a free and mutual giving of the self, proven by tender affection and by their actions, and permeates their entire lives (see GS 49). The Council Fathers deliberately chose the biblical-theological term “covenant” over the legal term “contract” based on their person-centred vision: the marital relationship is not about “things”, “obligations”, or “rights” but first and foremost about “persons”, more specifically, about two people with different characters and different life stories. However, this conciliar view of marriage lost some of its firmness and coherence in certain post-conciliar documents. This prompted an international group of theologians and canonists to remind the Church of the core teachings of the Second Vatican Council and to free it from contradictory, flawed, deformed, and, at times, anti-conciliar remnants that have crept into the life of the Church (see Part I). Three aspects have guided the study and research, which is presented in three Parts.

Part II aims to revitalise the theology of marriage as outlined in *Gaudium et spes*. However, in order to breathe new life into the Church and married couples in particular, erroneous teachings, harmful norms, and restrictive practices must first be identified and then refuted. A first point concerns the *consent* that the spouses give to one another. The matrimonial consent is “irrevocable” (GS 48) in the sense that the spouses’ promise shapes and defines married life forever, finding its sublime expression in the very moment of the promise. What is overlooked is that a single consent does not automatically guarantee everlasting fidelity, but rather involves a dynamic, developmental, and ongoing process that establishes, nurtures, and strengthens the spousal commitment. Canon law often places the emphasis on marriage in the moment of being contracted (*matrimonium in fieri*), whilst insufficient attention is paid to the nature of married life (*matrimonium in facto*). This has implications for a second point, namely the *indissoluble nature* of marriage, particularly with regard to divorce and remarriage, which have now also become part of married life for many Catholics as well. From a person-centred perspective, the concept of indissolubility can no longer be asserted as an objective and therefore transpersonal reality which, once the spouses have given their consent and have sexually consummated their marriage, takes on a life of its own that is independent of the spouses’ life journey. Since a marriage can falter and eventually break down, an analogous theological and pastoral approach is needed for marriages that succeed and flourish: happiness and failure in marriage depend on whether or not the spouses fulfil their marriage vows. To defend indissolubility at all costs would weaken the person-centred vision. This leads to a third point, i.e. the *sacramental nature* of marriage. The statement that there is no marriage between baptised persons which is not a sacrament (cf. CIC 1983, can. 1055 §2) contradicts both the experiences of many married couples and the theological principle that faith and sacrament must be in a balanced interplay with one another. Any notion of a sacramental automatism carries the dual risk that spouses might be relieved of their human responsibilities, or that their sacramental marriage might be burdened with unattainable ideals. A final and fourth point concerns Vatican II’s call for responsible parenthood, which post-conciliar documents have unjustifiably narrowed to the meaning of the *conjugal act*. A re-reading of the Council document shows that, whilst conjugal love does indeed include a willingness to become parents, this does not mean that the principle of openness to children must be upheld during “every single sexual act”. In other words, the one-sided, reproduction-focused approach to marriage seems to be regaining the upper hand in the post-conciliar Church, a situation that urgently needs to be revisited.

Part III recalls the call of the Pastoral Constitution that the joys and hopes, the anxieties and fears of the people of today are also the joys and hopes, the anxieties and fears of Christ's followers (see GS 1), and continues that we must "recognize and understand the world in which we live, its explanations, its longings, and its often dramatic characteristics" (GS 4). This opens up a perspective on a theological issue that has scarcely been addressed within the Church to date and is still in its early stages of development: the "lived realities and experiences" that are unique to us, and in particular the circumstances and situations that present challenges for Christian believers and, above all, for married couples. In the first section, a careful effort is made to "give a voice" to spouses and families, contrary to the long-held view that the magisterial Church alone has the final say. This means that the diversity of spousal and familial experiences reflected here encompasses not only spouses who believe they are living up to God's ideal but also couples who do not always meet God's standards. Two key areas of discussion are presented: firstly, divorce and remarriage, contraception, and the sacramentality of marriage – three topics that were addressed in the documents of Vatican II but which, to this day, give rise to dissatisfaction among many believers; and secondly, cohabitation, late marriage, single life, and same-sex marriage – topics which, although not on the agenda of the Council, now raise new questions regarding the understanding of marriage. However, giving space to different, sometimes even dissonant voices is one thing; assigning believers a legitimate and viable place in the Church is another. This is the task of the second section which is intended to provide a theological framework that can help give the realities and experiences of everyday life a sound and verifiable theological point of reference or *locus*. Four topics are addressed, all of which are in line with the vision of the Second Vatican Council but require more appropriate implementation: firstly, the *pastoral approach*, which was touched upon by the Council and is regarded as fundamental to the Church, but has not yet been further developed; secondly, the *ecclesiological concept of the sensus fidei fidelium*, which, in contrast to pre-conciliar teaching, defines how the various ecclesial subjects – whether the pope, bishops, priests, or laity – should interact with one another and engage with one another; thirdly, the *theological hermeneutics of the transmission of the faith*, which was reformulated in the Dogmatic Constitution *Dei verbum* (DV) by repositioning the various bearers of doctrinal authority within the Church; and finally, from an epistemological perspective, the *anthropological-theological function of human experience*, which has taken its place alongside Sacred Scripture, Tradition and human reason among the classical sources of theological knowledge – something that had previously scarcely been attended to. Part III concludes with a series of principles and criteria.

Part IV fully endorses the view of the Vatican II that "Christ summons the Church to *continual reformation* as she sojourns here on earth", as stated in the Decree on Ecumenism, *Unitatis redintegratio* (UR 6; emphasis added). The aim of this Part is to put forward specific suggestions that could assist the magisterium in *further developing* official teaching and legislation on marriage. This is achieved by reviewing the *Codex Iuris Canonici* of 1983 and subsequently the *Catechism of the Catholic Church* (published first in 1992), always guided by the principle that the vision of the Council must be preserved and upheld, and that unease felt by the *sensus fidelium* must be respected. In both of these magisterial documents, the text follows the same structure of argumentation: first, the strengths, i.e. the "Values and Benefits" are highlighted, before "Inconsistencies and Deficiencies" are set out, which hinder a conciliar and context-oriented reading of the documents. It is by no means the intention to view the magisterium's statements in a wholly negative or even disparaging light, but rather to examine the current state of these documents by identifying areas where distorting remnants could be removed, deeply rooted elements nurtured, and new seeds sown.

In brief, the Research Report does not aim to reformulate a theology of marriage or to draft a new one that would provide precise and appropriate answers to all the questions that arise today in Christian life in general and in marriage in particular. It makes a modest contribution to the further development of the magisterium.

I. Preliminary Considerations

1. We are an international group of academic theologians and canon lawyers who are affiliated with the *International Academy for Marital Spirituality* (INTAMS)¹ and who have been meeting regularly since 2018 to discuss questions relating specifically to the theology of marriage. Our intensive research has resulted in the document “The Theology of Marriage after Vatican II: Theological and Canonical Perspectives”, which we would like to make available to a broader audience, particularly church leaders, theological scholars, pastoral ministers, and anyone interested in the theology of marriage.
2. Several motives and reasons have prompted us to devote special attention to the theology of marriage in the present day. Firstly, as we are inspired by and appreciative of the vision and teachings of the Second Vatican Council (1962-1965), we recognise that the achievements of the Council have not yet been sufficiently implemented in the post-conciliar era. Secondly, we are deeply moved by the lived realities and pastoral difficulties faced by our fellow Christians, especially those whose marital and family bonds are being tested by unprecedented challenges, often due to a lack of sensitivity toward diverse lived and pastoral realities in the life and teachings of the Church. Thirdly, by reaffirming the view of Vatican II that the Church is in constant need of “continual reformation”,² we consider our reflections in the document not only as part of this process but also as a further incentive to make the teachings and disciplines more relevant and effective in addressing the needs and challenges of people today. Finally, the two theological disciplines of canon law and theology have not always moved in the same direction in the Church, particularly with regard to their understanding of the different types of marriage, namely natural, sacramental, and canonical marriage – a dilemma that still exists and needs to be resolved. In the following, we will explain in more detail the motivations that have guided our reflections.

I.1. Achievements and Unfulfilled Wishes of Vatican II

3. The Second Vatican Council, announced by Pope John XXIII on 25 January 1959, has had a profound impact on the life of the Church and will be remembered as a pivotal moment, or even a turning point, in its history. As theologians and canonists, we are aware that even today we are still coming to terms with the challenges posed by the Council. This also applies to the theology of marriage and family, as set out by the Council Fathers in 1965 in the *Pastoral Constitution on the Church in the Modern World, Gaudium et spes*.³ Here,

¹ INTAMS is an international non-profit organisation, founded in Belgium in 1989 (see <https://www.intams.org/>). Drawing on and committed to the intellectual and cultural heritage of Christianity, INTAMS is dedicated to the study of and dialogue about the meaning and relevance of marriage and families in the context of contemporary society.

² See SECOND VATICAN COUNCIL: *Decree on Ecumenism, Unitatis redintegratio* (hereafter UR), 21 November 1964, 6,1, available at https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19641121_unitatis-redintegratio_en.html.

³ SECOND VATICAN COUNCIL: *Pastoral Constitution on the Church in the Modern World, Gaudium et spes* (hereafter GS), 7 December 1965, available at https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html.

marriage is defined as “the intimate partnership of married life and love” (*intima communitas vitae et amoris conjugalis*, GS 48,1) which has been established by God and is brought into being by an irrevocable personal consent which leads the spouses to a free and mutual gift of themselves. Since God is the source and author of love between man and woman, conjugal love is the unique basis of married life, which is not subordinated to any external overarching ends. Through mutual giving and receiving, through an “intimate union of their persons and of their actions” (GS 48,1), the married persons generate a close bond which serves the good of the spouses themselves, of the offspring, and of the society, and which, no longer depending on human arbitrariness, creates a lasting union of love and fidelity.

4. The decades following the publication of the conciliar documents have once again demonstrated that the process of receiving magisterial teachings is never straightforward but rather open to further, sometimes divergent, interpretations. While the definition of marriage as an “intimate partnership of married life and love” seems, at first glance, to be generally accepted in the Church and widely accepted by the faithful, this does not prevent differences of opinion from arising in the post-conciliar period. One of the key questions we are concerned with is whether differences of opinion help to clarify and develop the Council’s teachings, or whether they sometimes lead to a deviation from these teachings. After more than half a century of the reception of Vatican II, we have little doubt that the theology of marriage elaborated in GS has established a solid foundation on which this theology can be further developed. However, we must acknowledge that some central and essential views of the renewed theology of marriage have not yet found the resonance in the teachings and practices of the Church that we had hoped for. For instance, the concept of “covenant”, with which the Council Fathers appropriately preferred to describe the conjugal union, is at risk of being overruled again by the legal term “contract”. Similarly, several post-conciliar documents treat the marital bond as a juridical entity that exists independently of the actual situations and circumstances of the individuals united by this bond, often making it challenging for couples to relate magisterial norms to their own experiences. The assertion that “sexual consummation” makes marriage “absolutely indissoluble” disregards the person-centred vision of Vatican II, as it narrows the intimate partnership in marriage to a single sexual act, to the detriment of the good of the spouses. These are just a few examples of discrepancies and inconsistencies in the post-conciliar theology of marriage, which we will further examine in Part Two of our document.

I.2. Lived Realities and Pastoral Challenges

5. Vatican II called upon the Church to scrutinize the signs of the times, to decipher authentic signs of God’s presence in our world, and to address the questions of today’s people about their lives (see GS 4 and 11). The period following the Council was entirely under this mandate. In the meantime, we have learned to better understand how the Church should respond to the challenges of modern times. Sensitivity to diverse lived and pastoral realities is an essential requirement for the Church’s mission. The teachings and laws of the Church must remain responsive to the concrete situation of each believer, recognising their discoveries, understandings, and experiences. Two decades after the Council, in the *Apostolic Exhortation on the Role of the Christian Family in the Modern World*, Pope John Paul II reaffirmed that “God’s plan for marriage and the family touches men and women in the concreteness of their daily existence in specific social and cultural situations”, and thus

admonished the Church to better understand the situations in which marriage and family are experienced today.⁴ Today, however, we must acknowledge that the Church has not given sufficient consideration to the lived realities of married and family life, as the Council called for. The mindset that the Pastoral Constitution is merely an appendix (*adnexa*) to the *Dogmatic Constitution on the Church*⁵ has again gained acceptance. According to this view, pastoral matters are considered simply the practical application of doctrines defined as immutable by magisterial teaching. Following his own announcement that the Council did not intend to define new dogmas, some argued that Vatican II was a “pastoral council” and therefore not as significant as other councils. Contrary to this, the Pastoral Constitution had stated in a remarkable footnote that the *pastoral* character of the Constitution has *doctrinal* value, especially when it seeks to express the relation of the Church with the modern world and with humanity, thereby emphasising that the changing circumstances in which we live are an essential subject of the Church’s teaching.⁶ The Council’s verdict means that, dogmatically speaking, pastoral issues are not merely application-related but rather have a constitutive ecclesial significance. Therefore, it would be only natural to conclude that the realities of marital and family life deserve an appropriate theological status within the Church’s teachings and laws. But the risk that dogmatic definitions on the one hand and pastoral applications on the other would again follow different paths of theological interpretation, with the latter being subordinated to the former, still remained alive in the post-conciliar era.

6. Pope Francis has broken with this view and breathed new life into the pastoral turn of Vatican II. He notes that “one of the main contributions of the Second Vatican Council was precisely seeking a way to overcome this divorce between theology and pastoral care, between faith and life.” And he continues: “I dare say that the Council has revolutionized to some extent the status of theology – the believer’s way of doing and thinking”.⁷ The pope is not calling for a gentle shift in the life of the Church, let alone for leaving dogmatic statements and proven pastoral practices untouched, but rather for a fundamental reorientation. The Council would lose its authority and the Church its credibility if the lived realities of marital and family bonds were not taken seriously and if their value and

⁴ JOHN PAUL II: *Apostolic Exhortation on the Role of the Christian Family in the Modern World, Familiaris consortio* (hereafter FC), 22 November 1981, 4, available at https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html.

⁵ SECOND VATICAN COUNCIL: *Dogmatic Constitution on the Church, Lumen gentium* (hereafter LG), 21 November 1964, available at https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html.

⁶ See GS, Preface, footnote 1: “The Pastoral Constitution ‘De Ecclesia in Mundo Huius Temporis’ is made up of two parts; yet it constitutes an organic unity. By way of explanation: the constitution is called ‘pastoral’ because, while resting on doctrinal principles, it seeks to express the relation of the Church to the world and modern mankind. The result is that, on the one hand, a pastoral slant is present in the first part, and, on the other hand, a doctrinal slant is present in the second part. In the first part, the Church develops her teaching on man, on the world which is the enveloping context of man’s existence, and on man’s relations to his fellow men. In part two, the Church gives closer consideration to various aspects of modern life and human society; special consideration is given to those questions and problems which, in this general area, seem to have a greater urgency in our day. As a result in part two the subject matter which is viewed in the light of doctrinal principles is made up of diverse elements. Some elements have a permanent value; others, only a transitory one. Consequently, the constitution must be interpreted according to the general norms of theological interpretation. Interpreters must bear in mind – especially in part two – the changeable circumstances which the subject matter, by its very nature, involves.”

⁷ FRANCIS: *Apostolic Constitution Veritatis gaudium on Ecclesiastical Universities and Faculties*, 27 December 2017, 2, available at https://www.vatican.va/content/francesco/en/apost_constitutions/documents/papa-francesco_costituzione-ap_20171208_veritatis-gaudium.html.

significance, however beneficial or sorrowful they may be, were not recognised. For good reasons, Pope Francis has therefore elevated the concept of the *sensus fidei fidelium* to a new, hitherto little-known ecclesiological level by describing the entirety of the faithful as additional decision-makers in the Church. Part Three is dedicated to this issue. We will give a voice to the diversity of marital and familial realities and provide them with a theological framework.

I.3. Development of Teaching and Legislation in the Church

7. The Church lives in history, not in a perfect society that guarantees the good of the Christian community for all time. This is another lesson from the Second Vatican Council. Under the guidance of the Holy Spirit (see Jn 14:26), the Church is in a constant process of “developing” its teaching, legislation, and practice. To fulfil its ecclesial mission, the Church must continuously seek better ways to apply its message and adapt its means accordingly. As the Christian message is an inexhaustible and unfathomable mystery, the Church’s search for a more profound and accurate understanding of the faith is an indispensable and infinite task. It is also important to bear in mind that the source of the faith can never be fully grasped and that its manifestations can never be comprehensively articulated. Against this background, the Council has also set out some criteria for how this development should occur. Since there is in Catholic doctrine “a ‘hierarchy’ of truths”, the different teaching statements “vary in their relation to the fundamental Christian faith” (UR 11,3). This means that some truths are more directly related to the heart of the Gospel and that the Church’s teachings and laws do not all share the same level of firmness and significance. Thus, the Church is called upon to engage in friendly competition and to encourage a deeper understanding and clearer expression of the Gospel. Furthermore, given that “institutions, laws and modes of thinking and feeling as handed down from previous generations do not always seem to be well adapted to the contemporary state of affairs” (GS 7,2), the Council requested an ongoing reassessment to ensure that the Church’s teachings and regulations remain relevant and effective in addressing the needs and challenges of people in their time. This does not exclude, but rather implies, that customary practices can be modified and, if necessary, replaced by other practices that better convey the richness of the faith. Lastly, the Pastoral Constitution placed its reflections under the motto that the “[t]he joys and the hopes, the griefs and the anxieties” of the people of today *are* “the joys and hopes, the griefs and anxieties of the followers of Christ” (GS 1,1). In other words, what helps us to better understand the Christian message are not primarily doctrines, rules, principles, or the like, but the human persons themselves. Realities only become real when they are “lived realities”, i.e. realities lived and experienced by persons. If the Church wishes to be “responsive” to situations and realities, especially new situations and realities, the responses must be found in the lives and experiences of persons, as it is these lived experiences that provide the ground on which the faith can grow and flourish.
8. The further development of Church teaching and laws is the subject of Part Four. After the Council, two key documents were published to articulate the Christian faith, the first from a canonical perspective and the second from a doctrinal-pastoral perspective, i.e. the *Codex Iuris Canonici* of 1983⁸ and, after that, the *Catechism of the Catholic Church*, first published

⁸ *Code of Canon Law*, 1983 (hereafter CIC/83), available at https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html.

in 1992⁹. In this Part, we will re-evaluate the passages of the two magisterial documents that deal with marriage and family issues. What motivated us to undertake this reassessment was our growing agreement that certain parts of the *Code of Canon Law* of 1983 and the *Catechism of the Catholic Church* hinder rather than facilitate a further development of the contemporary theology of marriage. We will conclude the reassessment with a series of suggestions that appear essential for a creative and constructive development of the Church's teaching and legislation.

I.4. Theology and Canon Law Searching for Common Grounds and Perspectives

9. Theology and canon law are two different theological disciplines with a long tradition of association in the history of the Church. Since the early Church, two main areas of life have been established: belief (*fides*) and practice (*mores*). For many centuries, these two spheres went hand in hand, although they were linked to different ways of thinking: reflection on Christian faith was articulated in creeds and doctrines (*symbola*, doctrine), while reflection on Christian practice was expressed in disciplinary and normative statements (*kanones*, norms). However, theology and canon law have not always been in harmony. Over time, the two spheres became more distinct, and their symbiotic relationship underwent a process of estrangement. Indeed, the last centuries of Church history have left little room for further discussion and creative conversation between the two disciplines. As legal and juridical norms began to take precedence in the life of the Church, the expertise of theologians came to a standstill, and their effectiveness for the good of Christian life was severely limited.
10. As a group of theologians and canonists, we strive to overcome the antagonistic tendencies and divergent interests that persist between the two disciplines. Our goal is to transform the mutual interaction that has characterized the life of the Church from the beginning into a healthy, creative, and sustainable collaboration for today. Although theology and canon law have different functions and competences in the Church, they stem from the same source and fulfil the same task, namely that the People of God “may have life, and have it abundantly” (Jn 10:10). The differences between the disciplines are also what unite them. Theology and canon law are part of an *organic unity*, animated by the Holy Spirit, where each discipline retains its autonomy and independence while maintaining a relationship of mutual dependence. What is true for an individual believer is also true for the Church. The recently deceased canonist Ladislav Örsy made this clear: “A human being achieves integrity when there is a flawless harmony between his or her vision and action. If someone thinks in one way and acts in another way, there is a breakdown in his or her personality. The same principle stands for a collective person, in our case, the Church. If the understanding of revelation does not govern and control the decisions of the Church as reflected in its own laws, there is a breakdown, with potentially disastrous consequences.”¹⁰

⁹ *Catechism of the Catholic Church*, Second Edition, revised in accordance with the official Latin text promulgated by Pope John Paul II (hereafter CCC), Vatican City: LEV, 2019; also available at <https://usccb.cld.bz/Catechism-of-the-Catholic-Church/6/>.

¹⁰ L. ÖRSY: “Theology and Canon Law: An Inquiry into Their Relationship”, in: *The Jurist* 50 (1990), 402-434, 414. For further details, see ID.: “Moral Theology and Canon Law: The Quest for a Sound Relationship”, in: *Theological Studies* 50 (1989), 152-167; ID.: *Theology and Canon Law: New Horizons for Legislation and Interpretation*, Collegeville, MN: The Liturgical Press, 1992; ID.: *Receiving the Council: Theological and Canonical Insights and Debates*, Collegeville, MN: The Liturgical Press, 2009.

11. We thus advocate for an *integral and holistic approach* in which the two disciplines of theology and canon law complement each other, focusing on the whole rather than the parts and avoiding any tendency toward mutually exclusive specialisations. When one of the ecclesial disciplines is absent or non-functional, the Church suffers from imbalances and deficiencies. The result is evident: at the level of theology, a “fundamentalist” or “idealist” vision that concentrates exclusively on doctrinal knowledge without considering the diversity of ecclesial activities; and at the practical level of canon law, a juridical “legalism” that leads to a fictitious life without any connection to theological sources and human experience. We mention this sometimes-disharmonious relationship between the two theological disciplines because the *theology of marriage* is a distinct area in which different canonical and theological perspectives have collided, often with conflicts that have not yet been definitively resolved. Our document is an attempt to bring together two theological disciplines in the belief that different approaches, hermeneutics, and methods can lead to a common theological outcome, in this case to a theology of marriage that is fruitful for both sides.

12. A last remark at the end of our preliminary considerations seems appropriate. This Research Report is written from a Western perspective. The underlying ideas and insights primarily originate from European and North American cultures, but they should not be read as limited to this way of thinking. We consider our reflections to be the first step in formulating a theology of marriage that aims to have a universal scope, while at the same time strives to respect the particularities of the local context. We are well aware that we are not free from Eurocentric or Western-influenced limitations, but we would like to offer our considerations as a platform for other continents of the world, so that they can contribute to our insights and develop their own theology of marriage.

II. The Theology of Marriage of the Second Vatican Council: Irreversible Achievements and Unfulfilled Desiderata

13. A contemporary theology of marriage continues to have its foundation and common ground in the documents of the Second Vatican Council. To “scrutinise the signs of the times”, to interpret them “in the light of the Gospel” (see GS 4), and, more specifically, to bring the Gospel of conjugal love to the faith and understanding of the faithful today was always a primary concern of the Council Fathers. In the *Pastoral Constitution on the Church in the Modern World* they gave a definition of marriage that pursued two purposes: first, to distance itself from the theology of marriage that had been considered sound and valid for centuries, but which had since been proven to be obsolete; second, to draft a renewed theology of marriage based on a few fundamental principles that could be convincing in a modern context. The process of reception that Vatican II’s theology of marriage has undergone in recent decades is as ambivalent as that of many previous councils: there are magisterial and theological insights that deserve to be further developed and others that have undesirable or even destructive effects. In the following, we will first recapitulate the essence of the conciliar theology of marriage and then identify pre-conciliar remnants.

II.1. The Theology of Marriage in the Perspective of Vatican II

14. In order to better understand the contemporary characteristics of the theology of marriage, it is helpful to refer briefly to the period before Vatican II. Marriage was usually conceived as a contract whose primary purpose is the procreation and education of children, with “mutual assistance” (*mutuum adiutorium*) and the “relief of concupiscence” (*remedium concupiscentiae*) as secondary purposes, and unity and indissolubility as essential properties that attain a unique firmness by virtue of the sacrament. The 1917 *Code of Canon Law*¹¹ described the meaning and sense of marriage in the following way:

Can. 1012 §1. Christ the Lord raised the marriage contract itself to the dignity of a sacrament among the baptised (*Christus Dominus ad sacramenti dignitatem evexit ipsum contractum matrimonialem inter baptizatos*).

§2. Therefore, among the baptised there can be no valid contract of marriage without its also being a sacrament (*Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum*).

Can. 1013 §1. The primary end of marriage is the procreation and education of children; the secondary is mutual support and a remedy for concupiscence (*Matrimonii finis primarius est procreatio atque educatio prolis; secundarius mutuum adiutorium et remedium concupiscentiae*).

§2. The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain special firmness by reason of the sacrament (*Essentiales matrimonii proprietates sunt unitas ac indissolubilitas, quae in matrimonio christiano peculiarem obtinent firmitatem ratione sacramenti*).

¹¹ *The 1917 or Pio-Benedictine Code of Canon Law*, in English Translation (hereafter CIC/17), San Francisco: Ignatius Press, 2001, available in Latin at https://www.vatican.va/content/john-paul-ii/la/apost_constitutions/documents/hf_jp-ii_apc_19901018_index-codex-can-eccl-orient.html.

15. For a long time, two main aspects contributed to defining the meaning of marriage: from a social-political perspective, the need to ensure the survival and reproduction of the human race, and from a socio-ethical perspective, the need to keep human sexuality under control. Procreation was seen as the main purpose of marriage, but it was always associated with a distrustful, not to say pessimistic, view of human sexuality. Saint Augustine (354-430) insisted that “after the Fall” sexual pleasure was pervasively linked to lust and had lost the innocence it had in paradise; the only justification for sexual relations was a chaste life within marriage, at least when procreation was the purpose. For centuries, the idea prevailed that marriage and family life should be protected from disordered sexuality by religious taboos and moral prohibitions. As a result, confessors, moral theologians, and canonists appeared incapable of seeing any true value and dignity in the intimate union between a man and a woman. There have been very few attempts, mostly unsuccessful, to attribute any purpose other than procreation to sexual intercourse, which is reserved for marriage. A first exception can be seen in the *Roman Catechism* commissioned during the Counter-Reformation by the Council of Trent (1566). In order to explain why two persons join their lives together, the Catechism responded that the primary cause of marriage is “the fact that of all human relations there is none that binds so closely as the marriage-tie, and...the fact that husband and wife are bound to one another by the bonds of the greatest affection and love”.¹² The “mutual support” that the spouses provide for each other is not primarily intended to “remedy concupiscence” – as the two secondary purposes enunciated by the 1917 *Code of Canon Law* would have it – but rather extends to all dimensions of marital life and includes “mutual assistance in bearing more easily the discomforts of life and the infirmities of old age”.¹³ In the centuries that followed, this vision of marriage as “companionship” fell into oblivion to the benefit of its procreational purpose. It was only in the first half of the 20th century that a different and more person-centred perspective on marriage reemerged, albeit hesitantly and reluctantly.

16. In the 1930 Encyclical *Casti connubii*, Pope Pius XI makes an explicit reference to the *Roman Catechism* and affirms that the “mutual molding of husband and wife (*mutua coniugum interior conformatio*), this determined effort to perfect each other, can in a very real sense...be said to be the chief reason and purpose of matrimony (*primaria matrimonii causa et ratio*)”.¹⁴ The encyclical is certainly based on the teaching of St Augustine, which is hailed as “a splendid summary of the whole doctrine of Christian marriage” (CC 10); indeed, the pope continues to defend the hierarchy of primary and secondary purposes, but he adds that one should not consider marriage “in the restricted sense” but “more widely as the blending of life as a whole and the mutual interchange and sharing thereof” (CC 24). Also unprecedented is the pope’s explicit reference to the concept of *conjugal love*, “which pervades all the duties of married life and holds pride of place in Christian marriage” (CC 23). The uniqueness of CC becomes clear when one sees how Pius XI addresses the issue of *bonum fidei*, i.e. the good of fidelity, one of the three classical “goods” (*bonum prolis, fidei, sacramenti*) that Augustine had defined. Marital fidelity is not restricted to monogamy and permanent cohabitation, as Augustine and further generations of theologians have assumed, but has a direct sexual connotation which the pope describes in terms of

¹² *The Roman Catechism: Catechism of the Council of Trent*, edited under St. Charles of Borromeo, trans. by J.A. McHugh, O.P., C.J. Callan, O.P., 1999, II, 8, q. 15, available in English at https://www.catholicsociety.com/documents/Catechism_of_the_Council%20of_Trent.pdf.

¹³ *Ibid.* II, 8, q. 13.

¹⁴ PIUS XI: *Casti connubii, Encyclical on Christian Marriage* (hereafter CC), 31 December 1930, 24, available at https://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19301231_casti-connubii.html.

“chastity”: mutual fidelity and chastity, which “blossoms more freely, more beautifully and more nobly, when it is rooted in that more excellent soil, the love of husband and wife”. Although somewhat oblique and allusive, the pope is forthright in his statement: the love “of which We are speaking is not that based on the passing lust of the moment nor does it consist in pleasing words only, but in *the deep attachment of the heart which is expressed in action*, since love is proved by deeds”. He continues that the “*outward expression of love in the home* demands not only mutual help but must go further”. It “must have as its primary purpose that man and wife help each other day by day in *forming and perfecting themselves in the interior life*, so that *through their partnership in life they may advance ever more and more in virtue*, and above all that *they may grow in true love toward God and their neighbor*” (CC 23; emphases added). That has several implications: First, for the first time, the sexual aspect of conjugal love receives a positive evaluation. Second, in addition to the traditional secondary purposes (*finis secundarii*), i.e. mutual help and remedy against concupiscence, a third one appears, namely conjugal love. This means, third, that the secondary purposes, including conjugal love, can vicariously assume the role of the primary purpose, but only if the reproductive end is not principally excluded (Pius XI refers to sexual intercourse during the infertile periods; see CC 59). And fourth, conjugal love is not limited to purely sexual relations but embraces the spouses in their integral personal identity.

17. In just a few sentences, Pope Pius XI attempted to revisit the doctrine of marriage and open the door slightly for a more person-centred vision. In the early 20th century, it also became increasingly difficult for popes to completely deny the changing political, social, and cultural conditions. In the end, Pius XI’s effort to adjust to the new situation proved to be a very brief interlude. His encyclical relapsed into the previous teaching, in which the procreative purposes of marriage once again prevailed. Nevertheless, *Casti connubii* remained the point of reference for a select group of (mainly moral) theologians who were eager to revise the teaching of the Church by relaunching a person-centred perspective on marriage. Among them were thinkers such as Dietrich von Hildebrand (1889-1977)¹⁵ and Herbert Doms (1890-1977),¹⁶ whose innovative phenomenological and personalist approaches were not accepted by the Church until the Second Vatican Council. Earlier, a 1944 decree of the Holy Office had again explicitly rejected the opinion of “certain modern authors” who had asserted that “the primary end of matrimony is not the generation of offspring or that the secondary ends are not subordinate to the primary end but are independent of it” (DH 3838). The same tune echoed, albeit for the last time, during the preparation of the new Council; in the 1962 schema *De castitate, virginitate, matrimonio, familia*, the Central Preparatory Commission had reaffirmed the traditional language of the hierarchy of ends in marriage:

...marriage has in itself – that is, independently of the intention of the contracting parties – its own objective ends that have been established by God. Among these ends – and this we know from the plan of its divine institution, from nature itself, as well as from the Church magisterium – the one and only primary end is the procreation and nurture of children, even if in a particular instance a marriage is infertile. It follows therefore that procreation, even though it be not the object of marital consent, is in itself so connatural to every marriage, even to the point of being essential to it, that no human will can by acts contrary to nature exclude it from the marriage. It

¹⁵ See D. VON HILDEBRAND: *Die Ehe*, München: J. Müller, 1929.

¹⁶ See H. DOMS: *Vom Sinn und Zweck der Ehe*, Breslau: Ostdeutsche Verlagsanstalt, 1935. For further information, see K. GLOMBIK: ‘Zweieinigkeit’: *Herbert Doms (1890-1977) und sein Beitrag zum personalistischen Eheverständnis* (Vergessene Theologen, 7), Münster: LIT Verlag, 2016.

is essential in the sense that in any valid matrimonial consent the exchange of the perpetual and exclusive right to those acts naturally apt for generation must be included in its object. So much is procreation primary and overriding (*praevalens*) that it in no way depends on any of the other intended ends, even though these are natural to marriage; nor can it be reduced to equality with them or confused with them.

The other objective ends of marriage, rooted in the character itself of marriage but still secondary – such as the spouses’ mutual help and the remedying of concupiscence – constitute genuine (even if subordinate) rights in marriage when they are rightly intended. Hence these secondary ends are in themselves not to be rejected and devalued, but promoted rightly and in true charity.¹⁷

18. In *Gaudium et spes*, Vatican II departs from pre-conciliar teaching and describes marriage as “the intimate partnership of married life and love” (*intima communitas vitae et amoris conjugalis*), instituted by God and created by an irrevocable personal consent (*irrevocabili consensu personali*).¹⁸ God, as the font of love, is also the source and author of love between man and woman; conjugal love is the unique foundation of married life, not subordinated to any external, overarching end. Through mutual giving and receiving, through an “intimate union of their persons and of their actions” (*intima personarum atque operum coniunctio*), the married persons generate a “sacred bond” (*vinculum sacrum*) which serves the good of the spouses themselves, of their offspring, and of the society; this bond, no longer subject to human arbitrariness, creates a lasting union of love and fidelity. As the spouses experience and make real God’s love in their married life, their union is enriched by Christ’s redeeming power and is elevated to the dignity of a sacrament. *Gaudium et spes* elucidates the core meaning and sense of marriage in the following way:

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 [sic] 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. (...) All of these have a very decisive bearing on the continuation of the human race, on the personal development and eternal destiny of the individual members of a family, and on the dignity, stability, peace and prosperity of the family itself and of human society as a whole. By their very nature, the institution of matrimony itself and conjugal love are ordained for the procreation and education of children, and find in them their ultimate crown. Thus, a man and a woman, who by their compact of conjugal love “are no longer two, but one flesh” (Mt 19ff), 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. As a mutual gift of two persons, this intimate union and the good of the children impose total fidelity on the spouses and argue for an unbreakable oneness between them.

¹⁷ For the English version, see T. MACKIN: *What is Marriage?*, New York: Paulist Press, 1982, 251. For the official Latin document, see *Acta et Documenta Concilio Oecumenico Vaticano II Apparando*, Series II (Praeparatoria), t. 2.3, Rome 1963, 893-937. For further information, see J.A. KOMONCHAK: “The Struggle for the Council during the Preparation of Vatican II (1960-1962)”, in: G. ALBERIGO/J.A. KOMONCHAK: *History of Vatican II*, vol. 1, Maryknoll-Leuven: Orbis-Peeters Publishers, 1995, 166-356.

¹⁸ The Latin version of GS is available at

https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_lt.html.

Christ the Lord abundantly blessed this many-faceted love, welling up as it does from the fountain of divine love and structured as it is on the model of His union with His Church. For as God of old made Himself present (...) to His people through a covenant of love and fidelity, so now the Savior of men and the Spouse (...) of the Church comes into the lives of married Christians through the sacrament of matrimony. He abides with them thereafter so that just as He loved the Church and handed Himself over on her behalf, (...) the spouses may love each other with perpetual fidelity through mutual self-bestowal.

Authentic married love is caught up into divine love and is governed and enriched by Christ's redeeming power and the saving activity of the Church, so that this love may lead the spouses to God with powerful effect and may aid and strengthen them in sublime office of being a father or a mother. (...) For this reason, Christian spouses have a special sacrament by which they are fortified and receive a kind of consecration in the duties and dignity of their state. (...) By virtue of this sacrament, as spouses fulfil their conjugal and family obligation, they are penetrated with the spirit of Christ, which suffuses their whole lives with faith, hope and charity. Thus, they increasingly advance the perfection of their own personalities, as well as their mutual sanctification, and hence contribute jointly to the glory of God. (GS 48,1-2)

19. The passages quoted from GS 48,1-2 summarize, in essence, the core of the theology of marriage set out in the Pastoral Constitution, covering both its natural and sacramental meanings. All components of marriage resulting from this are described in more detail in GS 48,3-4 (parent-child relationship), 49 (married love), 50 (fruitfulness of marriage), 51 (married love and respect for human life), and 52 (responsible promotion of marriage and the family) and will be, to a greater and lesser extent, the subject of our renewed reading of the conciliar theology of marriage. Three aspects will guide our reading: First, the *personalist* or *person-centred* vision of Christian anthropology, without which the Pastoral Constitution cannot be understood and which, fortunately, has now become common knowledge in the post-conciliar period; it is proper to recall this view first before taking a more critical perspective. Our critical approach draws attention to two aspects: on the one side a *contract-oriented* view that considers marriage mainly from a legal perspective, thereby neglecting its relational and interpersonal dimensions; and on the other side a *procreation-oriented* view, in which marriage is primarily focused on reproduction, ignoring its person-centred vision. Throughout history, the two views have found ways to reinforce and enrich each other, forming an intertwined combination. Untangling the Gordian knot means overcoming the one-sided approaches that have shaped the theology of marriage to this day. The following sections will address this issue, but first, we would like to acknowledge the Council's person-centred vision, which has found in the shift from a contractarian to a covenantal approach an appropriate expression of marriage in modern times.

II.2. The Person-Centred Vision of Marriage

II.2.1. Sources, Background, and Implications of the Person-Centred Approach

20. A "person-centred" vision of marriage echoes a philosophical school of thought that asserts the human person as the primary locus of investigation and the supreme principle in Christian ethics (see St Irenaeus' affirmation: "*Gloria Dei, vivens homo*"). A person-centred morality in its traditional outlook refers to volition and freely willed human actions, intelligence, and the human capacity for spirituality and intersubjectivity, in support of the

belief that human beings have been created in the image of God. Thomas Aquinas defines personhood as “a substance, complete, subsisting per se, existing apart from others (*substantia, completa, per se subsistens, separata ab aliis*)”.¹⁹ The personalist movement in France (Alexandre Marc, Emmanuel Mounier) described the primacy of the person as an “absolute” because s/he is “a free being that adopts, assimilates, lives and affirms values” which constitute his/her uniqueness. While the human person has an inalienable value and dignity in oneself, one expresses and realises oneself only in and through communion with other persons; the person is a person-in-community, different from the bourgeois individual within modern societies.²⁰ In the footsteps of his inspiring master Henri Bergson, Jacques Maritain (1882-1973) accentuated in *Humanisme intégral* (1936) the difference between the individual and the person. Through community relationships, human beings learn to treat each other as persons. It all starts with family life and local social groups, which are always prior to the state. Communities relate the world of the self in concentric circles with the world of others. Not individuality but personality allows the moving out from self to others in freedom and love: *capable de donner et de se donner* (“capable of giving and self-giving”). The vocation to self-giving, often designated as charity or love, is so essential to the constitution of the person that it is precisely when one becomes a gift for others that one fully becomes oneself.

21. The German personalist movement received a significant contribution when Max Scheler (1874-1928) finished his habilitation thesis in Jena under the guidance of Rudolf Eucken, while being in contact with personalist circles in Paris, of which the Russian emigrant Nikolai Berdyaev was a part. In part two of *Formalismus* (1916), he introduced the notion of “person” which is for him intrinsically connected with non-formal ethics. He argued that we do not need a formal theory to illustrate the autonomy and dignity of the human person, and he criticized Kant’s unilateral identification of the person with the rational. The person is primarily an intuitional reality. Values are seated in acts of feeling, willing, judging, thinking, and loving. The reality of values is always prior to knowing because “man is, before he can think or will, *ens amans*”. In sum, Scheler presents the person as the “unity-of-acts-of-different-natures”. And finally, there is his idea of intersubjectivity. Other persons can only be really known by way of the co-execution of acts (*Mitvollzug*), co-acting, co-operating, and thinking together. Therefore, persons can only be understood in and through their interrelationships. Since the sphere of the entire person is in every single act, the Louvain personalist Louis Janssens (1908-2001) concluded that the person is a complex totality, always existing in a particular spatio-temporal context. What characterises a person-centred morality is that it considers the human person the actor of their own existence. As a social and a relational being, one not only has to take responsibility for oneself but also for others, the surrounding communities and ecosystems. The polarity between what already is, and the potentialities for becoming, describes the process of the actualization of a person: “A person is a destiny. For the person, to live, then, is for him/her to realise one’s value as person.”²¹ This idea is at the core of new views on the dynamics of marital love.
22. Christian morality in the Council is presented as a personal response to the call of Jesus Christ. The *sequela Christi* takes as its point of departure “the call by God” which results in “the free response by a human person”. The personalist turn of Vatican II is rooted in a

¹⁹ THOMAS AQUINAS: *Summa Theologiae*, III, q. 16, a. 12, ad 2um.

²⁰ See E. MOUNIER: *Manifeste au service du personnalisme*, Paris: Éditions Mouton, 1936.

²¹ D.L. CHRISTIE: *Adequately Considered: An American Perspective on Louis Janssens’ Personalist Morals* (Louvain Theological and Pastoral Monographs; 4), Leuven: Peeters Publishers, 1990, 31.

strong conviction that transcendental freedom accentuates the personal responsibility for one's actions: "By showing that God invites us to freely respond to his call and to take on the task to act responsibly, Christian anthropology shares personal freedom as the common basis for moral engagement."²² The exercise of freedom, an inherent aspect of human nature and thus essential for an ethics of responsibility, always takes place within a particular social and historical context and in relation to others. Therefore, freedom and autonomy in Christian life should not be equated with the kind of individualistic autonomy found in liberal culture. Rather, it is an autonomy-in-relationship because persons cannot fully realise their potential in isolation. Instead, they live in communities, walk alongside others in a communal and inter-subjective commitment.²³ The human person is an entity open to communion and attains fullness in loving relationships. For Dietrich von Hildebrand the intention of benevolence and the desire for the happiness of the beloved person should be considered as the inner core of spousal love.²⁴ Its goodness is seen as prior to the other most distinctive trait of love, the desire for union. True happiness results from affirming the other person for his/her own sake. It should be considered as a superabundant gift, not as the primary motive of love, but the outcome "from the value-responding affirmation of a person" for his/her own sake.²⁵ Von Hildebrand situates the meaningfulness of sexual pleasure within this value-responding love for the other person. In sum, von Hildebrand is strongly convinced that the driving motivation for the act of marrying is spousal love. He acknowledges the change that has taken place in Western societies in which love as the reason from marriage had replaced a more functional concept of marriage.

23. But we still have to wait until the Second Vatican Council to provide for a paradigm shift by appreciating and promoting a person-centred vision of marriage. *Gaudium et spes* gives priority to the moral subject and his/her dignity of which conscience is a keystone. It expresses this in an outstanding way:

Conscience is the most secret core and sanctuary of a man. There he is alone with God, whose voice echoes in his depths...In a wonderful manner conscience reveals that law which is fulfilled by love of God and neighbour...In fidelity to conscience, Christians are joined with the rest of men in the search for truth, and for the genuine solution to the numerous problems which arise in the life of individuals from social relationships. (GS 16)

²² S. MÜLLER: "Moral Responsibility as an Answer to God's Call: Personalist Anthropology and the Hermeneutic Circle of Norms and Values, Discernment and Conscience", in: V. PAGLIA (ed.): *Etica Teologica della Vita: Scrittura, tradizione, sfide pratiche*, Vatican City: LEV, 2022, 209.

²³ See, e.g., FRANCIS: *Encyclical Letter Fratelli tutti on Fraternity and Social Friendship* (hereafter FT), 3 October 2020, available at https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html: "The human person, with his or her inalienable rights, is by nature open to relationship. Implanted deep within us is the call to transcend ourselves through an encounter with others. For this reason, 'care must be taken not to fall into certain errors which can arise from a misunderstanding of the concept of human rights and from its misuse. Today there is a tendency to claim ever broader individual – I am tempted to say individualistic – rights. Underlying this is a conception of the human person as detached from all social and anthropological contexts, as if the person were a 'monad' (*monás*), increasingly unconcerned with others...Unless the rights of each individual are harmoniously ordered to the greater good, those rights will end up being considered limitless and consequently will become a source of conflicts and violence'." (FT 111)

²⁴ D. VON HILDEBRAND: *Das Wesen der Liebe*, Regensburg: Verlag Josef Habel, 1971 (for the English version: *The Nature of Love*, South Bend, IN: St. Augustine's Press, 2009, transl. by J.F. Crosby and J.H. Crosby). See especially chapters one ("Liebe als Wertantwort") and seven ("Intentio benevolentiae, Wertantwort und Überwertantwort").

²⁵ P. TAKOV: "Dietrich Von Hildebrand on Love as a Value Response", in: *International Journal of Research and Innovation in Social Science* V/II (2021), 564-576, 564.

The *Declaration on Religious Freedom Dignitatis humanae*²⁶ takes a similar point of departure: the “sense of dignity of the human person has been impressing itself more and more deeply of the consciousness of contemporary man” (DH 1) which is “in accordance with their dignity as persons – that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility – that all men should be at once impelled...to seek the truth” (DH 2).

24. The fact that conscience is considered an inviolable sanctuary in which an individual encounters God alone does not mean that conscience is an isolated entity. The communal and relational view of personhood has consequences for how moral conscience is perceived. The person who is accountable to his/her conscience is also responsible for shaping it. Conscience formation and the building up of personal moral knowledge and the capacity for moral discernment occur within a community, through a dialogue of conscience within a particular cultural context. Examining the topic of conscience formation is therefore crucial to clarifying the interplay between conscience and the laws or moral norms. While laws and moral norms are essential, they alone cannot determine how to act in a specific situation. The law is incomplete without the conscience of a moral agent, which is the ultimate criterion in formulating the precise rule for action. For Müller, conscience, moral discernment, and moral norms or values make up a hermeneutic circle, understood as an ongoing reflection which takes into consideration a particular context, living experiences, circumstances, and new scientific insights. Taking persons seriously includes respect for a personal life history, a particular time and context, as a result of the recognition that “the acceptance of the call to responsibility...is the most fundamental aspect of conscience, whereas due to complexity of many situations it is not always clear what in the specific case is objectively right or wrong”.²⁷ For instance, the decision regarding the number of children a couple can have is ultimately the responsibility of the couple before God, as mentioned in *Amoris laetitia*.²⁸ Recognizing the special role of conscience and discernment, Pope Francis accentuates – in line with Vatican II – that the Church has “been called to form consciences, not to replace them” (AL 37).

25. Indeed, the cornerstones of a Christian personalist anthropology with regard to family life are *responsible parenthood* and *respect for the inviolability of a well-formed conscience*. In this regard, the late Eberhard Schockenhoff observes the following with regard to *Amoris laetitia*: “The Pope is concerned with nothing less than the change from an objectivist moral doctrine based on a static metaphysics of essence to a Gospel-based, practical theology characterised by a greater relevance to life.”²⁹ The post-Vatican II debate in marriage

²⁶ SECOND VATICAN COUNCIL: *Declaration on Religious Freedom, Dignitatis humanae* (hereafter DH), 7 December 1965, available at https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html.

²⁷ S. MÜLLER: “Moral Responsibility as an Answer to God’s Call”, 213.

²⁸ See FRANCIS: *Post-Synodal Apostolic Exhortation Amoris laetitia on Love in Family* (hereafter AL), 19 March 2016, 222, available at https://www.vatican.va/content/francesco/it/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia.html. See also GS 50.

²⁹ E. SCHOCKENHOFF: “Traditionsbruch oder notwendige Weiterbildung? Zwei Lesarten des Nachsynodalen Schreibens ‘Amoris Laetitia’”, in: *Stimmen der Zeit* 235 (2017), 147-158, 148: “Es geht dem Papst um nicht weniger als um den Wechsel von einer objektivistischen, auf eine statische Wesensmetaphysik gegründeten Morallehre zu einer evangeliumsgemäßen, praxisnahen Theologie, die sich durch eine größere Lebensrelevanz auszeichnet... Vielmehr lässt er von Anfang an seine persönliche Skepsis gegenüber der Anwendung genereller Regelungen auf komplexe seelsorgerliche Situationen und einem zu großen Vertrauen in die Leistungsfähigkeit einer deduktiven Methode erkennen, die aus allgemeinen Wahrheiten weitreichende Schlussfolgerungen für jede

theology could be described as a debate between “the option for the preference for norms over conscience” and “the option for the preference for conscience over norms”. While the personalist turn of Vatican II discarded the first option, the second option risks becoming subjectivist. However, for Müller, this should not necessarily be the case: “if the ‘option for the preference of conscience over norms’ refers to the full sense of moral conscience that includes objective elements of moral discernment, then it is no longer an ‘option for the preference of conscience over norms’ but an ‘option for the preference of conscience’”. Following such an interpretation, it is misleading to oppose norm and conscience to each other.”³⁰ The inviolability of a well-formed conscience implies, according to *Dignitatis humanae*, that “no one is to be forced to act in a manner contrary to his own beliefs” (DH 2). Any theology of marriage stems from the idea that the free and mutual consent of the spouses makes a valid marriage (GS 48). It is the consent of the couple that makes a marriage a covenant.

II.2.2. From Contract to Covenant: A Theological and Canonical Shift

26. The Council Fathers of Vatican II were well aware of the urgent need to adapt the teaching and legislation on marriage to the challenges of modern times. The first decisive advances they called for can be seen in the area of terminology. In order to grasp more adequately the meaning of marriage, the Pastoral Constitution employs the term “covenant” (*foedus*; in Hebrew *berith*, in Greek *diathēkē*). The Council Fathers avoided the term “contract” (*contractus*), a notion that had been prevalent in Church teaching and legislation for centuries and that reappeared, albeit without further explanation, in the CIC of 1983 (see can. 1055 §2: *matrimonialis contractus*)³¹ and in the *Catechism of the Catholic Church* promulgated in 1992.³² The choice for “covenant” instead of “contract” was not intended to make the traditional concept look more theologically and pastorally palatable, nor was the intention to drop the notion of contract due to some accidental or inadvertent oversight. On the contrary, the Council Fathers opted deliberately for covenant because they desired to expound the nature of marriage in a more meaningful way.³³ And they did so by drawing on their person-centred vision: they realised that the marital relationship is not about things, services, and rights, but primarily about “persons”, in fact about two persons of different

Einzelsituation ableitet (vgl. AL 2). Ausdrücklich anerkennt Franziskus, dass die notwendige Einheit in Lehre und Praxis der Kirche kein Hindernis dafür ist, dass ‘verschiedene Interpretationen einiger Aspekte der Lehre oder einiger Schlussfolgerungen, die aus ihr gezogen werden, weiterbestehen’ (AL 3).”

³⁰ S. MÜLLER: “Moral Responsibility as an Answer to God’s Call”, 211.

³¹ Besides being employed as a substantive in can. 1055 §2 and can. 1097 §2 (*causam contractui*), verbal derivatives of contract are used in can. 1086 §3 (*contracti matrimonii*), can. 1121 §2 (*matrimonium contrahitur*), and can. 1122 §1 (*matrimonium contractum*). It is worth noting that the term *contractus* does not appear in the *Code of Canons of the Eastern Churches* of 1990, see *Codex Canonum Ecclesiarum Orientalium*, 1990 (hereafter CCEO/90), available at https://www.vatican.va/content/john-paul-ii/la/apost_constitutions/documents/hf_jp-ii_apc_19901018_index-codex-can-eccl-orient.html.

³² Contractual terms also persist, although in passing, in the CCC at various places; see paragraphs 1628, 1629, 1631, 1649, 1650, 1660, 1662, 2364, 2381, and 2384.

³³ See B. HÄRING: “Kommentar zum ersten Kapitels des zweiten Hauptteils der Pastoralkonstitution”, in: *LThK*, Erg.-Bd. III, Freiburg: Herder, 1968, 423-446; H.-J. SANDER: “Theologischer Kommentar zur Pastoralkonstitution über die Kirche in der Welt von heute *Gaudium et spes*”, in: P. HÜNERMANN/B.J. HILBERATH (eds.): *Herders theologischer Kommentar zum Zweiten Vatikanischen Konzil*, vol. 4, Freiburg: Herder, 2005, 770-779. See also N. LÜDECKE: *Eheschließung als Bund: Genese und Exegese der Ehelehre der Konzilskonstitution ‚Gaudium et spes‘ in kanonistischer Auswertung* (Forschungen zur Kirchenrechtswissenschaft; 7), Würzburg: Echter, 1989, 259-690.

sex, character, personal biography, and sometimes even culture. In retrospect, however, it must be added that the various personal layers and strata of the conjugal union were not yet on the Council Fathers' radar.

27. The metaphor and concept of “covenant” have their roots in the Hebrew Bible and have developed further in Roman law and Christian, especially Protestant, theology.³⁴ They represent the binding agreement or bond between God and humanity, a relationship that has undergone various modifications throughout history. Nonetheless, the special relationship God had entered into with his chosen people was always more than a contract that could be easily adjusted and, if necessary, dissolved. God’s commitment to the Israelites – “I will take you for my people, and I will be your God” (Ex 6:7, see also Lv 6:12, Dt 26:16-19, 29:13) – testified to a mutual agreement that permanently bound the free parties. The early prophets Hosea (Hos 2), Jeremiah (Jer 3:6-13), Ezekiel (Ez 16), and Isaiah (Is 54) first used the metaphor of covenant to describe the Lord’s relationship with his people in terms of marriage: unfaithful and adulterous marriages serve as illustrative examples of the vicissitudes of the divine bond with the Israelites, but despite all instances of betrayal the marital metaphor remains the ideal reference point for covenantal faithfulness. The first explicit theological connotations appear only when the prophet Malachi (Mal 2:10-16) turns the covenantal metaphor on its head by using it to give moral instruction about human marriage: since every broken marriage harms God’s bond with Israel, divorce must be eliminated at all costs. From that moment on, the analogy between the divine covenant and the marital relationship was no longer seen as one-way, i.e., starting with the human experience of marriage and then moving to the divine bond, but was extended to the opposite perspective, namely, that God’s instructions for a faithful divine-human bond become the litmus test and measure of meaningful spousal relationships. Something similar happened in the New Testament when, within the order of salvation, God’s covenant relation with humanity was transferred to the relationship between Christ and the Church as unconditional love. In an effort to order and organise the Christian household, the author of Ephesians (5:21-33) saw in Christ more than a pedagogical example of harmony. The letter emphasises, without any reference to the metaphor of the covenant, the reciprocity between husband and wife as a specific value for marriage between Christians. The example of Christ’s love for the Church develops the issue of reciprocity by introducing the idea of precedence. Christ’s love precedes the Church’s obedience! The latter is the response, not the precondition. The husband is asked to love, and according to the comparison, he is the one who must take the initiative. The Christian aspect of the text, then, consists in re-affirming a traditional gender order (reciprocity) and in changing the predetermined hierarchical structure of ancient marriages (precedence of the husband’s love). By calling to mind the example of Christ’s love for the Church, selfless love becomes the central value in marriage. The unity of the spouses as one loving flesh (Gn 2:24) is understood as an icon of Christ’s relationship with his Church, stressing the ideal of unlimited love. By comparing Christ’s love for the Church and at the same time the love of husband and wife as one loving flesh with Christ’s sustaining relationship with the Church, love is again made the central value in marriage. Later theological reflection will transform the Ephesian testimony of the mutual relationship of the spouses into a “prefiguration” and “representation” of the relationship between Christ and his Church: it is Christ’s relationship with the Church that shapes marriage and elevates it to a higher perfection.

³⁴ For a general overview, see J. WITTE JR.: *From Sacrament to Contract: Marriage, Religion, and Law in the Western Tradition*, Louisville, KY: Westminster John Knox Press, 2012.

28. Vatican II took up the biblical references and asserted in theological terms that "...as God of old made Himself present (...) to His people through a covenant of love and fidelity, so now the Saviour of men and the Spouse (...) of the Church comes into the lives of married Christians through the sacrament of matrimony" (GS 48,2).³⁵ In the perspective of Vatican II, "conjugal love" becomes the outstanding type of covenantal relationship. What characterises the marital covenant is the mutual commitment in which the husband and the wife give and receive one another; by mutually bestowing and accepting each other, "a relationship arises which by divine will and in the eyes of society too is a lasting one" (GS 48,1). The way in which mutual commitment manifests itself and in addition becomes binding is through an "irrevocable personal consent" by which the spouses create an "intimate union of love and life" – a union that involves the whole person and embraces the "body and mind" (GS 49,1) of the spouses.
29. Already in biblical times the concept of covenant had obligatory social, institutional, and juridical implications. The handling of interpersonal relationships, especially the relation between God and human persons, was never a matter of subjective and arbitrary decision but was structured by mutual liabilities. Legal, that is "contractual", elements have always been, from a biblical point of view, part of God's relationship with humanity. In the same way, Vatican II highlights that the personal commitment between the spouses creates an objective, public, and institutional reality, or, as GS 48,1 argues, a "lasting" union or a "sacred bond" (*vinculum sacrum*), which has a perceptible effect and inevitably affects the life of the spouses. *Gaudium et spes* speaks of the "institution of matrimony" assigned to conjugal love, which is "qualified by His [the Creator's] law" and therefore does not depend on the arbitrariness of the spouses. In return, however, the Pastoral Constitution affirms that all the obligations, duties, and rights of marriage, even if they are on an equal footing with the conjugal unity, cannot take precedence over the personal relationship. All social, institutional, and legal dimensions, whatever their status and rights may be, do not precede the personal consent of the spouses but rather result from their consensual loving commitment. Although the terminology of *Gaudium et spes* is sometimes unclear on this point, it would be a rejection of the teaching of Vatican II to assert that obligatory commitments – the Council refers here to the traditional properties and purposes of marriage, such as unity, fidelity, indissolubility, and procreation – generate a transpersonal objective reality that, once the spouses have given their consent, takes on a life of its own independent of the life course of the spouses. One must conclude that personal and institutional aspects interact with one another – but only in such a way that the institutional dimensions are functionally related to the personal unity.
30. The vision of covenant retrieved and promoted by Vatican II serves as a red thread running through the renewed theology of marriage.³⁶ Pre-conciliar theology used the term contract, a term that dates back to Roman Law, according to which the *contractus realis* is validated by the act of handing over the objects of the contract. The CIC 1917 explains that the two contracting parties, in this case two heterosexual persons, agree that "each party gives and accepts perpetual and exclusive rights to the body (*ius in corpus*), for those actions that are of themselves suitable for the generation of children" (can. 1081 §2). Vatican II dissociates itself from this explanation and insists that the spouses consent by granting each other the "free and mutual gift of themselves, a gift providing itself by gentle affection and by deed";

³⁵ The footnotes reference Hos 2, Jer 3:6-13, Ez 16 & 23, Is 54, and Mt 9:15; Mk 2:19-20, Lk 5:34-35, Jn 3:29, 2 Cor 11:2, Eph 5:27, Rev 19:7-8, 21:2, 21:9.

³⁶ See P.F. PALMER: "Christian Marriage: Contract or Covenant?", in: *Theological Studies* 33 (1972), 617-665.

this gift is, in other words, a “love that pervades the whole of their lives” (GS 49,1) and is free from external and internal coercion. Conjugal love, then, is not a subjective, voluntary addition to the objective parameters of marriage – qualified by God – which the spouses must accept (or can reject); it belongs to the very meaning and value of marriage. It would therefore be an objectivist misinterpretation to presume that, for example, procreation – one of the objective parameters of marriage that *Gaudium et spes* clarifies by arguing that “the institution of matrimony itself and conjugal love are ordained for the procreation and education of children” (GS 48,1) – is *per se* and *eo ipso* intrinsic to marriage and conjugal love. *Gaudium et spes* acknowledges that the conjugal love of the spouses must reach its perfection by growing “day by day” and that the intimate union can find its “ultimate crown” in offspring (see GS 48,1). But procreation is an aftereffect of conjugal love, not its *conditio sine qua non*. Thus it must be argued that the “unitive” and “procreative” meanings of marriage – originally invented and promoted by *Humanae vitae*, but unfortunately narrowed to the sexual act – can only be coordinated, that is, on the same level, if the unitive dimension, that is, conjugal love, has a prior and leading position.³⁷

31. Vatican II’s vision of marriage as covenant also avoids subjectivist misunderstandings. The minority of the Council Fathers who insisted on replacing the term covenant with contract feared that, according to modern mentalities, the renewed concept of conjugal love could be referred to contingent moments of erotic attraction and infatuation, subject to changing affective fluctuations. The fear was that the conjugal union could be understood to depend on these and thus become dissolvable. In order to counteract such presumed risks of confusion and decadence, the minority postulated that the only way to guarantee the fidelity and indissolubility of marriage is to reinforce the contractual type of personal consent.³⁸ They insisted that the irreversible consent must be accompanied by objective obligations (such as unity, fidelity, indissolubility, and procreation) that last forever and can only be terminated by the death of one of the spouses. From the foregoing, it is obvious that no one denies that binding obligations are indeed inherent in the conjugal union and cannot be discarded. But what the apologists of the contractarian vision swept under the carpet was the conciliar conviction that marriage – far from being reduced to a juridical institution – is inextricably linked to the personal identity of the spouses and their developmental life course. Binding and lasting commitments do not arise from objective and transpersonal institutions but result exclusively from the free, mutual, and consensual commitment of the two persons who enter into marriage as equals.
32. By way of conclusion, it can be said that the concept of contract, which has a long history in the Church’s theology, jurisdiction, and practice, will retain its value in the ecclesial order and cannot be suppressed on a whim. The references to the various social, juridical, and institutional implications involved in marriage have shown that legal obligations are part of all marriages whatever their social, cultural, and religious status is. However, the person-centred vision of Vatican II has shifted the perspective on marriage, finding in the biblical concept of covenant a more adequate and meaningful approach for further developing the theology and legislation of marriage, despite the fact that the term covenant can have biased connotations. Understanding and explaining marriage from a covenantal perspective has become a theological standard that cannot be reversed.

³⁷ For more details on the unitive and procreative dimensions of marriage, see section II.7. (“Unitive and Procreative Dimensions of Marriage: The Conjugal Act Revisited”).

³⁸ See B. HÄRING: “Kommentar zum ersten Kapitels des zweiten Hauptteils der Pastoralkonstitution”, 429-430.

33. So far we have considered the sources, background, and possible implications of the person-centred vision of Vatican II and its option for a covenantal vision of marriage. The Council made the first major attempt to restore the balance between the institutional and personal dimensions of marriage, which had been disrupted in the period before the Council. Drawing on this personalistic approach, a renewed theology of marriage must take the person as the primary point of reference, with other social, legal, and institutional obligations flowing directly from this. In the following sections, we will explore four elements of marriage that warrant closer consideration, as they border on contractarian and procreative misconceptions: the nature of marital consent, which focuses on personal and juridical aspects as if in a magnifying glass, sometimes with adverse effects;³⁹ the property of conjugal indissolubility, which poses insurmountable problems in the event of civil divorce and remarriage;⁴⁰ the sacramental character of marriage, which is often discussed in terms of canonical regulations, to the detriment of theological and pastoral solutions;⁴¹ and the relationship between the unitive and procreative dimensions of marriage, in which the procreation-oriented approach can lead to an intolerable situation.⁴²

II.3. The Theology of Marriage Revisited

II.3.1. What Creates a Marriage? Spousal Consent Revisited

34. The traditional Latin principle of *consensus facit nuptias*, “consent makes marriage”, was also echoed in the Second Vatican Council when it attempted to rethink the meaning of marriage. For centuries, consent has been valued as an important stabilising factor in marriage, understood as an act of will that must be a free and conscious decision on the part of the individual, with a clear decision made by the person concerned after sufficient consideration, not given by anyone other than the spouses themselves, and having a lasting effect on the persons to be married. In can. 1081 of the CIC 1917 the term *consensus* was also mentioned but not included among the characteristics that define the essence of marriage. The focus was obviously on the *material object* of the marital consent, that is, on what marriage involves, as explained in can. 1081 §2: “Matrimonial consent is an act of the will by which each party gives and accepts the exclusive and perpetual right over the body, for acts which of themselves are apt for the generation of offspring” (*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*; CIC/17 can. 1081 §2). Vatican II nuanced the perspective on marriage in several important respects. Above all, this was by assigning the term “consent” to the definition of marriage and finding an equivalent, if not more appropriate, term in the notion of “covenant”: marriage is established and rooted in the conjugal covenant or, to use the traditional term, in the irrevocable personal consent (*foedere coniugii seu irrevocabili consensu personali instauratur*; GS 48,1; note that the term *consensus* is employed only once in *Gaudium et spes*!). The nuance seems at first glance to be negligible, but in fact the focus shifts from the *material* content of the consent (“what does the consent consist in?”) to the *formal* act of the will: the “human act” (*actus humanus*) referred to in *Gaudium et spes* is condensed

³⁹ See section II.3.1. (“What Creates a Marriage? Spousal Content Revisited”).

⁴⁰ See section II.3.2. (“Divorce and Remarriage: The Indissolubility of Marriage Revisited”).

⁴¹ See section II.3.3. (“Marriage as Sacrament: Sacramentality Revisited”).

⁴² See section II.3.4. (“Unitive and Procreative Dimensions of Marriage: The Conjugal Act Revisited”).

and reduced to the act of “bestowing and accepting to each other” (GS 48,1). Certainly, “giving and accepting” were also an essential part of the consensual act in pre-conciliar times (*quo utraque pars tradit et acceptat*; CIC/17 can. 1081 §2), but by including the mutual right of sexual intercourse in the spouses’ consent, the material object of the consent became much more elaborated and associated with a whole list of (mainly procreative) tasks to be accomplished. In contrast, the Pastoral Constitution narrows the consent to the mutual interaction between the spouses, which is nothing else than the “intimate union” consisting in the “mutual gift of two persons” (*intima unio, utpote mutua duarum personarum donatio*; GS 48,1).

35. To put it differently, what the spouses agree or consent to is “the intimate partnership of married life and love” (*intima communitas vitae et amoris conjugalis*; GS 48,1). All the other components of marriage mentioned in GS 48 – namely, the threefold goods of marriage,⁴³ its benefits and purposes,⁴⁴ and the traditional properties of marriage, i.e. fidelity, unity, and indissolubility⁴⁵ – may be aspirational goals that describe the nature of marriage and impose conjugal obligations, but *they are not part of the consent itself*. Consent is a *formal act* in which the spouses freely commit themselves to “mutual self-giving” (“‘I take you to be my wife’ – ‘I take you to be my husband’”; CCC 1627). Its *material object* seems equally compact and, in a certain sense, devoid of content since the spouses guarantee nothing other than an “intimate community” which stands for a “married life and love”. This means that, on the one hand, the whole of married life⁴⁶ is reduced to one single instant (of consent), while, on the other hand, nothing is said about what married life really entails. What lies behind the consent is undoubtedly an ambiguous undertaking for the spouses, but on closer examination it remains an opaque abstraction when it comes to the question of how the promise can be realised *in concreto*. One can conclude that GS 48 has indeed shifted the attention from defining marriage as a set of obligations to be realised in married life to an act of consent as a momentary act of mutual giving, but it has left the decision as to what mutual acceptance and receiving actually means open to further explanation. In the post-conciliar Church, a certain interpretation took over.
36. In the field of canon law, it has become customary to distinguish between two moments in time that characterise marriage: *matrimonium in fieri* is the instant when the marriage is established by mutual consent; and *matrimonium in facto* is the married life that follows the consent.⁴⁷ Although these terms were not explicitly employed in the codes of canon law – neither in CIC/17, nor in the post-conciliar CIC/83, nor in CCEO/90 – they opened up space for further canonical and theological interpretations. The prevailing explanation has often

⁴³ There are three “goods” of marriage: “the good of the spouses and their off-springs [sic] as well as of society” (GS 48,1).

⁴⁴ The benefits of marriage refer to “the continuation of the human race...the personal development and eternal destiny of the individual members of a family, and...the dignity, stability, peace and prosperity of the family itself and of human society as a whole” (GS 48,1).

⁴⁵ See GS 48,1: “As a mutual gift of two persons, this intimate union and the good of the children impose total fidelity on the spouses and argue for an unbreakable oneness between them.”

⁴⁶ In the CIC/83 can. 1055 §1, married life is described as *totius vitae consortium*.

⁴⁷ See, e.g., P. GASPARRI: *Tractatus canonicus de matrimonio*, Rome: Typis Polyglottis Vaticanis, 21932, t. 1, 12: “...matrimonium spectari potest et debet ut *in fieri* et ut *in facto* esse. Matrimonium in fieri est contractus matrimonialis qui celebratur sine ullo impedimento dirimente cum debito consensu interno rite manifestato; matrimonium in facto esse est ipsemet contractus matrimonialis qui celebratus fuit quique permanet cum consensu et inductis iuribus et obligationibus matrimonialibus.”

been that *matrimonium in facto* signifies a “married state”⁴⁸ which, once created by consent, is permanent, immutable, and involves permanent matrimonial obligations. A similar interpretation can also be found, for instance, in one of Pope Paul VI’s declarations. The pope adamantly rejects

the idea that if a subjective element – among these especially conjugal love – is lacking in a marriage, the marriage ceases to exist as a *juridical reality*, which originated in a consent for once and forever efficacious. No, this *reality*, which is juridical, continues to exist and does not depend on love; it remains even though love may have totally disappeared. For, when the spouses give their free consent, they are entering into and making themselves part of an objective order or *institution* that transcends them and does not in the slightest depend on them as far as its nature and special laws are concerned.⁴⁹

What typifies this and other interpretations is the predominance of a juristic or institutionalist conviction. The conjugal life, or to use the canonical term *matrimonium in facto*, is narrowed to a permanent and immutable married state, without any possibility of personal development. In other words, the consent regulates everything, from the first vows until the death of one of the spouses. What is overlooked here is that spouses deserve adequate living space and time to live out their marital promise. Vatican II, on the other hand, has opted for a long-term relationship and for an intimate union that the spouses reach “with growing perfection day by day” (GS 48,1). No one denies that *matrimonium in fieri* has a lasting effect and produces a “sacred bond” (GS 48,1) that is permanent as a way of longing for perfection. But objective and transpersonal principles cannot transcend the human condition of married persons. A good example for this reasoning is again the person-centred vision of Vatican II.

37. From a biblical and theological perspective, the concept “covenant” used by Vatican II refers to the interaction between God and human persons, an interpersonal relationship characterised by love (GS 48,2 refers to Hos 2, Jer 3:6-13, Ez 16 and 23, Jes 24, and Eph 5:27). Such love, and especially conjugal love, is, as GS 49,1 explicates, “merging the human with the divine” and thus “leads the spouses to a free and mutual gift of themselves”. This implies that the God of the covenant is not the eternal lawgiver whom humans must obey unconditionally; rather, God is the covenant partner who invites humans to find their own place in the divine plan. As human persons are historical beings, they become not only responsible for their action but are also exposed to the conditions of personal development. Finding one’s own role takes time and is a lifelong process. From this perspective, it becomes clear that the consent of the spouses cannot be reduced to an instantaneous moment that, once given, ensures everlasting fidelity and indissolubility. Rather, it is a dynamic, developmental, and processual course that initiates, fosters, and substantiates the spousal commitment. The consent of the spouses is therefore twofold: it is “irrevocable” in the sense that the spouses’ promise forever marks and shapes married life, which finds its sublime expression in the instantaneous moment of the vows, but at the same time, it involves a dynamic process in which the promise once made is gradually fulfilled as it aspires to infinite perfection.

⁴⁸ According to CCC 1631, marriage “is a state of life in the Church” and “introduces one into an ecclesial order (*ordinem ecclesialem*), and creates rights and duties in the Church between the spouses and towards their children”.

⁴⁹ PAUL VI: “Allocution to the Members of the Tribunal of the Roman Rota”, 9 February 1976, in: *AAS* 68 (1976), 204-208. English translation in: W.H. WOESTMAN (ed.): *Papal Allocutions to the Roman Rota 1939-1994*, Ottawa: St Paul University, 1994, 133-137, 136.

38. In conclusion, the person-centred vision that underlies Vatican II's concept and theology of marriage has corroborated the evidence that spouses do not enter into a marital state that, once promised, "forges" and "formats" them forever. Instead, spouses are human beings who live in their respective spatial and temporal conditions and are both agents and objects of a dynamic process. This has serious implications for two major issues with which the post-conciliar era is now confronted and which we will address, along with others, in what follows: retrospectively, the fact that a marriage can fail and lead to civil divorce, which requires a new approach from a theological, pastoral, and canonical perspective;⁵⁰ and prospectively, the need to reconsider the process of entering into marriage, which today is frequently accompanied by premarital cohabitation, which has led to a different view of the sexual act.⁵¹

II.3.2. Divorce and Remarriage: The Indissolubility of Marriage Revisited

39. "Marriage is one and indissoluble" – these are the classical properties that have characterised marriage from the beginning of Christianity until today. On the one hand, "unity" stands for the exclusion of polygamy and, on the other hand, for the prohibition of adultery, so that historically "fidelity" has become a corresponding concept of "unity". Other controversies arose over the issue of the "permanence" of marriage, i.e., the question whether spouses must stay together forever and whether their union is itself indissoluble. The question had already been considered by New Testament writers and the early Christians and has never been resolved in the course of history. Vatican II reiterated that the "mutual gift of two persons, this intimate union and the good of the children impose total fidelity on the spouses and argue for an unbreakable oneness between them" (GS 48,1). But what happens when a conjugal relationship fails, breaks down, and terminates? Marital breakdown is an evident fact that has occurred throughout history and that has gained new relevance today. Christian believers, and among them also Catholics, are not exempt from the risk of failure and breakdown. In the Apostolic Exhortation *Familiaris consortio* (1981), Pope John Paul II recognised that there are "those who have sincerely tried to save their first marriage and have been unjustly abandoned, and those who through their own grave fault have destroyed a canonically valid marriage" (FC 84). The pope also refers to those "who are sometimes subjectively certain in conscience that their previous and irreparably destroyed marriage had never been valid", and he extends the scope from divorce to remarriage, since some persons "have entered into a second union for the sake of the children's upbringing". The complex situation of divorce and remarriage needs "careful discernment" because the Church "cannot abandon to their own devices those who have been previously bound by sacramental marriage and who have attempted a second marriage" (FC 84).

40. "[B]y their compact of conjugal love", the Pastoral Constitution argues, man and woman "are no longer two, but one flesh" (GS 48,1), returning to the biblical narrative. Marriage was always highly esteemed in biblical times, but when Jesus announces the coming of Kingdom of God, he reaffirms another aspect of marriage, namely the *prohibition of*

⁵⁰ See section II.3.2. ("Divorce and Remarriage: The Indissolubility of Marriage Revisited").

⁵¹ The widespread phenomenon of unmarried cohabitation will be addressed in section II.3.4. ("Unitive and Procreative Dimensions of Marriage: The Conjugal Act Revisited").

divorce. In the synoptic gospels, we hear that Jesus revokes the moral law of marriage taught by Moses which in Dt 24 allows divorce by the husband. He sees the Mosaic law as an effect of “hardness of heart”, and, with reference to the creation account, he retorts: “...from the beginning of creation, ‘God made them male and female.’ ‘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” (Mk 10:6-9; Mt 19:4-6 par). Notwithstanding the seeming radicality and intransigence of Jesus’ refusal of divorce (see also Mk 10:11-12; Mt 5:31-32; 19:9; Lk 16:18), current exegetical research indicates that his authentic pronouncement must be read from the perspective of prophetic teaching and moral admonition in the eschatological context of God’s coming kingdom, and cannot be reduced to legal statutes that address all possible life situations. Joseph Ratzinger himself already argued: “Since Jesus reaches back behind the level of the law to the origin, his word itself must not be regarded directly and without further ado as law again.”⁵² Since the Church has not legally implemented Jesus’ strict prohibition against taking any oaths (Mt 5:33-37), which immediately follows the prohibition against divorce (Mt 5:31-32), Jesus’ prohibition against divorce can rightly be treated in the same way.

41. Biblical evidence also shows that the early Christian communities, confronted with cases of divorce, adapted Jesus’ teaching to their respective contexts. For example, the apostle Paul, in 1 Cor 7:10, accepts the woman’s right to divorce, which, in contrast to the Jewish world of Jesus, existed in the Greco-Roman world. By describing the divorced wife as *agamos* (literally: “unmarried”, v. 8), he considers the marriage between two Christians – mixed marriages are treated separately in v. 12ff. – dissolved. He insists that in such a case they should not remarry. In mixed marriages that are divorced on the initiative of the non-baptised partner (male or female) for whatever reason, the baptised partner is no longer bound; the brother or sister does not have to fight to preserve the marriage (v. 15), and s/he is free to remarry. The request to endeavour to renew the marriage (v. 11) is replaced by the exculpatory indication that one no longer has any obligations towards the divorced partner (v. 16). Since in Paul’s eyes there is no longer a marital bond, it is obvious that a new marriage is permitted. The apostle favours a pastoral approach (“for God has called us to peace”, v. 15) and recognises exceptional cases in favour of the Christian partner in which Jesus’ prohibition of divorce is no longer binding. According to Paul, the baptised partner should not go through with the divorce as long as the unbaptised partner respects the Christian faith and way of life (*syndokein*, v. 12f.). Matthew, for his part, rooted in his Judeo-Christian background, regards *porneia* (literally, “unchastity”) as an exceptional reason for divorce by the husband (Mt 5:32), without mentioning remarriage here. In the fundamentally polygynous concept of marriage in ancient Israel, the prohibition of the remarriage of a man would have made no sense. Differently from that, Matthew – following Mark – states that remarriage is forbidden (Mt 19:9). But even here, *porneia* is the only reason for a legitimate divorce that the Pharisees asked about at the beginning of the conversation (Mt 19:1). Luke (Lk 16:18) completely erases the argument about divorce that he found in Mk 10. As a result, not only the woman’s right to divorce in the Greco-Roman cultural sphere mentioned in Mk 10:11f. disappears in his gospel, but also the central idea of a marriage founded in the order of creation, and that of a marital union between two

⁵² “Da Jesus hinter die Ebene des Gesetzes zurückgreift auf den Ursprung, darf sein Wort selbst nicht wieder unmittelbar und ohne weiteres als Gesetz angesehen werden.” J. RATZINGER: “Zur Theologie der Ehe”, in: G. KREMS/R. MUMM (eds.): *Theologie der Ehe*, Regensburg: Friedrich Pustet-Vandenhoeck & Ruprecht, 1969, 81-155, at 83 (the authors’ translation).

people that was created by God which therefore cannot be dissolved, is absent. To sum up, the New Testament writers clearly show a very nuanced approach to the strict prohibition of divorce that can be traced back to Jesus. As much as they endeavour to remain faithful to Jesus' instruction, they see no contradiction in adapting it to pastoral considerations or to culturally different conditions in their local churches. The pluriformity of the tradition of the divorce logia – no two versions are alike – shows impressively that it was not understood as a law (“Gesetz”), but as a directive (“Weisung”) that can and must be tied back to life and culture.

42. What might be called Jesus' “discipleship ethics” would be incomprehensible and misleading if it ignored the palpable tension that all Christian believers are called to endure. In his words and deeds, Jesus defends, on the one hand, God's command for unconditional fidelity and at times bluntly enforces the prohibition of divorce. On the other hand, he testifies to his unreserved predilection for sinners, tax collectors, and adulterers; the narrative of the adulterous woman is a telling example (Jn 7:53-8:11). God's unconditional love and commitment to all human beings and the insistence on defending the indissolubility of marriage are part of the Gospel and of the Christian tradition and cannot be played off against each other. These dual ethical principles are not without contradictions, since they can never be made to coincide, but fortunately they prevent any believer from becoming a victim of simple solutions: there is neither a *carte blanche* for easy divorce nor a strict adherence to unbearable relationships. The testimonies of the Christian period of the first millennium prove that the churches, both in the East and in the West, have generally succeeded in maintaining the double strategy of upholding the biblical norm of indissolubility and seeking a viable solution in exceptional cases.⁵³ The precarious balance began to give way after the Great Schism between the Orthodox East and the Latin West. One-sided and extreme positions, which had always infiltrated the Church, finally prevailed and marked the churches for the coming centuries: in the East, the toleration of second and third marriages according to the principle of *oikonomia* and for the purpose of pastoral arrangements; in the West, cemented by legal regulations, the theory that Christian marriages cannot be dissolved and remarriage is prohibited. Laxism and rigorism, the two fallacies that continue to threaten the Church, have not been overcome and have not led to a satisfactory theological, pastoral, and canonical understanding of the indissolubility of marriage. The difficult, albeit “evangelical”, balance can only be restored if the two churches and traditions again find ways of mutual rapprochement and reconciliation. In the Latin Church, there has been a growing desire in recent decades to reconsider the possibility of a second marriage on the basis of the principle of *oikonomia*, which the Eastern Orthodox Church practices in order to care for the person who had failed in the first marriage – a practice, incidentally, that was never condemned, either by the Council of Trent or by subsequent councils.⁵⁴ The Orthodox tradition has always affirmed that while Christian marriage remains in eternity, its exercise in the world can be terminated either by the death

⁵³ See, e.g., H. CROUZEL: *L'Église primitive face au divorce: du premier au cinquième siècle* (Théologie historique; 13), Paris: Beauchesne, 1971; G. CERETI: *Divorzio, nuove nozze e penitenza nella Chiesa primitiva*, Bologna: EDB, 1977 (2013); J. RATZINGER: “Zur Frage nach der Unauflöslichkeit der Ehe: Bemerkungen zum dogmengeschichtlichen Befund und zu seiner gegenwärtigen Bedeutung”, in: F. HENRICH/V. EID (eds.): *Ehe und Ehescheidung: Diskussion unter Christen* (Münchener Akademie-Schriften; 59), München: Kösel, 1972, 35-56 (reprinted in J. RATZINGER: *Gesammelte Schriften*, vol. 4, ed. by G.L. MÜLLER, Freiburg: Herder, 2014, 600-621; with revised „Schlussfolgerungen“, 615-621). For a general overview, see also T. MACKIN: *Divorce and Remarriage*, New York: Paulist Press, 1984, 90-273.

⁵⁴ See B. HÄRING: *No Way Out? Pastoral Care of the Divorced and Remarried*, Middlegreen: Hyperion Books, 1990.

of one of the spouses or by certain circumstances that render conjugal cohabitation impossible. It understands the evangelical axiom: “what therefore God has joined together, let not man put asunder” (Mk 10:9; Mt 19:6) as a moral ideal rather than as a juridical or even ontological norm. Although one cannot or should not break a marital relationship, this does not mean that the relationship cannot be broken or terminated on a practical level.⁵⁵

43. Since the last third of the 20th century, divorce and subsequent remarriage have become part of normal everyday life and experience in the Western world. There are many reasons for this situation: the loss of the socio-economic function of marriage, the socio-cultural rise of individualisation and pluralisation, leading to the de-institutionalisation of matrimony, the focus on “soul mates” as indicators of the fragility of marital fidelity, and, last but not least, persistent domestic violence and sexual discrimination. The situation is different in other parts of the world, where instances of family pressure (e.g. arranged marriage, dowry, etc.) and polygamy do not automatically lead to divorce and remarriage but undermine the fidelity of the spouses in other ways. At least in the West, divorce and remarriage are now a part of life for Christian communities, however disruptive and painful it may be for the couples involved. It took a long time for official Church teaching to begin to acknowledge and recognise this situation. The CIC 1917 considered divorced persons *ipso facto* “publicly unworthy” and “manifestly infamous” (can. 855 §1 and can. 2356). Pope John Paul II was the first to call for a “careful discernment of situations” of the divorced and remarried. He exhorted pastors and the entire Christian community “to help the divorced, and with solicitous care to make sure that they do not consider themselves as separated from the Church, for as baptised persons they can, and indeed must, share in her life”. However, since a second marriage after divorce is considered “an evil that...is affecting more and more Catholics as well”, the pope’s theological conclusion was 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” (FC 84; emphasis added), and therefore remarried persons cannot be admitted to Eucharistic communion.⁵⁶

44. In its canonical regulations, the Latin Church lays down various conditions for the indissolubility of marriage. The primary requirement is that the marriage must be *valid*, which implies that it is established by “an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage” (CIC/83 can. 1057 §2; see CCEO/90 can. 817 §1); this applies to all spouses, regardless of whether they are baptised or not. The situation is different for baptised spouses. Three criteria must be fulfilled in order for a Christian marriage to be indissoluble: it must be valid (which applies also to non-baptised spouses); it must have been received sacramentally (which is presupposed for all baptised spouses⁵⁷); and it must have been “consummated” (*consummatum*). The first criterion is obvious: valid marriages are “ratified” (*ratum*), that is, entered into by way of consent. The CIC 1983 adopts in can. 1057 §2 (and likewise in CCEO/90 can. 817 §1) the view of GS that the object of the consent is nothing other than the sincere promise of mutual commitment (see GS 48,1). A further component of the indissolubility of marriage comes with sexual intercourse: a marriage

⁵⁵ See J. MEYENDORFF: *Marriage: An Orthodox Perspective*, Crestwood, NY: St Vladimir’s Seminary Press, 1984; K. SCHEMBRI: *Oikonomia, Divorce and Remarriage in the Eastern Orthodox Tradition* (Pontificio Istituto Orientale, Kanonika; 23), Rome: Valore Italiano, 2017.

⁵⁶ For further information, see CONGREGAZIONE PER LA DOTTRINA DELLA FEDE: *Sulla pastorale dei divorziati risposati: Documenti, commenti e studi* (Documenti e studi; 17), Città del Vaticano: Libreria Editrice Vaticana, 1998.

⁵⁷ For further information, see section II.3.3. (“Marriage as Sacrament: Sacramentality Revisited”).

between the baptised is valid when it is “called *ratum tantum*” and “has not been consummated”; but the value of indissolubility is increased when the marriage is “called *ratum et consummatum*” (can. 1061 §1; see also can. 1141). *Consummatum* here stands for the conjugal act, that is, sexual intercourse “which is suitable in itself for the procreation of offspring, to which marriage is ordered by its nature and by which the spouses become one flesh”.⁵⁸ In a nutshell, all Christian marriages that have been ratified are valid and indissoluble, but only those marriages that have additionally been consummated in a conjugal act become “absolutely” indissoluble. All kinds of (indissoluble) marriages are “intrinsicly” indissoluble, but only the consummated marriage acquires the degree of “intrinsic and extrinsic indissolubility”.⁵⁹

45. From today’s perspective, it may seem unusual that a conjugal act – presumably the first act of sexual intercourse within a marriage⁶⁰ – could contribute something significant to the firmness of the marriage. A look back at history reveals where the current canonical regulations come from. In the early Middle Ages, when the question of the validity of marriage arose,⁶¹ two different cultures competed with each other: while according to Roman law the will of the spouses and the consent of two families were constitutive of marriage, in the Germanic cultural and legal tradition it was the first sexual intercourse of the spouses that initiated a marriage. Soon two different legal traditions appeared in the schools of canon law: the so-called “consent-theory” (established by the Paris School with Peter Lombard [1096-1160] as its proponent), according to which a marriage is created when the bride and groom express their agreement of will by exchanging the marriage consent; and the “copulation-theory” (defended by the Bologna School, in which the canonist Gratian [† 1144/45] played an important role) according to which the bride and groom are chosen by their parents; the bride then becomes the property of her future husband, and the marriage is *de facto* concluded by the first sexual intercourse, as free choice of partners and mutual consent play no role in this culture. Both theories had considerable practical relevance: The consensus principle emphasises the free choice of the spouses and diminishes the influence of the families of origin – an emancipatory development that, historically speaking, has made marriage what it is today. On the other hand, the importance of sexuality in marriage is shown by the decision, supported by a large group of canonists, that a sexually unsealed marriage can be dissolved. Although at that time sexual intercourse was not yet regarded as an integral and gender-equal part of the cohabiting partnership, the decision nonetheless contributed to a shift in perspective from the pessimistic view that had prevailed since Late Antiquity to a more positive vision of

⁵⁸ CCEO/90 avoids the term *consummatum* when referring to the (procreative) meaning of marriage. In canon 819, the object of the marital consent is modified in the sense that the spouses must be cognizant of the meaning of the conjugal union which is ordered to procreation: “Ut consensus matrimonialis haberi possit, necesse est, ut matrimonium celebrantes saltem non ignorent matrimonium esse consortium permanens inter virum et mulierem ordinatum ad filios cooperatione aliqua sexuali procreandos”.

⁵⁹ See, e.g., INTERNATIONAL THEOLOGICAL COMMISSION: *Propositions on the Doctrine of Christian Marriage*, 1997, 4-5, available at https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_1977_sacramento-matrimonio_en.htm.

⁶⁰ CIC/83 describes the consummation of marriage by referring to the general openness to procreation (can. 1061 §1) but does not determine the moment when the conjugal act renders the marriage absolutely indissoluble. Can. 1061 §2 continues: “After a marriage has been celebrated, if the spouses have lived together consummation is presumed until the contrary is proven.” However, sexual intercourse *before* marriage is regarded as canonically irrelevant.

⁶¹ For further historical information, see T. MACKIN: *What is Marriage?*, 146-175; P.L. REYNOLDS: *How Marriage Became One of the Sacraments* (Cambridge Studies in Law and Christianity), Cambridge: Cambridge University Press, 2016, 157-288,

sexuality. The most influential attempt to dismantle the competing theories and harmonise the different legal traditions was made by Pope Alexander III (1100/05-1181), himself a canonist. He decided that marriage is validly contracted by the mutual consent of the spouses (*matrimonium ratum*),⁶² which makes the marriage indissoluble, but that it becomes absolutely indissoluble only by virtue of consummation (*matrimonium consummatum*). As long as the marriage is contracted but not yet consummated, the Church may, under certain conditions, grant a dispensation and dissolve a marriage. This is still the case today. However, it must be taken into account that since that time a juridical prioritization has taken place in the Church which has left little room for a theological approach to marriage. At a time when the Church took over state functions and enforced ecclesiastical norms, the focus was no longer on a long-lasting course of a marriage, but rather on the instantaneous moment, i.e. the marriage ceremony. The consent of the spouses was undoubtedly a signpost and served as a verifiable and justifiable basis for reliable relations, but the canonists did not hesitate to enlarge the scope from consent to consummation. Since it seems difficult to realise, in the long run, the promise of permanent fidelity expressed in the consensus, the next step is not so far away: the first sexual act can be considered as a clear proof that one of the purposes of marriage, namely procreation, has been achieved and the promise has been kept.

46. Two questions arise with regard to the indissolubility of marriage. The first concerns the moment of marital consent, and the second concerns the meaning and sense of the first conjugal act. What characterises and unites all types of indissoluble marriage is that they cover *one single act*, regardless of the life course of the spouses. Marriage becomes indissoluble first through ratified consent and then, even more firmly, through the spouses' first sexual intercourse. In the first case, the indissoluble marriage is condensed into a single moment which stands for the mutual self-giving of the spouses: they take cognisance of their capacities to assume the rights and duties of marriage and consciously consent to it. Consent is an *instantaneous act*, but the question is whether and how it can be transformed into a *continuous consent*. In the latter case, the first sexual act is a kind of physical confirmation of the verbal consent that normally follows after some time (although the moment is not fixed). The moment of the first conjugal intercourse is supposed to compress into a single moment a lasting intimate union which, from the first moment, is linked to the openness to procreation and which is still waiting to be achieved. But how can a single sexual encounter, in this case the first sexual act, suffice to express the significance of the sexual relationship, the most outstanding expression of which is mutual devotion? This is where the main problems lie in a theology and legislation of marriage in which the personalist approach has not been implemented, as the following paragraphs will further demonstrate.
47. Pre-conciliar relics are still present in current canon law. The first concerns the relationship between the marital consent and married life, that is, the correlation between *matrimonium in fieri* and *matrimonium in facto* which the CIC 1917 had already implicitly addressed. From a canonical perspective, the prevailing view is that marriage is limited to the moment and the brief period of time in which the spouses embody their promises in condensed form: firstly, the promise of mutual commitment at the moment of consent, and secondly, the promise of openness to children in the relatively brief moment of a sexual act. In the same

⁶² The presence of the priest is obligatory, although his absence does not derogate the validity of the marriage, a lacuna which the Council of Trent will fill by putting an end to the widespread phenomenon of clandestine marriages.

way, the “lived marriage” or “married life” or, in other words, the project of a lasting intimate partnership, is reduced to a supposedly permanent but in reality fictitious bond: the permanence of the bond, associated with fidelity and indissolubility, is artificially feigned, leaving no room or time for a concrete and genuine married life. As Walter Kasper has already noted, the still lurking contractarian model gives the impression “that the marriage bond is a kind of a metaphysical hypothesis that places marriage above marriage in the concrete”.⁶³

48. The second concern is that another pre-conciliar idea has not been overcome, which affirms that the spouses grant to each other the right over their body for the generation of offspring. According to current canon law, the first sexual intercourse following the spousal consent is sufficient to render a valid marriage absolutely indissoluble. Consequently, any sexual relationship with a partner other than that of the first marriage is forbidden and contrary to the indissolubility of marriage. This applies also and especially to second marriages, which are in themselves invalid. The only way to make a second marriage acceptable to the Church and the couple is to commit to permanent sexual abstinence. This option was offered by Pope John Paul II in 1980. In *Familiaris consortio*, he explicates that there could be “serious reasons, such as for example the children’s upbringing”, why a man and a woman who “cannot satisfy the obligation to separate” could live together – but only on condition that they “take on themselves the duty to live in complete continence, that is, by abstinence from the acts proper to married couples” (FC 84). In this case, the remarried partners can also receive the sacraments of Penance and the Eucharist in order to regulate the new union. Sexual abstinence certainly plays a significant role in Christian life, but it is hardly compatible with marriage, at least in the long term, given that Vatican II emphasised that sexual intercourse is an integral part of the very nature of marriage as a personal union. From a canonical perspective, sexual activity within a second – and therefore invalid – marriage is undoubtedly prohibited; this makes the question all the more pressing as to why non-sexual relationships should allow for a second marriage, as *Familiaris consortio* suggests. This model of *frater-soror* relationship or *cohabitatio fraterna* – that is, the notion of permanently denying partners in a second marriage the right to sexual activity – is plausible only on the condition that the right to sexual intercourse derives from the transfer of the *ius in corpus*, of “giving and accepting the exclusive and perpetual right over the body”, which was long regarded as the characteristic and essential object of the contractual relationship entered into by the spouses through marriage. The assumption arises again that by having consummated the marriage, the spouses have ceded their sexual activity once and for ever to the partner of the first marriage: any other sexual relationship with another partner, whatever the context and whatever the reasons, is *eo ipso* excluded. *Familiaris consortio* goes on to state that a second marriage is permissible only once all further sexual relations with the partner who left the first valid marriage have been definitively brought to an end. The idea that sexual abstinence can pave the way for receiving the sacraments of Penance and the Eucharist also fits into this line of thinking. How confusing this option of *cohabitatio fraterna* may be itself, it runs counter to the experience of many remarried partners – many of whom find in their second marriage the love and fidelity that were lacking in their first marriage – and also ignores the current state of human-scientific knowledge regarding sexuality and sexual relations.⁶⁴

⁶³ W. KASPER: *Theology of Marriage*, New York: Seabury Press, 1980, 49.

⁶⁴ For further study, see section II.3.4. (“Unitive and Procreative Dimensions of Marriage: The Conjugal Act Revisited”).

49. There is reason to believe that the proposal of *frater-soror* relationships or *cohabitatio fraterna* is an attempt to retrieve the contractual model of *ius in corpus*, of “giving and accepting the exclusive and perpetual right over the body”, which sees procreation as the primary essence of marriage – an option that runs counter to Vatican II’s concept of marriage and, moreover, ignores current human-scientific knowledge about sexuality and sexual relations.
50. A person-centred approach to marriage allows us to readjust the concept of indissolubility. In order to bring into balance *matrimonium in fieri* and *matrimonium in facto*, i.e. the beginning and the continuation of married life, it is necessary to take into account the reality of conjugal life, both in the case of successful and blissful marriages and in the case of marital failure and breakdown. The term *matrimonium in facto* describes the way in which the spouses have shared the whole of married life and have reached a certain level of human and Christian fulfilment. If, however, the marriage fails or even breaks down, the initial consensual promise has obviously been broken. This does not mean that indissolubility would automatically disappear as an objective and binding criterion of marriage, or that the marriage would be dissolved; various solutions for the thorny situation of the divorced and remarried have been provided in the theological academy on the basis of relevant exegetical, dogmatic, moral, and pastoral insights.⁶⁵ However, from a canonical perspective, a revised view of the conjugal act in particular is also necessary. Traditionally, canonical legislation used the term *consummatum* to define a single sexual act, namely the first conjugal act, as the actual fulfilment of the procreative duty. In contrast, Vatican II claims that the conjugal act, which is part of the totality of the loving union of the spouses, “pervades the whole of their lives” (GS 49,1); in other words, in their intimate union the spouses “experience the meaning of their oneness and attain to it with growing perfection day by day” (GS 48,1). Consequently, sexual encounter embraces “body and mind” (GS 49,1) and is therefore part of the developmental life course of the spouses. Reducing the intimate partnership to one single act would be against today’s person-centred view and understanding of sexuality. Unfortunately, the vision of Vatican II has not yet been reflected in canon law.
51. A side note on the sacramentality of marriage⁶⁶ may be helpful in recalibrating the meaning of married life (*matrimonium in facto*) when it comes to divorced and remarried spouses. While the degree of absolute indissolubility is generally achieved through validity, sacramentality, and sexual consummation, as post-conciliar documents continue to emphasise, it must be added that the sacramental dimension of marriage plays only a subordinate role. As GS 48,2 confirms, “Christian spouses have a special sacrament by which they are fortified and receive a kind of consecration in the duties and dignity of their state. (...) By virtue of this sacrament, as spouses fulfil their conjugal and family obligation, they are penetrated with the spirit of Christ, which suffuses their whole lives with faith, hope and charity. Thus, they increasingly advance the perfection of their own personalities, as well as their mutual sanctification, and hence contribute jointly to the glory of God.” In other words, sacramental grace may confirm, complete, and deepen the unity and

⁶⁵ For a general overview, see, e.g., K.T. KELLY: *Divorce and Second Marriage: Facing the Challenge* (new and expanded edition), London: Sheed & Ward, 1997; E. SCHOCKENHOFF: *Chancen zur Versöhnung? Die Kirche und die wiederverheirateten Geschiedenen*, Freiburg: Herder, 2011; B. PETRÀ: *Divorziati risposati e seconde nozze nella Chiesa: una via di soluzione*, Assisi: Cittadella Editrice, 2012; more recently, I. BERTEN: *Les divorcés remariés peuvent-ils communier? Enjeux ecclésiaux des débats autour du Synode sur la famille et d’Amoris laetitia*, Namur: Éditions jésuites, 2017.

⁶⁶ The subject of sacramental marriage will be further elaborated in the section II.3.3. (“Marriage as Sacrament: Sacramentality Revisited”).

indissolubility of marriage, but it does not contribute substantially to what makes a marriage, by its very nature, indissoluble. In the sacrament of marriage, God's helping grace does not erase the essence of matrimony, which is a voluntarily entered into, but in reality *natural*, covenanted relationship. As Peter Hünermann aptly concludes: "if indissolubility refers to the nature of marriage, it is quite clear that [due to a failure of human cooperation] it can break down".⁶⁷ From a person-centred perspective, it is therefore inappropriate to condemn all individuals in civil second marriages as contradicting God's plan for marriage and incurring guilt ("irregular situations"), as this would disregard their own sense of responsibility and conscientious decision-making. Moreover, the marriage bond is a dynamic reality, undergoing changing realities (e.g. living longer, two income households, equal partnership, impact of personal biography, etc.). Following this line of thinking, personalists rightly distinguish between the humanly desirable (*vere bonum*) and the best humanly possible (*minus bonum*) in a given context.⁶⁸

52. We therefore argue that marriage must be understood as a temporal process that unfolds over the course of the partners' lives together. This understanding of marriage allows us to evaluate in a different way the binding obligations of the initial marital consent. It is obvious that the initial consent no longer refers to the perpetual granting of a "right to the body" (*ius in corpus*). On the contrary, the consent gives rise to a whole period of married life, with all the certainties, but also the possible hesitations and uncertainties, of conjugal life; the marital consent is by no means the endpoint of marriage. The momentary consent gives way to a "continuous consent". From this it is consistent to conclude that a marriage, valid by consent, becomes gradually indissoluble to the extent that the objective of the consent has been clearly and visibly achieved by the spouses, who have already passed through different stages of their life and who commit themselves to do so in the future. When the spouses have reached a level where they can testify to the human and Christian achievement of their marriage, we can speak of an "existential consummation". On the other hand, if a couple whose marriage has been sexually consummated has for a long time failed to attain the required and desired quality of an intimate conjugal relationship, the result may be that the valid marriage has ended in a state where one can speak of an "existential non-consummation" (as canonists and theologians have convincingly argued⁶⁹). The term and concept of "existential non-consummation" is very similar to what is often described in today's language as a situation of "complete and irremediable breakdown".⁷⁰

⁶⁷ G. KAPLAN: "From Tübingen to the Tiber: A Conversation with Peter Hünermann", in: *Commonweal*, October 7, 201, available at <https://www.commonwealmagazine.org/t%C3%BCbingen-tiber>.

⁶⁸ See, e.g., R. BURGGRAEVE: *An Ethics of Mercy: On the Way to Meaningful Living and Loving*, Leuven-Paris-Bristol, CT: Peeters Publishers, 2016, 129-133.

⁶⁹ See, e.g., J. BERNHARD : "A propos de l'hypothèse concernant la notion de 'consommation existentielle' du mariage", in : *Revue de Droit Canonique* 20 (1970), 184-192; ID. : "Réinterprétation (existentielle et dans la foi) de la législation canonique concernant l'indissolubilité du mariage chrétien", in: *Revue de Droit Canonique* 21 (1971), 243-278; for an English article, see ID.: "The Conjugal Bond in the Code of Canon Law", in: J. PROVOST/K. WALF (eds.): *Ius Sequitur Vitam: Studies in Canon Law Presented to P.J.M. Huizing*, Leuven: Leuven University Press, 1991, 160-172; M.G. LAWLER: "Indissolubility, Divorce, and Holy Communion: An Open Response to Germain Grisez, John Finnis, and William May", in: *New Blackfriars* 76 (1995), 229-236. For a synopsis of this theory, see J. E. HUDSON: "Marital Consummation according to Ecclesiastical Legislation", in: *Studia Canonica* 12 (1978), 109-114.

⁷⁰ Some theologians see "irreversible breakdown" as an indication that a marriage "has become sick" and "has died"; see, e.g., B. PETRÀ: *Il matrimonio può morire? Studi sulla pastorale dei divorziati risposati*, Bologna: EDB, 1995; ID.: *Divorziati risposati e seconde nozze nella Chiesa*; A. GRILLO: *Indissolubile? Contributo al dibattito sui divorziati responsati*, Assisi: Cittadello Editrice, 2014; ID.: "'Individua coniunctio': What Does Indissoluble Marriage Mean in Times of Individual Freedom?", in: T. KNEIPS-PORT LE ROI/A. BRENNINKMEIJER-

53. The step, however, from the status of “existential non-consummation” to juridical decisions is still fraught with difficulties, especially in canonical legislation. In particular, some canonists have called attention to the fact that the status of “existential non-consummation” could become something very subjective, reducing the marriage bond to a psychological reality that is not subject to any external scrutiny.⁷¹ There is also the possibility that the concept of “existential non-consummation” could be misused. For example, in a patriarchal society a husband may argue that although there has been physical consummation, the marriage is “existentially non-consummated”, and thus try to get rid of the wife so that he can conveniently remarry; in this patriarchal culture, he is also likely to receive social support. Conversely, the proposal of “existential non-consummation” can help the woman to free herself from an exploitative relationship based solely on coerced sex. However complex and degrading these and similar cases may be, what often prevails in such situations is a one-sided physicalistic understanding of the marital relationship, often linked to patterns of power imbalance in which men are supposed to take an active and dominant role while women are supposed to be submissive and obedient. In contrast, conjugal relationships require the *free, equal, and permanent mutual consent* of the spouses, and this also has implications for the sexual relationship: as part of marriage, sexual relations bring together “body and mind” (GS 49,1) in the human person and in their common life, and represent an experience that can rightly be called “existential”. If the “body” remains the main driving force while the “mind” ceases to exist, the spouses risk ending up in a state described above as “existential non-consummation”. Again, the guiding canonical principle must be that the law cannot override theological realities and that any expression of the law should be consistent with person-centred thinking.

II.3.3. Marriage as Sacrament: Sacramentality Revisited

54. The Pastoral Constitution highlights that *all* marriages, understood by the Council as “intimate partnership[s] of married life and love”, are “rooted in the conjugal covenant of irrevocable consent” (GS 48,1). This also applies to marriages according to the “order of creation”, since the “sacred synod wishes to offer guidance and support to those Christians and other men who are trying to preserve the holiness and to foster the natural dignity of the married state and its superlative value” (GS 47,3). In the “order of salvation”, Christ “comes into the lives of married Christians through the sacrament of matrimony” (*per sacramentum matrimonii christifidelibus coniugibus obviam venit*; GS 48,2). By virtue of the sacrament, the spouses are strengthened in their vocation to mutual self-giving and are enabled to assume their responsibilities in Church and in society. Vatican II reaffirms a traditional and common theological maxim according to which grace presupposes and perfects nature; that is, the order of creation and that of redemption are not opposed but complement each other: “natural” marriage is a reality significant in itself, destined to be realised and perfected in Christ.

WERHAHN (eds.): *Authentic Voices, Discerning Hearts: New Resources for the Church on Marriage and Family* (INTAMS Studies/INTAMS Studien; 1), Münster: LIT, 2015, 99-118.

⁷¹ For an overview, see P. CONNOLLY: “Divorce, Remarriage and the Eucharist: What Can Pope Francis Do?”, in: *Doctrine and Life* 64/8 (2014), 2-17.

55. *Gaudium et spes* does not develop a separate theology of the sacrament of marriage, but refers – often implicitly, at times explicitly – to the current state of the Church’s teaching on sacramental marriage: while marriage was not included in the official list of sacraments until the 12th century (see Second Lateran Council 1139, Synod of Verona 1184, Second Council of Lyon 1274), the Council of Trent defended the sacramentality of marriage against the teachings of the Reformers. The background is Eph 5:22ff. in which it is asserted that Christ abides with the spouses, just as “He loved the Church and handed Himself over her”; in the same way, the spouses “love each other with perpetual fidelity”, for which the Pastoral Constitution introduced the concept of “mutual self-bestowal”. The sacramental character of marriage is based in the sacrament of Baptism; “caught up into divine love and...governed and enriched by Christ’s redeeming power and the saving activity of the Church”, Christian spouses “have a special sacrament by which they are fortified”. In addition, in their responsibilities they “receive a kind of consecration (*veluti consecrantur*)” which corresponds to the “dignity of their state”. When they “fulfil their conjugal and family obligations”, they “increasingly advance the perfection of their own personalities, as well as their mutual sanctification” (all quotations taken from GS 48,2).
56. Transforming the theological vision of the Pastoral Constitution into practical and especially canonical conceptualizations was the task of the post-conciliar codification of canon law. CIC 1983 states:

Can. 1055 §1: The matrimonial covenant...has been raised by Christ the Lord to the dignity of a sacrament between the baptised (*Matrimoniale foedus...a Christo Domino ad sacramenti dignitatem inter baptizatos evectum est*).

§2: For this reason, a valid matrimonial contract cannot exist between the baptised without it being by that fact a sacrament (*Quare inter baptizatos nequit matrimonialis contractus validus consistere, quin sit eo ipso sacramentum*).⁷²

The first canon reflects in one sentence the theological view of the sacrament of marriage presented by *Gaudium et spes*. A different picture emerges in the second canon. The *Code of Canon Law* adopts a canonical concept from the 19th century, which, in a period of increasing liberalism and secularisation, led to the theory of the “inseparability of marital contract and sacrament”.⁷³ The ruling that every matrimonial contract between baptised persons is *ipso facto* a sacrament was influenced more by historical circumstances and political decisions than by theological arguments. At that time, the Church was fighting to retain its legal authority over the marriages of Christians as some European states moved to assert jurisdiction over such marriages. Subsequent papal teaching and codification in the 19th and 20th centuries (*Arcanum divinae sapientiae*, 1880; *Casti connubii*, 1930; CIC 1917) continued to reinforce the conviction that every valid marriage is a sacrament and is elevated and consecrated as an efficacious sign of grace (see DH 3145-3146, 3710; CIC 1917 can. 1012). The magisterium thus intervened in an issue that the Council of Trent had deliberately left undefined. In response to the challenges of the Reformation, Trent had

⁷² See the corresponding passage in CCEO/90 can. 776 §2: “Ex Christi institutione matrimonium validum inter baptizatos eo ipso est sacramentum, quo coniuges ad imaginem indefectibilis unionis Christi cum Ecclesia a Deo uniuntur gratiaque sacramentali veluti consecrantur et roborantur.”

⁷³ For an overview of the theory of “inseparability of marital contract and sacrament”, from a historical, dogmatic and canonical perspective, see J.B. SEQUEIRA: *Tout mariage entre baptisés est-il nécessairement sacramentel? Étude historique, théologique et canonique sur le lien entre baptême et mariage*, Paris: Cerf, 1985; and D. BAUDOT: *L’inséparabilité entre le contrat et le sacrement de mariage: La discussion après le Concile Vatican II*, Rome: Pontificia Università Gregoriana, 1987.

defended the fact that marriage is indeed one of the seven sacraments, but it never clarified the relationship between the validity and sacramentality of marriage (see DH 1797-1816).⁷⁴ In fact, CIC 1983 does not reopen the issues discussed and literally repeats the pronouncements of CIC 1917 can. 1012 §2: the moment that baptised spouses have ratified their consent (even if they have not yet consummated their union), they have *eo ipso* entered into sacramental marriage. In this way, the current teaching of the Church absorbs a canonical rule which has never been explicated by adequate theological reflection and which does not correspond to the challenges of contemporary married life. In the following, we will briefly summarise the ambiguities and inconsistencies of the theology of marriage, before suggesting possible ways (theological, canonical, and pastoral) of resolving the sacramental character of marriage.⁷⁵

57. Canon law states that Christ has raised the marriage of the baptised to the dignity of a sacrament, and that there is no marriage of the baptised which is not a sacrament. The theological underpinning of this canonical legislation is based on the close relationship between baptism and marriage. By the fact of their baptism, two persons who enter into marriage also enter into the marriage “in the Lord” (1 Cor 7:39). Both *Codes* (CIC/17 can. 1012 §2 and CIC/83 can. 1055 §2) use the particle *quare* (“for this reason”) to emphasise that nothing other than baptism is required for the sacrament of marriage. Matrimonial jurisprudence certainly provides for security and clarity by upholding that baptism secures the sacramentality of marriage, but it does not escape the risk of sacramental “automatism”. If baptism has achieved its effects, and baptised engaged couples automatically receive the sacrament of marriage, the result is that the role of the recipients of the sacrament of marriage would be minimal, and the personal faith of the recipients to some extent irrelevant. Considering that infant baptism has been the classical model for the sacrament of baptism for centuries, it is hard to believe that the practices that have been used for a long time and still prevail today have contributed to consolidating and strengthening the personal responsibility of Christians who marry. Furthermore, the increased awareness of human freedom and the rise of a secular age in recent decades have also their impact on persons in the Western world who are “Christian by baptism” or “nominal Christians”. Many go to the church to get married, but do not profess their faith in Jesus Christ, the Church, and the sacramental nature of marriage. This leads to the absurd consequence that those who are baptised but have no personal faith either cannot marry at all (and consequently have to live in concubinage) or are forced to receive a sacrament which they do not know or even do not want to receive.

58. The International Theological Commission first diagnosed a major incongruity in the Church’s teaching in 1977: “The existence today of ‘baptised nonbelievers’ raises a new theological problem and a grave pastoral dilemma, especially when the lack of, or rather the

⁷⁴ See A. DUVAL : “Contract et sacrement de mariage au Concile de Trente”, in : *La Maison-Dieu* 127 (1976), 34-63; P.L. REYNOLDS : *How Marriage Become One of the Sacraments*, 727-982.

⁷⁵ With regard to remaining incongruities in today’s theology of sacramental marriage, see L. ÖRSY: “Faith, Sacrament, Contract, and Christian Marriage: Disputed Questions”, in: *Theological Studies* 43 (1982), 379-398; S. WOOD: “The Marriage of Baptised Non-Believers: Faith, Contract and Sacrament”, in: *Theological Studies* 48 (1987), 279-301; M.G. LAWLER: “Faith, Contract, and Sacrament in Christian Marriage: A Theological Approach”, in: *Theological Studies* 52 (1991), 712-731; K. HERZBERG: *Taufe, Glaube und Ehesakrament: Die nachkonziliare Suche nach einer angemessenen Verhältnisbestimmung* (Bamberger Theologische Studien; 11), Frankfurt a.M.: Peter Lang, 1991; P. PETERS: *Was macht eine Ehe zum Sakrament? Anfragen an die konstitutiven Elemente des Ehesakraments durch exemplarische sakramententheologische Ansätze nach dem Zweiten Vatikanum* (Studien zur systematischen und spirituellen Theologie; 56), Würzburg: Echter, 2020.

rejection of, the Faith seems clear.”⁷⁶ The Theological Commission thus made a first theological attempt to examine the relevance of personal faith in sacramental marriage, but its findings were not incorporated in CIC 1983 in any way.⁷⁷ Even today, there are still unanswered questions and remaining inconsistencies, which can be roughly divided into three categories. First, regarding the first point: What happens when a baptised person who has grown up outside of the Christian community and has never assumed and confirmed his/her baptismal vocation chooses to marry in the church? The answer forces us to choose an alternative: either s/he accepts – unknowingly or unwillingly – the prerequisites for a sacramental marriage, or s/he cannot be married in the church at all.

59. Another, second sensitive issue concerns Protestant or Reformed Christians, who embrace the Christian faith but do not normally recognise the sacramentality of marriage. Strictly speaking, and according to the canonical rule that the marital bond and sacrament are inseparable, their marriages are considered invalid. This gives the impression that the Church denies its Protestant partners the right to a “natural” marriage. However, further nuances are needed in this context. One aspect is that the growing number of mixed or interchurch marriages (between a Catholic and a non-Catholic partner) in many parts of the world has to some extent contributed to blurring the former clarity of doctrinal beliefs that previously separated the Roman Catholic Church from other churches or ecclesial communities. For instance, the *Directory for the Application of Principles and Norms on Ecumenism* (1993) acknowledges that in an interchurch marriage (not only Eastern Christian but) all non-Catholic partners can enter into a valid marriage and receive the sacrament of marriage, since “the spouses in a mixed marriage share the sacraments of baptism and marriage”.⁷⁸ In fact, the Church has never determined to what degree the intention to marry comprises the sacramentality of marriage. Striving for indissolubility, fidelity, and openness to children (i.e. the three essential properties of marriage) has always been an integral part of the will to marry, but it has not been clarified what the intention of sacramentality entails and whether an implicit acceptance of sacramentality is sufficient (e.g. in the case of non-believing baptised and Protestant Christians who ignore or deny the sacramentality of marriage) or whether an explicit and formal articulation is required. To this day, the Church has applied the fundamental and general principle that the minimum requirement for a valid marriage is “the intention to do what the Church does”⁷⁹ – and

⁷⁶ INTERNATIONAL THEOLOGICAL COMMISSION: *Propositions on the Doctrine of Christian Marriage*, 2.3.

⁷⁷ Pope Benedict XVI was the first pope to call for a further reflection on the role of personal faith in entering into sacramental marriage; see BENEDICT XVI: *Address during Meeting with Diocesan Clergy in Aosta*, 25 July 2005, available at https://www.vatican.va/content/benedict-xvi/en/speeches/2005/july/documents/hf_ben-xvi_spe_20050725_diocesi-aosta.html; *Allocution to the Members of the Tribunal of the Roman Rota*, 26 January 2013, available at https://www.vatican.va/content/benedict-xvi/en/speeches/2013/january/documents/hf_ben-xvi_spe_20130126_rota-romana.html. See also J. CARD. RATZINGER: “Introduzione”, in: CONGREGAZIONE PER LA DOTTRINA DELLA FEDE: *Sulla pastorale dei divorziati risposati*, 7-29, 27f.

⁷⁸ PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY: *Directory for the Application of Principles and Norms on Ecumenism*, 25 March 1993, 160, available at <https://www.christianunity.va/content/unitacrisciani/en/documenti/testo-in-inglese.html>.

⁷⁹ BENEDICT XVI: *Allocution to the Members of the Tribunal of the Roman Rota* (2013), 1 (see DH 1312: the sacrament must be administered *cum intentione faciendi quod facit ecclesia*; see also DH 1617). Pope John Paul II reversed the common principle in a negative sense: “...when in spite of all efforts, engaged couples show that they reject explicitly and formally what the Church intends to do when the marriage of baptised persons is celebrated, the pastor of souls cannot admit them to the celebration of marriage” (FC 68). John Paul II’s reluctance to distinguish between different levels of personal faith was also determined by ecumenical reasons: he warned that “one would...fall into the danger of calling into question the sacramental nature of many marriages of brethren separated from full communion with the Catholic Church, thus contradicting ecclesial tradition” (FC 68).

nothing more. Indeed, the Church has always had good reasons to handle the sacramentality of marriage with caution and prudence. Without delineating degrees of sacramentality, it has granted greater leeway to the spouses and their choices, situating them in the range between a half-hearted acceptance of the ecclesial intention and its formal rejection.⁸⁰ However, the remaining difficulty and dilemma lie in the rapid and ill-considered identification of the validity and sacramentality of marriage. Instead of starting with validity and then dealing with the sacramentality of marriage, current canon law continues to regard sacramentality as proof of validity and then canonical form (which is mandatory since the 1563 decree *Tametsi*, see DH 1813-1816) as the most appropriate expression of sacramental marriage.

60. A third and final ambiguity in today's theology of sacramental marriage was recently noted by Pope Francis himself in *Amoris laetitia*. In AL 121-122, he explains that “[m]arriage is a precious sign, for ‘when a man and a woman celebrate the sacrament of marriage, God is, as it were, ‘mirrored’ in them; he impresses in them his own features and the indelible character of his love...’”. But at the same time, the pope warns that one should not “confuse different levels: there is no need to lay upon two limited persons the tremendous burden of having to reproduce perfectly the union existing between Christ and his Church”. The idea that marriage “is the icon of God’s love for us” (AL 122) and a prefiguration and representation of the relationship between Christ and his Church goes back to Eph 5 and became part of the traditional theology of marriage. It was given a new signification when Pope John Paul II taught that the sacrament of marriage not only serves to “purify and strengthen” the characteristics of conjugal love that is natural to all spouses, but raises them “to the extent of making them the expression of specifically Christian values” (FC 13). The sacramental sign, expressed in liturgical language, “signifies not only the ‘*fieri* [coming to be]’ or birth of marriage, but builds its ‘*esse* [being],’ its duration”,⁸¹ and thus becomes an obligatory and irrevocable “ethos”: the “totality” of the mutual self-giving which the spouses pledge in the wedding celebration (FC 13) can by no means be annihilated; sacramental marriage is not only a moral ideal to be achieved, but it acquires an ontological status. The consequences of this argument are obvious, especially with regard to the issue of marital indissolubility. The threat of what Pope Francis has called “excessive idealization” (AL 36) is still imminent when it is suggested that sacramental marriages are

⁸⁰ The critical limit is reached when a prevailing and consistent act of will rejects the intention of the Church. Pope John Paul II’s pronouncement that the celebration of marriage cannot take place if the spouses refuse with premeditation the Church’s intention (FC 68) was taken up by CIC/83, which states in can. 1099: “Error concerning the unity or indissolubility or *sacramental dignity of marriage* does not vitiate matrimonial consent provided that it does not determine the will” (emphasis added). Without explicitly referring to “sacrament” or “sacramental”, can. 1011 decrees in a similar way: “§1. The internal consent of the mind is *presumed* to conform to the words and signs used in celebrating the marriage. §2. If, however, either or both of the parties by a positive act of the will exclude marriage itself, some essential element of marriage, or some essential property of marriage, the party contracts invalidly” (emphasis added). In its document *The Reciprocity between Faith and Sacraments in the Sacramental Economy* (2020), the International Theological Commission goes a step further by suggesting that the absence of faith can impair what is required for a “natural” marriage: “...if the intention to enter into marriage does not include these properties [i.e. indissolubility, fidelity, and ordering to the good of the spouses, and the good of the offspring], at least implicitly, then there is a serious lack of intention, which can call into question the very existence of a natural marriage, which is the necessary basis for sacramental marriage” (INTERNATIONAL THEOLOGICAL COMMISSION: *The Reciprocity between Faith and Sacraments in the Sacramental Economy*, 2020, 168, available at https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20200303_reciprocita-fede-sacramenti_en.html).

⁸¹ JOHN PAUL II: *Man and Woman He Created Them: A Theology of the Body*, trans. and ed. by M. Waldstein, Boston: Pauline Books & Media, 2006, 614. The bracketed material is in the original.

per se permanent and “successful” marriages, leaving no room to deal in an adequate way with those couples who experience hardship, failure, or even break-up.

61. Two principles which determine Christian marriage are decisive when it comes to revisiting the sacramental nature of marriage and adjusting it to current challenges. The first is the enduring correlation between the order of creation and the order of redemption. Marriage is part of the order of creation “established by the Creator and qualified by His laws” (GS 48,1), but it requires a special articulation and affirmation by those who trust in God’s agapeic love. The “natural” marriage is a reality which is significant in itself, but it becomes “sacramental” only when God’s unconditional love is assumed by his human covenant partners and brought to completion in Christ. From this follows the second principle, i.e. the reciprocal relationship between faith and sacrament. On the one side, marriage becomes a sacrament and bestows grace only by virtue of the action of Christ himself and not primarily by the personal faith of those who receive the sacrament. There are therefore good reasons why the Eastern tradition, for example, emphasises the role of the Church in conferring the sacrament. On the other side, there can be no sacrament without the personal faith of the spouses, because a certain form of active faith is presupposed as a disposing cause for receiving the fruitful effect of the sacrament, whereby “the validity of marriage...does not imply that this effect is necessarily fruitful”.⁸² Here, the Latin tradition stands out in that it holds that the spouses themselves confer the sacrament, provided that they have a personal faith. A number of lessons can be learned from these theological principles, which are in tension with one another.
62. A first important aspect is that of theological epistemology and anthropology. From a Christian point of view, marriage in its various dimensions can only be understood in the light of the order of redemption or, to use a similar term, the “sacramental economy”. In other words, the difference between “natural” and “sacramental” marriage becomes distinct only when we understand that we live in a world in which God’s unconditional love has been brought to completion in Christ’s salvation. Whether we are Christians or non-believers, God’s agapeic love is not only an *imperative* to be fulfilled by human beings, but also an *indicative* that is already present here and now. It applies to all human persons. Although Christians are called in a particular way to give a clear sign of God’s covenantal love, they cannot speak in God’s name. The Church should also be careful not to decree where God’s grace does and does not work. Among the baptised persons and within the new order of redemption, the Church does indeed have the responsibility of specifying the criteria for the sacramentality of marriage, a practice which it has always treated with great solicitude. The nature of natural marriage, however, is a different matter. The document *The Reciprocity between Faith and Sacraments in the Sacramental Economy*, published in 2020, is noteworthy in this context. In it, the International Theological Commission, largely in line with Pope Benedict XVI,⁸³ states that “there is reason to doubt that in the case of marriages between baptised non-believers...a sacrament of faith takes place because of a serious defect of intention to contract natural marriage, presumably as a very possible consequence that is quasi-inherent in the lack of faith”. And it continues, the essence of natural marriage is in peril since “[o]ne cannot desire, pretend, or love what one does not know or explicitly rejects”.⁸⁴ The tone of these statements is very assertive, and the

⁸² INTERNATIONAL THEOLOGICAL COMMISSION: *Propositions on the Doctrine of Christian Marriage*, 2.3.

⁸³ See, e.g., BENEDICT XVI: *Address during Meeting with Diocesan Clergy in Aosta*.

⁸⁴ INTERNATIONAL THEOLOGICAL COMMISSION: *The Reciprocity between Faith and Sacraments in the Sacramental Economy*, 173.

arguments put forward in it wide-ranging, especially with regard to the theological understanding of natural marriage. Can one really claim that in the case of baptised non-believers a lack of faith may “compromise”⁸⁵ or, to quote Benedict XVI, “damage the goods of the marriage”,⁸⁶ which entail indissolubility, fidelity, and orientation toward procreation? Can a natural marriage not be “contracted”, as the document says, if there is no sense of faith, let alone of sacramentality? There are certainly good reasons why, particularly in a secularised culture and in special cases, a Christian wedding may be rejected, as Pope John Paul II has suggested (see FC 68). But it is a significant step in a different direction to assert that, as the document states, the absence of faith and of the sense of sacramentality can constitute “a modification of the natural reality of marriage” and, subsequently, “a departure from the creational project”, which “directly affects the supernatural reality, the sacrament”.⁸⁷ The document is even clearer in its implications: in the words of Benedict XVI, “the current crisis of faith...brings with it a crisis of the conjugal society”.⁸⁸ Also according to Benedict, the conjugal bond can only be “understood from sacrificial love”.⁸⁹ The good of offspring is damaged if the reciprocal good of the spouses is not raised to “sacrificial love and unselfish self-transcendence”.⁹⁰ The lack of faith compromises any “true intention of indissolubility of the bond”.⁹¹ Likewise, an absence of faith jeopardises Christian “anthropology and, with it, the natural reality of marriage, which is more at the mercy of the dominant cultural paradigm”.⁹² In summary, “the intention to enter into a natural marriage cannot be presupposed as guaranteed, nor can it be excluded at the outset”,⁹³ and it is questioned whether baptised non-believers embrace the true truth of married love.⁹⁴ In light of these firm and culturally pessimistic conclusions, one would have wished that the Church would apply the same gradual nuances to natural marriages as it traditionally does to sacramental marriages. In fact, much more theological sensitivity and pastoral discernment are required before a natural marriage can be justified as deficient. The International Theological Commission clearly rejects any sacramental automatism,⁹⁵ but considering that it upholds without hesitation the inseparability of contract and sacrament,⁹⁶ one cannot help but feel that an automatic approach to sacramentality is regaining importance, now in reverse order: just as a valid marriage contract is equivalent to sacramental marriage, the absence of sacramental meaning signifies the invalidity of marriage. We can only conclude that the question of whether a lack of faith harms a natural marriage is still a matter for further discussion.

63. A second aspect is closely linked to the previous one. Vatican II has expounded in GS 49,1 that within the framework of sacramental economy, conjugal love, “*merging the human with the divine*, leads spouses to a free and mutual gift of themselves” (emphasis added). Indeed, God’s covenantal love opens up new possibilities for human persons that can liberate them from the limitations inherent in the human condition; what conjugal love is, is ultimately

⁸⁵ Ibid.

⁸⁶ BENEDICT XVI: *Allocution to the Members of the Tribunal of the Roman Rota* (2013).

⁸⁷ INTERNATIONAL THEOLOGICAL COMMISSION: *The Reciprocity between Faith and Sacraments in the Sacramental Economy*, 174.

⁸⁸ Ibid. 175.

⁸⁹ Ibid. 176.

⁹⁰ Ibid. 177.

⁹¹ Ibid. 178.

⁹² Ibid. 179.

⁹³ Ibid.

⁹⁴ Ibid. 180.

⁹⁵ See *ibid.* 41, 78, and 181.

⁹⁶ Ibid. 155, 166 e).

defined not by human beings, but by God himself. However, “merging the human with the divine” does not mean that human limitations are automatically lifted to a new level, as the theory of sacramental automatism and some theological ideas may erroneously suggest. Moreover, in the *Declaration on Religious Freedom Dignitatis humanae*, Vatican II developed and promoted an understanding of human dignity and human freedom grounded in the constitutive relationship of the human person to God. Hence, human persons are not marionettes who obey the divine lawmaker but human beings who have to respond responsibly and creatively to the situation in which they find themselves. This also applies to engaged couples who are baptised and ask to be married in the Church. It entitles them, in a first phase, to scrutinise and then to articulate the extent to which they are aware of, accept, and appreciate the sacramental value of a Christian marriage. There is no reason why Christians who do not believe in the sacramentality of marriage, and those who hesitate to ascribe sacramental value to their marriage, or doubt this value, should not enter into a valid marriage. Baptised persons can decide for themselves whether or not their valid marriage can have a sacramental value.⁹⁷

64. Thirdly, conjugal love can be a grace for spouses, whether or not they are Christians. Even if they have not grown up in the Christian faith, God the Creator encourages and assists them to go beyond their normal human restrictions and to live a life of mutual self-giving. It may sound unusual, but the Church has never denied that divine grace has a *sacramental* significance in itself. Theologically speaking, God’s grace is always “sacramental grace”. This was also the reason why the Church kept the conditions for receiving the sacraments to a minimum. The Council of Trent used the term *ex opere operato* to affirm the efficacy of the sacraments (see DH 1608): “When a sacrament is celebrated in an appropriate manner, in the name of the Church and in accordance with the meaning given to it by the Church, it always conveys what it signifies.”⁹⁸ The conferring of sacramental grace – which, according to the Latin tradition, is conferred by the spouses themselves – requires little more than the intention to do what the Church intends to do. Just as the personal and moral integrity of the minister is not constitutive for administering a sacrament, so it is not the faith of the spouses that conveys sacramental grace and brings about salvation, but it is Christ himself who acts through the sacrament. The task of the Church as a whole is also an auxiliary and supportive one: it is only to ensure that Christ’s grace can flow without external obstacles. To put it differently, the imperative is: let God do what he wills, and be sure that he works – “sacramentally”! It would be unbearable and counterproductive to overburden baptised spouses – not to mention non-believers – with requirements and measures regarding the quality of their personal faith.

65. Fourthly and lastly, the *Constitution on the Sacred Liturgy Sacrosanctum Concilium* explains the relationship between faith and sacrament in the following way: “The purpose of the sacraments is to sanctify men, to build up the body of Christ, and, finally, to give

⁹⁷ In the 1970s, the French diocese of Autun developed a pastoral programme that allowed couples to choose the form of marriage they wished to enter into. The first is a civil marriage, which takes place in the registry office; the second is a “welcomed civil marriage”, for couples who wish to marry in a church or other religious context, with little or no emphasis on the sacramentality of marriage, but which creates a space of openness and hospitality in the hope that a sacramental celebration will be possible at a later date; the third form is a sacramental marriage, to be celebrated by couples who have a living faith. For the programme, see J.A. SCHMEISER: “Marriage – New Developments in the Diocese of Autun”, in: *Église et Théologie* 10 (1979), 369-385; for an overview, see ID.: “Welcomed Civil Marriage”, in: *Studia Canonica* 14 (1980), 49-87. See also H. DENIS (ed.): *Le mariage, un sacrement pour les croyants?*, Paris: Cerf, 1990.

⁹⁸ INTERNATIONAL THEOLOGICAL COMMISSION: *The Reciprocity between Faith and Sacraments in the Sacramental Economy*, 65.

worship to God; because they are signs they also instruct. They *not only presuppose faith*, but by words and objects they *also nourish, strengthen and express it*; that is why they are called ‘sacraments of faith (*fidei sacramenta*).’ They do indeed impart grace, but, in addition, the very act of celebrating them most effectively disposes the faithful to receive this grace in a fruitful manner, to worship God duly, and to practice charity.”⁹⁹ Although the sacraments work *ex opere operato*, the personal faith of their recipients is also necessary and presupposed as a disposition to receive the fruitful effect of the sacrament. Whether the fruitfulness of sacramental grace becomes a reality depends on the ability and willingness of the spouses. What is essential here is that *the sacramental celebration set the spouses on a dynamic, processual, and gradual path*. Contrary to a still widespread misunderstandings, the sacramentality of marriage is not achieved once and forever when consent is given. A prime example is the Orthodox tradition, which regards Christian marriage as a sacrament whose nature is permanent, everlasting, and eternal, and which opens a space for growing perfection. In a similar way, some theologians and canonists in the Latin Church have convincingly argued that the sacramentality of marriage may have different degrees according to which sacramental marriage can “nourish, strengthen, and express” the personal faith of the spouses.¹⁰⁰ Such approaches deserve to be further implemented in the light of Vatican II.

66. To conclude, marriage has its place in the sacramental economy and obtains a sacramental value for baptised Christians. Sacrament and faith entertain a close and reciprocal relationship that can neither be separated nor fused. Just as there is no sacrament without faith, so personal faith urges sacramental expression. What is characteristic of this reciprocal relationship is an *interpersonal, dialogical, and communicative encounter* which connects and commits all levels of covenantal relationships, from the Trinitarian God to humanity, from Jesus Christ to the Church, to the relationship of each person to God and to the mutual relationships of persons among themselves, thus creating a community of believers.¹⁰¹ God’s gift to humanity and to the Church comprises a grace that enables human persons to respond to God’s call and to cooperate with his action to the extent that is proper to their potentialities and facilities. This implies both the urge to realise one’s potentialities and the recognition of the limits of one’s facilities. From this angle, the concept of gradual stages of sacramentality within a marriage makes sense, since it avoids two pitfalls: a sacramental automatism that relieves the spouses of human responsibility and the absolutizing of ideals that are not achievable.

⁹⁹ SECOND VATICAN COUNCIL: *Constitution on the Sacred Liturgy Sacrosanctum concilium* (hereafter SC), 4 December 1963, 59,1 (emphasis added), available at https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19631204_sacrosanctum-concilium_en.html.

¹⁰⁰ See S. DEMEL: *Kirchliche Trauung – unerläßliche Pflicht für die Ehe des katholischen Christen?*, Stuttgart: Kohlhammer, 1993; EAD.: “Plädoyer für das Modell eines gestuften Ehesakraments”, in: R. PUZA/A. WEIB (eds.), *Iustitia in Caritate: Festgabe für Ernst Rößler* (Adnotationes in Ius Canonicum; 3), Frankfurt a.M.: Peter Lang, 1997, 215-229.

¹⁰¹ A theological scheme of the “dialogical character” of the sacramental economy can be found in INTERNATIONAL THEOLOGICAL COMMISSION: *The Reciprocity between Faith and Sacraments in the Sacramental Economy*, chapter II, 15-79.

II.3.4. Unitive and Procreative Dimensions of Marriage: The Conjugal Act Revisited

67. The Pastoral Constitution has described humanity as “the entire human family” (*totam hominum familiam*; GS 3). As social institutions, marriage and the family are meant to meet the basic needs of society, such as providing structure, guidance, and order. Interpersonal relationships across different generations and genders should be organised in such a way as to ensure stable cohabitation and the joint upbringing of offspring. In the Judeo-Christian tradition, procreation has always occupied an important role in the conception and practice of matrimony, based on the biblical account in Genesis that “God created man in his own image, in the image of God he created him; male and female he created them. And God blessed them, and God said to them, ‘Be fruitful and multiply, and fill the earth and subdue it...’” (Gn 1:27-28). A leading role has been attributed to St Augustine. Against Manichaean visions, he regarded marriage as part of God’s plan and as a God-given gift (see *De bono coniugali*). But at the same time, he did not hesitate to call sexual desire an effect of original sin: since human beings are exposed to disordered human instincts and impulses, they engage in sexual intercourse mainly for the sake of pleasure (see *De nuptiis et concupiscentia*). Sexual intercourse can therefore only be excused and legitimised within marriage and when it serves the purpose of procreation – this is one of the three goods of marriage (*bonum prolis*, along with *fides* and *sacramentum*) proposed by this Latin church father, and probably the one that has had the greatest influence. His vision became the basis for a theological definition of marriage that has guided the Church for centuries, declaring the procreation and rearing of the offspring to be the primary purpose of marriage, along with the mutual assistance of the spouses and the overcoming of lust as ancillary purposes. This view reached its climax with Pope Pius XI’s encyclical *Casti connubii* (1930).
68. *Gaudium et spes*, in the first chapter of its second part (entitled “Fostering the Nobility of Marriage and the Family”), first puts emphasis on the “intimate partnership of married life and love” and thus on “conjugal love” (GS 48 and 49), before addressing the issue of procreation (mainly in GS 50-52). Admittedly, sections 48 and 49 are not elaborated apart from a reference to procreation and fecundity. On the contrary, conjugal love is immediately associated with the “good of off-springs [sic]”, the “benefits and purposes” of the “continuation of the human race”, the “dignity, stability, peace and prosperity of the family itself” and the “good of children”. In short, “the institution of matrimony itself and conjugal love are ordained for the procreation and education of children, and find in them their ultimate crown” (all quotations from GS 48,1). This finds its expression in concepts such as the “sublime office of being a father or a mother”, the “dignity and office of fatherhood and motherhood” or the common “conjugal and family obligations” (GS 48,2). When it comes explicitly to the “fecundity of marriage” (*De matrimonii fecunditate*), GS 50 repeats that “[m]arriage 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” (GS 50,1). But what is the relationship between “the true practice of conjugal love” and “the whole meaning of the family life which results from it” (GS 50,1)? The seemingly vague response given by GS is that the couple should “be ready with stout hearts to cooperate with the love of the Creator and the Savior”. The following statement is clearer: “Marriage to be sure is not instituted solely for procreation”; consequently, “marriage persists as a whole manner and communion of life, and maintains

its value and indissolubility, even when despite the often intense desire of the couple, offspring are lacking” (GS 50,3). The priority of conjugal love over procreation also resonates when the Council Fathers acknowledge that in today’s society couples are confronted with new challenges, and thus “the faithful exercise of love and the full intimacy of their lives is hard to maintain”. This entails that “where the intimacy of married life is broken off, its faithfulness can sometimes be imperiled and its quality of fruitfulness ruined, for then the upbringing of the children and the courage to accept new ones are both endangered” (GS 51,1). The underlying logic is evident: if intimate love is vanishing or lacking, fidelity and the openness to children lose their primary meaning. But the Council Fathers left open the question of how the renewed theology of marriage should treat “the acts themselves which are proper to conjugal love and which are exercised in accord with genuine human dignity” (GS 51,3). In other words, the question remained unsolved how the conciliar theology of marriage can be translated into sexual morality. Pope Paul VI took up the gauntlet, being aware that questions of sexual morality “need further and more careful investigation” and that “immediate concrete solutions” should be avoided. The task was therefore “handed over to a commission for the study of population, family, and births” (GS 51, footnote 14). The final conclusion was reached by Paul VI when, on 25 July 1968, he published his encyclical on the “regulation of birth”, *Humanae vitae*.¹⁰²

69. From a historical perspective, two aspects need to be taken into account before the theology of marriage can be evaluated in the spirit of Vatican II. First, the prehistory and genesis of Pope Paul VI’s encyclical was a subject of turmoil and disquietude within the inner circle of the Church.¹⁰³ While the majority of the members of the Papal Commission for the Study of Population, Family and Births, set by Pope John XXIII and subsequently by Paul VI, called for a “further development” of the doctrine of marriage and its moral implications, a minority fiercely defended the doctrinal positions of the magisterium and cautioned that revisions in sexual morality would have enormously negative effects on Church and society. Paul VI’s final decision to repudiate the majority report of the Commission also affected the theology of marriage, into which Vatican II had breathed new life. Secondly, *Humanae vitae* met with a negative response in large parts of Church and society, and that annoyance lasted for a long time.¹⁰⁴ As the ecclesial situation has not yet calmed down more than half a century after the appearance of the encyclical, there is still a pressing need to reimplement the conciliar theology of marriage and to critically revisit the detrimental remnants of the pre-conciliar period.¹⁰⁵

70. A first pre-conciliar relic can be seen in *Gaudium et spes* itself. The Pastoral Constitution is looking for ways of “harmonizing conjugal love with the responsible transmission of life”

¹⁰² PAUL VI: *Encyclical Letter Humanae vitae on the Regulation of Birth* (hereafter HV), 25 July 1968, available at https://www.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae.html.

¹⁰³ For the genesis of HV, see M.M. LINTNER: “Humanae vitae: Eine historisch-genealogische Studie”, in: J. ERNESTI (ed.): *Paolo VI e la crisi postconciliare/Paul VI. und die nachkonziliare Krise* (Pubblicazioni dell’Istituto Paolo VI; 32), Brescia-Rome: Istituto Paolo VI-Edizioni Studium, 2013, 16-53; G. MARENCO: *La nascita di un’enciclica: Humanae Vitae alla luce degli Archivi Vaticani*, Vatican City: LEV, 2018.

¹⁰⁴ See M.M. LINTNER: *Vom Humanae vitae bis Amoris laetitia: Die Geschichte einer umstrittenen Lehre*, Innsbruck-Wien: Tyrolia, 2018.

¹⁰⁵ For a theological-historical interpretation of HV, see H.-G. GRUBER: *Christliche Ehe in moderner Gesellschaft: Entwicklungen – Chancen – Perspektiven*, Freiburg i.Br.: Herder, 1994, 151-212; T.A. SALZMAN/M.G. LAWLER: *The Sexual Person: Toward a Renewed Catholic Anthropology*, Washington, DC: Georgetown University Press, 2008, 162-191; E. SCHOCKENHOFF: *Die Kunst zu lieben: Unterwegs zu einer neuen Sexualethik*, Freiburg i.Br.: Herder, 2021, 200-240.

and concludes that “the full sense of mutual self-giving and human procreation in the context of true love” can only be preserved if “the nature of the human person and his acts” – “determined by objective standards” – is “honoured with great reverence” (all quotations are taken from GS 51,3). However, the paragraph ends with a reference to birth control and asserts, without further explanation, that “the sons of the Church, faithful to these principles [objective criteria], are *forbidden (non licet)* to use methods disapproved of by the teaching authority of the Church in its interpretations of the divine law”.¹⁰⁶ The attached footnote clarifies that doctrinal positions – in this case those proclaimed by Pius XI in *Casti connubii*, by Pius XII in his address to participants in the Conference of the Italian Catholic Union of Obstetricians on 29 October 1951, and by Paul VI in his address to a group of cardinals of 23 June 1964 – are part of the teaching authority and can neither be adjusted nor changed (GS 51,3, footnote 14). This immediately raises the question of why “further and more careful investigation” on the subject of birth control seems so unnecessary. In fact, Pius XI had already defined that “the conjugal act is destined primarily by nature for the begetting of children” and that “those who in exercising it deliberately frustrate its natural power and purpose sin against nature and commit a deed which is shameful and intrinsically vicious” (CC 54). A similar inconsistency appears when Paul VI argues that he did not follow the majority opinion of the members of the Papal Commission because within the commission “certain criteria of solutions had emerged which *departed from* the moral teaching on marriage proposed with constant firmness by the teaching authority of the Church” (HV 6).¹⁰⁷ Does this mean that the Papal Commission erred and became heretical? That is certainly not what the pope says. There is also no doubt that Paul VI did not return to Pius XI’s hierarchical language of primary and secondary ends of marriage, as he showed himself to be a proponent of Vatican II and deliberately defended the renewed theology of marriage. However, a different picture arises when it comes to issues of sexual and conjugal morality: what the pope says is that the *theology and teaching of marriage* can be adjusted at the discretion of the Church, but that the traditional *sexual morality* must be strictly maintained. In *Humanae vitae*, the pope subordinates the fundamental issues of the marriage theology of Vatican II to the previous moral precepts of the Church. The one-sided orientation of marriage to its procreative purpose, which the Council had corrected on the doctrinal level, is reintroduced through the back door on the normative-ethical level. It is all the more incomprehensible why Paul VI ignored the common theological principle that matters of faith must be considered and, if necessary, determined before they can be put into practice. One might have hoped that the Pope would have taken greater account of the theology of marriage set out in *Gaudium et spes* before applying that theology to questions of sexual and marital morality.

71. *Humanae vitae* sees itself in the same line as *Gaudium et spes*: taking “its origin from God, who ‘is love’”, conjugal love “reveals its true nature and nobility” (HV 8) and can be described as a “fully human”, “total”, “faithful”, and “fecund” venture (HV 9). Since “married love” and “responsible parenthood” are “two important realities of married life” (HV 7), the pre-conciliar vision is abandoned, and procreation is no longer seen as an end in itself but as arising from the communal love of the couple. Likewise, the conviction of *Gaudium et spes* that the loving self-gift of the spouses “far excels mere erotic

¹⁰⁶ This sentence comes from A. FLANNERY (ed.): *The Conciliar and Post Conciliar Documents*, Collegeville, MN: Liturgical Press, 1996, 955 (emphasis added).

¹⁰⁷ The sentence is taken from PONTIFICAL COUNCIL FOR THE FAMILY: *Enchiridion on the Family: A Compendium of Church Teaching on Family and Life Issues from Vatican II to the Present*, Boston: Pauline Books & Media, 2004, 20 (emphasis added).

inclination” (GS 49,1), seems to be echoed in HV: as “fecund”, love “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” (HV 9). The disruption occurs when *Humanae vitae* misreads the Pastoral Constitution. HV 9 literally quotes GS 50,1 (“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”), but it overlooks the context of *Gaudium et spes*. Anyone who reads GS 50 as a whole will recognise that the quoted sentences at the beginning of the paragraph are complemented by a relevant qualification, namely:

Marriage to be sure is not instituted solely for procreation; rather, its very nature as an unbreakable compact between persons, and the welfare of the children, both demand that the mutual love of the spouses be embodied in a rightly ordered manner, that it grow and ripen. Therefore, marriage persists as a whole manner and communion of life, and maintains its value and indissolubility, even when despite the often-intense desire of the couple, offspring are lacking. (GS 50,3; emphasis added)

There is no mention of this contextual account in *Humanae vitae*. In stark contrast to *Gaudium et spes*, the encyclical uses a final clause to reduce the mutual love of the spouses to an instrument for bringing about new life:

By means of the reciprocal personal gift of self, proper and exclusive to them, husband and wife tend toward the communion of their beings in view of mutual personal perfection, *to collaborate with God in the generation and education of new lives (ut ad novorum viventium procreationem et educationem cum Deo operam sociant)*. (HV 8; emphasis added¹⁰⁸)

The purpose of loving self-giving is to provide for offspring.

72. With *Humanae vitae*, the interrelation between conjugal love and procreation in the theology of marriage loses its balance. This becomes apparent when Paul VI introduces a new doctrinal pronouncement in which he defends 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 act” (HV 12). By way of comparison: *Gaudium et spes* had argued that “the institution of matrimony itself and conjugal love are ordained for the procreation and education of children” (GS 48,1), in other words, that married love and life are by nature open to new life. In this vein of thinking, the Council Fathers concluded that marriage and conjugal love in their totality, that is, *as a whole*, are directed towards openness to children.¹⁰⁹ Procreation is undoubtedly part of the conjugal act, but it does not in itself stand for married love. *Gaudium et spes* went on to explicate that the most appropriate expression and realisation of married love is to be found in the conjugal act, which “pervades” the whole of the life of the spouses, “intimately unites” them, “enriches” and “perfects” them beyond the egoistic inclinations of self-isolation, opens them to new life and makes them, in the best way and according to adequate rules, “truly human” (see GS 49,1-3). *Gaudium et spes* thus paints a rather positive and appreciative picture of conjugal sexuality, in contrast to the pessimistic view of the

¹⁰⁸ The English passage is again from *Enchiridion on the Family*, 21.

¹⁰⁹ B. HÄRING: “Kommentar zum ersten Kapitel des zweiten Teils von *Gaudium et spes*”, 438. HV 3 refers literally to the “principle of totality” (*principio totalitatis*) which the majority of the members of the Papal Commission had claimed, but without further reflection.

world that for centuries has permitted sexual intercourse only for the purpose of procreation. *Humanae vitae*, however, redraws the map of sexuality in a particular way, and it does that by claiming that the precepts of natural law and the Church as its interpreter teach that “*each and every marital act (quilibet matrimonii usus) must of necessity retain its intrinsic relationship to the procreation of human life*” (HV 11; emphasis added, while the Latin version contains the emphasis¹¹⁰). The conjugal act is thus forced back into the Procrustean bed from which Vatican II had released it.

73. What lies behind the encyclical’s redefinition of the conjugal act? A first indication can be seen in a quote in which *Humanae vitae* refers to *Gaudium et spes* and describes sexual activity as “noble and worthy” (HV 11). The Pastoral Constitution was speaking of the love of marriage expressed and deepened by the intimate union of the spouses: “The actions [*actus*] within marriage by which the couple are *united intimately and chastely* are noble and worthy ones” (GS 49,2; emphasis added). The whole paragraph says nothing about the procreative meaning of the conjugal act. In contrast, *Humanae vitae* connects the “noble and worthy” conjugal act in a short circuit with the genital act, which provides for procreation. While the English version (“The sexual activity, in which husband and wife are intimately and chastely *united with one another*”; emphasis added) conceals the underlying meaning, the Latin version is clearer: “*Hi actus, quibus coniuges intime et caste copulantur, et per quos vita humana propagatur*” (HV 11; emphasis added). In other words, the conjugal act is a genital act. Since the unitive dimension of the conjugal act is necessarily inseparable from the procreative dimension, the latter will take priority: first, because, according to *Humanae vitae*, there is no better explanation for the intimate union of the spouses than the *genital act*, which is determined by biological laws and, as the encyclical elucidates, “written into the actual nature of man and woman” (HV 12); and second, because the *unitive* dimension of the conjugal act is undermined by that of procreation. *Humanae vitae*’s principle of “inseparable connection” risks tending towards an axiom of “identity” in which differences fade away.
74. This becomes clearer when we consider the issue of birth control and the prohibition of artificial means of its accomplishment. *Humanae vitae* explains that the intimate union of man and woman which “renders them capable of generating new life” is “a result of laws written into the actual nature of man and woman” (HV 12). Since “God has wisely ordered laws of nature and the incidence of fertility”, the human person cannot destroy the “intrinsic relationship to the procreation of human life” (HV 11), especially not by using artificial methods which, on the person’s initiative (*suo sponte*, HV 12), interrupt the natural finality of the intimate union. The corollary is obvious: when a couple has sexual intercourse in the woman’s infertile periods which do not lead to conception, the spouses recognise the natural laws written by God and respect the two essential qualities of marriage, namely, not only “true mutual love” but also the “ordination to the supreme responsibility of parenthood to which man is called” (HV 12). It is noteworthy that the choice not to have children is the leading intention behind both artificial birth control and natural family planning; however, while artificial methods automatically contradict the openness to children, the acceptance and implementation of the female cycle *per se* preserves this assumption. In the latter case, the couple follows the biological law of the female cycle by acknowledging that conception is *possible*, at least in principle, even if it is biologically unlikely in times of infertility. The spouses are therefore not unwillingly obedient to biological dictates, since they consciously

¹¹⁰ The Latin version is available at https://www.vatican.va/content/paul-vi/la/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae.html.

use infertile periods for their own ends, in this case to prevent pregnancy; however, the procreative purpose remains intact and valid for every conjugal act, even in moments of infertility. At the behest of the natural laws established by God, the biology of heterosexual procreation is raised to the rank of a moral claim that must be unconditionally respected, as HV 14 elucidates: "...excluded is any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation – whether as an end or as a means". Many critics have accused *Humanae vitae* of a "naturalistic fallacy", which is difficult to refute.

75. HV 10 deals explicitly with the issue of "responsible parenthood", which is assigned to the spouses and which they are to fulfil with "full awareness of their obligations" and with right understanding. This includes respecting the biological processes and laws of the procreative faculty, controlling human "innate drives and emotions", and recognising "physical, economic, psychological and social conditions" regarding the number of children.¹¹¹ The idea that the primary responsibility for family matters rested with the parents themselves had already been echoed at the Council. *Gaudium et spes* had declared that "parents themselves and no one else should ultimately make this judgment [about responsible parenthood]", adding that parents "should be aware that they cannot proceed arbitrarily" and, subsequently, that they "must always be governed according to a conscience dutifully conformed to the divine law itself, and should be submissive toward the Church's teaching office, which authentically interprets that law in the light of the Gospel" (GS 50,2). The first aspect, namely that spouses "are not free to act as they choose in the service of transmitting life" (HV 10; emphasis added), gains much more attention in *Humanae vitae* and leads to the prohibition of artificial means of birth control. Since the encyclical is very concerned about dehumanising effects of technological advances, it sets a limit by claiming that "[j]ust as man does not have unlimited dominion over his body in general, so also, and with more particular reason, he has no such dominion over his specifically sexual faculties, for these are concerned by their very nature with the generation of life" (HV 13). The second aspect, i.e. *conscience*, is also mentioned in *Humanae vitae*. Both documents, *Humanae vitae* and *Gaudium et spes*, argue that conscience conforms to "the divine law itself" (GS 50,2) and to "the objective moral order which was established by God, and of which a right conscience is the true interpreter" (HV 10). However, when it comes to the question of what these "objective criteria" are grounded on, or – in the wording of HV – of how "the will of God the Creator" (HV 10) can be determined, the underlying opinions differ. While *Gaudium et spes* refers to "the nature of the human person and his acts (*obiectivis criteriis, ex personae eiusdemque actuum natura desumptis*)" (GS 51,3), *Humanae vitae* points to "the very nature of marriage and its use (*ipsa matrimonii eiusque actuum natura*)". The difference is obvious: the Council Fathers opt for a person-centred approach in which the objective criteria for the human experience of sexuality, and hence for responsible parenting, are to be found in the specificity and dignity of the person and his or her actions. In *Humanae vitae*, on the contrary, it is no longer the human person who, "in the context of true love" (GS 51,3), gives shape and form to marriage by performing the appropriate acts, but again it is an act which is in itself destined for procreative purposes.

76. *Humanae vitae* rightly pointed to a number of imminent dangers facing the world today: humans' "stupendous progress in the domination and rational organization of the forces of nature to the point that he [man] is endeavoring to extend this control over every aspect of

¹¹¹ The mastery of human drives and passions was never a matter in GS's outline of the theology of marriage. It reappears in HV, recalling the pre-conciliar concept of *remedium concupiscentiae*.

his own life – over his body, over his mind and emotions, over his social life, and even over the laws that regulate the transmission of life” (HV 2); “the rapid increase in population which has made many fear that world population is going to grow faster than available resources”, and, when it comes to birth control, “a general lowering of moral standards” (HV 17) nourished by individualistic, egoistic, and hedonist attitudes and the risk of the objectivation of the woman “disregarding her physical and emotional equilibrium” (HV 17). The pope, however, sees the only way of countering these threatening tendencies in a reversion to the act-centred morality that Vatican II sought to overcome. In contrast, the Council established a person-centred vision of conscience that cannot be withdrawn: a life of faith in which moral values and norms interact in a hermeneutic circle with other constituents to be taken into consideration, namely particular contexts, social circumstances, lived experiences, and recent scientific discoveries.¹¹²

77. As a successor of Paul VI, Pope John Paul II regarded *Humanae vitae* as a conciliar and personal legacy that he wished to take up and develop further in post-conciliar documents.¹¹³ His point of departure is undoubtedly the theology of marriage of Vatican II and the person-centred thinking that underlies this renewed theology of marriage. He completely shares the vision of *Gaudium et spes* – which also shines through in *Humanae vitae* – that conjugal love is an affirmative commitment from person to person, implying an act of free mutual will and involving the good of the whole person. Conjugal love finds its adequate expression and fulfilment in the conjugal act, in which the spouses grow in unity, perfect themselves, and are ennobled with dignity and friendship (see GS 49,1 and HV 9). It concerns “body and mind”, as *Gaudium et spes* formulates, but it gains a new signification in the teaching of John Paul II. The pope emphasises that the human person is not a dualistic construction of body and spirit but “an incarnate spirit”: “As an incarnate spirit, that is a soul which expresses itself in a body and a body informed by an immortal spirit, 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) Sexuality, as a form of expression of the human person, is “by no means something purely biological, but concerns the innermost being of the human person as such”. Any idea of a naturalistic image of sexuality, to which *Humanae vitae* succumbed, is far from John Paul’s vision. However, his anthropological view immediately takes on a normative meaning: human sexuality “is realised 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”. This means that bodily self-giving is morally pure only when the mutual commitment is *unconditional* and extends to the *totality* of the relationship of the partners. The final verdict is that “[t]he total physical self-giving *would be a lie* if it were not the sign and fruit of a total personal self-giving, in which the whole person, including the temporal dimension, is present: 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; emphasis added). We are here at the heart of John Paul II’s theological anthropology, which concerns major issues in the theology of marriage, in particular contraception, remarriage, and likewise pre-marital cohabitation.

78. In *Familiaris consortio*, the pope also appeals to the prohibition of contraception articulated in *Humanae vitae*, according to which the unitive and procreative meanings of the conjugal

¹¹² See section II.2.1. (“Sources, Background, and Implications of the Person-Centred Approach”).

¹¹³ On the role of Karol Wojtyła/Pope John Paul II in the genesis and theology of HV, see M.J. BARBERI/J.A. SELLING: “The Origin of *Humanae Vitae* and the Impasse in Fundamental Theological Ethics”, in: *Louvain Studies* 37 (2013), 364-389.

act are inherent in marriage and cannot be arbitrarily disconnected. But he goes a step further, and this becomes clear when one compares his assertion in FC 11, where he calls the reservation regarding the total self-giving a “lie”, with his explanation about contraception in FC 32. The term “lie” generally implies that an objective order can be distorted by a subjective error, which, if possible, can be repaired; the objective order is then not fundamentally destroyed. Very few would think, for instance, that partners who have sex before getting married objectively undermine the meaning of marriage. John Paul II, however, modifies in a unique way what he calls the “personalist reasons” behind his teaching (FC 31) when he claims that spouses who deliberately interrupt their generative process not only infringe God’s plan, but

act as “arbiters” of the divine plan and...“manipulate” and degrade human sexuality – and with it themselves and their married partner – by altering its value of “total” self-giving. Thus the innate language that expresses the total reciprocal self-giving of husband and wife is overlaid, through contraception, by an *objectively contradictory language*, namely, that of not giving oneself totally to the other. This leads not only to a positive refusal to be open to life but also to a *falsification of the inner truth of conjugal love*, which is called upon to give itself in personal totality. (FC 32; emphasis added)

In other words, contraception imposes on married couples a language that is objectively contrary to the truth of conjugal love, contrary to their “innate language” of total mutual self-giving. Conscious infertility in reproduction is no longer regarded as a personal failing but has serious implications for the objective status of the marital act: the status of total mutual self-giving of husband and wife, proper to marriage, is *de facto* removed, since they can no longer give themselves totally to each other.

79. How can Pope John Paul II’s stance on procreation be assessed? Three aspects appear to be relevant. First, the pope always fervently defended the idea that “nature and person” correlate “at the level of the deepest interaction” (FC 32), an idea he elaborated in his earlier philosophical-anthropological thought, mainly in his work *The Acting Person*,¹¹⁴ inspired by the ethical personalism of the German philosopher Max Scheler (1874-1928). “Nature” certainly provides the foundation for human action, which must be interpreted and shaped with the help of human reason. The core of the pope’s “personalist” vision is that human persons must not be used as objects for purposes outside themselves – for him, this is the essence of “personal dignity”. However, this personalistic conviction takes a different direction when human beings and their actions are once again linked to a natural order and then accepted ontologically, with all the normative implications that this entails. Applied to conjugal love and the conjugal act, the total reciprocal self-giving of the spouses, even if it seems idealist and unbearable, can be understood and experienced by everybody from an empirical perspective; but it only attains its true reality when it is raised to a metaphysical level – the pope used the term “metaphysical reduction” in his early works. Total self-giving becomes the essence of the human person and, consequently, the norm for action: it prescribes and inculcates – according to the scholastic axiom *agere sequitur esse* – how one is to behave. The result is that “nature” – now called metaphysical essence – once again takes precedence over the person. Further scientific insights, for example concerning the developments of biological processes and human sexuality, are of no significance from the outset.

¹¹⁴ K. WOJTYLA: *The Acting Person* (Analecta Husserliana; X), Dordrecht-Boston: D. Reidel Publishing Company, 1979.

80. A second aspect is closely related. John Paul II ignores fundamental person-centred principles when he demands, for instance, that the twofold meaning of sexual intercourse, both unitive and procreative, as an expression of conjugal love and openness to children, must be present in every sexual act and can never be separated. The human body, with its generative dimensions, undoubtedly plays an essential role for the human person; it belongs to marriage and is part of any sound theology of marriage, where, together with intimate union, it stands for fertility and the openness to offspring. However, the body in its unitive and generative facilities does not alone determine what it means to be human and how one should behave. Contemporary phenomenological anthropology teaches that the human person *is* not only a body to be respected unconditionally, as *Humanae vitae* and *Familiaris consortio* presume, but also *has* a body and can and must relate to her body.¹¹⁵ This means that bodily expressions are not given in an unhistorical way but have to be spatially, temporarily, and culturally moulded and shaped. The assumption, that by means of recourse to contraception a couple can “act as ‘arbiter’ of the divine plan and...‘manipulate’ and degrade human sexuality” (FC 32), is only tenable if one adheres to the naturalistic idea that a metaphysical concept of bodiliness defines what a person is and must be. The human body, on the other hand, does not present its own theology – contrary to the “theology of body” developed by John Paul to verify the normativity of what he understands by the body.¹¹⁶ Therefore, human sexuality also requires responsible behaviour. It is true that to exclude fertility from conjugal love in a fundamental and permanent way risks disintegrating the marriage, but it is equally true that to exclude fertility from a single conjugal act can be morally justified when, for example, a couple is unable and incapable of adequately caring for and educating children. The call for “responsible parenthood” as set out in *Gaudium et spes* must be placed on a different basis than that assumed in *Humanae vitae* and *Familiaris consortio*.
81. After all, to promise the “totality” of self-giving without any reservation, without “withholding something” or reserving “the possibility of deciding otherwise in the future” (FC 11), is a moral ideal with the highest expectations – but it crumbles when it is tied to a metaphysical normativity. Theological reflection and discussion reveal how inadequate and sometimes hazardous normative theology is, which often prevails in the post-conciliar period. One need only consider how conjugal love between human beings is conceived primarily from the perspective of the covenantal relationship between Christ and the Church, with all its consequences for divorce and remarriage.¹¹⁷ But it also concerns the issues of contraception and responsible parenthood. There is certainly no disagreement that conjugal love includes the readiness for parenthood as Vatican II affirmed; however, it is rightly disputed that the principle of openness to children must be safeguarded *in each and every single sexual act*. Similarly, there is also unanimous agreement that human persons and their dignity must take precedence in shaping sexual life; however, it is incomprehensible why personal dignity should be violated if the possibility of conception is temporarily eliminated and the couple takes on the task of parenthood by conscientiously validating their shared sexual behaviour. One of the most important challenges facing the post-conciliar Church and theology is to counteract any “ideology of totality”.

¹¹⁵ Thinkers such as Edmund Husserl (1859-1938), Gabriel Marcel (1889-1973) and Helmuth Plessner (1892-1985) can serve as references.

¹¹⁶ See JOHN PAUL II: *Man and Woman He Created Them*.

¹¹⁷ See section II.3.2. (“Divorce and Remarriage: The Indissolubility of Marriage Revisited”).

82. In this context, another topic deserves attention, albeit only briefly and superficially, namely the phenomenon of unmarried cohabitation, which has been spreading in the West for several decades. “Living together” without or before marriage has always existed in church history, as evidenced by the incessant attempts of moral theologians and confessors since the Middle Ages and early modern period to outlaw premarital and extramarital sex.¹¹⁸ At the time of Vatican II, the existence of so-called “free love” (GS 47,2) was known, but it was mainly understood as a rare alternative to marriage. What was not known, however, was the extent to which the coming decades would shake the institution of marriage. Since the 1980’s, unmarried cohabitation has increased exponentially in late modern societies as a consequence of broader socio-cultural processes of individualisation, pluralisation, and de-institutionalisation.¹¹⁹ John Paul II’s exhortation *Familiaris consortio* of 1981 was the first official document to assess the new situation and to come up with pastoral solutions for what were called “irregular situations” (FC 79). The document, which later found its expression in CCC 2390-2391, distinguished between two major forms of unmarried cohabitation: “trial marriages” as a synonym for premarital cohabitation (FC 80) and “de facto free unions” as an alternative to or denial of marriage (FC 81). A particular form is that of civil-only marriage, as “[t]here are increasing cases of Catholics who for ideological or practical reasons, prefer to contract a merely civil marriage, and who reject or at least defer religious marriage” (FC 82). Although the exhortation requires that all persons in civil marriage and unmarried cohabitation should be treated “tactfully”, “respectfully” (FC 81), and “with great charity” (FC 82), the decision was firm: unless their situation is “regularised” (FC 81 and 82), they cannot be admitted to the sacraments (see FC 83; CCC 2390).
83. Notwithstanding that the three types of living together mentioned above (i.e. premarital cohabitation, de facto free unions, and civil marriage) differ in terms of causes, motivations, and intentions, the underlying theological arguments to counter such irregular situations are similar: they lie in an idiosyncratic understanding of the sexual relationship that still prevails today. A first case is that of “free unions”. The *Catechism of the Catholic Church* explains that “[i]n a so-called free union, a man and a woman refuse to give juridical and public form to a liaison involving sexual intimacy” (CCC 2390). This leads to the demand that (all forms of) sexual relationships require a “publicly recognised institutional bond”, at least a civil bond, and at best a religious bond (see FC 80). Otherwise the dignity of marriage is offended. This also applies to the case of “civil marriages”. *Familiaris consortio* admits that the situation of Catholics in civil marriages “cannot...be likened to that of people simply living together without any bond at all, because in the present case there is at least a certain commitment to a properly-defined and probably stable state of life”, and that couples who seek public recognition of their union on the part of the state “show that they are ready to accept not only its advantages but also its obligations”. However, the final verdict is clear: even this situation is unacceptable to the Church, and no further clarification is necessary (see FC 82).

¹¹⁸ See B. SCHLEGELBERGER: *Vor- und außerehelicher Geschlechtsverkehr: Die Stellung der katholischen Moraltheologen seit Alphons von Liguori*, Remscheid: Verlag der Paulus-Mission, 1970.

¹¹⁹ Concerning the situation in Europe, see K. KIERNAN: “Cohabitation in Western Europe: Trends, Issues, and Implications”, in: A. BOOTH/A. CROUTER (eds.): *Just Living Together: Implications of Cohabitation on Families, Children and Social Policy*, New York: Routledge, 2002; N. HIEKEL: *The Different Meanings of Cohabitation across Europe: How Cohabitors View Their Unions and Differ in Their Plans and Behaviors* (Dissertation Vrije Universiteit Amsterdam, 2014), Amsterdam: Amsterdam University Press, 2014. For the situation in the USA, see S. SASSLER/A.J. MILLER: *Cohabitation Nation: Gender, Class and the Remaking of Relationships*, Oakland, CA: University of California Press, 2017.

84. The most obvious example is that of “trial marriage” or premarital cohabitation, i.e. with the intention of marrying later. The idea that persons should from childhood have “been trained to dominate concupiscence” and must be educated “in the right use of sexuality”, resonates in the apostolic exhortation (FC 80). The climax is reached when sexuality and marriage are tied together. According to *Familiaris consortio*, the intimate union of (heterosexual) persons expresses itself in “the gift of the body in the sexual relationship” which is a “real symbol of the giving of the whole person” (FC 80). Moreover, in the order of salvation, the mutual self-giving of the partners, sustained and ennobled by Christ’s love of charity, is considered “a real symbol of the union of Christ and the Church” (FC 80). This means that all intimate and sexual unions have their sole grounding and dignity in a marriage; they must be recognised institutionally by the Church, and they enforce a definitive community of life once and for all. The dignity of human beings “demands that they should be always and solely the term of a self-giving love without limitations of time and any other circumstance” (FC 80): sexual relations necessitate a definitive commitment which does not tolerate any period of experimentation or probation.
85. Whatever one makes of these post-conciliar documents, there is no doubt that the widespread practice of unmarried cohabitation has modified the vision of marriage and sexuality. Sociological evidence indicates that premarital cohabitation will be the preferred form of living together for young adults, including those who intend to marry at some point. Marriage no longer marks the entry into a committed, lifelong relationship, as it once did, but rather comes as a point of culmination in a dynamic process that starts with infatuation and then develops, in the best of cases, through different stages into a stable and lasting love. What is no longer tenable is a traditional vision of marriage which considers marriage from a purely institutional perspective and, from a theological, canonical, and pastoral point of view, focuses on the momentary event of the spousal consent, thereby establishing the conjugal union *ex nihilo*, i.e. without any relevant previous history. Post-conciliar teaching no longer takes into account the process of development that Vatican II cautiously initiated, since interpersonal and loving relationships now pass through different phases. Contemporary theological scholarship demonstrates that marriage has to be reconfigured as “marriage in process” with cohabitation as a substantial phase and potential prelude to marriage.¹²⁰ Insofar as sexual intimacy is an expression of mutual commitment in a loving relationship, premarital sex can be seen as an integral part of a relationship on the path to marriage. What at first glance appears to be a practice that deviates from Catholic sexual morality turns out to be a critical and constructive challenge to this morality. Cohabitation before marriage reflects a pattern of behaviour that is widespread in late modern societies and – when viewed in context – plausible, which the Church and its ministers can neither prevent nor ignore. It calls on theology, pastoral practice, and canon law to rethink their traditional concepts and approaches in order to rediscover the meaning of the “mystery of marriage”, which cannot be found in a fixed dogmatic or legal formula, but only in the lived reality of partners and spouses in the specific historical and social situation in which they find themselves.¹²¹
86. In conclusion, the following can be emphasised. In post-conciliar teaching, the person-centred approach was emphatically advocated as a principle of anthropological

¹²⁰ See, e.g., A. THATCHER: *Living Together and Christian Ethics: New Studies in Christian Ethics*, Cambridge: Cambridge University Press, 2002; T.A. SALZMAN/M.G. LAWLER: *The Sexual Person*, 192-213.

¹²¹ See part III (“A ‘Pastoral Face’ to Married Life: Lived Realities Challenging the Theology of Marriage”).

development within Christian theology, particularly by John Paul II in his defence of human rights – but unfortunately not to the same extent in the official theology of marriage. The majority of the Council Fathers considered a physicalist approach to the morality of sexual intercourse a limitation of the understanding of the moral norm and a disavowal of the *role of conscience* and *personal discernment in the morality of individual actions*. Reflecting on the relationship between theological anthropology and Christian ethics is particularly significant because it gives support to a richer understanding of morality, paying attention to three key elements of any action: intention, act, and context. If we adhere to the personalist conception of the human being as found in the documents of Vatican II, the moral life can no longer be reduced to mere compliance with obligations imposed by an impersonal order, as the naturalistic paradigm implies.¹²²

87. In a person-centred view of marriage, the human sexual act has multifaceted meanings that cannot be reduced to its physiological or procreational dimensions alone. The sexual act involves a mutual exchange of gifts, which can result in the generation, not the creation, of a third party, distinct from the parents. In a person-centred view of marriage, marriage itself, but not each and every marital act, should be open to the generation of life. Personalists consider marriage primarily as an interpersonal union where sexual intercourse is seen as contributing to and strengthening the loving relationship between two partners. Openness to children is important in a Christian marriage but cannot be seen as the only goal of sexual intercourse. For many married people, sexual intercourse has no procreative meaning but still has relational value.¹²³ This is not only the case for post-menopausal and infertile couples but also for many fertile couples who already have a number of children and cannot afford to have more children because it would be considered irresponsible parenthood. A deeper understanding of responsible parenthood, in line with the theological anthropology of *Gaudium et spes*, and of sexuality within relations during the different stages of married life, will help magisterial teaching overcome its natural law-based and act-focused view of sexual intercourse. Moreover, personalists are sensitive to the fact that sexual acts should always be performed *humano modo*, in a human manner, which means in a sphere of respect for the other person, e.g. not in cases of lack of consent.

¹²² “Natural law could not be presented as an already established set of rules that impose themselves a priori on the moral subject; rather, it is a source of objective inspiration for the deeply personal process of making decisions.” (INTERNATIONAL THEOLOGICAL COMMISSION: *In Search of Universal Ethics: A New Look at Natural Law*, 2009, 59, available at

https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html). This text is also quoted in AL 305, which adds: “For this reason, a pastor cannot feel that it is enough simply to apply moral laws to those living in ‘irregular’ situations, as if they were stones to throw at people’s lives. This would bespeak the closed heart of one used to hiding behind the Church’s teachings, ‘sitting on the chair of Moses and judging at times with superiority and superficiality difficult cases and wounded families’.”

¹²³ This also applies to homosexual relationships. The Church recognises that gays and lesbians are by nature sexed persons but still refuses to recognise the positive relational value of their sexual intercourse. In our opinion, same-sex couples also have the right to cherish their personal unions and could be as open to the generation of new life as infertile heterosexual couples who cannot realise their desire to become biological parents.

III. A “Pastoral Face” to Married Life:¹²⁴ Lived Realities Challenging the Theology of Marriage

88. The purpose of Part II has been to breathe new life into the documents of the Second Vatican Council, particularly by identifying aspects of the theology of marriage that have not been fully implemented in the post-conciliar period. The effects of these lacunae became visible both at the level of Church teaching and at the level of Canon Law. The need to address missing and unresolved questions in the theology of marriage is all the more urgent in the light of the profound changes that have taken place in recent decades in the socio-cultural landscape of marriage and family dynamics. The Church today finds itself confronted with difficult, and sometimes conflictual, situations that cannot be resolved by traditional pastoral and disciplinary measures. For a long time, bishops, priests, canonists, and theologians have been finding ways to circumvent “irregular situations”, provided that doctrine and discipline are not compromised. However, those days are gone. New realities now shape the lives of people in general and Christian believers in particular, and these realities cannot simply be ignored. Therefore, it is useful to recall the opening passages of the Pastoral Constitution on the Church in the Modern World, which state that “[t]he joys and the hopes, the griefs and the anxieties of the men of this age, especially those who are poor or in any way afflicted, these are the joys and hopes, the griefs and anxieties of the followers of Christ” (GS 1,1). And *Gaudium et spes* continues: “We must therefore recognize and understand the world in which we live, its explanations, its longings, and its often dramatic characteristics” (GS 4,1).
89. The vision of Vatican II encourages us anew to acknowledge and to respect the realities in which we live, both within and outside the Church. The first and most important step in doing so is to “give a voice” to the faithful, in our case to married couples and their experiences. The first section of Part III is dedicated to letting these “voices” resonate. Our aim is to paint the most accurate and objective picture possible of married couples in the Church today. This means that our overview encompasses not only spouses who believe they are living up to God’s ideal, but also couples who do not always meet God’s standard. We recognise that the variety of spousal and familial experiences is an invaluable source for further developing the Church’s teaching and legislation. The second and final section of this Part attempts to provide a theological framework that does justice both to the treasure of faith we have received as Christians and the plurality and diversity of married life in today’s world. Giving space to different, sometimes even dissonant, voices is one thing; assigning believers a legitimate and viable place in the Church is another – a task that can only be accomplished after thorough reflection and discernment. Four theological issues will be the subject of further reflection, all of which are in line of the vision of the Second Vatican Council but require more adequate implementation: the *pastoral approach* evoked

¹²⁴ The term “pastoral face” is borrowed from Pope Francis’ *Address to Participants in the Plenary Session of the Congregation for the Congregation of the Faith*, 26 January 2018, available at https://www.vatican.va/content/francesco/en/speeches/2018/january/documents/papa-francesco_20180126_plenaria-cfaith.html: “...your mission assumes an eminently *pastoral face*. Authentic pastors are those who do not abandon man to himself, nor leave him in the grip of his disorientation and his errors, but with truth and mercy bring him back to find his true face in goodness. Therefore every action aimed at taking the man by the hand, when he has lost the sense of his dignity and his destiny, to lead him trustfully to rediscover the loving paternity of God, his good destiny and the ways to build a more humane world, is authentically pastoral” (emphasis added).

in nuce by the Council and considered fundamental for the Church, but which has not yet been elaborated; the *ecclesiological concept of sensus fidei fidelium* which, unlike pre-conciliar teaching, defines how the various ecclesial subjects – whether pope, bishops, priests, or lay people – should interact and involve each other; the *theological hermeneutics of transmitting the faith* which has been reformulated in the *Dogmatic Constitution on Divine Revelation* by relocating the different bearers of teaching authority in the Church; and finally, from an epistemological perspective, the *anthropological-theological function of human experience* which, alongside Holy Scripture, tradition, and human reason, has taken a new place among the classical sources of theological knowledge, something that had previously hardly been attributed to believers. We will conclude this part by suggesting a series of principles and criteria that could help the Church to better accompany and guide married couples and the faithful as a whole on the path that Christians are called to follow.

III.1. Giving Voice to Marital and Familial Realities

90. In an age of individualisation, pluralisation, and deinstitutionalisation, it is becoming increasingly difficult to put aside differing opinions and views and find common ground on which to build shared convictions. “Giving individual opinion a voice” is certainly a necessity of the moment and relevant to us all in times of modernity, regardless of whether we are Christians or not. However, this does not mean that coincidence and arbitrariness should prevail; on the contrary, a carefully considered plan or structure is required to ensure that opinions are given their proper place. Before attempting to propose a set of more comprehensive and accurate criteria for the life and organisation of the Church, which will be the subject of the third section, a few basic principles immediately come to mind.
91. The first has to do with the search for (Christian) unity, a goal that the Church has sought to realise in an exemplary manner from the very beginning. In order to prevent dissonances and disagreements from leading to irreconcilable divisions, the overriding principle must be that the pursuit of agreement and unity takes precedence over differences of opinion, however legitimate they may be. This principle will also guide our presentation of the diverse voices of married couples in this section. A second principle, which at first glance may seem surprising but is directly related to the first, concerns the role of “dissent” in the Church. It would be illusory to believe that the desired unity would have ever been achieved, as if the Church were an ideal communion without fractures. Here, another criterium comes into play that accompanies us throughout this section: we give space to the positions of believers, in particular to married couples, whose experiences no longer agree with certain aspects of the church teaching and who feel the need for adaptation. Rather than becoming destructive, dissent can also have a creative and constructive function, with the search for Christian unity remaining the central guiding principle. This brings us to another criterion: disagreement requires adjustments if no agreement has been reached over a long period of time. A telling example of this is the rejection that the encyclical *Humanae vitae* encountered both in conceptual and practical terms. Something similar applies to other aspects of the conciliar theology of marriage which have not been implemented. We will therefore divide this section into two parts: The first portion deals with the issues of divorce and remarriage, contraception, and the sacramentality of marriage – three major subjects which were treated in the documents of Vatican II but which continue to be a source of dissatisfaction and resistance among the majority of the faithful to this day. The second portion deals with the topics of cohabitation, delayed marriage, singlehood, and same-sex

marriage. Although these topics were not on the agenda of the Council, they continue to raise new questions about the current theology of marriage, given the significant social and cultural changes that have occurred in society and the Church since then.

92. With regard to the presentation of the diverse voices and opinions, we rely mainly on the synthesis reports of several European Bishops' Conferences, which were intended to reflect the current situation of local churches regarding marriage and family issues in the run-up to the Third Extraordinary General Assembly of the Synod of Bishops in 2014. Since it seems impossible to provide an adequate, let alone comprehensive, overview of the opinions of the faithful, and since opinion polls, referendums, and academic empirical studies are always of limited and temporary significance, we will confine ourselves to the results presented in the reports of the different European Bishops' Conferences. Although these episcopal reports were published more than 10 years ago, they can still be seen as a candid and honest reflection on what really moves Christian believers today.

III.1.1. Divorce and Remarriage, Contraception, and the Sacramentality of Marriage

93. When asked which aspects of the Catholic theology of marriage are widely distrusted among the faithful, the answers are obvious: the prohibition of remarriage and the rejection of artificial contraception. The two underlying concepts, the indissolubility of marriage on the one hand¹²⁵ and openness to offspring on the other,¹²⁶ were explicitly addressed in the documents of Vatican II, but became a subject of theological, canonical, and pastoral debates in the decades that followed. Today, married couples seem to be fairly unanimous in their opinion that the Church's teaching and legislation on these two aspects need to be adapted. A third topic, namely the sacramentality of marriage,¹²⁷ was also addressed during the Council (see GS 48,2). What is currently prompting the Church to adapt its theological, pastoral, and canonical views on marriage is the fact that couples are increasingly reluctant to give marriage a sacramental character. We will allude to the three topics one after the other.
94. *Divorce and remarriage*: Separated couples and those divorced and remarried have become an integral part of society and pastoral reality in almost all Western countries. Since 1964 (the first year for which data are available), the crude marriage rate in the EU has declined by almost 50% in relative terms. Over the same extended period, the crude divorce rate has essentially doubled, peaking in 2006 and slightly declining in general since then. Part of this increase may be due to the fact that in several EU Member States divorce was legalised during this period. Nevertheless, the decrease in the crude divorce rate was far less pronounced (about 10%) than the one observed for the crude marriage rate. Since then that value has remained almost unchanged. However, high rates of divorce and subsequent civil remarriages challenge the Church's teachings on the indissolubility and exclusivity of marriage.
95. As a response to the questionnaire launched by General Secretariat in 2013 in preparation of the 2014 Synod of Bishops, many local churches have emphasised that believers who

¹²⁵ See section II.3.2. ("Divorce and Remarriage: The Indissolubility of Marriage Revisited").

¹²⁶ See section II.3.4. ("Unitive and Procreative Dimensions of Marriage: The Conjugal Act Revisited").

¹²⁷ See section II.3.3. ("Marriage as Sacrament: Sacramentality Revisited").

find themselves in difficult circumstances, including divorced and remarried persons, reject the division into “regular” versus “irregular” situations. The German bishops, for example, state that “[t]hey consider their separation and the establishment of a new relationship as morally justified, and on the contrary may even consider it to be wrong to remain in an unacceptable relationship”.¹²⁸ In other words, many faithful individuals justify their separation and defend entering into a new relationship on good moral grounds, and in some cases even feel guilty about remaining in an unhealthy relationship. Recent surveys in Germany show also that a majority of Catholics “are in favour of divorcees being able to marry in the Church”.¹²⁹ The German bishops are honest in their judgement: “Whilst a certain permanence and a personal bond, as well as the principle of monogamy, are broadly accepted in society as general indicators of marriage, a large majority reject the principle of the strict indissolubility of marriage leading to the non-permissibility of remarriage.”¹³⁰

96. The way the Church deals with divorce and remarriage is a burden to many committed Catholics who are divorced and remarried. The 2014 synthesis report of the German Bishops’ Conference comes to a similar conclusion: “Many of them...undergo considerable suffering, particularly those who are committed members of the Church. They feel discriminated against and marginalised by being excluded from the sacraments, but also by being excluded from certain services and offices.”¹³¹ Exclusion from the sacraments due to a new civil marriage is often seen as unfair and merciless. This exclusion is particularly painful when their children are receiving their first communion; this sometimes leads to a break in the children’s participation in the Eucharist, as they lack the example of a family living in Eucharistic communion. The bishops see this as an alienation from the Church, which leads to turning away from the Christian faith itself, since belonging to the Church and its teachings can lose meaning for people who have difficulty understanding them: “Divorce and remarriage frequently lead to a process of becoming distant from the Church or of widening the existing gap towards the Church. Many no longer wish to be associated with an institution which they regard as unforgiving. This process of becoming distanced from the Church also repeatedly leads to a distance from the Christian faith, which becomes less and less significant where people no longer have any connections with the Church and because of the contents which the Church proclaims and which people do not understand.”¹³²

97. Another equally relevant aspect is that many Catholics whose marriages have ended are not willing to question the validity of their marriage. They do not regard their marriage, which in many cases may have lasted for years, as null and void, but as having failed. For a smaller

¹²⁸ *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses to the questions contained in the preparatory document for the III Extraordinary General Assembly of the Synod of Bishops 2014*, 2014, 10, available at

https://www.dbk.de/fileadmin/redaktion/diverse_downloads/presse_alt/presse_2014/2014-012b-ENG-Fragebogen-Die-patoralen-Herausforderungen-der-Familie.pdf, 10. The original German version, entitled *Die pastoralen Herausforderungen der Familie im Kontext der Evangelisierung: Zusammenfassung der Antworten aus den deutschen (Erz-)Diözesen auf die Fragen im Vorbereitungsdokument für die III. Außerordentliche Vollversammlung der Bischofssynode 2014*, can be found at https://www.dbk.de/fileadmin/redaktion/diverse_downloads/presse_alt/presse_2014/2014-012a-Fragebogen-Die-pastoralen-Herausforderungen-der-Familie.pdf.

¹²⁹ *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses*, 11.

¹³⁰ *Ibid.* 5.

¹³¹ *Ibid.* 10.

¹³² *Ibid.*

number, the annulment process could resolve their issues if it were simplified, streamlined, and accompanied by pastoral support, as Pope Francis has suggested in the Apostolic Letter *Mitis Iudex Dominus Iesus*.¹³³ However, many believers whose union has broken down despite the desire and hope that it would be stable and lasting consider the annulment process to be dishonest.

98. Finally, most Catholics “demand that pastoral care should involve respect for the individual’s conscience-based decision and a merciful approach towards failure which also allows people to make a new beginning and be re-admitted to the sacraments, in particular to the Eucharist.”¹³⁴ Adequate pastoral care presupposes that the conscience of the believer is taken seriously and that understanding, empathy, and mercy may accompany broken marriages, providing opportunities for new beginnings and reintegration into the sacraments. These Catholics point out that Christian values such as love, faithfulness, and responsibility for one another and their children are usually also lived in the new relationship. They also want the Church to recognize and bless the new partnership of civilly remarried divorcees, with many also calling for a sacramental celebration.¹³⁵
99. *Contraception*: The openness to life has always been an integral part of marriage in Christianity and beyond. While Vatican II reiterated and insisted that “[m]arriage and conjugal love are by their nature ordained toward the begetting and educating of children” (GS 50,1), it left the question of how to regulate procreation and child-rearing to future magisterial documents. Pope Paul VI answered this question in the encyclical *Humanae vitae* with the prohibition of all artificial means of contraception. Before we come to the reception of the encyclical, one further point should be mentioned. The vast majority of Catholics in Western societies recognise that openness to children is an intrinsic part of marriage, and so they place a high priority on a successful family life with children in their own life planning. Even though the decision to have a child depends on a variety of factors, one of the main tasks of pastoral care is and remains promoting a life-serving climate which is friendly to the family and enabling spouses and parents to make free and responsible choices. In this sense, Catholics agree with and remain loyal to what *Gaudium et spes* proclaimed, namely that the parents “will fulfil their task with human and Christian responsibility” and that “parents themselves and no one else should ultimately make this judgment in the sight of God” (GS 50,2). Nevertheless, what has often been forgotten in the post-conciliar period is that procreation is not primarily a matter of *sexual* morality but also of *social* ethics.¹³⁶

¹³³ FRANCIS: *Apostolic Letter Motu Proprio Mitis Iudex Dominus Iesus*, 2015, available at https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html.

¹³⁴ *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses*, 10.

¹³⁵ See DICASTERY FOR THE DOCTRINE OF THE FAITH: *Declaration Fiducia supplicans on the Pastoral Meaning of Blessings*, 2023 (hereafter FS), available at https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_dcf_doc_20231218_fiducia-supplicans_en.html). The Declaration authorises for the first time the blessing of persons living in – as it goes on to say – “irregular situations”. However, in order to “avoid any form of confusion or scandal”, the document considerably restricts the conditions and forms of the blessing: “even though it is expressed outside the rites prescribed by the liturgical books, this blessing should never be imparted in concurrence with the ceremonies of a civil union, and not even in connection with them. Nor can it be performed with any clothing, gestures, or words that are proper to a wedding” (FS 39).

¹³⁶ See *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses*, 16: “Openness to life is not only a moral theological challenge, but also a social and ethical one.”

100. In the EU, the proportion of live births outside and inside marriage according to Eurostat was estimated in 2023 at 42.2% outside marriage, meaning that 57.8% of children were born inside marriage. This trend reflects a fundamental change in traditional patterns of family formation where children were only born within marriage: out-of-wedlock births are occurring in non-marital relationships, among cohabiting couples, to single parents, and in registered partnerships. Another aspect of change in family formation patterns is that in Europe in 2023, for instance, about 61 percent of women of reproductive age (aged 15-49) use modern contraceptive methods. In general, the prevalence of modern contraceptive use among women varies greatly, with lower levels in Southern and Eastern European countries and higher levels in Northern and Western countries. However, a brief examination of the rising number of out-of-wedlock births, coupled with the growing accessibility of alternative methods of parenthood, reveals that the traditional Church's stance that marital union and conjugal intercourse are the sole legitimate means of conceiving life is being fundamentally challenged. Against this background, the vision propagated by *Humanae vitae* needs to be revisited.
101. The fact that *Humanae vitae* has been poorly received in Catholicism and beyond still resonates today. The encyclical is now only known to the older generation, who at the time associated responsible parenthood exclusively to the prohibition of so-called "artificial" birth control methods. It is largely unknown among the younger generation; they regard the encyclical as an expression of the Church's otherworldliness and as evidence of its ignorance of the situation faced by parents, especially women. The request for the exclusive use of "natural methods" of contraception is met with incomprehension as the methods presented are rejected as cumbersome, unsafe, and unsuitable for the circumstances of most women. Practicing Catholics no longer differentiate between "natural" and "artificial" birth control methods and reject the ban on the latter. Instead, they understand "responsible parenthood" to mean the use of suitable contraceptive methods, which should be selected according to the criteria of safety, practicability, and health compatibility. It is widely accepted within (and also outside of) the Church that parents should determine the number of children by taking into account factors such as health, finances, emotions, and social conditions (as already mentioned in GS 51 and HV 10).
102. The vast majority of Catholics reject the Church's teaching that, firstly, each sexual encounter should encompass all elements of human sexuality and, secondly, that therefore any "sexual intercourse which is deliberately contraceptive" is "intrinsically wrong" (HV 14). To begin with human sexuality: in view of the plurality of sexual forms and practices, as well as of couple and family constellations, the Swiss Bishops' Conference, for example, points out that people's intimate lives and the organisation of sexuality are largely a matter of people's privacy and that the normative determination in sexual matters is first and foremost the consent of the sexual partners.¹³⁷ Sex education outside (and often also inside) the Church encourages young people to make informed, responsible decisions regarding their physical wellbeing while treating others with dignity. This approach primarily focuses on preventing unintended pregnancies and the spread of diseases, especially HIV/AIDS. The same rejection applies to birth control methods. The Church's ban on artificial contraception, particularly condoms, is seen by some as not only unrealistic but, especially

¹³⁷ See 'Die Pastorale Herausforderung der Familie im Kontext der Evangelisierung': Synthesebericht der Schweizer Bischofskonferenz über die Umfrage der Diözesen unter Seelsorgenden und Experten in der Schweiz, 2014, 15, available at <https://www.kath.c/skz/upload/20140211154218.pdf>.

for HIV prevention, as blatantly immoral. Almost everyone agrees that fidelity, kindness, and respect are important attitudes which still bind the partners in an intimate union. Guilt and sin only come into play when the relationship of the partners is impaired, i.e. in cases of infidelity, lack of kindness, and disrespect. Many believers see no connection between choosing a birth control method and participating in sacraments like penance or the Eucharist. Responses from many dioceses consistently indicate that using artificial contraception is not viewed as sinful and, therefore, is not a matter for confession.

103. In this context, a final remark is in order. “Love and sexuality on the one hand, and procreation on the other, are...increasingly understood as two different, separate circumstances”.¹³⁸ With this sentence the German Bishops’ Conference pertinently summarizes what is at stake today in the theology of marriage and sexual morality. The immediate and direct link, or in other words the fusion, between the intimate conjugal union on the one side and procreation on the other, as post-conciliar documents seem to imply, is no longer tenable for a majority of the faithful.

104. *Sacramentality of marriage*: The 1983 *Code of Canon Law* stipulated that the “matrimonial covenant...has been raised by Christ the Lord to the dignity of a sacrament between the baptized” and went further by stating that “a valid matrimonial contract *cannot exist between the baptized without it being by that fact a sacrament*” (can. 1055 § 1 and 2; emphasis added). However, this definition seems hardly compatible with the lived realities today. Admittedly, in strictly canonical terms, the union of two baptised people who get married in a civil ceremony is not valid; if they do not adhere to the prescribed canonical form and do not recognise any religious, i.e. sacramental, significance of marriage, they are not officially married in the eyes of the Church. From this perspective, the idea of a coincidence or identity between the validity and sacramentality of marriage would make sense. But what happens when the partners insist on being married in the Church without knowing the sacramental meaning of marriage or showing any willingness to accept this meaning? The more obvious consequence would be to refuse to allow them to marry. In reality, however, not many ministers are prepared to do this. The alternative seems more practical: if the two partners are willing to accept the canonical form, they can marry validly and sacramentally – without knowing what they are committing themselves to in religious terms. In that case, the sacramental meaning of marriage will become a non-committal formality. It is these pastoral, canonical, and theological difficulties which the local bishops have in mind in their synthesis reports.

105. The answers to the questionnaire for the 2014 Synod reported that at least those who still marry in the Church both know and accept the idea of a sacramental marriage covenant, which includes fidelity and exclusivity on the part of the spouses and the transmission of life: “Most of the baptised enter into marriage in the expectation and hope of concluding a bond for life.”¹³⁹ However, far less is known about what the married couple themselves understand by the sacramentality of marriage. The situation seems to be exacerbated when it comes to couples with little or no church affiliation. The prevailing background is certainly the pluralisation and privatisation of the lives of individuals and partners. The increasing secularisation of society and culture especially appears to make it more “difficult for the Church to communicate the religious and spiritual dimension of marriage and the

¹³⁸ *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses*, 5.

¹³⁹ *Ibid.* 2.

family. Most people are unable to follow the language and content of the theological statements.”¹⁴⁰ The report continues: “Even within the family, the increasing individualisation of everyday life also leads to religion being increasingly regarded as a private matter for the individual members of the family. It becomes very difficult to talk about the meaning of Jesus Christ for one’s own life against such a background.”¹⁴¹ Obviously, the problems of communication are not only about sexual morality, as the synthesis reports often point out, but also about the theology of marriage. Likewise, the German bishops note a marked “insecurity” and “speechlessness”¹⁴² regarding religious topics and the transmitting of the faith; they even speak about a “silence on faith-related matters” and about a “climate of ‘practical agnosticism’”: “This...means the loss of the security and ultimate orientation which faith gives to people.”¹⁴³

106. Secularisation tendencies prevail in Western societies with the result that Church and Christian faith are increasingly losing importance and relevance. As a typical example of de-churching and non-religiousness, the Belgian bishops note that many persons who turn to the Church regard the sacraments as “rites of passage” and are largely unaware of the Christian meaning of the sacrament. For the bishops, this is an opportunity to invite the church communities to accompany the faithful, whether committed or distanced, on a common journey.¹⁴⁴ The Swiss and German bishops concur that good pastoral care proves that an inviting practice can be the beginning of a lasting path of evangelisation and that the meaning of the sacrament can therefore continue to grow and develop even after the church wedding ceremony.¹⁴⁵ The bishops also suggest what the process of suitable pastoral care should look like: First, “[i]f non-practicing Christians or declared non-believers wish to marry, they should first of all be welcomed with open arms, and their decision to marry should be encouraged and strengthened”.¹⁴⁶ Secondly, there is a need for comprehensive high-quality marriage preparation in the Church, which, as the German bishops add, should be compulsory. The bishops also refer to the sacramentality of marriage when they draw parallels between the first wedding and the breakdown of a marriage. A same inviting attitude and practice that are extended to non-practicing and non-believing Christians should also be applied to those whose marital relationships have failed; the task is to deal constructively and productively with the question of perhaps admitting them to the sacraments again.¹⁴⁷ This raises the question of which forms of celebration or liturgical forms are admissible for both first and possibly second marriages. If a sacramental marriage is ruled out, either because of the lack of consensus at the time of the first union or in the

¹⁴⁰ Ibid. 3.

¹⁴¹ Ibid. 16f.

¹⁴² Ibid. 7 and 16.

¹⁴³ Ibid. 17.

¹⁴⁴ *Rapport de synthèse de la Conférence épiscopale de Belgique sur le questionnaire en vue du synode 2014: ‘Les défis pastoraux de la famille dans le contexte de l’évangélisation’*, 2014, 5f., available at

<https://www.pastoralefamiliale-namlux.be/synode-sur-la-famille/>: “Many request the sacraments as a rite of passage and are less aware of the Christian significance of the sacrament. Requesting a sacrament can provide the church community with an excellent opportunity to accompany them” (authors’ translation).

¹⁴⁵ See, e.g., *‘Die Pastorale Herausforderung der Familie im Kontext der Evangelisierung’*: *Synthesebericht der Schweizer Bischofskonferenz*, 6: “Numerous reports from pastoral workers indicate that a welcoming approach often proves to be the beginning of a lasting path of evangelisation. Understanding the significance of the sacrament can therefore continue to grow and develop even after the church wedding. The welcoming attitude of the Church at the beginning of this journey can be decisive in this regard” (authors’ translation).

¹⁴⁶ *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses*, 5.

¹⁴⁷ See *ibid.* 18.

case of remarriage, other forms of solemn rites or blessings are conceivable. It is also recommended that the different cases must be assessed individually.¹⁴⁸

107. *Interchurch and interfaith marriage*: A final point, which primarily touches on the sacramentality of marriage, concerns interchurch and interreligious marriages. Many Catholics enter into marriage with Christians from other churches, resulting in “mixed marriages” which can create tensions regarding the practice of faith, the raising of children, the spiritual unity of the couple, and differing views on the sacramentality of marriage. Similarly, the growing number of marriages between Catholics and non-Christians poses additional challenges, especially when different religious traditions and beliefs come together and a happy union has yet to be found. The rate of interchurch or “ecumenical” marriages (a Catholic marrying a baptized non-Catholic) and interfaith marriages (a Catholic marrying a non-baptized non-Christian) varies by country and region, but in general there has been no decline; rather, an increase has been observed worldwide. Moreover, Interchurch Marriage Associations from various countries, which have done pioneering work since the late 1960’s to encourage mixed marriages and value them as laboratories and nuclei for overcoming the painful divisions in the Church,¹⁴⁹ affirm that today, in times of secularisation, the formerly firm denominational boundaries between the different churches are losing their doctrinal sharpness and practical relevance.¹⁵⁰
108. From a Catholic perspective, a marriage can be considered at two levels: its validity according to the canon law of the Catholic Church and its sacramental value from a theological point of view. For mixed or interchurch marriages, canonical regulations determine that the marriage between a Catholic and non-Catholic Christian is valid as long as the Catholic partner obtains official permission from the diocese and follows the required procedures for a Catholic wedding. In fact, the Church views all marriages between baptised Christians as sacramental, provided there are no impediments. This creates problems on several levels. Given that the interchurch spouses are committed (and practicing) Christians, the Protestant partner is automatically assumed to be entering into a sacramental marriage, even though s/he may not be fully aware of, or willing to accept, the idea of the sacramentality of marriage as imposed by the Roman Catholic Church. Does that mean that the partner is expected to accept something that s/he is not ready to accept? Or, even worse, that the rejection of the doctrine of sacramental marriage is tantamount to invalidating the marriage? The dilemma can also be observed elsewhere, although it not only affects interchurch marriages. Regardless of denominational affiliation, the number of non-committed and non-practising Christians, often called “nominally baptised”, is increasing throughout the West, and those partners who still wish to marry in church are often unfamiliar with the religious and spiritual significance of sacramentality. The question arises again as to whether it still makes sense to elevate all marriages of baptised persons to the dignity of a sacrament, as the CIC 1983 can. 1055 §1 and 2 asserts. The dilemma regarding ecumenical marriage is obvious. Is it still theologically, canonically, and pastorally viable and justifiable to maintain the rigour of sacramentality and apply it equally to all ecumenical marriages and also to spouses who are distanced from the Church? Several theological and pastoral approaches already indicate that the sacramentality of marriage

¹⁴⁸ See *ibid.* 6.

¹⁴⁹ See SECOND WORLD GATHERING OF INTERCHURCH FAMILIES: *Interchurch Families and Christian Unity*, Rome, 2003; see also <https://www.interchurchfamilies.org.uk/>.

¹⁵⁰ See special theme issue “Interchurch Marriage and Ecumenism”, in: *Marriage, Families & Spirituality* 30/1 (2024), 1-135.

should be categorised according to the principle of graduality in order to do justice to the different contexts and lives of faith.¹⁵¹ The growing demand for various forms of blessing other than the sacrament could be of greatest importance here.

109. Although the post-conciliar Church offers pastoral support to ecumenical and interfaith couples to help them face these challenges with a spirit of holiness, interreligious marriages differ from interchurch marriages. When a Catholic marries someone who is not a baptised Christian, the Church takes a more cautious approach. A dispensation from the local bishop is required for the marriage to be valid. In this case, the union is not considered sacramental. Nevertheless, many couples believe that even if they do not fully participate in the sacrament of marriage, both partners can still receive God's love and grace through their good lives and beliefs. Pastors are advised to discuss the couple's different religious backgrounds, to learn as much as possible about each other's religious traditions and beliefs, to encourage mutual respect for each other's beliefs, to discuss the religious upbringing of children before marriage and, if possible, to attend each other's worship services. Many local churches encourage priests, deacons, and pastoral workers to adopt a realistic and yet welcoming attitude, as discouraging practices can be counterproductive.

III.1.2. Cohabitation, Delayed Marriage, Singlehood, and Same-Sex Marriage

110. The institution of marriage has always played a significant and widespread role in people's lives throughout history. What we are seeing now is that marriage is showing cracks and fractures like hardly ever before. The spectrum ranges from those who do not want to get married at all, to those who recoil or become reluctant when the question of permanent marriage is raised, to others who postpone their marriage until a later point in their lives. Major changes in the life course show that, for example, the phase of marriage no longer coincides with the family phase as it did before: as partners now delay marriage, the family phase is often shortened and followed by a longer post-parental phase, mainly due to increased life expectancy. New forms of partnership that emphasise emotional affection, intimate closeness, and a sense of security and mutual recognition have also helped to recode the traditional understanding of marriage and transform it into a separate and appropriate way of life, regardless whether children are involved or not. Divorce has become an integral part of many couples' relationships today, as the increased demands placed on them put them at a greater risk of separation. Not to be forgotten is the rise in childless marriages due to an inability to conceive, with deliberately planned temporary or lifelong childlessness.

111. As incomplete as this abridged overview of the changing situation of marital and family life may be, a look from a phenomenological perspective should suffice to give an idea of the extent to which marriage and family are currently undergoing a readjustment of their nature and structure. The fact is that marriage in the traditional sense is now in competition with non-marital partnerships. Sociological studies show that the marriage rate will continue to decline and that marriage will even become a minority in comparison to other forms of living arrangements. As it is difficult to make prognoses, some pertinent questions remain unanswered: Is marriage an obsolete model that is coming to an end, or does it have enough resistance and adaptability to prove to be a promising form of partnership? Should

¹⁵¹ See also section II.3.3. ("Marriage as Sacrament: Sacramentality Revisited").

the non-marital partnerships, in whatever form, be seen as an alternative to marriage, i.e. as a rejection of the value of marriage, or are they considered equivalent to marriage, i.e. can they harmonise well with each other? Or are they a precursor, a prelude to marriage with the result that marriage retains its essence but requires other forms of application? On the basis of these uncertainties, we list some points that will certainly have an impact on the theology of marriage as it is now and as it will be in the future.

112. *Cohabitation*: Many couples in late-modern Western societies live together without entering into formal marriage. Since the 1980's, unmarried cohabitation (either before or without marriage) has increased exponentially, gained widespread social acceptance in the following decades, and is now described by sociologists as the fastest growing family type and permanent lifestyle choice. Historically, cohabitation has gone through various stages, starting in the early 20th century as a deviant and avant-garde way of life that defied the prevailing culture of marriage, continuing after World War II as a trial period for marriage without children, and finally leading to a form of living together that is more or less equivalent to marriage, whether or not there are children involved. This has also become a reality today: having children is no longer seen as an evident reason to marry.
113. Cohabitation can be classified in two main types: First, as a stage in the marriage process (premarital type), in which two different aspects are taken into account, those who see their union as a prelude to marriage and those who consider their relationship as a test of compatibility for further marriage. A second type concerns cohabitants who view their union as an alternative to marriage (non-marital type); within this second group, some consciously refuse to marry while others consider marriage irrelevant and have no further plans for marriage. The motives for cohabitation are various, ranging from family reasons (moving out of the parental home) to pragmatic reasons (convenience, sharing and reducing costs) and to relationship-oriented motives (next step in relationship, being together, testing the relationship). Recent findings have shown that – contrary to previous assumptions that cohabitation is associated with a heightened risk of later marital divorce and supposedly lower marital satisfaction – having concrete marriage plans or being engaged to the person you later marry not only increases the chance of marriage but also eliminates the negative effects of cohabitation, so that these partners have the same chances of marital stability and quality as those who marry first. In other words, the degree of personal commitment to the partner, not the fact of living together as such, is a decisive factor for later marital (dis)stability and (dis)satisfaction. Finally, cohabitation is predominantly practiced by young adults and is in general “short-lived”: while a majority marries after some time, a smaller majority separates and only a small minority continue to cohabit. Although marriage is often seen as a relic of the past, the “institution of marriage continues to be prominent within most societies and tied to a regulatory framework”.¹⁵²
114. Forecasts indicate that unmarried cohabitation will continue to expand in Europe and is growing rapidly in other parts of the world, such as in Latin America and the industrialised countries of the Far East. The Roman Catholic Church was aware of these tendencies and reacted as early as twenty years after the promulgation of the documents of the Second Vatican Council, albeit in a strictly negative manner. Following the 1980 Synod of Bishops on the family, the apostolic exhortation *Familiaris consortio* and later the *Catechism of the*

¹⁵² B. PEDRELLI-HARRIS/B. KUANG: “Demographic perspectives on cohabitation”, in: R. PROBERT/S. THOMPSON (eds.): *Research Handbook on Marriage, Cohabitation and Law*, Cheltenham, UK-Northampton, MA: Edgar Elgar, 2024, 296-312, 311.

Catholic Church considered any intimate relationship outside of a valid marriage to be “against the dignity of marriage” and “a grave sin” (CCC 2390). This vision is no longer tenable when one realises that non- and pre-marital cohabitation has become commonplace also in Catholic communities and therefore cannot be ignored or denied. An illustrative example are the synthesis reports which some local churches submitted in preparation of the Third Extraordinary Bishops’ Synod of 2014. According to the German Bishops’ Conference, “[d]e facto unions which are not recognised either religiously or civilly are a growing phenomenon”. Even clearer is the message about cohabitation *ad experimentum*:

The statements from the dioceses are unanimous in maintaining that “pre-marital unions” are not only a relevant pastoral reality, but one which is almost universal. Almost all couples who wish to marry in Church have already been living together, frequently for several years (estimates are between 90% and 100%). A recent demoscopic survey has shown that a similarly large proportion of Catholics as in the overall population consider this to be acceptable. Weddings between couples who already have children are becoming increasingly common. Here, cohabitation is regarded less as an “experiment”, and more as a generally-customary preliminary stage to marriage which is entered into intending to cement the relationship by these means and to marry later if the partnership proves to be stable. In view of the ultimate binding nature of marriage, and in an awareness that a failed marriage means a profound life crisis, many in fact consider it irresponsible to marry without living together beforehand.¹⁵³

The same narrative can be seen in the synthesis report of the Bishops’ Conference of Switzerland:

Almost all couples who wish to have a church wedding not only have a longer phase of trial living-together behind them. As a rule, there is also a longer non-marital and ultimately failed relationship in the life courses of the partners. Socially and also among almost all Catholic believers, premarital cohabitation is not only accepted, but welcomed as a sensible and necessary phase before a decision to marry. Increasingly, the birth of the first child is a reason for a couple to also want a civil marriage and a church wedding.¹⁵⁴

The Swiss Bishops add, however, that so far there are no pastoral programmes available for couples who are living together on a trial basis, “although this situation represents a completely normal biographical situation for almost all people in Switzerland and could be very important for the religious characterisation of relationships and families”.¹⁵⁵

115. Many contemporary theologians have already pointed out that the Church can no longer fail to respond in a theologically and pastorally appropriate way to the prevalent practice of premarital cohabitation. The realisation is dawning that marriage is no longer, as it once was, the direct, publicly declared, and legally binding entry into a stable union along with

¹⁵³ *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses*, 9. The Belgian Bishops’ Conference speaks about a “marriage in the making”, in French called “mariage en devenir” (*Rapport de synthèse de la Conférence épiscopale de Belgique sur le questionnaire en vue du synode 2014*, 4), in Dutch “Huwelijk in wording” (*Syntheserapport van de Belgische bisschoppenconferentie over de vragenlijst voor de synode 2014 over het gezin in de context van de nieuwe evangelisatie*, 2014, 4, available at <https://www.pastoralezorg.be/cms2/uploads/idgp/file/idgp/14%2002%2005%20Synthese%20rapport%20vragenlijst%20synode%202014.pdf>).

¹⁵⁴ *Die Pastorale Herausforderung der Familie im Kontext der Evangelisierung*: *Synthesebericht der Schweizer Bischofskonferenz*, 10 (authors’ translation).

¹⁵⁵ *Ibid.* 10 (authors’ translation).

children, but part of a dynamic process which goes through different stages. In his post-synodal exhortation *Amoris laetitia*, Pope Francis began to develop an appreciative assessment of cohabitation. He distinguishes between a marriage that is “fully realized” and forms of unions that “radically contradict this ideal, while others realize it in at least a partial and analogous way” (AL 292). This opens the way to recognising some forms of pre-marital cohabitation as partial and analogous realisations of full marriage, or otherwise as on their way to full marriage. As criteria for a positive evaluation, Francis suggests: particular stability of the union, deep affection of the partners, responsibility for the offspring, ability of the partners to overcome trials (in other words, faithfulness); on the negative side, “distrust of marriage”, “putting off indefinitely the commitment of marriage”, and lack of faithfulness are mentioned (AL 293). The pope calls on the Church and its ministers “not [to] disregard the constructive elements in those situations which do not yet or no longer correspond to her teaching on marriage” (AL 292), and proposes a pastoral discernment towards, among others, people who simply live together, “helping them understand the divine pedagogy of grace in their lives and offering them assistance so they can reach the fullness of God’s plan for them” (AL 297). This path needs to be followed, if one takes seriously what the mind and the sense of most of the faithful express.

116. Social changes since the end of World War II have significantly transformed Western societies, the most tangible indicator of which is the decline in the marriage rate, which in relative terms is almost 50% in some countries. A plethora of alternatives to marriage have become available, some of which undermine, some of which fundamentally alter the social and legal institution of marriage, which has long been seen as a formal, binding, and long-term relationship between two heterosexual individuals who agree to share their lives, rights, responsibilities, and resources. Cohabitation has already been discussed above; some other alternative forms of marriage will be mentioned, albeit very briefly, namely *delayed marriage*, *single households*, and *same-sex marriage*. However, it should not be forgotten that the contemporary Western context is characterised by two main factors that are intertwined: romantic love on the one hand and self-arrangement on the other. The “lived realities” presently focus on emotional fulfilment – deep feelings of affection, attraction, attachment, and care for someone or something – and aim at the same time at personal happiness “as long as there is love”, rather than at permanent commitment. Marriage is seen as a private reality and not so much as a public contract. Without passing moral judgement on the situation we find ourselves in today, a balanced perspective seems necessary, taking two aspects into account: on the one hand, that marriage “for love” has graciously put an end to centuries of acceptance of “arranged” marriages, but on the other hand, that it has unfortunately led to high divorce rates once the passionate love has faded.
117. *Delayed marriage*: Many people marry later in life, often after extended periods of career-building, personal exploration, cohabitation, or financial constraints. Marriage is often postponed until a stable career is established. Statistics show that the median age of first marriage for women in the US, for example, rose from 20.8 in 1970 to 25.1 in 2000, while in 2024 the median age for the first wedding was 28.6 years for women and 30.2 years for men (in 1890, it was 22.5 for men and 20.1 for women). A similar evolution took place elsewhere. In Switzerland, the average age for marriage is 31.8 years for men and 29.5 years for women (2023); in Germany the average age for the first marriage is 35.1 years for men and 32.6 years for women, making Germany and Switzerland the countries with the oldest average marriage ages in Europe.

118. This does not mean that people always wait until marriage to have children; in fact, the proportion of births outside of wedlock has increased dramatically, now accounting, for instance, for around 40% of US births. However, marriage and childbearing have not been completely separated. The dilemma lies in the fact that marrying later not only shortens the window of opportunity for having children but also makes conception more difficult, as fertility declines after the age of 30, with the decline being most pronounced in the late 30's. In any case, the changes in women's roles would not have had such a significant impact on falling fertility rates without the increased availability of contraception. Feminism has also played a key role in enabling women to pursue a wider range of life paths, free from the traditional pressures of early marriage and motherhood. The availability of contraception (and abortion) has provided women greater control over their reproductive choices and made it easier to avoid unintended pregnancies.
119. To better understand fertility trends, it is crucial to examine the factors that influence the childbearing decisions of couples. In some countries the high costs of raising children, both financially and in terms of opportunity costs, do explain the hesitation with regard to having children. Raising a family in a large city comes with logistical challenges, such as managing children's activities, the societal focus on economic success, and a wide range of alternative activities available to those without family responsibilities. Women bear the greatest burden when it comes to raising children, particularly due to the opportunity costs associated with disrupted career progression. Factors such as the labour market, employer and coworker attitudes, and the expectations of husbands or potential husbands make it challenging for women to balance full-time work with family life. Since men often remain reluctant to take on more childcare and household responsibilities, even when their wives work full-time, the time demands of full-time jobs clash with the responsibilities of motherhood. This creates a major quandary for women who want to combine raising children with a career, as the opportunity costs of parenting are considerable for them.
120. *Single households:* An increasing number of persons choose to remain single. According to Eurostat 2023 data, 73.4 million (around 35% of all European households) are single adult households without children. These households experienced a growth rate of 21.0% between 2013 and 2022. This trend has been on the rise for over two decades. The proportion of single adults correlates with age. Around one tenth of young adults aged 18-24 live alone, but almost one third of those 65+ are single. In 2023, 19.5% of adult men aged 25-54 were single without children, compared to 11.5% of adult women (in 2013, 15.7% and 9.8%, respectively). Not only in Western countries is singlehood growing, but also in Asia, South America, and in parts of Africa singlehood is on the rise.
121. The question of whether non-marriage is voluntary or involuntary (due to circumstances) is complex. Rather than making a sharp distinction between these two aspects, it may be more helpful to recognize that adult singlehood often involves different stages. In the early to mid-20's, voluntary singlehood is often linked to the idea that there is plenty of time to marry, and relationships can be explored without marriage being the primary goal. Most people in their 20's eventually want to marry, but they may choose to remain single for now or wait for the right partner to come along. By their early 30's, some individuals, especially women who are more aware of their biological clock, may feel a sense of urgency as they realize that their ideal partner has not yet appeared. For some, however, having children is not a priority, and they are not willing to settle for a less-than-ideal partner just to start a family. For others, singlehood becomes more involuntary at this stage, with the realization that the right partner might never come.

122. Being single is usually not for spiritual or vocational reasons but motivated by the desire for personal fulfilment, freedom and independence, career management, financial stability and material success, or by the rejection of societal or familial pressures. Singlehood is now generally accepted in many parts of the world, possibly because it has become a widespread lifestyle that challenges traditional views on the necessity of marriage. Nowadays, in many countries singles face little social or familial pressure to marry, and there is minimal social stigma or discrimination.
123. *Same-sex marriage*: The term “same-sex marriage” has now become part of common parlance, but it needs to be explained and nuanced. Some refuse to apply the notion “marriage” to the partnership between persons of the same sex, arguing that marriage is restricted to pairings of a man and a woman. Others see no problem in either deleting the gender-specific specifications of the term marriage or supplementing them with secondary definitions that include gender-neutral language or the explicit recognition of same-sex partnerships.
124. Denmark became the first country to recognize a legal relationship for same-sex couples in 1989, followed by the Netherlands in 2000, establishing respectively “registered partnerships” and “same-sex marriage”, granting those in same-sex relationships most of the rights given to married heterosexuals. In the beginning of the 21st century, legislation has quickly spread across more countries. Fifteen Member States of the European Union currently allow same-sex marriage: the Netherlands (since 2000), Belgium (2003), Spain (2005), Sweden (2009), Portugal (2010), Denmark (2012), France (2013), Luxembourg (2015), Ireland (2015), Finland (2017), Malta (2017), Germany (2017), Austria (2019), Slovenia (2022), and Estonia (2024). Many other Member States acknowledge unions similar to marriage or some form of contract or registration. On the other hand, some Eastern European countries do not provide any legal recognition for same-sex relationships. Indeed, there are significant differences between Member States, with national laws varying widely regarding the legal recognition of same-sex marriages and the adoption rights of same-sex couples. The rights to full joint adoption remain quite limited, though the number of states allowing it has grown. In Italy, for example, the courts make decisions on a case-by-case basis. Croatia allows both registered and unregistered life partners to become partner-guardians of their partner’s child (since 2014), while in Greece, same-sex couples in civil partnerships can have foster children but cannot adopt.
125. As the differences in the terminology of same-sex marriage have already shown, the Catholic communities are also not in agreement as to what status same-sex unions should have in the Church. There seems to be a clear tendency, as some bishops have noted on the occasion of the 2014 Bishops’ Synod on family, that same-sex partnerships should be legally recognised and treated on an equal footing with marriage, bearing in mind that tolerance, individual appreciation, and respectful recognition of homosexual people are considered essential.¹⁵⁶ Moreover, “[l]arge numbers...also consider it to be expedient and positive to offer a rite of blessing to same-sex couples”.¹⁵⁷ In any case, almost all bishops at this point

¹⁵⁶ See *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses*, 12; *‘Die Pastorale Herausforderung der Familie im Kontext der Evangelisierung’*: *Synthesebericht der Schweizer Bischofskonferenz*, 13.

¹⁵⁷ *Pastoral challenges to the family in the context of evangelization: Summary of the responses from the German dioceses and archdioceses*, 12. – A similar proposal has currently been confirmed in the Declaration *Fiducia*

continue to oppose the legal equality of marriage and registered partnerships, arguing that marriage, especially because of its focus on procreation and family-building, has a different significance for both the individuals involved and society, and that this difference should be reflected in the legal status of the two institutions. By way of conclusion, same-sex marriage remains a matter of debate and discussion, as the voices of the faithful do not always point in the same direction.

III.2. A Theological Framework for Lived Realities

126. Changing realities and lived experiences are shaping today's marriage and family life in ways that were previously unheard of. The synopsis of diverse "voices", which has been the aim of the former section, has shown that the Church as a whole, and particularly its teaching and law, are increasingly requested to respond more respectfully and sustainably to new challenges, both when these lie in a body of established knowledge and practices that urgently needs to be adapted (such as the indissolubility of marriage, openness to new life, and the sacramental character of marriage) or in newly emerging situations which put traditional convictions into question (such as cohabitation and same-sex marriage). As we have already pointed out at the beginning of the previous section, some principles or criteria could initially help to outline lived realities and experiences in generally understandable terms. However, further theological reflection seems inevitable, especially as we find ourselves in a situation of "beginners" when it comes to giving lived realities and experiences a theological framework. Our focus is on four key areas: the pastoral approach, the *sensus fidelium*, transmitting the faith, and human experience. Although these theological reflections run the risk of becoming abstract, it should be clear that marital realities and experiences form the background of our reflections.

III.2.1. The Pastoral Approach

127. The idea that a "pastoral approach" should inform all dimensions of Church activities dates back to the Second Vatican Council. Pope John XXIII demanded that the Church should treat both the treasure of the Christian faith and the context and situation of the present day with the utmost respect. The following passage, in which he elucidates that the Church should be "pastoral in character", is worthy of quotation:

As all sincere promoters of Christian, Catholic, and apostolic faith strongly desire, what is needed is that this doctrine be more fully and more profoundly known and that minds be more fully imbued and formed by it. What is needed is that this certain and unchangeable doctrine, to which loyal submission is due, be investigated and presented in the way demanded by our times. For the deposit of faith, the truths contained in our venerable doctrine, are one thing; the fashion in which they are expressed, but with the same meaning and the same judgement, is another thing. This way of speaking will require a great deal of work and, it may be, much patience: types of

supplicans, although it specifies that the blessing must be given outside the liturgical rites fixed by the ecclesial authorities (see FS 31, 39 and 41).

presentation must be introduced which are more in accord with a teaching authority which is primarily *pastoral in character*.¹⁵⁸

It cannot be the task in this section to explain in detail the concept of “pastoral in character” or “pastoral approach”, which has entered into common usage in the post-conciliar Church, even though its theological basis remains largely unclear. We will content ourselves with sketching the meaning of the pastoral approach with just a few strokes of the pen, in the belief that its theological foundations can be clarified better when questions of ecclesiology, theological hermeneutics, and anthropology are addressed, as we will see below.

128. If one takes the term “pastoral in character” seriously, the effects appear to be far more grave than one can imagine. It is probably no coincidence that Pope Francis used the word “pastoral conversion” to explain what he understood by a pastoral approach. In biblical terms, conversion (*metanoia*) means a radical change in one’s life, affecting every dimension of one’s thinking and the will behind every action. The “revolutionary” connotation, at least seen from a scriptural perspective, is evident, for example, when Francis calls on all Christian communities to make the “necessary effort to advancing along the path of a pastoral and missionary conversion *which cannot leave things as they presently are*”.¹⁵⁹ The pope remains here in the process of the reception of Vatican II, which is characterized by the choice for a permanent ecclesial renewal and reform and for adequate means of evangelization. “Conversion” stands for a change *that needs to be made*. Likewise, “pastoral” no longer refers to a framework of operational principles or to an ideal vision yet to be realised, but rather an *all-encompassing perspective to be adopted*. This perspective touches all areas and operations of the ecclesial subjects and of the ecclesial institution as whole, not only, but in particular, those who exercise ministerial authority. The pastoral approach is not merely a side effect of magisterial teaching, but rather its very essence. In this vein, Karl Rahner has reminded us that the pastoral (or practical) character of ecclesial and theological action “is concerned with the Church’s self-actualisation here and now – both that which *is* and that which *ought to be*”.¹⁶⁰ That means that the Church does not mean “being Church” but rather “doing Church”, because the Church always has a critical and prophetic function and is “oriented towards committal”.¹⁶¹ In this respect, the practical or pastoral character should always take precedence over other dimensions of ecclesial and theological action. The same applies to the various academic theological disciplines. Disciplines such as biblical theology, dogmatic theology, moral theology, canon law, church history etc., while having an irreplaceable function in the Church, cannot be carried out in

¹⁵⁸ JOHN XXIII: “Allocutio in sollemni Ss. Concilii inauguratione (Die 11 octobris mensis a. 1962)”, in: *AAS* 54 (1962), 786-796, 792 (emphasis added); for the English version, see <https://jakomonchak.wordpress.com/wp-content/uploads/2012/10/john-xxiii-opening-speech.pdf>.

¹⁵⁹ FRANCIS: *Apostolic Exhortation Evangelii gaudium on the Proclamation of the Gospel in Today’s World* (hereafter EG), 24 November 2013, 25 (emphasis added), available at https://www.vatican.va/content/francesco/en/apost_exhortations/documents/papa-francesco_esortazione-ap_20131124_evangelii-gaudium.html.

¹⁶⁰ K. RAHNER: “Die praktische Theologie im Ganzen der theologischen Disziplinen“, in: *Schriften zur Theologie* VIII, Einsiedeln-Zürich-Köln: Benziger Verlag, 1967, 133-149, 134: “Praktische Theologie ist jene theologische Disziplin, die sich mit dem tatsächlichen und seinsollenden, je hier und jetzt sich ereignenden Selbstvollzug der Kirche beschäftigt mittels der *theologischen* Erhellung der jeweils gegebenen Situation, in der die Kirche sich selbst in allen ihren Dimensionen vollziehen muß.” The English version can be found in “Practical Theology Within the Totality of Theological Disciplines”, in: *Theological Investigations* IX, London: Darton, Longman and Todd, 1972, 101-114, at 102 (emphasis added).

¹⁶¹ „Denn sie [praktische Theologie] ist Reflexion *auf Entscheidung hin*“ (emphasis added) (K. RAHNER: “Die praktische Theologie im Ganzen der theologischen Disziplinen“, 135; “Practical Theology Within the Totality of Theological Disciplines”, 103).

an ahistorical or sterile space. Taking into account the respective historical and contextual situation from which they cannot escape, this means that they are “pastoral in character”: regardless of its background, scope, purpose, etc., theological reflection remains committed to the Church, in other words, to its self-realisation.¹⁶² Here, we find a first essential principle of how the life of the Church is to be organised, for which the term “pastoral approach” deserves full approval. This gives rise to three other aspects, all of which derive from this pastoral approach.

III.2.2. The Sense of the Faithful within the Church

129. A second aspect concerns the issue of ecclesiology. Pope Francis has taken up again the thread begun by Vatican II in the *Dogmatic Constitution on the Church* when he points out that the “prophetic” or “teaching” office is not a prerogative of a specific elite or expert group within the Church but a common responsibility of the people of God in its entirety. The “entire body of the faithful” (*universitas fidelium*) is endowed by the Holy Spirit with that “supernatural discernment in matters of faith” (*supernaturali sensu fidei totius populi*) which prevents it from erring in matters in faith (LG 12,1). In the words of Francis:

In all the baptized, from first to last, the sanctifying power of the Spirit is at work, impelling us to evangelization. The people of God is holy thanks to this anointing, which makes it infallible *in credendo*. This means that it does not err in faith, even though it may not find words to explain that faith. The Spirit guides it in truth and leads it to salvation. (Cf. LG 12) As part of his mysterious love for humanity, God furnishes the totality of the faithful with an instinct of faith – *sensus fidei* – which helps them to discern what is truly of God. The presence of the Spirit gives Christians a certain connaturality with divine realities, and a wisdom which enables them to grasp those realities intuitively, even when they lack the wherewithal to give them precise expression. (EG 119)

The pope leaves no room for doubt: “All the baptized, whatever their position in the Church or their level of instruction in the faith, are agents of evangelization” (EG 120). It would be erroneous to conclude that responsibility in the Church has been taken over by a special group of actors, be they popes, bishops, theologians, or canonists, and that the rest of the faithful are simply passive recipients. “Every Christian is challenged, here and now, to be actively engaged in evangelization” (EG 120). Moreover, the infallibility *in credendo*, to which the pope refers by quoting LG 12,1, is certainly to be distinguished from the infallibility *in docendo* which especially attributed to the magisterium. However, the Vatican Council and Pope Francis alike insist that all teaching authority in the Church cannot be dismembered into different areas of responsibility but must be derived from the same sense of the faith of all the faithful. The Church is undoubtedly guided in her teaching authority by the magisterium of the pope and the bishops, and the faithful must be faithfully obedient to it,¹⁶³ but the believers themselves can no longer be treated as echoes of what the hierarchy teaches. The person-centred vision of the Council has also reminded us that the

¹⁶² See K. RAHNER: “Die praktische Theologie im Ganzen der theologischen Disziplinen”, 140f. (“Practical Theology Within the Totality of Theological Disciplines”, 107f.).

¹⁶³ See LG 12,1: “That discernment in matters of faith is aroused and sustained by the Spirit of truth. It is exercised under the guidance of the sacred teaching authority, in faithful and respectful obedience to which the people of God accepts that which is not just the word of men but truly the word of God. (Cf. 1 Thess. 2:13)”

totality of the faithful cannot be reduced to a collective assembly but is made up of a community of believers who give their own individual response to God's call. This once again raises the question of what is actually meant by the *sensus (fidei) fidelium*, the sense of all faithful.

130. If the Church as a whole is kept in the truth, then the individual believer must be given that spiritual sense or instinct which enables her/him to hold fast to the truth. The *sensus fidelium* would lose its foundation if the sensory and investigative insight of the individual believer were lacking. This involves a reciprocal relationship: The individual believer has this spontaneous and instinctive knowledge of the truth because the Church as a whole, from which he or she has received the faith, has been "anointed with the Spirit of truth" (see 1 Jn 2:20.27). This is also true the other way round: The Church as a community can only stand firm in the truth to the extent that each individual believer has this interior disposition to hold fast to what God has revealed. Here we must recall a fundamental ecclesiological principle which says that the community of the believers is neither a collective in which the individual's identity is being absorbed into the mass nor a conglomerate of self-sufficient individuals without any shared identity. This organic structure of the ecclesial community is also reflected in the way it finds and bears witness to the faith and its truth. There is no lasting truth in the Church unless it is embraced and upheld by concrete persons in particular contexts. This shift in emphasis, from a hierarchical church deciding what the faithful should believe to a communal Church in which the faithful have self-reliant and active responsibility, highlights two aspects: one is that *every faithful person* – whether pope, bishop or anyone else – is guided by the Spirit and strengthened in the faith, and thus shares in the infallibility of the Church; the other is that, consequently, the *Church as a whole* faithfully and infallibly proclaims the word of God, which does not prevent some from having specific teaching tasks reserved for those whose sole task is to authentically express the consensus of the faithful.¹⁶⁴

131. The term *sensus fidei*, which was recovered at Vatican II, never had a significant and unequivocal meaning in the theological vocabulary, neither in the history of Church and theology nor in the first decades of the post-conciliar period.¹⁶⁵ The concept gained new importance only recently. In 2014, the International Theological Commission dedicated one of its several documents to the *Sensus Fidei in the Life of the Church*, stressing the need to clarify and possibly further develop the Council's vision of how the faithful participate in the life of the Church. The theologians of the Commission explained that "[b]anishing the caricature of an active hierarchy and a passive laity, and in particular the notion of a strict separation between the teaching Church (*Ecclesia docens*) and the learning Church (*Ecclesia discens*), the council taught that all the baptised participate in their own proper

¹⁶⁴ One has to consider that magisterial functions are not limited to the office of teaching. Although LG locates the *sensus fidei totius populi* in the treatment of the teaching office (see LG 12), it includes the threefold office of Christ, that is teaching, sanctifying, and governing, each of which has a specific but also overarching responsibility in the life of the Church: "If therefore in the Church everyone does not proceed by the same path, nevertheless all are called to sanctity and have received an equal privilege of faith through the justice of God. (Cf. 2 Pt. 1:1) And if by the will of Christ some are made teachers, pastors and dispensers of mysteries on behalf of others, yet all share a true equality with regard to the dignity and to the activity common to all the faithful for the building up of the Body of Christ." (LG 32,3)

¹⁶⁵ "The phrase, *sensus fidei*, is found neither in the Scripture nor in the formal teaching of the Church until Vatican II." (INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus Fidei in the Life of the Church*, 2014, 7, available at https://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20140610_sensus-fidei_en.html.)

way in the three offices of Christ as prophet, priest, and king. In particular, it taught that Christ fulfils his prophetic office not only by means of the hierarchy but also via the laity.”¹⁶⁶ However, as comprehensible and promising as these statements may be, it should be noted that, historically speaking, the term *sensus fidei* was overshadowed by the term *sentire cum ecclesia*: “to feel, sense and perceive in harmony with the Church”¹⁶⁷ – a concept that became the common and widely accepted denominator of participation in the life of the Church and prevailed for centuries. What was often forgotten in this ecclesiology was that the magisterium became the only authority able to declare what the *sensus fidei* stands for. Instead of serving as places of testimony of the Christian faith (*loci theologici*), the *sensus fidei* was gradually reduced to instances of confirmation of what the Church had proclaimed. Vatican II undoubtedly broke through this vision and sowed the first seeds of a form of church membership that would respond to modern challenges. But only later generations of Christians will testify – the “voices of the faithful” are a telling example – that before all faithful live in harmony and agreement and the *sensus (fidei) fidelium* can be transformed into a *consensus fidelium*, the sense of the individual believer (*sensus fidei fidelis*) must first be acknowledged and recognised. In this sense, the term “voices of the faithful” takes on its own and proper meaning. The question of how the variety and diversity of individual believers can adequately reflect a *sensus fidelium*, and arrive at a *consensus fidelium*, is a matter of criteriology, to which we will return at the end of the section. However, the concept of *sensus fidei fidelium* also tells us something about the way in which the Christian faith can be transmitted from one generation to the next.

III.2.3. Transmitting the Faith and the Teaching Office

132. Although not quoted verbatim, the term *sensus fidei* is also mentioned in the *Dogmatic Constitution on Divine Revelation, Dei verbum*.¹⁶⁸ The Constitution deals with a hermeneutics of God’s revelation, explaining how Scripture and Tradition, the primary and secondary authorities of the Christian faith, can be transmitted “so that by hearing the message of salvation the whole world may believe, by believing it may hope, and by hoping it may love” (DV 1). The transmission of the faith is an essential part of the teaching office of the Church, and this is the task of the whole Church. Its main responsibility is to faithfully pass on what it has received: God’s self-communication in Jesus Christ, made possible with the help of the Holy Spirit who is the principle of receiving that gift. To ensure that the faith is both preserved and effectively transmitted, the Constitution identifies three bearers of, or authorities within, the teaching office: the handing over of the faith happens “through the contemplation and study made by believers, who treasure these things in their hearts (*ex contemplatione et studio credentium, qui ea conferunt in corde suo*) (see Luke, 2:19, 51)[,] through a penetrating understanding of the spiritual realities which they experience (*ex intima spiritualium rerum quam experiuntur intelligentia*), and through the preaching of those who have received through Episcopal succession the sure gift of truth” (DV 8,3). We can best describe these three exercising authorities in terms of theology, *sensus fidelium*,

¹⁶⁶ INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus Fidei in the Life of the Church*, 4.

¹⁶⁷ Ibid. 90.

¹⁶⁸ SECOND VATICAN COUNCIL: *Dogmatic Constitution on Divine Revelation, Dei verbum* (hereafter DV), 18 November 1965, available at https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651118_dei-verbum_en.html.

and magisterium.¹⁶⁹ Each of these authorities (all derived from Scripture, Tradition, and the Church as a supreme authority) has a distinctive, but at the same time *complementary* and *dialogical*, function, as the following passages will show.

133. *Magisterium*: Vatican II insists that the magisterium can speak on behalf of the whole Church by articulating the faith of the whole Church: "...the task of authentically interpreting the word of God, whether written or handed on, (...) has been entrusted *exclusively* to the living teaching office of the Church" (DV 10,2; emphasis added). At first glance, the adverb "exclusively" seems to adopt a pre-conciliar ecclesiology by supporting a purely hierarchical concept of Church and suggesting that the teaching office is identical with the magisterium. However, the Constitution continues, this formal "teaching office is not above the word of God, but serves it" (DV 10,2). Since Scripture and Tradition "form one sacred deposit of the word of God" that was "committed to the Church" (DV 10,1), one must conclude that the role of magisterium as the authoritative interpreter of God's revelation is not to be conceived apart from the whole community of the faithful and, more precisely, that the transmission of the faith has been entrusted to the whole Church and not just to the magisterium. Any claim that the magisterium is the sole receiver and transmitter of the word of God would contradict the hermeneutical-theological and ecclesiological vision of the Council.
134. *Sensus fidelium*: This brings the other authority of the teaching office in play, the *sensus fidelium*. To the extent that the magisterium does not *establish* the faith but preserves and communicates it as it has been handed on by the Christian community through the ages,¹⁷⁰ the *universitas fidelium* itself participates in and contributes to the teaching office. In other words: "Ordinary believers, when they articulate their faith, do have a real teaching authority, which comes from their dignity as recipients of God's prime revelation."¹⁷¹ However, it would be mistaken to infer that the magisterium is reduced to a merely passive receiver of the *sensus fidelium*: the bishops retain their apostolic commission to teach in the name of the Church. According to Ormond Rush, there are moments in which "the magisterium is the *ecclesia docens* and the *sensus fidelium*...is the *ecclesia discens*" – without forgetting that there are also moments "when the magisterium is called to be a listening and learning body of teachers, a *magisterium discens*".¹⁷²
135. (*Academic*) *Theology*: Something similarly dialogical can be said about how theology is related to the magisterium on the one hand and to the *sensus fidelium* on the other. Theology, called "the contemplation and study made by believers, who treasure these things in their hearts" (DV 8,2), is in this sense dependent on the official teaching that it is a church-related discipline, but at the same time autonomous, since its task is to look for cogent languages and concepts to express the ancient tradition anew for today, in other words, to reinterpret the sources of the faith in a way that is appropriate to the present context. That makes theology not the voice of the magisterium but an active agent in the teaching office.

¹⁶⁹ See F.A. SULLIVAN: *Magisterium: Teaching Authority in the Catholic Church*, Eugene, OR: Wipf & Stock, 1983, 174-218; O. RUSH: *The Eyes of Faith: The Sense of the Faithful and the Church's Reception of Revelation*, Washington, DC: CUA Press, 2009, 174-214.

¹⁷⁰ See J. RATZINGER: "The Transmission of Divine Revelation", in: H. VORGRIMLER (ed.): *Commentary on the Documents of Vatican II*, vol. III, New York: Crossroad, 1989, 181-198: "In this process of understanding, which is the concrete way in which tradition proceeds in the Church, the work of the teaching office is one component (and, because of its nature, a critical one, *not a productive one*), but it is not the whole (186; emphasis added).

¹⁷¹ H. VORGRIMLER: "From Sensus Fidei to Consensus Fidei", in: *Concilium* 180 (1985), 3-11, 8.

¹⁷² O. RUSH: *The Eyes of Faith*, 201.

In a nutshell, theology is one of three fundamental bearers of the Church's office of teaching. This becomes even clearer when one realises that theology finds in the other teaching authority, i.e. the sense of the faithful, an equivalent partner. Not only the documents and practices of the past (which are, for instance, the subject of church history, biblical studies, dogmatic theology etc.), but also the "lived realities" of the faithful who have received and answered God's call in the present, are an essential target of theology and a primary source for further theologising. Reading the "signs of the times" (GS 4,1) does not mean simply taking note of the current situation and giving it a theological cast; rather, it means recognising that God's saving and revelatory presence has already been interpreted by the faithful, both individually and communally. The "lived realities" of the faithful, another word for *sensus fidelium*, are a *locus theologicus* and therefore an indispensable part of the Church's teaching authority, to which theology and magisterium are equally tributary.

136. What combines the primary task of the teaching office across the three distinctive authoritative areas, i.e. magisterium, theology, and *sensus fidelium*, is the conviction that all ecclesial efforts should be directed to a deeper understanding, interpretation, and application of the faith. *Dei verbum* has laid the foundation for this. It says that the apostolic preaching is not only "to be preserved (*conservari debebat*) by an unending succession of preachers until the end of time" (DV 8,1), but that the tradition "which comes from the Apostles develops (*Traditio...proficit*) in the Church with the help of the Holy Spirit" and, similarly, that "there is a growth (*crescit*) in the understanding of the realities and the words which have been handed down" (DV 8,3; emphases added). Underlying this assumption is the significant shift of Vatican II from a static notion of tradition, which previously reduced God's revelation to a set of propositional statements, to what might be called a "living tradition".¹⁷³ *Dei verbum* speaks of "the presence of this living tradition (*huius Traditionis vivicantem praesentiam*), whose wealth is poured into the *practice* and *life* of the believing and praying Church" (DV 8,4; emphases added), thus reminding us that the development and growth of the faith concern not only the *teaching* office of the Church but equally its *life* and *worship*.¹⁷⁴

137. The notions "development" and "growth" used in *Dei verbum* have also certainly found their way into the theology of Vatican II. However, it must be borne in mind that it is not what we have received from God's self-communication that advances and progresses, but that the human understanding (*perceptio*) of God's word is subject to development and growth. Unchanging truths must be, according to Pope Francis, directed "to the people of today" and must be expressed, in view of "today's vast and rapid cultural changes", in a language "which bring out their abiding newness" (EG 41). In other words, the deposit of faith that the Church has to pass on has not fallen from heaven, nor it is a monolithic and consistent vessel that must be preserved untouched. Rather, it is part of a long process of searching, struggling, evaluating, and adapting, so that it can grow organically where it finds

¹⁷³ See Y. CONGAR: *Tradition and Traditions: An Historical and A Theological Essay*, London: Burns & Oates, 1966, 189-221.

¹⁷⁴ See, e.g., a statement of Pope Francis in which he refers first to DV and then continues: "The Church, in her teaching, life and worship, perpetuates and hands on to all generations all that she herself is, all that she believes" (*Dei Verbum*, 8). The Council Fathers could not have found a finer and more synthetic way of expressing the nature and mission of the Church. Not only in 'teaching', but also in 'life' and 'worship', are the faithful able to be God's People." (FRANCIS: *Address to Participants in the Meeting Promoted by the Pontifical Council for Promoting the New Evangelization*, 11 October 2017, available at https://www.vatican.va/content/francesco/en/speeches/2017/october/documents/papa-francesco_20171011_convegno-nuova-evangelizzazione.html.)

fertile ground for further flourishing. The deposit and the transmission of the faith have always been articulated in particular contexts and bear the index of historicity. In this sense, the faith must remain responsive to its context and to concrete situations, and it must be sensitive to historical transformations. The process of transmitting is open-ended, ever-evolving, relational, and has a contingent nature. It is inescapable, therefore, that the Church is always in need of “continual reformation” (UR 6,1). This finally brings us to a last aspect, namely the thorny question why human experience – a classical, yet often ignored, source of theological knowledge – deserves further theological reflection in the lives of believers.

III.2.4. Human Experience as Source of Theological Knowledge

138. The term “experience”, both as a noun and as a verb, is a familiar term in contemporary language, although it remains one of the most unexplained and enigmatic concepts. The Second Vatican Council documents generally say little about human experience. The Pastoral Constitution carefully states that “the call to grandeur and the depths of misery [of humankind]...are a part of human experience” (GS 13,3) and that the urgent needs of the present age must be considered “in the light of the Gospel and of human experience” (GS 46,1; all emphases added). However, the meaning of human experience is largely reduced to “mankind’s store of experience” (GS 33,2) and to the “experience of past ages (*saeculorum experientia*)” (see GS 37,1; 41,2; 43,6; 44,2), with little consideration for the productive and creative function of experience. Much more remarkable is a passage from the *Constitution on Divine Revelation*. As insignificant as it may seem, *Dei verbum* localises “the intimate sense of spiritual realities”, in other words the *sensus fidei fidelium*, in the experience of the believers (*ex intima spiritualium rerum quam experiuntur intelligentia*; DV 8,2; emphasis added). We have already made it clear that the transmission of the faith is indeed the task of the whole body of the faithful, together with theology and the magisterium, but even more striking is that experience is named as one of the central sources of knowledge. Admittedly, experience cannot be considered the sole and exclusive source of human knowledge; when it comes to faith, the Christian tradition has always emphasised that theological knowledge consists of four sources, namely scripture, tradition, reason, and experience.¹⁷⁵ Nevertheless, with reference to DV 8, it can rightly be argued that the sense of the faithful is largely supported by experience and that experience has a certain priority over the other three sources.

139. Again, experience as one of the sources for Christian insight gains its full value only when interrelated with the other sources. The same is true of the other sources, scripture, tradition, and human reason or rather the secular disciplines (including philosophy, natural and social sciences, history, literature etc.): each source is important in its own right, but no source is sufficient without the others; none of them in itself can provide everything we need for adequate theological knowledge. All the sources are dialectically interrelated, along with the intention of avoiding one-sided and biased views. Nevertheless, experience

¹⁷⁵ Among contemporary theologians there is a general agreement that the methodology for theological reflection involves four sources – scripture, tradition, human reason, and experience. Another term for these four sources is the Wesleyan Quadrilateral, a methodology attributed to John Wesley, leader of the Methodist movement in the late 18th century, and further developed in the 20th century by the American Methodist scholar Albert C. Outler (see W.S. GUNTER ET AL.: *Wesley and the Quadrilateral: Renewing the Conversation*, Nashville, TN: Abingdon Press, 1997). For Catholic theology, see C. CURRAN: *The Catholic Moral Tradition Today: A Synthesis*, Washington, DC: Georgetown University, 1999, 47-55.

differs significantly from the other sources; it is what Margaret A. Farley has called a “discrete” source of knowledge.¹⁷⁶ Experience is not just one source among many that can be selected or neglected at will; on the contrary, experience is firstly inherent in all other sources and secondly predominant in all forms of human knowledge. A quick look at the different epistemological sources is helpful: “Scripture, for example, is the record of some persons’ *experience* with God; tradition is the lived *experience* of a faith community through time; and secular disciplines, too, are shaped by the *experience* of those who engage in them.”¹⁷⁷ These sources are shaped by previous understandings in a context of multiple influences and are consequently the result of both personal and communal experiences and interpretations. The peculiarity of experience becomes even clearer when one considers that what can be described as “past experience” is subjected to further interpretation. Experience is the key factor in reading and understanding the other sources, but it also remains the main player in acquiring adequate knowledge in the current situation. “Past experience... provides content for all the sources”, but “present experience provides a necessary and inescapable vantage point for interpreting them.”¹⁷⁸ Experience is, in its different stratifications, at the heart of providing data, of receiving and recognising it in the present situation, and of opening it up to new interpretations. It seems obvious, then, that experience is best characterised as “the contemporary actual living of events and relationships, along with the sensations, feelings, emotions, insights, and understandings that are part of this lived reality”.¹⁷⁹ Since it is not possible to exhaustively describe the complexity and multi-dimensionality of the concept of experience, we limit ourselves to a few key aspects.

140. A first aspect is that experience is made consciously by a living agent. There are certainly past experiences, but they only unfold their effect if they are lived now, in this concrete moment. Experience would lose parts of its full signification if it were not linked to the present moment. The German term *er-leben* illustrates well what “experiencing the present” or “experiencing in the present” means. *Experience has its genuine place in “lived realities”*. This is the reason why, for instance, any contemporary theology of marriage would be incomplete without the experiences and lived realities of the spouses. Secondly, experience is always *historically* and *contextually mediated*. Experience may appear immediate, spontaneous, or intuitive, but it is never free or innocent of previous understandings. It may seem as if it belongs merely to the self, individually and privately, but it always concerns the self together with others. It can appear unique or unparalleled, but it is never self-interpreting and therefore always situated in a communal and social matrix. In other words, experience is in itself shared experience and something that needs to be communicated. Thirdly, experience is not primarily an autonomous act of freedom, which can be acclaimed or rejected, but something that befalls the person from outside. External sensations, events that happen, and calls from outside are good examples of this kind of “immediacy”. Further reflections on the cognitive, emotional, and pragmatic levels will follow subsequently, creating a space of resonance and narrative, which in the best case will be a space of trust on the basis of which further interpretations can be made. But it may turn out differently; experience can be a negative or contrast experience; it can be experienced as a painful moment of disappointment, loss, or destruction with the result that fundamental

¹⁷⁶ M.A. FARLEY: *Just Love: A Framework for Christian Sexual Ethics*, New York-London: Continuum, 2006, 190.

¹⁷⁷ Ibid. (emphases added).

¹⁷⁸ EAD.: “The Role of Experience in Moral Discernment”, in: L.S. CAHILL/J.F. CHILDRESS (eds.): *Christian Ethics: Problems and Prospects*, Cleveland, OH: Pilgrim Press, 1996, 134-151, 136.

¹⁷⁹ EAD.: *Just Love*, 190.

adjustments will be inevitable.¹⁸⁰ In any case, experience is the privileged *space of interpretation* and thus the *cornerstone of hermeneutical understanding*. Last but not least, there is no fund or deposit of experience that is foundational, immutable, or incontestable. This is also valid for the other sources. It would be illusionary and deceptive to assume that any one of these sources, be it the Bible, tradition, the light of reason, or experience, will necessarily yield the same truth as a few centuries, decades, or years earlier. The simple truth is that human knowledge – and experience is part of it – is *subject to constant critique and modification*.

141. In summary, considering that all sources of theological knowledge are interpretation-based, it can be said that experience is both chronologically and epistemologically prior to all types of interpretation: it “constitutes the final test of the accuracy and adequacy”¹⁸¹ of all interpretations achieved so far. However, the “prioritisation” of experience should not be understood ontologically, as if it were the final and independent judge of human knowledge; rather, experience is forever embedded in an “unavoidable hermeneutical circularity”.¹⁸² The starting point is and must be experience, but as soon as the (contingent) priority of experience is recognized, the unending hermeneutical circle is set in motion. It “displays an ongoing dialectic between whole and part, the familiar and the unfamiliar, the old and the new, the past and present”:¹⁸³ experience cannot be understood if it is detached from the history and circumstances of the person’s life; consequently, the *understanding* always falls back on an *interpretation* that is based on a familiar framework from the past; only this enables an *application* of the context of understanding to the present circumstances.¹⁸⁴ All this makes experience a reliable source of human knowledge in general and of theological knowledge in particular. Critical questions arise, however, when one asks what *authority* experience can have within the circle of the four sources of theological knowledge, especially in the life of the Church.

142. One should not forget that experience is still, especially since the time of the “turn to experience” in the 20th century,¹⁸⁵ one of the most frequently contested epistemological sources. Scripture and tradition are often regarded as authoritative, although neither of the two takes precedence over the other and both remain in a constant reciprocal relationship – which, incidentally, would be incomprehensible without the help of human reason and scientific disciplines. In fact, the question of which of the sources will ultimately have authority remains subject to never-ending discussion and interdependence. With regard to

¹⁸⁰ From a moral-theological perspective, three key types of experience can be identified: experiences that give life positive meaning (*Sinnerfahrung*); experiences that make one feel concerned and outraged (*Kontrasterfahrung*); and experiences that provide new perspectives and have a motivational force (*Motivationserfahrung*). See, e.g., D. MIETH: *Moral und Erfahrung I. Grundlagen einer theologisch-ethischen Hermeneutik*, 4. überarbeitete und ergänzte Neuauflage, Freiburg/Schweiz: Universitätsverlag, ⁴1999, 141-145.

¹⁸¹ M.A. FARLEY: “The Role of Experience in Moral Discernment”, 137.

¹⁸² With reference to the Protestant moral theologian James Gustafson, Farley points out: “If experience is always already structured (by previous experience previously interpreted), and if it is structured so that individually and socially we are predisposed to look for and find certain meanings, and if experience is itself the final judge of the interpretation it receives, then we appear to be faced...with an unavoidable circularity” (M.A. FARLEY: “The Role of Experience in Moral Discernment”, 138).

¹⁸³ O. RUSH: “*Sensus Fidei*: Faith ‘Making Sense’ of Revelation”, in: *Theological Studies* 62 (2001), 231-261, 233.

¹⁸⁴ Rush refers to the philosophical hermeneutical tradition, the so-called hermeneutical triad of understanding, interpretation, and application, elaborated by H.-G. GADAMER: *Wahrheit und Methode: Grundzüge einer philosophischen Hermeneutik*, Tübingen: J.C.B. Mohr (Paul Siebeck), ⁴1975, 250-360 (*Truth and Method*, rev. trans. J. Weinsheimer and D.C. Marshall, New York: Crossroad, 1989).

¹⁸⁵ M.A. FARLEY: “The Role of Experience in Moral Discernment”, 135.

experience, the situation seems equally, if not more, precarious, as there seems to be no generally recognized criteria for determining what and whose experience can count as compelling. Before we develop a set of criteria for theological epistemology, which will be the aim at the end of this Part, all we can say is this: One of the guiding criteria for the probity of experience, perhaps the most relevant, is *integrity* and *maturity*: experience derives its competence from a person-centred rootedness, from personal responsibility and from an ongoing life process; spontaneous and short-term decisions are not helpful in this respect. Another aspect is *intelligibility*, *coherence*, and *communicability*: experience-based interpretation should be understandable, it should make sense to and for the interpreter, and it must also be communicable, i.e. consistent and graspable to a broader audience. In addition, it is important to *distinguish between helpful and harmful consequences* of interpretations of experience; given the ambivalence of historical life practices, both tendencies toward absolutism and relativism (“anything goes”) must be avoided. Finally, the authority of experience depends on a *responsive recognition and reception*: interpretations based on experience must, after a long process of discernment, be generally and jointly recognised and, at best, receive a positive and constructive response.

143. There is, however, one last aspect that should be mentioned, namely that of the *moral* connotation of experience. Experience not only has a *functional* signification, when, for instance, an idea or an interpretation begins to make sense (“now, I realise something”) or a bad experience (“that can’t be true”) urges modification. Experience may also have a *motivational* meaning which can be expressed, for example, by the exclamation “it absolutely affects me”.¹⁸⁶ The step from comprehensibility, plausibility, and integrity of experience-related interpretations to willingness and commitment, i.e. from idea to action, is neither automatic nor necessary, but it is also a fact that motivational experiences are also part of a person’s moral self-understanding. The personal demands that accompany such a motivational experience usually draw attention to the concept of “conscience”, which Vatican II has called the “most secret core and sanctuary” where the human person is “alone with God”, and, more accurately, the law that is not imposed on the person but should be obeyed, calling her/him to love good and avoid evil (see GS 16). Conscience is undoubtedly a general normative principle that is inherent and rooted in every human being and that guides them to “do this” and “shun that”; but it does not release them from the human responsibility of making choices which are situation- and context-specific, linked to a living agent and part of an ongoing life process.¹⁸⁷ Therefore, the criteria mentioned above apply to all forms of experience, including moral experience.

III.3. Criteria for Integrating Lived Realities and Experiences

144. In this Part, we have accomplished two tasks: the first was to give lived realities and experiences of married couples a place in the life of the Church, and the second was to provide them with a theological position. We have already listed some aspects in the second section, many of which have an axiomatic or normative value; see, for example, the requirement that the mind of the faithful (*sensus fidelium*) must be incorporated in the Church, that the teaching office of the Church cannot be reduced to the magisterium but

¹⁸⁶ As mentioned before (see D. MIETH: *Moral und Erfahrung*), while *Sinnerfahrungen* and *Kontrasterfahrungen* have a functional meaning, *Motivationserfahrungen* introduce the person to the realm of morality.

¹⁸⁷ See also section II.2.1. (“Sources, Background, and Implications of the Person-Centred Approach”).

must be extended to the sense of the faithful and to theology, or that both the experience of the faithful and the insights of human sciences must assume their responsibility in the Church. We will now attempt to develop a set of criteria which could help integrate the realities of married and family life into the Christian faith and provide orientation and guidance to the Church and the faithful, especially in situations which are constantly evolving and changing.

145. We do that in different steps: Firstly, we emphasise what really constitutes the treasure and richness of the deposit of faith and therefore needs to be preserved. Then, we turn our attention to what runs counter to today's faith consciousness, proves to be no longer viable and justifiable, and needs to be renovated, modified, or even changed. However, there is an intermediate position between "preserving" on the one hand and "progressing" on the other: that is the theological concept of "development". To use the words of DV 8 again, the apostolic preaching must be "preserved" and "developed" at the same time because preservation in itself will become a lifeless torso and progress as such will resemble a quick start with no end in sight. There is no continuity with the past without creative innovation. While it seems relatively easy to identify criteria of preserving (see first set of criteria), it is much more challenging to categorize appropriate criteria which apply first to creative development (see second set) and subsequently to constructive renovation (see third set). We will summarise these criteria in the form of short theses.

146. A first set of criteria concerns the identity, continuity, and unity of the Christian faith and can best be summarised under the term "preservation".

- The foundation and standard for all believers is what God has achieved and revealed through Jesus Christ for the sake of humanity's salvation, what has been witnessed in Holy Scripture, handed down by the Church in apostolic reception, and passed on by the Holy Spirit for the understanding, interpretation, and application of the salvific revelation.
- The deposit of faith contains "what is everywhere, what is always, what is by all people believed" (*quod ubique, quod semper, quod ab omnibus creditum est*); it is a body of knowledge and practice that is "consolidated by years, enlarged by time, refined by age" (*ut annis consolidetur, dilatetur tempore, sublimetur aetate*),¹⁸⁸ in other words, it is the result of periods of constructive reflection, meditation, and transmission, which have led to better knowledge and have been well appropriated to this day.
- The teaching of the Church, whose main task is the authentic and faithful transmission of the faith, has also a specific authoritative and official responsibility, and this in a threefold way: it must offer support and assistance to the faithful, individually and collectively, especially in situations of hardship and vulnerability; it must preserve proven knowledge from being forgotten; and it must ensure unity in cases of conflict, according to the principle that unity comes before diversity. In this sense, integrating lived realities and experiences also means explicitly affirming consolidated components of faith, which sometimes comes with the surprising realisation that emphasising the essential can have a critical, provocative, and innovative relevance.

¹⁸⁸ Quoted from VINCENT OF LÉRINS: *Commenitorium*, 23.9, in: PL 50.

147. Before criteria for revision, modification, and change can be adequately addressed, it seems necessary to recall some principles that are no less characteristic of the Church's teaching and legislation. Here, too, the term "development" can serve as a pivotal point that connects the other endpoints, preservation on the one hand and modification on the other.

- Doctrinal opinions and documents have never had a uniform and consistent form but are the interim results of long processes of searching, researching, and wrestling undertaken by bishops, theologians, canonists, and, in the best case, by the entire community of the faithful. To assume that the goods of faith can be seen as an immutable and forever-fixed deposit would be to ignore the fact that the Church has always been, and will continue to be, marked by dissent and, at worst, division.
- Despite persistent efforts for consistency and continuity, the Church's teachings and laws do not all share the same level of firmness and significance. Vatican II has reminded us that "there exists an order or a 'hierarchy' of truths since they vary in their relation to the foundation of the Christian faith" (UR 11,3). Recent post-conciliar documents have reaffirmed the limited number of precepts given by Christ and the apostles, while emphasising that some truths hold a more direct expression of the heart of the Gospel (see EG 36 and 43).
- "Continuity" of the teaching of the Church does not mean that discontinuity and corrections are excluded and that further theological examination is not in order.¹⁸⁹ Doctrinal adaptations concerning the support of the death penalty and the prohibition of homosexuality are telling examples. Doctrines do not come from higher or secret sources of knowledge that are closed to others but are concise and formalised answers to controversial questions and problems to which new answers must be found in today's changing circumstances.
- Church doctrines and disciplines are in a constant state of development because "the laws and modes of thinking and feeling handed down from previous generations do not always seem well adapted to the contemporary state of affairs" (GS 7,2). Recent magisterial documents have underscored the importance of re-examining "rules or precepts which may have been quite effective in their time, but no longer have the same usefulness for directing and shaping people's lives" (EG 43).
- Since the deposit of faith is built on the basis of personal relationships, with God as a covenant partner with human beings, it can never be fully and completely expressed. Every doctrinal interpretation, even that of the magisterium, remains necessarily inadequate. The Church's proclamation is thus authorised and required to detach itself from certain historical forms of presenting the faith, precisely in order to preserve it in its unadulterated form as the most suitable representation of the Christian faith for the current situation.

¹⁸⁹ Pope Benedict XVI has advanced the approach that magisterial documents, especially those of the Second Vatican Council, must be read according to a "hermeneutics of continuity", which he describes as the correct hermeneutics, while he states that the "hermeneutics of discontinuity and rupture" causes confusion in the church (see BENEDICT XVI: *Address to the Roman Curia*, 22 December 2005, available at https://www.vatican.va/content/benedict-xvi/en/speeches/2005/december/documents/hf_ben_xvi_spe_20051222_roman-curia.html). However, Pope Benedict XVI's statement has justifiably been met with opposition.

148. Probably the most difficult challenge is that of innovative revision, modification, or change. We limit ourselves to three aspects that all urgently require remedial action: the deregulation of the organic functioning of the Church, the non-reception of the Church teaching, and the loss of credibility of the Christian community.

- A major problem occurs when the authentic teaching authorities of the Church, i.e. magisterium, *sensus fidelium*, and theologians, whose task it is to ensure that the Church remains in the truth, no longer interact with one another, but drift apart and stand irreconcilably opposed to one another. The ban on artificial contraception illustrates this exemplarily. If the magisterium steadfastly holds a doctrinal statement without consulting and recognizing the authority of the *sensus fidelium* and the theologians, the Church as a whole become disjointed. In other words, the Church risks being compromised as an organic unity.
- A second case is that of “non-reception”, again illustrated by *Humanae vitae*. The reception of a doctrinal statement is not yet achieved if the bishops accept the teaching but disregard the (dis)approval of the local church community. Something similar happens when the bishops do not formally express their disagreement. A doctrine is only received by the faith of the Church when it has been accepted by the sense of the faithful and this doctrine has entered into their faith consciousness in such a way that it finds an echo in their normative convictions, so that they endeavour to act accordingly in their actual behaviour. “So the response of the faithful to the teaching of the magisterium has the effect of closing a circle: from the faith of the Church, to the official teaching, back to the faith of the Church.”¹⁹⁰ If the final response is not given, the cycle of reception is interrupted. Moreover, the longer the reception is delayed, the greater is the assumption that the initial refusal is of a permanent nature, so that one can speak of a non-reception of the doctrine – with all the harmful implications that this still has today.
- Lastly, the long duration of non-reception reveals another kind of deficiency, or rather “blind spot”, in Church teaching which goes beyond the political turbulence caused by, for example, *Humanae vitae*. Nowadays, the institution of marriage is also confronted with a plurality of lifestyles and different moral views. The Church can certainly speak with *one* voice, which may be familiar to some people from their own biographies or even particularly trustworthy, but it cannot simply claim to be authoritative, true, and valid on the basis of its magisterial authority alone. The Church runs the risk of abandoning the standards of guidance and orientation it has long provided, if its official positions are not subjected to the test of probity and plausibility. Only with the help of reason, both theoretical and practical, and of experience, both personal and shared, can the Church form a sustainable community. If this is lacking or disappears, the Church faces one of its greatest risks today, namely the loss of its “credibility” in the Christian community. The responses to the questionnaire for the 2014 Synod of Bishops were clear evidence of this.

¹⁹⁰ F.A. SULLIVAN: *Magisterium*, 112.

IV. The Code of Canon Law 1983 and Catechism of the Catholic Church under Review in Light of the Development of Church Teaching and Legislation

149. In the previous Parts we have attempted to fulfil a threefold task: First, we wanted to show what has prompted us to revisit the theology of marriage introduced by the Second Vatican Council and to deepen it as a response to the challenges of today (I.). Secondly, we expressed our full recognition of the conciliar theology, pointing out the impasses into which the theology of marriage has fallen in the post-conciliar period, both theologically and canonically (II). Thirdly, we opened our perspective to an aspect which was often ignored in the Church, namely the “lived realities” and the “mind” of the faithful (*sensus fidelium*) (III). This leads us to the last and final Part that is intended to further develop the theological understanding and regulation of marriage. We do this by reviewing first the *Codex Iuris Canonici* of 1983 and subsequently the *Catechism of the Catholic Church*, which was first published in 1992, as these are influential texts regarding the theology of marriage which have a huge impact on pastoral life worldwide. Two elements serve as a basis for our interrogation of marriage-related topics of the *Code of Canon Law* and the *Catechism*: first, the detection of pre-conciliar relics that have been examined in Part II, and secondly, the unease felt by the majority of the faithful as shown in Part III.

150. As mentioned before, Part IV is subdivided in two sections, in which the *Code* is examined first, followed by the *Catechism*. Within the two sections, we follow the same argumentation structure: first, we highlight the strengths, i.e. the “Values and Benefits” of the magisterial documents; then we focus on “Inconsistencies and Deficiencies” that hinder a conciliar and context-oriented reading of the documents; and finally, we briefly list the most important criteria or “Suggestions for Further Development” of church teaching and law.

IV.1. The Code of Canon Law Revisited

151. The *Codex Iuris Canonici*, promulgated by Pope John Paul II in 1983, represents one of the most significant juridic achievements of the post-conciliar era. In the Apostolic Constitution through which the *Code* was promulgated, *Sacrae disciplinae leges*, Pope John Paul II presented the *Code* as “an efficacious means by which the Church may progress in conformity with the spirit of the Second Vatican Council”. He affirmed that “the Code, not only because of its content but also because of its very origin, manifests the spirit of this Council”. The pope further added that “what constitutes the substantial ‘novelty’ of the Second Vatican Council, in line with the legislative tradition of the Church, especially in regard to ecclesiology, likewise constitutes the ‘novelty’ of the new Code.”¹⁹¹

152. Our common task as theologians and canonists is therefore to examine whether the canons on marriage (cann. 1055-1165: “Title VII” of “Book IV”) in the *Code* truly realise what they profess to achieve, namely, the embodiment of the conciliar vision of marriage.

¹⁹¹ JOHN PAUL II: *Apostolic Constitution Sacrae disciplinae leges for the Promulgation of the New Code of Canon Law*, 25 January 1983, available at https://www.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf_jp-ii_apc_25011983_sacrae-disciplinae-leges.html.

This study will proceed in three steps: first, by identifying the values and strengths of the current canons and recognizing the juridic and pastoral goods already present within them; second, by analysing their inconsistencies and deficiencies in light of the teachings of the Council, post-conciliar theology, and the lived realities of the faithful worldwide; and third, by outlining practical proposals for development, aimed at reconciling legislative coherence with this vision.

IV.1.1. Values and Benefits

153. A first value of the current canonical legislation on marriage is its attempt to receive, at least partially, the teaching of *Gaudium et spes*. For instance, can. 1055 §1 – which is the first canon on marriage in the *Code* – speaks of marriage as a “covenant” (*foedus*) and identifies its two essential ends as the good of the spouses (*bonum coniugum*) and the procreation and education of children (*bonum prolis*): “The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.” It should be recalled that can. 1012 §1 of the 1917 *Code* – which was likewise the first canon on marriage – defined marriage primarily as a “contract”, situating it squarely within classical Roman contractual categories: “§1. Christ the Lord raised the marriage contract itself to the dignity of a sacrament among the baptized.” In this sense, can. 1055 §1 of the revised *Code*, inspired by conciliar teaching, seems to be seeking to orient the regulation of marriage beyond a merely contractual scheme and opens the possibility of viewing canonical marriage through the lens of a person-centred anthropology that reflects the Council’s vision of human love as a participation in divine communion. In a similar vein, can. 1057 §2 describes matrimonial consent as “an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage”, whereas its preceding equivalent, can. 1081 §2 of the 1917 *Code*, defined matrimonial consent as “an act of the will by which each party gives and accepts perpetual and exclusive rights to the body for those actions which are of themselves suitable for the generation of children.”
154. Another value, closely related to what has just been highlighted, concerns the inclusion of the good of the spouses (*bonum coniugum*) among the ends of marriage and the abandonment of the hierarchical ordering of those ends found in the 1917 *Code*. Can. 1013 of the 1917 *Code* stated: “The primary end of marriage is the procreation and education of children; the secondary is mutual support and a remedy for concupiscence.” Can. 1055 of the 1983 *Code* replaces this secondary end with the good of the spouses and recognises it as co-essential rather than derivative in relation to the procreative end. This development has significant canonical consequences, particularly with regard to the evaluation of marital consent and capacity. At the same time, the canons intentionally refrain from defining the *bonum coniugum*, thereby leaving space for further development in its interpretation. This openness has in fact been explored in the jurisprudence of the Roman Rota, which has highlighted, among other elements, interpersonal reciprocity, legitimate expectations, and responsible parenthood as concrete expressions of the *bonum coniugum*.
155. Another value of the current canonical legislation on marriage lies in its affirmation of the sacramentality of marriage between the baptised. As noted above, can. 1055 §1 states:

“The matrimonial covenant...has been raised by Christ the Lord to the dignity of a sacrament between the baptized”, thereby safeguarding the specifically ecclesial character of Christian marriage. It acknowledges that the sacrament confers a “particular firmness” (*peculiarem firmitatem*) upon the two properties of marriage, namely unity and indissolubility.

156. Another value of the current legislation on marriage lies in its attempt to affirm and protect the equality, freedom, deliberation, and commitment of the spouses in the celebration of marriage. Can. 1057 states that matrimonial consent must be exchanged “between persons qualified by law” and must be “legitimately manifested”. To this end, the canons on impediments to marriage (cann. 1083-1094) and on the grounds of nullity (cann. 1095-1107) establish a framework of safeguards against marriages celebrated through deceit, error, ignorance, simulation, force, fear, psychological incapacity, or through crimes such as murder or kidnapping. In particular, can. 1095 recognises forms of incapacity arising from a lack of sufficient use of reason, from a grave defect of discretion of judgment – that is, the inability to understand, evaluate, and freely choose marriage – and from the inability to assume and fulfil the essential obligations of marriage, categories that had no real equivalent in the 1917 *Code*. Moreover, the canons on the canonical form of marriage (cann. 1108-1123) establish a juridic framework regulating the celebration and proper registration of marriage, thereby safeguarding both the will and the public act of the spouses. Can. 1060 further affirms that “marriage enjoys the favour of law” and that “in a case of doubt, the validity of a marriage must be upheld until the contrary is proven”, once again protecting the public and definitive decision of the spouses against unfounded doubts. At the same time, cann. 1130-1133 on marriages celebrated in secret reveal the pastoral wisdom of Church law by regulating exceptional and complex situations in which publicity could cause serious harm to the spouses or to others, such as threats to reputation, personal safety, or grave social repercussions.

157. Another value of the current legislation on marriage is that it also provides a number of norms aimed at fostering marriage, as far as possible, as “a partnership of life and love”. For example, the canons on the preparation of marriage require diocesan and parochial structures for the remote, proximate, and immediate preparation of spouses (cann. 1063-1064), and situate marriage within the broader sacramental economy by explicitly linking it to Confirmation, Reconciliation, and the Eucharist. In doing so, they underscore that marital life unfolds within a process of full Christian initiation and ongoing conversion (can. 1065). The preliminary investigation mandated by cann. 1066-1067 provides a careful mechanism for discerning situations that might render a marriage not only invalid but also gravely imprudent. At the same time, it deserves to be noted that the law’s provision for a system of dispensations in such matters (see can. 1078) reveals the Church’s pastoral wisdom, insofar as it allows for flexibility in exceptional or complex circumstances, ensuring that the law functions as a means of salvation rather than as an obstacle to grace. For their part, the canons that articulate the effects and duties arising from marriage reaffirm the perpetuity and exclusivity of the marital bond, as well as the sacramental consecration of baptised spouses (can. 1134). They further underline the equality of the spouses in rights and duties, including their shared responsibility for the education and care of children – a serious obligation of all Christian parents, whether married or unmarried, also enshrined in can. 226 of the *Code* – while at the same time eliminating some outdated distinctions regarding legitimacy (cann. 1135-1138).

158. Another value concerns the intention of the 1983 *Code* to address with genuine respect the conscience and faith of spouses in mixed marriages (that is, between a Catholic and a baptised non-Catholic) and in marriages affected by disparity of cult (that is, between a Catholic and a non-baptised person). In the 1917 *Code*, such marriages were treated with pronounced suspicion and subjected to strict juridical safeguards. The abrogated canons severely prohibited marriages between a Catholic and a baptised non-Catholic (can. 1060), permitted dispensations only for a grave cause and only after the giving of formal promises, normally in writing (can. 1061), obliged the Catholic spouse to work prudently for the conversion of the non-Catholic partner (can. 1062), forbade any form of religious participation before or after the Catholic celebration with a non-Catholic minister (can. 1063), and required pastors to discourage mixed marriages or marriages with those who had abandoned the faith, to ensure their conformity with Church law and to vigilantly oversee the fulfilment of promises made (can. 1064). By contrast, the current canons (cann. 1124-1129) and can. 1086 establish a juridic path that permits such marriages more easily under specified conditions. Moreover, contemporary canon law seeks to promote ecclesial unity and to honour the traditions of other Churches by permitting, in particular circumstances, dispensations from canonical form in mixed marriages, and by affirming that, in marriages between a Catholic and an Orthodox, canonical form is only for liceity (can. 1127).
159. A further value lies in the intention and effort of cann. 1156-1165 to discreetly regularise invalid marriages through the juridical instruments of *convalidatio* and *sanatio in radice* that permit the retroactive or renewed validation of consent. Although these mechanisms operate within a strongly consent-centred legal framework, the canons nevertheless recognise the significance of the spouses' lived experience of love and seek to serve the peace of families and the welfare of children without subjecting spouses to unnecessary public scrutiny. The 1983 *Code*'s extension of the faculty to grant *sanatio in radice* to diocesan bishops reflects an intention to make this juridic remedy more accessible and pastorally responsive.
160. A further value is that the *Code*, albeit still in an insufficient manner – as will be discussed in the next section – attempts to offer different pastoral-turned-juridic responses to situations in which marriages break down. First, cann. 1151-1155 seek to provide a juridic framework for cases of separation, offering a remedy, albeit a limited one, in situations involving adultery, grave danger, or intolerable cohabitation, while at the same time protecting the innocent party and safeguarding the welfare of the children. These canons recognises that “a legitimate cause” may excuse spouses from “the duty...to preserve conjugal living” (can. 1151-1153) and may grant the innocent spouse has “the right to sever conjugal living” (can. 1152), while ensuring that “the adequate support and education of the children must always be suitably provided” (can. 1154). Second, cann. 1142-1150 provide for the possibility of dissolving a valid marriage in cases of non-consummation or by virtue of the privilege of the faith, that is, when a non-sacramental marriage is dissolved in favour of the faith of one of the parties.

IV.1.2. Inconsistencies and Deficiencies

161. As shown above, the values and benefits of the current canons are rooted in a sincere and rightful intention and reflect a commendable effort to receive Vatican II's person-centred theology of marriage, or at least certain elements of it, and to translate these into juridic terms. Yet, as already hinted above, the canons often fail in the concrete

implementation of these laudable aims. This section will therefore highlight certain inconsistencies and deficiencies in the current canons on marriage, considered in light of the teaching of Vatican II, post-conciliar theology, and the lived realities of the faithful worldwide. It will show that certain aspects of the canons do not fully express the Council's vision or the experience of the faithful and are not conducive to the further development of the Church's legislation. This analysis will proceed following the chronological order of the canons, with a few necessary exceptions.

162. The most significant inconsistency lies in the fact that, although can. 1055 §1 – the first canon on marriage – does speak of “the matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life”, the section on marriage as a whole (“Title VII” of “Book IV” of the *Code*) continues to understand – and thus to regulate and protect – marriage predominantly through the perspective of a contractual model. That is, marriage is primarily treated as the juridic act of consent legitimately manifested between persons qualified by law (the *matrimonium in fieri*), rather than as the living and interpersonal communion of life and love that unfolds dynamically over time (the *matrimonium in facto esse*). While the act of consent is undoubtedly central to both theology and canon law, this imbalance privileges the act of contracting marriage over the ongoing reality of living it. In doing so, it obscures the shift introduced by the Council and developed in post-conciliar theology from a “contract model” to a “covenant model” of marriage, as well as the Council's emphasis on process, growth, fidelity, gradualness, and sanctification within the concrete history of a couple's life.
163. It is also regrettable that, while the Council in GS 48,1 defines marriage as “the intimate partnership of married life and love”, can. 1055 §1 limits itself to describing marriage as “a partnership of the whole of life”. Defining marriage merely as “a partnership of the whole of life”, rather than as “the intimate partnership of married life and love”, risks disregarding essential characteristics and lived realities of marriage – such as emotional engagement, affective bonds, and the long-term effort required to sustain conjugal love – that are indispensable to the understanding of marriage articulated by Vatican II. As will be shown later, this omission has also influenced the definition of marriage in the *Catechism of the Catholic Church*, which adopts a literal quotation of can. 1055 §1 in paragraph 1601.¹⁹²
164. Another deficiency concerns the assertion of can. 1055 §2 regarding the *ipso facto* sacramentality of a marriage between two baptised persons: “between baptized persons there can be no valid matrimonial contract which is not by that very fact a sacrament”. This norm effectively excludes the possibility of a purely natural marriage between two baptised persons, for example when one or both spouses do not intend to enter into a sacramental marriage. Such a position raises serious questions concerning freedom of conscience and internal consent. Similar difficulties arise when one or both spouses lack a sufficient understanding of the meaning of the sacrament due to deficiencies in faith, catechesis, or ecclesial practice, thereby risking a form of sacramental automatism. Separating the juridic validity of marriage from its sacramentality could, by contrast, open the way to a certain notion of graduality with regard to sacramentality, corresponding to the degree of a person's engagement in faith. For instance, baptised Catholics who do not wish to celebrate a sacramental marriage could nonetheless enter into a valid marriage, either through a civil ceremony recognised by the Church or through a different form of celebration within the Church. The concept of graduality is not foreign to canon law; it already appears, for

¹⁹² See section IV.2.1.2. (“Inconsistencies and Deficiencies”), nr. 204-205.

example, in the treatment of the indissolubility of marriage. While all valid marriages are regarded as indissoluble in the eyes of the Church, some are, in juridic terms, “more indissoluble” than others: natural marriages can be dissolved by the privilege of the faith; sacramental but non-consummated marriages can be dissolved by a dispensation for non-consummation; whereas sacramental and consummated marriages can be dissolved only by death (can. 1141). Furthermore, without embracing the notion that the sacrament of marriage is reserved only for the perfect, it remains necessary to ask whether marriage continues to function as a “sacrament” – that is, as a sign and instrument of grace – when the conjugal communion has effectively ceased to exist in practice, or when the spouses may even have come to hate one another. In other words, can it coherently be maintained that the grace of God remains operative in marriage as a sacrament when the “species” of the sacrament have effectively deteriorated?

165. Another deficiency concerns the notion of the consummation of marriage as articulated in can. 1061: “§1. A valid marriage between the baptized is called *ratum tantum* if it has not been consummated; it is called *ratum et consummatum* if the spouses have performed between themselves, in a human fashion, a conjugal act which is suitable in itself for the procreation of offspring, to which marriage is ordered by its nature and by which the spouses become one flesh. §2. After a marriage has been celebrated, if the spouses have lived together, consummation is presumed until the contrary is proven.” The problematic aspects of this canon arise on several levels. Apart from the fact that the term “consummation” carries patriarchal connotations and may no longer be readily understood in contemporary contexts, the canon reflects a reductionist, pre-conciliar sexual anthropology in which genital intercourse alone is understood to actualise marital unity. While it is true that can. 1061 introduces the expression *humano modo*, canon law would benefit from expanding the notion of consummation to include an “existential” level, that is, situations in which a genuine interpersonal relationship – “the intimate partnership of married life and love” – was never truly achieved or realised.

166. Closely linked to this issue are two canons concerning the dissolution of consummated and non-consummated marriages. Can. 1141, which directly influences paragraph 1640 of the *Catechism of the Catholic Church*, states: “A marriage that is *ratum et consummatum* can be dissolved by no human power and by no cause, except death.” Can. 1142 adds: “For a just cause, the Roman Pontiff can dissolve a non-consummated marriage between baptized persons or between a baptized party and a non-baptized party, at the request of both parties or of one of them, even if the other party is unwilling.” In light of the lived experiences of spouses whose marriages break down, can. 1141 can give the impression that the Church bears no responsibility or duty to engage constructively with these situations, even while safeguarding the doctrine of the indissolubility of the matrimonial covenant. By contrast, the dispensation envisaged in can. 1142 opens the possibility for the Church to reflect more deeply on whether it possesses the authority to dissolve ratified marriages not only on the basis of non-consummation but also in view of higher goods – just as the Church, following the example of the Apostle Paul in 1 Cor 7:12-15, dissolves consummated but non-sacramental marriages “in favour of the faith”. As can. 1141 is currently formulated, however, it effectively forecloses any such exploration. Furthermore, the faculty granted in can. 1142 also invites reflection on whether the authority to dissolve non-consummated marriages should remain exclusively vested in the Roman Pontiff or whether it could be extended to others, such as diocesan bishops, thereby rendering these processes more personal, accessible, and efficient. At the root of the current juridic rationale lies the fact that, in Mt 16:19, Christ entrusted “the power of the keys” to Simon Peter, whose successor

is the Roman Pontiff; yet in Mt 18:18, the same authority “to bind and loose” is extended to all the disciples.

167. In this context, it is also appropriate to address can. 1085 §1 on the impediment of prior bond, as well as cann. 1152-1155 on separation while the bond remains. These canons require profound revision, particularly in light of the painful realities experienced by many spouses who find themselves trapped in a limbo of existential “irreparability” and “impossibility”, with no realistic hope of reconciliation. In such cases, the continued maintenance of the bond risks resembling an expired “contract” whose essential purpose has disappeared, yet which continues to impose obligations that are no longer feasible in practice. Such situations have significant repercussions not only for the spouses themselves but also for the lives and faith of their children.
168. Can. 1085 states: “§1. A person bound by the bond of a prior marriage, even if it was not consummated, invalidly attempts marriage. §2. Even if the prior marriage is invalid or dissolved for any reason, it is not on that account permitted to contract another before the nullity or dissolution of the prior marriage is established legitimately and certainly.” This formulation reflects a legal logic that collides with the emotionally burdensome and often prolonged processes many individuals must endure. Within a person-centred framework, the existential breakdown of a marriage is frequently experienced long before juridic certainty is reached, thereby creating a profound gap between canonical status and lived commitment.
169. Contemporary separation dynamics extend far beyond and often differ radically from those envisaged in cann. 1152-1155. For instance, can. 1152 §1 treats adultery as a privileged cause of separation, whereas in reality, adultery is often only one symptom among many deeper relational failures. Can. 1152 §2 further introduces the notion of tacit condonation of adultery by the other spouse through voluntary marital relations or six months of cohabitation. As formulated, the canon presumes that sexual relations imply reconciliation, whereas in reality, sexual intimacy may occur under pressure, for the sake of stability, or without trust or forgiveness. The six-month presumption itself is arbitrary: silence does not necessarily imply consent or reconciliation, and a spouse may delay decisions and remain in a state of emotional limbo for years. Moreover, can. 1152 §3 mandates recourse to ecclesiastical authority in cases of separation and portrays this authority as one that determines “whether the innocent spouse can be moved to forgive the fault and not to prolong the separation permanently”. Such a depiction is morally paternalistic and, in some cultural contexts, unacceptable. Can. 1153 §2 states that “in all cases, when the cause for the separation ceases, conjugal living must be restored unless ecclesiastical authority has established otherwise.” This presents a twofold difficulty: first, it unrealistically presumes reversibility, whereas modern separations often involve new residences, established routines for children, and civil divorce proceedings; second, it assumes decisive ecclesiastical authority in matters that are now largely governed by civil courts, particularly with regard to custody, residence, and financial support. The canon thus presupposes a degree of juridic power that the Church no longer possesses. Finally, can. 1155, concerning the readmission of the guilty spouse, presents heroic forgiveness as a juridic expectation. While forgiveness is rightly praised, the canon subtly pressures reconciliation without sufficient regard for long-term harm or the complexity of relational trauma.

170. A number of canons concerning diriment impediments that disqualify a person from entering marriage also warrant review in light of the conciliar and post-conciliar understanding of marriage. Can. 1083 on the minimum age for marriage currently states: “§1. A man before he has completed his sixteenth year of age and a woman before she has completed her fourteenth year of age cannot enter into a valid marriage. §2. The conference of bishops is free to establish a higher age for the licit celebration of marriage.” In several Western countries, where civil marriage precedes the religious celebration and where the minimum age for civil marriage is set at eighteen years, this canon appears incongruous. In other parts of the world, where sexual maturity may be established at an earlier age, the canon may seem more culturally acceptable. Nevertheless, the minimum age appropriate for a person-centred understanding of marriage should not be determined solely by physical or sexual maturity – especially given that physical maturation now occurs at increasingly earlier ages (for example, around 10-11 years for girls, compared with 13-14 in previous generations) – but must also take into account emotional, psychological, and economic readiness. It should be recalled that the origins of the current impediment can be traced back to Roman law, which grounded marriage primarily in biological capability and functional maturity rather than in personal development, affective bonding, and the covenantal vision of marriage as “the intimate partnership of married life and love” ordered to the good of the spouses.
171. Can. 1084 §1, concerning the impediment of impotence, currently states: “Antecedent and perpetual impotence to have intercourse, whether on the part of the man or the woman, whether absolute or relative, nullifies marriage by its very nature.” Framing marriage in such a way that the capacity for genital intercourse is considered constitutive of marriage “by its very nature” – as is likewise reflected in can. 1061 on the consummation of marriage – runs counter to a person-centred vision of marriage and fails to accommodate adequately the diversity of human conditions and disabilities. While sexual intercourse holds an important place within marriage, it should not function as an absolute prerequisite for marital validity. The expression of sexual intimacy may take various forms beyond genital intercourse, and it must also be recognised that sexual relations may diminish over time while the essence of the marital bond remains intact. Furthermore, this canon gives rise to a practical contradiction. On the one hand, it speaks of the impediment of impotence at the moment of consent. On the other hand, Church teaching prohibits premarital sexual activity as a means of assessing or confirming this condition before marriage.
172. Can. 1086 on disparity of cult, which states that “a marriage between two persons, one of whom was baptized in the Catholic Church or received into it, and the other of whom is not baptized, is invalid”, sits uneasily with the lived reality of many contemporary couples. For such couples, religious difference is often experienced as one dimension of personal identity among many, rather than as a fundamental obstacle to marital communion. In this context, it is appropriate to depart momentarily from the chronological order of the canons and turn to cann. 1124-1129 on “mixed marriages” and “marriages by disparity of cult”.¹⁹³ Can. 1124 requires that a mixed marriage “cannot be celebrated without the express permission of the competent authority”. The notion that marriage to another baptised Christian places the parties in an exceptional juridic category requiring explicit permission is largely unintelligible to couples formed within ecumenical and pluralistic contexts, where

¹⁹³ These canons continue to employ terminology which, in light of the history and developments of the ecumenical movement, would benefit from revision in favour of expressions such as “interchurch marriages” or “ecumenical marriages”.

denominational boundaries often carry little existential weight. Similar difficulties arise with can. 1127 §§1-2, which prescribes the canonical form for such marriages and allows for a dispensation from the canonical form only in cases of grave difficulty. While it remains important that marital consent not be given or renewed twice in two religious ceremonies or before two ministers within the same ceremony (can. 1127 §3), it must be acknowledged that in ecumenically mixed families, the use of either the Catholic form or another Christian form of marriage may be experienced as a sign of familial unity rather than a source of theological confusion. Consequently, such prohibitions may be perceived as pastorally alienating rather than pastorally clarifying.

173. Can. 1125, 2 requires that the non-Catholic spouse be informed of the unilateral promises made by the Catholic party under canon 1125, 1 (namely, to “remove dangers of defecting from the faith” and to do “all in his or her power” to have all children baptised and raised Catholic) “in such a way that it is certain” that the non-Catholic spouse is aware of them. The canon does not require dialogue, discussion, or agreement, thereby creating a significant risk that this requirement may be reduced to a merely formal acknowledgment with little substantive effect, since awareness does not entail consent, agreement, or future compliance. Within a person-centred understanding of marriage, such unilateral promises could be replaced by mutual declarations of respect for conscience and faith, as well as shared commitments regarding the education of children (see can. 1136). Such an approach – potentially entrusted to particular law, since the relationships between the Catholic Church, on the one hand, and other Churches and Christian communions, on the other, vary from place to place – would transform these norms from instruments primarily concerned with safeguarding confessional boundaries into expressions of dialogue, reciprocity, and mutual respect. This recognition of conscience would help prevent violations of personal integrity and would be consistent with Vatican II’s ecumenical vision, as articulated in *Unitatis redintegratio*, and the Council’s affirmation of religious freedom, as expressed in *Dignitatis humanae*.
174. The cluster of canons on matrimonial consent and incapacity (cann. 1095-1107) represents one of the most ambitious efforts within the *Code* to integrate a person-centred anthropology into marriage law. Yet even within this section, certain canons warrant further review in light of the conciliar and post-conciliar understanding of marriage. Can. 1096 §1, which establishes ignorance as a ground of nullity, currently states: “For matrimonial consent to exist, the contracting parties must at least not be ignorant that marriage is a permanent partnership between a man and a woman ordered to the procreation of offspring by means of some sexual cooperation.” Within a person-centred understanding of marriage, such minimal cognitive content should also include an awareness that marriage is ordered to the good of the spouses, taking into account the mutual self-gift and relational commitment expected of them.
175. Can. 1097 §2, which concerns error as a ground of nullity, currently reads: “Error concerning a quality of the person does not render a marriage invalid even if it is the cause for the contract, unless this quality is directly and principally intended.” This canon reflects a predominantly contractual understanding of marriage and sits uneasily with a person-centred vision grounded in the notion of a lifelong partnership of life and love. It also fails to take adequate account of the fact that personal qualities, such as emotional stability, religious commitment, or the capacity for communication, are often central to the decision to marry.

176. Can. 1100 states that “the knowledge or opinion of the nullity of a marriage does not necessarily exclude matrimonial consent”. While this canon reflects a juridic effort to preserve the validity of consent despite intellectual doubt, from a person-centred perspective it risks minimising the moral and existential significance of intentionality. When a party believes a marriage to be invalid yet nonetheless proceeds with its celebration, the distinction between juridic consent and authentic personal self-commitment becomes increasingly difficult to sustain.
177. Can. 1102, which concerns conditions attached to consent, currently states: “§1. A marriage subject to a condition about the future cannot be contracted validly. §2. A marriage entered into subject to a condition about the past or the present is valid or not insofar as that which is subject to the condition exists or not. §3. The condition mentioned in §2, however, cannot be placed licitly without the written permission of the local ordinary.” This canon reflects a largely contractual understanding of marriage. By contrast, Eastern Catholic canon law permits no conditions whatsoever in the celebration of marriage.
178. Can. 1103, which concerns force and fear as grounds of nullity, currently reads: “A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in order to be free from it.” This formulation appears to understate the extent to which contemporary forms of coercion are often internalised, psychological by nature, or culturally mediated, and therefore largely invisible within a strictly external juridic framework. The canon could also be expanded to address more explicitly the lived realities of arranged marriages. In certain cultural contexts, marital consent may be given primarily due to parental or familial pressure, or in circumstances where the future spouse is scarcely known.
179. Cann. 1108-1123 on the canonical form of marriage reveal an institutional emphasis that often clashes with contemporary lived realities. As stated above, these canons are undoubtedly important insofar as they establish a framework regulating the celebration and proper registration of marriage, thereby safeguarding the will and public act of the spouses in the celebration of their marriage. However, by linking canonical form directly to the validity of marriage (see can. 1108 §1: “Only those marriages are valid which are contracted before the local ordinary, pastor, or a priest or deacon delegated by either of them, who assist, and before two witnesses...”) rather than to its liceity, the law presumes that canonical form is experienced as constitutive of the reality of marriage itself. Is it acceptable that such an important act can be invalidated by a failure to comply with procedures on the part of third parties or witnesses? In fact, in practice, many couples, particularly in Western contexts, experience form as secondary to intention, fidelity, and the shared life of the spouses. This tension is further confirmed by the fact that canonical form pertains entirely to ecclesiastical law and has no basis in divine law, unlike the norms governing matrimonial consent and impediments. With regard to the manifestation of consent, can. 1105 on marriage by proxy also merits reconsideration, as it appears difficult to justify within a person-centred understanding of marriage that emphasises personal presence, relational encounter, and mutual self-gift.
180. Cann. 1137-1140 concerning the legitimacy and illegitimacy of children no longer possess theological or canonical relevance. They are incompatible with the Church’s pastoral commitment to the equal dignity of all the baptized and with the fundamental principle that children are never “irregular” in the eyes of God. For these reasons, they should be suppressed.

181. Cann. 1156-1165 on the convalidation of marriage presuppose a strongly juridical model of marriage in which validity is secured through discrete legal acts, formal renewals of consent, and administrative interventions by ecclesiastical authority. When read in light of a person-centred understanding of marriage, several assumptions underlying these canons appear increasingly anthropologically and pastorally unrealistic in contemporary contexts. Can. 1156 §1 states: “To convalidate a marriage which is invalid because of a diriment impediment, it is required that the impediment ceases or is dispensed and that at least the party conscious of the impediment renews consent. §2. Ecclesiastical law requires this renewal for the validity of the convalidation even if each party gave consent at the beginning and did not revoke it afterwards.” This canon reflects a form of legal formalism that sits uneasily with a person-centred vision of marriage. From the perspective of lived experience, couples who have freely chosen one another, built a shared life, and remained mutually committed may find it difficult to understand why their marriage is considered invalid until a further juridic act is performed. Can. 1158 §2 and 1159 §2 further illustrate this tension by providing that, when an impediment or defect of consent cannot be proven, it suffices that the party conscious of the impediment or defect “renews the consent privately and in secret, provided that the other perseveres in the consent offered”. From a person-centred perspective, the notion that the juridic status of a marriage can be altered by a hidden internal act of consent – unknown even to one of the spouses – appears deeply counterintuitive and prioritises juridic demonstrability over interpersonal transparency. Marriage, understood today as a fundamentally interpersonal and dialogical reality, is difficult to reconcile with a legal mechanism that allows validity to hinge upon unilateral acts that are secret. These tensions are further accentuated in the norms concerning *sanatio in radice*. Can. 1161 §1 defines sanation as convalidation “without the renewal of consent, which is granted by competent authority and entails the dispensation from an impediment, if there is one, and from canonical form, if it was not observed, and the retroactivity of canonical effects”. Can. 1164 further states that “a sanation can be granted validly even if either or both of the parties do not know of it”. While this juridic mechanism respects the historical reality of the couple and can be pastorally expedient, the idea that a person’s marital status may be altered without his or her knowledge risks instrumentalising the spouses for the sake of juridic order. It also demonstrates that the current norm gives priority to safeguarding the validity of the marriage over the persons and personal relationships involved in the same marriage.

182. A final canon to be considered, although it does not belong to the canons on marriage, is can. 915, on admission to Holy Communion (see “Title III” of “Book IV”), which states: “Those who have been excommunicated or interdicted after the imposition or declaration of the penalty and others obstinately persevering in manifest grave sin are not to be admitted to Holy Communion.” There exists a widespread interpretation according to which this canon typically applies to Catholics who are civilly married or who are divorced and remarried. This interpretation has its roots in number 84,4 of *Familiaris consortio*; it was incorporated into paragraphs 1650 and 2384 of the *Catechism of the Catholic Church*; it was endorsed by the Congregation for the Doctrine of the Faith in its 1994 Letter to the Bishops concerning the reception of Holy Communion by divorced and remarried Catholics (issued in response to the bishops of the Upper Rhine region);¹⁹⁴ and it was confirmed by

¹⁹⁴ See CONGREGATION FOR THE DOCTRINE OF THE FAITH: *Letter to the Bishops of the Catholic Church concerning the Reception of Holy Communion by the Divorced and Remarried Members of the Faithful*, 1994, available at

the Pontifical Council for Legislative Texts in its 2000 Declaration on the same matter.¹⁹⁵ As a result, many Catholics around the world either are excluded from, or voluntarily abstain from, receiving Holy Communion on account of their “irregular” marital situation.

183. This interpretation, however, should be reassessed for several reasons. First, can. 915 restricts a fundamental right of the baptised, namely access to the Eucharist (can. 213), and must therefore be interpreted in accordance with can. 18, which requires that laws restricting the free exercise of rights be subject to strict interpretation. In this light, can. 915 does not explicitly refer to Catholics who are civilly married or divorced and remarried, but rather to those “obstinately persevering in manifest grave sin”. Second, it cannot be presumed that civilly married or divorced and remarried Catholics are invariably “obstinately persevering in manifest grave sin”. Moral theology and recent papal magisterium emphasise the necessity of personal discernment and recognise that the notion of “grave sin” includes subjective imputability. *Amoris laetitia* affirms that certain circumstances can mitigate or even eliminate culpability in objectively irregular situations, noting that couples living in such situations “can be living in God’s grace, can love, and can also grow in the life of grace and charity, while receiving the Church’s help to this end” (AL 305). Footnote 351 to this passage further clarifies that “in certain cases, this can include the help of the sacraments.”¹⁹⁶ Moreover, in order for a person to be considered as “obstinately persevering” in sin, prior admonitions and persistence in the behaviour despite such warnings are ordinarily required (see, for instance, can. 1347 §1 and can. 1326 §1). Third, with regard to the term “manifest”, it is often not publicly known whether a couple is divorced and remarried, nor is it generally known whether remarried Catholics may be living in continence.

IV.1.3. Suggestions for Further Developing Church Legislation

184. Review the canons on marriage in “Title VII” of “Book IV” and replace references to “contract”, “contracting parties,” “contracting marriage”, and similar terminology with expressions such as “celebrate marriage” or “enter into marriage”.

185. Review can. 1055 §1 on the definition of marriage so as to incorporate the full expression from GS 48 – “the intimate partnership of married life and love” – in order to

https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_14091994_rec-holy-comm-by-divorced_en.html.

¹⁹⁵ Pontifical Council for Legislative Texts: *Declaration II. Concerning the Admission to Holy Communion for Faithful Who Are Divorced and Remarried*, 2000, available at

https://www.vatican.va/roman_curia/pontifical_councils/intrptxt/documents/rc_pc_intrptxt_doc_20000706_declaration_en.html.

¹⁹⁶ Alongside AL, one should also read *Basic Criteria for the Application of Chapter Eight of Amoris Laetitia*, published by the bishops of the Buenos Aires pastoral region, as well as the *Letter of Pope Francis to the Delegate of the Buenos Aires Pastoral Region*, in which he explicitly confirmed those criteria (see REGIÓN PASTORAL BUENOS AIRES: *Criterios Básicos para la Aplicación del Capítulo VIII de Amoris Laetitia*, 5 September 2016, available at https://www.vatican.va/content/francesco/es/letters/2016/documents/papa-francesco_20160905_regione-pastorale-buenos-aires.pdf). Both the letter and the criteria were published in *AAS* 108/10 (2016), 1071-1074, followed by the Secretary of State’s *Rescriptum ex audientia SS.mi* of 5 June 2017, which ordered their publication as expressions of the authentic ecclesiastical magisterium.

counter the prevailing notion that certain lived realities of marriage lack significance in the Church's understanding and juridic protection of marriage.

186. Relocate and integrate the content of cann. 1134 (“From a valid marriage there arises between the spouses a bond which by its nature is perpetual and exclusive. Moreover, a special sacrament strengthens and, as it were, consecrates the spouses in a Christian marriage for the duties and dignity of their state”), 1135 (“Each spouse has an equal duty and right to those things which belong to the partnership of conjugal life”) and 1136 (“Parents have the most grave duty and the primary right to take care, as best they can, for the physical, social, cultural, moral, and religious education of their offspring”) into the opening section of “Title VII” of “Book IV” (cann. 1055-1062), which contains the foundational canons on marriage. In this process, expand the concept of equality articulated in can. 1135 in order to promote and protect the equal dignity and responsibility of both spouses in cultural contexts marked by patriarchy, gender inequality, and disparities in domestic and familial responsibilities.
187. Suppress can. 1055 §2 on the *ipso facto* sacramentality of a valid marriage. The references already contained in can. 1055 §1 (“The matrimonial covenant...has been raised by Christ the Lord to the dignity of a sacrament between the baptized”) and can. 1056 (“The essential properties of marriage are unity and indissolubility, which in Christian marriage obtain a special firmness by reason of the sacrament”) are sufficient. Consider introducing a certain notion of graduality with regard to sacramentality, corresponding to the degree of a person's engagement in faith, as proposed in nr. 163 of this Report. More broadly, it is also important that the Church reflect on how to accompany persons in their concrete life situations: some explicitly seek the sacrament, while others may simply desire to receive a blessing from the Church. Such requests constitute valuable pastoral opportunities to deepen the faith of those concerned and to make tangible the Church's presence at their side, thereby fostering a more attentive and meaningful pastoral approach.
188. Review the content of cann. 1061, 1085, 1141-1142 and 1151-1155 on the separation of spouses and the dissolution of marriage in light of the arguments presented above:
- to retain the following foundational principles: that spouses have the duty and right to preserve conjugal living unless a legitimate cause excuses them (can. 1151); that while forgiveness motivated by Christian charity is laudable, the innocent spouse retains the right, and in some cases the duty, to sever conjugal living (can. 1152 §1); that a spouse who causes grave mental or physical danger to the other spouse or to the offspring, or otherwise renders common life too difficult, provides a legitimate cause for separation (can. 1153 §1); and that after separation the adequate support and education of the children must always be ensured (can. 1154).
 - to expand the grounds for separation beyond those currently articulated in can. 1153, so as to include harm to the dignity of the spouse or children, serious violations of the essence of the matrimonial covenant, and other grave circumstances that render conjugal life untenable.
 - to allow for the further development of the concept of consummation, by omitting the exclusive reference to physical consummation and by giving greater juridic weight to the complex process through which marital consent is actualised in the lived reality of marriage, thereby recognising that marital unity is progressively built through different stages of life.
 - to acknowledge the painful realities experienced by many spouses who find themselves trapped in a limbo of existential “irreparability” and “impossibility”. In this context, one

might consider the reference in FC 84,2 to spouses who are “certain in conscience that their previous and irreparably destroyed marriage had never been valid” or the Orthodox notion of the existential death of a marriage.

- to explore a potential canonical approach that would transform a marriage failure and a separation of spouses, after a specified number of years and when it becomes clear that reconciliation is not possible, into a dissolution of the marriage, analogous to the one in favour of the faith, invoking for instance, the principles of “irreparability” and “impossibility”. This juridical procedure could be carefully circumscribed and exercised under episcopal discernment and could feature a stronger recognition of the conscience and the moral agency of spouses and their capacity to participate in the official discernment about their marriage. Such recognition would not relativise the marriage but would acknowledge the role of conscience as the “most secret core and sanctuary of the person” (GS 16), where the human being is alone with God. Such a procedure would also embody the Church’s conviction that “no one can be condemned forever, because that is not the logic of the Gospel” (AL 297).

189. Reassess can. 1083 on the impediment of age with a view to increasing the minimum age for marriage.
190. Review can. 1084 on the impediment of impotence, for example by replacing the language of “impotence to have intercourse” with a formulation centred on the “ability to express marital love through physical intimacy”. GS 49,2 speaks of love as an affection of the will that expresses itself in both body and mind. Such expressions may include the whole range of embodied affection, from tenderness to various forms of physical intimacy.
191. Amend can. 1096 §1 on the nullity ground of ignorance, so as to expand the definition of marriage to include explicitly “the intimate partnership of married life and love” and to recognise that marriage is also ordered to “the good of the spouses.”
192. Suppress can. 1097 §2 on the nullity ground of error.
193. Rework can. 1102 on the nullity ground of condition, or replace it with can. 826 of CCEO/90, which states: “Marriage based on a condition cannot be validly celebrated.”
194. Elaborate can. 1103 on the nullity ground of force or fear so as to include dimensions of psychological, cultural, and familial pressure.
195. Review cann. 1108-1123 on canonical form in order to distinguish more clearly between the disciplinary necessity of canonical form for the liceity of marriage (which ensures publicity, juridical certainty, and proper record-keeping) and its necessity for the validity of marriage.
196. Suppress cann. 1137-1140 on the legitimacy and illegitimacy of children.

IV.2. The *Catechism of the Catholic Church* Revisited

197. The *Catechism of the Catholic Church* was first promulgated by Pope John Paul II in 1992.¹⁹⁷ It was presented as “an instrument to convey the essential and fundamental content of the Catholic faith and morals, in a complete and summary way”. The sources of the *Catechism* include the “Sacred Scripture, the western and eastern traditions of the Church (in particular the Church Fathers), Liturgy, the Magisterium, the Code of Canon Law, and the life and the teachings of the saints”. It is important, however, to note that its contents “reflect essentially, even though not exclusively, the Second Vatican Council”, which implies that the *Catechism* “is dedicated to the full and faithful expression and implementation of the teaching of the Second Vatican Council”.¹⁹⁸ Our common task as theologians and canonists is therefore to examine whether the *Catechism* does what it promises to do, namely to implement the teachings of Vatican II. We treat two segments of the *Catechism* which deal with marriage, the first from a systematic-theological point of view (CCC 1601-1666: “Part Two: The Celebration of the Christian Mystery, Section Two: The Seven Sacraments of the Church, Chapter Three: The Sacraments at the Service of Communion, Article 7: The Sacrament of Marriage”), the second from a moral-theological viewpoint (CCC 2331-2400: “Part Three: Life in Christ, Section Two: The Ten Commandments, Chapter Two: You Shall Love Your Neighbor as Yourself, Article 6: The Sixth Commandment”).

IV.2.1. CCC 1601-1666 (“The Sacrament of Marriage”)

IV.2.1.1. *Values and Benefits*

198. First of all, we acknowledge the value and merit of the *Catechism* when it comes to the subject of marriage. The *Catechism* views marriage positively as an intimate and loving partnership between equal spouses that expresses itself sexually, without attaching any overriding importance to procreation. In the opening passages, entitled “Marriage in God’s Plan”, it is explained that the mutual love between man and woman “is good, very good, in the Creator’s eyes” (CCC 1604). Certainly, after the fall, the union of man and woman, who God originally intended to lead a blissful life with each other, was and still is “threatened by discord, a spirit of domination, infidelity, jealousy, and conflicts that can escalate into hatred and separation” (1606). However, marriage is an exquisite remedy to “overcome self-

¹⁹⁷ Pope John Paul II promulgated the *Catechism of the Catholic Church* on 11 October 1992, the 30th anniversary of the opening of the Second Vatican Council, accompanied by the Apostolic Constitution *Fidei depositum*. The first Latin typical edition was promulgated on 15 August 1997. An English version of the *Catechism* was published in 1994 by United States Conference of the Catholic Bishops, followed by a second edition in 1997. In the following, we refer to *Catechism of the Catholic Church*, Second Edition, revised in accordance with the official Latin text promulgated by Pope John Paul II, Vatican City: LEV, 2019; also available at <https://usccb.cld.bz/Catechism-of-the-Catholic-Church/6/>. In the following, we refer to this edition; all italicised text from this edition has been retained. Where the *Catechism* quotes from the documents of the Vatican II, these quotations are taken from the translation by Austin Flannery; see A. FLANNERY (ed.): *Vatican Council II: Conciliar and Post-Conciliar Documents*.

¹⁹⁸ All quotations are from EDITORIAL COMMISSION OF THE CATECHISM OF THE CATHOLIC CHURCH: *Informative Dossier*, 1992, available at https://www.vatican.va/roman_curia/congregations/cfaith/ccc_documents/rc_con_cfaith_doc_19920625_informative-ccc_en.html.

absorption, egoism, pursuit of one's own pleasure, and to open oneself to the other, to mutual aid and to self-giving" (1609). Following Jesus' preaching, the Church has always emphasised "the confirmation of the goodness of marriage" (1613). Theologically speaking, the community of man and woman needs "the help of the grace that God in his infinite mercy never refuses them" (1608), which is what marriage stands for: it is "an efficacious sign of Christ's presence" (1613), or, put differently, "Christian marriage in its turn becomes an efficacious sign, the sacrament of the covenant of Christ and the Church" (1617). To present human marriage as good in itself and Christian marriage ("Marriage in the Lord", see CCC 1612-1617) as a means of salvation is to reject the long-held belief that procreation is the sole way to justify and legitimise marriage. But an echo of the procreative vision still resounds when CCC 1654 notes that "[s]pouses to whom God has not granted children can *nevertheless* have a conjugal life full of meaning, in both human and Christian terms" (emphasis added). Given the essential importance of reproduction in church history, this assertion is understandable, but the current context sheds new light on the meaning of procreation, and it does so by replacing traditional childbearing with alternative forms of fertility. In that sense, the *Catechism* rightly asserts that childless marriage "can radiate a fruitfulness of charity, hospitality and self-sacrifice" (1654).

199. From a pastoral and theological perspective, the *Catechism* conveys in general an appropriate image of grace in the sacrament of marriage. CCC 1615 points out that "Jesus has not placed on spouses a burden impossible to bear, or too heavy", adding that the "grace proper to the sacrament of Matrimony is intended to *perfect* the couple's love and to *strengthen* their indissoluble unity" (1641; emphases added).¹⁹⁹ As characteristic and accurate as these descriptions of sacramental grace may be, they do not cover the full scope of the theology of grace. The verbs "perfect" and "strengthen" imply that there is a foundation in the marital relationship on which more could be built. But what happens if the couple fails in their marital endeavours? Sacramental grace reaches another dimension when spouses find themselves in a situation that can best be expressed by the terms "taking up the cross", "starting from scratch", "facing up to guilt", and "finding the burden too heavy". The *Catechism* recognises these situations when it argues that Christ, dwelling with the spouses, "gives them the strength to take up their crosses and so follow him, to rise again after they have fallen, to forgive one another, to bear one another's burdens" (1642). One should not underestimate the purview of these grace-theological assertions. Christ's grace grants the capability to accept another person unconditionally, regardless of their characteristics, achievements, or failures. In the case of failure, however, it is nonsensical to only speak about "perfection" and the "desirable", especially in situations that seem hopeless, as illustrated by the biblical story of the "prodigal son". The question remains then whether the *Catechism* is capable of breaking through the regime of "perfection" and "idealisation" and honestly acknowledge that some burdens can be too heavy to bear. Is there room for mercy and for a "second thought" about the best humanly possible in a given situation?

200. Some further aspects are worth mentioning. The *Catechism* is unequivocal in its assertion that marriage is founded on the equality of woman and man and that the

¹⁹⁹ Similar terms can be found in CCC 1643 ("...it is a question of the normal characteristics of all natural conjugal love, but with a new signification which not only *purifies* and *strengthens* them, but *raises* them to the extent of making them the expression of specifically Christian values", quoted from FC 13) and 1644 ("This human communion [of the spouses] is *confirmed*, *purified*, and *completed* by communion in Jesus Christ, given through the sacrament of Matrimony") (all emphases added).

cooperation of the spouses in family and society is based on a relationship characterised by mutual respect and intimacy. Since we are “created in the image and likeness of God who is himself love”, the characteristic of spousal love is “to be fruitful and to be realized in the common work of watching over creation” (1604). In other words, the stewardship of creation is a “common work”, meaning that parenthood is not depicted as a particularly female task. The woman is the man’s “counterpart, his equal, his nearest in all things” (1605).

201. The idea that virginity takes precedence over marriage, which has often shaped the Catholic view of marriage, has also been abandoned. The paragraphs on virginity (1618-1620) emphasise its importance in the history of salvation, without, however, disparaging marriage. “Both the sacrament of Matrimony and virginity for the Kingdom of God come from the Lord himself. It is he who gives them meaning and grants them the grace which is indispensable for living them out in conformity with his will” (1620). Respect for virginity in view of the coming kingdom of God on the one hand, and the Christian meaning of marriage in today’s world on the other, are inseparably linked and reinforce each other.
202. The *Catechism* also pays attention to situations that lie somewhat outside the parameters that the Church’s teaching and regulations uphold. These include persons who find it “difficult, even impossible, to bind oneself for life to another human being” (1648), divorced and remarried persons (1649-1651), infertile spouses (1654), and permanently single persons (1658). The latter two cases can count on recognition and appreciation on the part of the Church. The first two cases, namely cohabiting couples and divorced people who have remarried, however, meet with more disapproval and rejection. It is important to bear in mind that the *Catechism* directs its interest mainly to cultures which are familiar with Western mentalities. Non-Western cultures are hardly mentioned, with the exception of polygamy, which is completely rejected (1645, 1664, 2387, 2400).²⁰⁰
203. Of great importance is also a suitable and timely preparation of couples for marriage, since “solid and lasting human and Christian foundations” must be laid in view of the free and responsible act that constitutes marriage (1632). In this context, another passage from the *Catechism* makes perfect sense when it rightly points out the difficulties couples face today in committing themselves to another partner *for life*. “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.” (1648) Pastoral care is imperative, since the decision to enter into marriage cannot be limited to the moment of consent, but is part of a long, if not “lifelong”, process.

²⁰⁰ While CCC 1648 contents itself with the phrase, “[p]olygamy is contrary to conjugal love which is undivided and exclusive”, the *Youth Catechism of the Catholic Church* is more pronounced in its judgment: Christianity views polygamy as “a fundamental offense against charity and human rights” (*YOUCAT: Youth Catechism of the Catholic Church*, translated by M.J. Miller, San Francisco: Ignatius Press, 2011, 262 [hereafter YOUCAT], available at <https://ucymb.wordpress.com/wp-content/uploads/2015/12/youth-catechism-of-the-catholic-church1.pdf>). See also CCC 2387, which states that polygamy “negates the plan of God” and is “contrary to the equal personal dignity of men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive” (quote from FC 19).

IV.2.1.2. *Inconsistencies and Deficiencies*

204. Having said that, it is obvious that not all paragraphs of the Catechism merit the same level of accordance and appreciation. In the following, we will highlight passages that we consider not helpful for the further development of the Church's teaching, and some that we even consider harmful. This will be done in chronological order of the paragraphs.

205. **CCC 1601 (doctrinal definition of marriage):** Paragraphs 1601-1666, which deal with "The Sacrament of Marriage", begin with a summary definition of the meaning of marriage theology. As theologians and canonists, we can only regret that the definition is taken entirely from the *Code of Canon Law* and consists in a literal quotation from CIC 1983 can. 1055 §1, which reads: "The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of offspring; this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament." A first critical remark concerns the intention and scope of a catechism. The present *Catechism* contains, as the Informative Dossier of the Editorial Commission of the *Catechism* argues, "the fundamental Christian truths, formulated in a clear way so that their understanding, apprehension and lively reception are made easier".²⁰¹ There is no doubt that the *Catechism* also encompasses the legal and juridical order that the Church provides for and which is intended to enable and ensure a peaceful coexistence among believers, with the ultimate goal of achieving salvation. However, the *Code*, which embodies the Church's legal order, cannot replace the tradition of faith; it can only supplement it. As Pope John Paul II said in his presentation of the new *Codex*, it is "in no way intended as a substitute for faith, grace and the charisms in the life of the Church and of the faithful."²⁰² Any attempt to define the Church's faith in legal terms would not do justice to the rich treasure of the faith. This becomes even clearer when one considers what can. 1055 §1 covers in relation to marriage and what it does not cover.

206. CCC 1601 is undoubtedly committed to the definition of marriage as defined in GS 48. Concordant terms such as "conjugal" or "matrimonial covenant", "irrevocable personal consent" or "partnership of the whole of life", the "good of the spouses" and "the procreation and education of offspring", the Redeemer who "comes to the lives of married Christians through the sacrament of matrimony" or Christ who raises baptized person "to the dignity of a sacrament", are found in GS 48 and CCC 1601 (quoted from CIC 1983 can. 1055 §1) and are consistent in their meaning. However, it is very regrettable that, while GS 48,1 defines marriage as a "partnership of married life *and love*" (emphasis added), the *Catechism* contents itself with describing marriage as a "partnership of the *whole of life*" (emphasis added), thus omitting the term "conjugal love" which is indispensable for the understanding of marriage proper to Vatican II. Defining marriage merely as a "partnership of life" and not as an "intimate partnership of married life and love", means disregarding an essential characteristic of marriage.

207. **CCC 1610-1611, 1613-1615, 1617 (biblical perspectives on monogamy, indissolubility, and sacramentality):** The way biblical references are used in the *Catechism* often does not meet today's academic standards of biblical interpretation. These references tend to obscure rather than to build upon the parameters and strengths of the

²⁰¹ EDITORIAL COMMISSION OF THE CATECHISM OF THE CATHOLIC CHURCH: *Informative Dossier*.

²⁰² JOHN PAUL II: *Apostolic Constitution Sacrae disciplinae leges*.

tradition with regard to the unity, fidelity, indissolubility, and sacramentality of marriage. For instance, CCC 1610 gives the impression that the books of the Old Testament provide clear evidence of a gradual decline of polygamy and the consolidation of monogamy. From an exegetical and historical point of view, this is only partly correct. Similarly, CCC 1611 seems to claim that the prophets must be read as precursors who “prepared the Chosen People’s conscience for a deepened understanding of the unity and indissolubility of marriage”, and that the Song of Songs must be regarded as a “unique expression of human love, insofar as it is a reflection of God’s love”. Although not fallacious, this interpretation of the biblical sources is at least ambiguous. And it even becomes more obvious when passages from the New Testament are appealed to. CCC 1613 sees in Jesus’ attendance at the wedding at Cana “an efficacious sign of Christ’s presence” whereas CCC 1614 and 1615 equate Jesus’ preaching with a “unequivocal insistence on the indissolubility of the marriage bond” (1615). Likewise, in CCC 1617 it is claimed that the “entire Christian life bears the mark of the spousal love of Christ and the Church”, thus suggesting that the teaching of the sacramentality of all marriages between baptised persons has been an integral part of Christian belief since the time of the New Testament. What is overlooked in these interpretations of the biblical sources is that the doctrine of the sacramentality of marriage, which CCC 1617 erroneously considers to be defined in Eph 5, only emerged after centuries of theological reflection on marriage. Something similar applies to the teaching of the indissolubility of marriage. The New Testament authors have recalibrated Jesus’ teaching on divorce in order to apply it to the particular situations in their own communities (see Mt 5:32; 19:9; Mk 10:12; 1 Cor 7:10-12.15); thus, the “unequivocal insistence on the indissolubility of the marriage bond” (1615) is the result of later doctrinal and canonical considerations.

208. **CCC 1627 (consent of marriage):** The paragraphs concerning “matrimonial consent” (1625-1632) rightly emphasise the *liturgical, public, and ecclesial* character of the marriage (celebration) (see especially 1631). What “makes the marriage” (1626) is the consent or, in other words, the “human act by which the partners mutually give themselves to each other” (the quotation is a paraphrase of GS 48,1 and CIC 1983 can. 1057 §2) in a liturgical form that is visible to the outside world and comprehensible to the Church. However, this understanding is distorted when, in CCC 1627, the definition of consent is overlaid with a further aspect, namely that that which binds the spouses to each other “*finds its fulfilment in the two ‘becoming one flesh’*”²⁰³ (emphasis added). In Latin, it reads: “*Hic consensus qui sponsos coniungit inter se, suam invenit consummationem in eo quod uterque ‘una caro’ fit*” (1627; emphasis added).²⁰⁴ The problematic aspect is not the term “consummation” in itself, which has a long history in the Church, which has been enshrined in Canon Law (see e.g. CIC 1983 can. 1061 §1; can. 1141) and still makes sense today, since every vow of promise needs to be fulfilled. The problem is that *a single conjugal act* (in biblical perspective, “becoming one flesh”) is sufficient to achieve the consent.²⁰⁵ In other words, the biblical perspective is transformed into the canonical view that the first sexual act suffices to render the marriage absolutely indissoluble.

²⁰³ Reference is made to Gn 2:24, Mt 10:8 and Eph 5:31.

²⁰⁴ The Latin version of CCC can be found at https://www.vatican.va/archive/catechism_it/index_it.htm.

²⁰⁵ A telling example of this can be found in YOUCAT 261: “The →SACRAMENT of Matrimony comes about through a promise made by a man and a woman before God and the Church, which is accepted and confirmed by God and *consummated by the bodily union of the couple*” (emphasis added).

209. **CCC 1633-1637 (mixed marriage and disparity of cult):** Mixed marriages (between a Catholic and a baptised non-Catholic) and marriages with a disparity of cult (between a Catholic and a non-baptised non-Catholic), which are the subject of sub-article “III. Matrimonial Consent”, are becoming increasingly common in many countries. The *Catechism* rightly points out that differences in Christian denomination and religious traditions are not without difficulties and can lead to tensions in partnerships, especially with regard to living a shared faith and raising children (see 1634). However, it is astonishing that any appreciative vision is generally lacking. Firstly, there is no mention of the fact that interchurch or ecumenical marriages (in view of the history of the ecumenical movement, these terms should replace the term “mixed marriage”) can have a positive and fruitful effect on the couple and, equally important, on the Church itself. Practising interchurch couples and families can be seen as “laboratories”, “living examples”, or “seeds of unity”, thereby taking effective steps towards overcoming the separation and division of Christians. Secondly, in marriages between people of different religions, the Catholic spouse is responsible for “sanctifying” the marital union, in accordance with St Paul’s instruction in 1 Cor 7:14. Unfortunately, in CCC 1637, “sanctification” or “consecration” is primarily associated with the “grace of conversion”, leaving no room for individual conscience and the religious freedom of the unbaptised spouse.

210. **CCC 1639-1640 (marriage as bond):** In a sub-article entitled “IV. The Effects of the Sacrament of Matrimony”, two characteristics of marriage are described, namely the “marriage bond” (1639-1640) and the “grace of sacrament of matrimony” (1641-1642). What stands out is the definition of the marital bond. The term “bond” (*vinculum*) has always been firmly established in the language of canonical provisions relating to marriage. It was also used in GS 48,1, which states that the personal consent, by which the spouses mutually give themselves to each other, receives a special confirmation, i.e. one that is irrevocable and permanent, which no longer depends on human arbitrariness but is willed by God himself. It is called here a “sacred bond” (*vinculum sacrum*). In the short paragraph of CCC 1639, however, we find several quotations, one from the Bible and the others from GS 48, that do not correspond to the argumentative flow proper to the Pastoral Constitution. The first interference concerns the assertion that mutual consent is declared to be “sealed by God himself”. As proof, a biblical quotation from Mk 10:9 is presented (“Therefore what God has joined together, no human being must separate”). However, the direct equation of the marital bond with the indissolubility of marriage defies any explanation. The terms “indissoluble” and “indissolubility” are actually applied to it in GS 48-50, albeit mostly implicitly,²⁰⁶ but they are never elevated to the status of a divine instruction; “indissolubility” remains a matter of human relationships and cannot be transferred one-to-one to God’s will. The second quotation associates the marital bond (“an institution, confirmed by the divine law...even in the eyes of society”, quote from GS 48,1) with the concept of “covenant” – a view that is comprehensible in itself. The argument goes wrong, however, when the statement in the third quotation (“Authentic married love is caught up into divine love”, quote from GS 48,2) is identified with God’s covenant with humankind: admittedly, the human covenant between the spouses may be “assumed” into or “raised” to

²⁰⁶ Explicit references to the Latin terms *indissolubilis* and *indissolubilitas* can be found in GS 48,1 “intima unio...plenam coniugum fidem exigunt atque *indissolubilem* eorum unitatem urgent”; “[a]mor ille mutua fide ratus, et potissimum sacramento Christi sancitus, inter prospera et adversa corpore ac mente *indissolubiliter* fidelis est” (49,2); “ipsa indoles foederis inter personas *indissolubilis*”; and “matrimonium ut totius vitae consuetudo et communio perseverat, suumque valorem atque *indissolubilitatem* servat” (GS 50,3) (all emphases added).

God's love ("Germanus amor coniugal in divinum amorem assumitur", GS 48,2), but it is not "integrated into God's covenant" in the sense of participating in it, as CCC 1639 asserts.

211. This inconsistency of the argument reaches its climax in CCC 1640. The distilled text consists of only three sentences which reaffirm the identification of marital bond and its indissolubility, but with more serious implications than previously thought. As a side issue, it should be noted that the passage ignores the fact that the term "consummation" (used twice: "...a marriage concluded and *consummated* between baptized persons can never be dissolved" and the bond "which results from the free human act of the spouses and their *consummation* of the marriage..."; emphases added) was never mentioned in GS 48-52 but was rather the result of canonical provisions. What causes even more harm to the theology of Vatican II is the legalistic mindset that dominates the *Catechism*. One can understand that the indissoluble nature of marriage needs legal regulations, but justifying them by and inflating them with divine authority goes too far. The bond is, according to CCC 1640, "a *reality, henceforth irrevocable*", it "gives rise to a *covenant guaranteed by God's fidelity*", and the "Church *does not have the power* to contravene this disposition of divine wisdom" (emphases added). The theological fallacy is threefold: first, that the bond by mutual consent is presented as an ontological reality that is beyond human capacity and anchored in divine immutability; furthermore, that God's covenant of faithfulness is not just an analogy but rather a constant representation of the loving covenant between the spouses; and finally, that the Church itself claims divine authority for something that is not within the power of the Church. The theological and pastoral dilemma is that the authors of the *Catechism* impose a burden on married couples which leaves no room for human decision, while at the same time relieving the Church of any responsibility to deal constructively with the life experiences of the spouses, which should actually be its task, especially when it comes to the failure of marriages. "To say in effect that the infinite faithfulness of God to the Church needs a created representation, and that, since Christian marriage has been chosen as the sign, it must in every case manifest properties which quite exceeds the human reality as widely experienced, is surely to put the cart before the horse."²⁰⁷

212. **CCC 1643, 1644 and 1646 (conjugal love as total self-gift):** As noted in CCC 1639 and 1640, an inadequate merging of the ideal and the real permeates other passages of the *Catechism* as well. While the essence of conjugal love undoubtedly consists of partners giving themselves to each other, qualifying self-gift as "total self-giving" can have an alienating and oppressive effect. Examples of idealised forms of self-giving can be found in CCC 1643, 1644, and 1646. CCC 1643 is a lengthier quotation taken verbatim from FC 13. Pope John Paul II rightly speaks of conjugal love as 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" (emphasis added). However, the properties of marriage, namely indissolubility, faithfulness, and fertility, take on a *definitive* character; they require a "definitive mutual giving". Although these marital properties belong to "the normal characteristics of all natural conjugal love", they receive a new and higher signification in the sacrament of marriage. The notion of a "marriage promise of *total* mutual self-giving" (emphasis added) is also used in CCC 1644, according to a citation from FC 19. Likewise in CCC 1646: conjugal love "seeks to be *definitive*: it cannot be an arrangement 'until

²⁰⁷ L.S. CAHILL: "Marriage (Paragraphs 1601-1666)", in: M.J. WALSH (ed.): *Commentary on the Catechism of the Catholic Church*, London: Chapman, 1994, 318-329, 328.

further notice” (emphasis added) – certainly a reference to the situation of “trial marriages”, which John Paul II strictly rejected (see FC 80; repeated in CCC 2391).²⁰⁸

213. At first glance, the term “total” is not specific to FC but can also be found in *Gaudium et spes*. In GS 48,1, for example, we read that “intimate union and the good of the children impose *total* fidelity on the spouses and argue for an unbreakable oneness between them”. GS 49,2 speaks also about “mutual and *total* love” (emphases added). It should be borne in mind, however, that the original Latin version of *Gaudium et spes* refers to “full” rather than “total” fidelity and love (“*plenam* coniugum fidem exiunt”, GS 48,1; “in mutua atque *plena* dilectione”, GS 49,2; emphases added). The transition from “plenitude” or “fullness” to “totality” may be negligible in terms of terminology, but it can be of great conceptual significance. In fact, with *Familiaris consortio* the Church strikes a different tone. There is a risk that the aspiration for the ideal becomes a utopian transfer point, and that at the expense of reality. In *Amoris laetitia*, Pope Francis warned about an “excessive idealisation”, “a far too abstract and almost artificial theological ideal of marriage, far removed from the concrete situations and practical possibilities of real families” (AL 36). This is also evident in the topics of indissolubility (see 1649-1651) and fertility, which we will examine in more detail in CCC 2331-2400. It should therefore be emphasised that, from an anthropological point of view, human love, especially marital love, cannot be flawless.
214. **CCC 1641-1642, 1647 (grace of sacramental marriage):** In general, the *Catechism* describes the “Grace of the Sacrament of Matrimony” (in sub-article “IV. The Effect of the Sacrament of Matrimony”) in an appropriate way and in accordance with the theology of the Pastoral Constitution. Behind this lies the common theological principle that grace presupposes and completes nature, so that natural marriage, which is meaningful in itself, must be perfected with the help of Christ. The grace proper to the sacrament of marriage is intended “to perfect the couple’s love and to strengthen their indissoluble unity” (1641). The spouses’ union “is confirmed, purified, and completed by communion in Jesus Christ, given through the sacrament of Matrimony” (1644). Fortunately, the *Catechism* does not follow the theory of the identity of matrimonial contract and sacrament, which has been reaffirmed in CIC 1983 can. 1055 §2. Any assumption that the marital sacrament could degenerate to an automatic and abstract reality is prevented.
215. A passage in CCC 1647 is more ambiguous. It says that “the deepest reason” for the spouses’ faithfulness “is found in the fidelity of God to his covenant, in that of Christ to his Church”. It continues: “Through the sacrament of Matrimony the spouses are enabled to *represent* this fidelity and witness to it” (emphasis added). No one would be surprised if the formulation had been that the spouses “live”, “witness to it” (as articulated in 1647), or “share in” (a phrase used in 1648) Christ’s covenant with the Church. Questions emerge, however, when the term “represent” (the Latin word *repraesentent* is used in 1647) is employed.²⁰⁹ This gives rise to the idea of “vicarious representation” in relation to the marriage covenant, which elevates the spouses living in a sacramental marriage to an undeserved level by placing them on the same level as Christ’s covenant. The *Catechism* should have been more cautious in its wording, resisting any temptation to view the lives of

²⁰⁸ See also YOUCAT 263: “...the essence of love is mutual self-giving *without reservation*” (emphasis added).

²⁰⁹ The same term is used in YOUCAT 263: conjugal love “*represents* Christ’s devotion to his Church, even unto death on the Cross” (emphasis added).

spouses as an embodiment of Christ's love on earth. This exaggerated vision has never been in line with the Church's teachings, and this is particularly true of today's lived realities.²¹⁰

216. **CCC 1650 and 1665 (prohibition of remarriage):** CCC 1648 addresses the situation of persons who find it difficult or even impossible to commit themselves for life, while CCC 1649 considers married persons who are permitted to live separately yet remain married, and are therefore not free to enter into a new union. Pastoral suggestions for divorced and remarried people are offered in CCC 1651, whereby the directives in FC 84 generally apply. The point which is widely contested in the Church today is CCC 1650 (summarised in 1665). The paragraph highlights two aspects, both of which can be traced back to the instructions in FC 84, namely the prohibition of remarriage and the obligation of complete continence as a prerequisite for receiving the sacraments of Penance and Eucharist.

217. The strict prohibition of a second marriage of a partner who was validly married to the first spouse is justified by two different arguments: First, divorced persons who remarry civilly "find themselves in a situation that objectively contravenes God's law" (1650), or in other words, "[t]he remarriage of persons divorced from a living, lawful spouse contravenes the plan and law of God as taught by Christ" (1665). Secondly, however, persons who have remarried invalidly have "violated the sign of the covenant and of the fidelity to Christ" (1650). Both arguments are grounded on Holy Scripture, in this case on Mk 10:11-12 (1650). The comprehensive paragraph evidently combines two different approaches: on the one hand, a method based in natural law that penalises acts that transgress God's law and natural law; on the other hand, the understanding of covenant from the perspective of salvation history and economy, which implies that remarriage injures the fidelity that Christ irrevocably promised to the Church. The combination of the two approaches, alongside the biblical references, is shown in CCC 1665, which states: "The remarriage of persons divorced from a living, lawful spouse contravenes *the plan and law of God as taught by Christ*" (emphasis added).

218. A look at the history of church teaching and current standards of biblical hermeneutics, as well as today's experiences and realities of married life, tells us that the rigid prohibition of remarriage is no longer tenable, and that for several reasons: it is "unrealistic, incoherent and injurious", to paraphrase a quote by KR. Himes and J.A. Coriden.²¹¹ It is not *realistic*, as the high incidence of divorce and remarriage in the West cannot be ignored, and there is a risk that remarried persons will be forced into a permanent situation of non-compliance with the rules. The ban on remarriage is *incoherent* because the biblical and theological elements that make up current church teaching do not fit together: it involves insufficient use of biblical evidence as well as insistence on a natural law approach that no longer corresponds to person-centred thinking. Finally, it is *harmful*, as equating the covenantal union of the spouses with Christ's covenant with the Church would mean placing a burden

²¹⁰ This admonition should be directed in particular to YOUCAT, which attributes to the magisterium an authority that it does not possess. See, e.g., YOUCAT 263: "At a time when 50 percent of marriages in many places end in divorce, every marriage that lasts is a great sign – ultimately a sign for God. On this earth, where so much is *relative*, people ought to believe in God, who alone is *absolute*. That is why everything that is not relative is so important: someone who speaks the truth *absolutely* or is *absolutely* loyal. Absolute fidelity in marriage is not so much a human achievement as it is a testimony to the faithfulness of God, who is there even when we betray or forget him in so many ways. To be married in the Church means to rely more on God's help than on one's own resources of love."

²¹¹ K.R. HIMES/J.A. CORIDEN: "The Indissolubility of Marriage: Reasons to Reconsider", in: *Theological Studies* 65 (2004), 453-499, 499.

on those who divorce and remarry that is “beyond the requirements of moral integrity and the bounds of pastoral compassion”.²¹² As it stands now, the paragraph needs to be amended.

219. A second aspect concerns the so-called *frater-soror* relationship. As explained in CCC 1650, civilly remarried partners who continue to live in a situation that is objective contrary to God’s law and plan cannot be admitted to the Eucharist and cannot assume responsibilities in the Church. However, according to advice first offered in FC 84, the teaching on the indissolubility of marriage is not violated if the remarried persons “have repented for having violated the sign of the covenant and of fidelity to Christ” and “are committed to living in complete continence” (1650). The relevant question that arises is why the first marriage would not be betrayed and contradicted if all the qualities that constitute a marital relationship can be transferred to a third party, with the exception of sexual intercourse? Behind this lies the contractual model of marriage in which the right to sexual intercourse was exchanged as part of the matrimonial consent: once sexual intercourse ceases, marriage loses most of its characteristics, in particular its procreative purpose, so that the other components of a marital life are considered non-essential. Hence, if remarried partners abstain from sexual activity, their second marriage is regarded as non-existent, which also renders the second union meaningless, no matter how much it may have been based on marital love. Although this contractual model had a certain plausibility in the period before the Council, it has since lost all persuasiveness and now contradicts to the personalist vision of Vatican II.

IV.2.1.3. Suggestions for Further Developing Church Teaching

220. **CCC 1601 (doctrinal definition of marriage):** The doctrinal definition of marriage used in CCC 1601 should be made completely consistent with the understanding of marriage as defined in GS 48.

221. **CCC 1610-1611, 1613-1615, 1617 (biblical perspectives on monogamy, indissolubility, and sacramentality):** In its catechetical and canonical teaching, the magisterium should be more cautious in using biblical passages for doctrinal purposes that are hermeneutically and theologically not tenable.

222. **CCC 1627 (consent of marriage):** CCC 1627 should make it clear that valid matrimonial consent does not find its fulfilment in the first conjugal act but must be achieved in a “dynamic process...one which advances gradually with the progressive integration of the gifts of God” (AL 122).

223. **CCC 1633-1637 (mixed marriage and disparity of cult):** The passages of the *Catechism* on ecumenical marriages and interreligious marriages should use more affirmative language consistent with a person-centred view of marriage, with the present ecumenical climate, and with the teaching on individual conscience and religious freedom.

²¹² Ibid.

224. **CCC 1639-1640 (marriage as bond):** By elevating the marital bond to an ontological level and attributing to it a character willed by God, the *Catechism* contradicts the theology of Vatican II. Hence, CCC 1639-1640 should be revised and entirely adapted according to the vision of the Council.
225. **CCC 1643, 1644 and 1646 (conjugal love as total self-gift):** In order to avoid alienating and oppressive side effects, the *Catechism* should give the term “total self-giving” an appropriate and well-founded meaning.
226. **CCC 1647 (grace of sacramental marriage):** A more adequate expression for the meaning of the grace in the sacrament would be that the Christians spouses “live”, “bear witness to”, and “share” Christ’s covenant to the Church, rather than “represent” it vicariously.
227. **CCC 1650 and 1650 (prohibition of remarriage):** The terms used in CCC 1650 and 1665, according to which persons who are civilly remarried in their state and condition are objectively in contradiction to God’s plan and law, should be deleted. The situation of remarried partners should be revised in the light of the developments brought about by Chapter 8 of *Amoris laetitia*, especially AL 301, 305, and footnote 351. Likewise, the passage on *frater-soror* relationships needs to be eliminated.

IV.2.2. CCC 2331-2400 (“The Sixth Commandment”)

228. With CCC 2331-2400, we move from Part Two of the *Catechism* (entitled “The Celebration of the Christian Mystery”, which deals mainly with the sacramental economy and the sacraments) to Part Three, “Life in Christ”. The *Catechism* follows in general the traditional textbook form of moral theology which attributes a central place to the Ten Commandments in the exposition of morality. Our intention here is not to subject the structure and rationale of the *Catechism* itself – which at times falls back on pre-conciliar thinking – to a critical scrutiny but rather to limit ourselves to themes related to marriage. The topic at stake is “adultery”, or, as it says the *Catechism*, “You shall not commit adultery” (Ex 20:14).
229. Our focus will therefore be on the sixth commandment, as set out in CCC 2331-2400. However, a brief annotation is appropriate at this point. CCC 2197-2257 deal with the fourth commandment (“Honor your father and your mother, that your days may be long in the land which the Lord your God gives you”, Ex 20:12), as part of the second table of the Decalogue which is dedicated to the love for one’s neighbour (“You shall love you neighbor as yourself”, 2196). The topic of marriage is also addressed but situated in the broader context of the *family*. Family is presented as “a privileged community called to achieve a ‘sharing of thought and common deliberation by the spouses as well as their eager cooperation as parents in the children’s upbringing’ (GS 52,1)” (CCC 2206) and as the “*original cell of social life*” (2207). From the point of view of the social doctrine of the Church (2198), the argument shifts from “Marriage in God’s Plan” (1602-1620), which is intended to outline the intimate partnership between the spouses, to “The Family in God’s Plan” (2201-2206), with all responsibilities, rights, and duties that arise from social community. The foundation

remains the same, namely that marriage is “ordered to the good of the spouses and to the procreation and education of children” (2201) and that “husband and wife are called to give themselves in love and in the gift of life” (2207). But the perspective is extended to other forms of human and social relationships, as the following passages show: “A man and a woman united in marriage, together with their children, form a family” (2202); “[i]n creating man and woman, God instituted the human family” (2203); and “[t]he Christian family constitutes a specific revelation and realization of ecclesial communion” (2204, quote from FC 21). So far, the paragraphs about the fourth commandment are in line with the theology of marriage introduced by Vatican II. The text emphasises that all human persons have equal dignity, including every member of the family (2203), that this dignity is based on the fact that we are all created in the image of God and are all children of God, and that therefore every relationship with our neighbour is truly “personal in character” (2212). Whether the concept of “authority”, which according to CCC 2197 ultimately derives from God, is appropriately represented, or rather follows a biased scheme of authority and obedience, is not the focus of our considerations here.

230. Two preliminary remarks, albeit critical ones, seem appropriate. CCC 2331-2400, as already mentioned, focus primarily on the topic of *adultery*. Adultery finds its locus, among other offenses, in the Decalogue, a corpus of laws which was designed to protect all essential legal interests of a tribal community living in a cult-like association. On the one hand understandable, on the other surprising, the second tablet of the Ten Commandments consists of commandments which are all formulated as prohibitions (“You shall not...”), with the exception of the fourth commandment (“Honor your father and mother...”). That is also the case for marriage. From the outset, the concept of marriage is negatively defined: marriage means *not* committing adultery; marital fidelity means *not* having a sexual relationship with a third. Here, “the emphasis is”, to quote Franz Böckle, “solely on evil; it is transgression, not fidelity, that determines the content. Furthermore, only the act itself is relevant in this provision; thoughts, wishes, and intentions are not taken into account.”²¹³ In accordance with Vatican II, one would have hoped that the *Catechism* would take a more appreciative stance on marriage by emphasising the salutary effects of marital fidelity. Although the *Catechism* attempts to paint a more positive picture in the last section (“III. The Love of Husband and Wife”, CCC 2360-2379), the pejorative image of marriage continues to overshadow Article 6 on the sixth commandment. This becomes also apparent in relation to human sexuality.

231. CCC 2336 concludes its passage about the basics of sexuality (“I. Male and Female He Created Them...”, 2331-2336) with the assertion that the “tradition of the Church has understood the sixth commandment as encompassing the whole of human sexuality”. However, this statement is not correct. Historically, the term “adultery” goes back to socio-cultural structures in which, among other things, a binding legal form of cohabitation between men and women was developed to regulate ownership and property relations as well as kinship relationships. At the time when the Ten Commandments took shape, the long-term integration of human sexuality was not yet conceivable, and the idea of a comprehensive approach to human sexuality was not in people’s mind. Adultery was considered a serious offence against social order and morality, manifested in sexual misconduct, which had to be regulated by norms. The *Catechism* makes the mistake of

²¹³ F. BÖCKLE: “Ehe und Ehescheidung”, in: A. HERTZ/W. KORFF/T. RENDTORFF/H. RINGELING (eds.): *Handbuch der christlichen Ethik*, vol. 2 (aktualisierte Neuausgabe), Freiburg-Basel-Wien: Herder, 117-135, 125 (authors’ translation).

attributing normative value to a historical context that lies outside the scope of today's application. The risk that the *Catechism* takes is in accepting or even promoting a concept of human sexuality that is shaped by a mindset in which marital infidelity (formerly "adultery") is measured solely on the basis of sexual intercourse. Worse still, spousal fidelity is in danger of being reduced to *sexual* fidelity, which gives to human sexuality a meaning that is much narrower than that of today's sexual morality. The *Catechism* is not free from such prejudices.

232. Since the sexual morality conveyed by the *Catechism* in paragraphs 2331-2400 is still overshadowed by pre-conciliar ideas, it seems sensible to depart from the benefit-deficiency or pros-and-cons scheme that we used as a basis for interpreting CCC 1601-1666. Instead, we opt for an approach that highlights the ambiguous and ambivalent aspects of sexual morality, while acknowledging that the moral teachings of the *Catechism* are, or are intended to be, in harmony with Vatican II. We examine the respective paragraphs of the *Catechism* according to the following topics: the foundation of human sexuality ("I. Male and Female He Created Them...", CCC 2331-2336), sexual chastity ("II. The Vocation of Chastity", CCC 2337-2359), and finally the spousal union ("III. The Love of Husband and Wife", followed by "IV. Offenses Against the Dignity of Marriage", CCC 2360-2391).

IV.2.2.1. Sexual Morality: Benefits and Ambiguities

233. **CCC 2331-2336 (human sexuality):** Paragraphs 2332-2336 do not contain a definition of human sexuality but merely list a few basic terms, most of which are substantiated by scriptural quotations and references to *Familiares consortio*. God has created the human person as male and female and "inscribed in the humanity of man and woman the *vocation*, and thus the capacity and responsibility, of love and communion" (2331, quoted from FC 11). While the goals of sexuality are said to be "the capacity to love and procreate", a third important aspect is added: it concerns "in a more general way the aptitude for *forming bonds of communion with others*" (2332; emphasis added). One can only welcome this statement as it emphasises "the goods of marriage and the flourishing of family life" and thus broadens the perspective from mere procreation to the wellbeing, in other words, to the "harmony of the couple and of the society" (2333). The term "sexuality" thus acquires a more comprehensive and balanced meaning.

234. It goes without saying that the *Catechism* also highlights the equality of men and women. CCC 2334 affirms that "[i]n creating men 'male and female,' God gives man and woman an equal personal dignity" (quoted from FC 22 and referring to GS 49,2) and that human beings, "created in the image and likeness of the personal God", include men and women who are equal (quoted from *Mulieris dignitatem*, 6;²¹⁴ see also CCC 1605). However, one should not forget that the idea of equality between men and women was not commonly affirmed from the outset, and was not, as *Mulieris dignitatem* mistakenly assumes, provided for by "sufficient bases" (MD 6) in the biblical text itself. For a long time, the biblical text offered ample scope for different interpretations, including, above all, the subordination of women to men – a view that was only overcome in the documents of Vatican II.

²¹⁴ See JOHN PAUL II: *Apostolic Letter Mulieris dignitatem on the Dignity and Vocation of Women* (hereafter MG), 15 August 1988, available at https://www.vatican.va/content/john-paul-ii/en/apost_letters/1988/documents/hf_jp-ii_apl_19880815_mulieris-dignitatem.html.

235. Another aspect is of great importance, its statement that “[s]exuality affects all aspects of the human person in the unity of his body and soul” (2332) and thus encompasses “physical, moral, and spiritual” dimensions (2333). This certainly echoes GS 49,1, but the question arises as whether “the whole of human sexuality”, which CCC 2336 says has always been an essential part of the Church’s teaching, can rightly be treated in combination with the prohibition of adultery. We will discuss this in more detail in the next section on chastity. In any case, it should also be mentioned that the unfounded connection between adultery and indissolubility argued in CCC 2336 cannot be justified exegetically.
236. Finally, CCC 2333 insists that “[e]veryone, man and woman, should acknowledge and accept his sexual *identity*” (see also 2393). Whatever was intended by the statement that sexual identity “should” (or better still, must) be accepted, this is open to everyone’s individual judgement. On the other hand, it is clear that sexual identity has two meanings, namely sexual “difference” and sexual “complementarity”. The *Catechism* does not further elaborate on the twofold meaning of sexual identity, although the term “complementary” in particular is reminiscent of the theology of *Familiaris consortio* (see, in particular, FC 19). CCC 2335 probably comes closest to the twofold meaning of sexuality when it states: “Each of the two sexes is an image of the power and tenderness of God, with equal dignity though in a different way. The *union of man and woman* in marriage is a way of imitating in the flesh the Creator’s generosity and fecundity.”
237. **CCC 2237-2359 (chastity):** For centuries, chastity has stood for the appropriate treatment of human sexuality in religious history in general and in the Judeo-Christian tradition in particular. The *Catechism* confirms this in its own words by defining chastity as “*the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual being*” (2337; emphasis added). At first glance, it seems obvious that chastity encompasses the “wholeness” of human sexuality, in accordance with CCC 2332, which states that sexuality “affects all aspects of the human being” and implies the “unity of...body and soul”. It seems that, from an anthropological and a psychological point of view, chastity describes an inner balance of the person, including all dimensions of the human being in a holistic way. However, the following sentence of CCC 2337 appears to take a different, at least more ambivalent, path. Sexuality is undoubtedly expressed in physical, biological, and corporeal ways, but the paragraph adds that it becomes “personal and truly human when it is integrated into the relationship of one person to another, in the complete and lifelong mutual gift of a man and a woman”. Does this mean that the lifelong union of the spouses is the only means by which a person can integrate their physical and bodily expression of sexuality into the personal dignity and value of a human being? Does the significance of human sexuality, and thus also of chastity, diminish when it is not inherently connected with marriage? CCC 2337 does indeed seem to confirm that. The following paragraphs will provide greater clarity.
238. The “integrity of the person” (CCC 2338-2345) and the “integrity of the gift of self” (CCC 2346-2347) are two essential principles that give human sexuality its value and dignity. The approach which fulfils both principles is “self-mastery” (2339, 2342, 2346, also 2359), since a good “training in human freedom” is “*apprenticeship in self-mastery*” (2339). In general, the paragraphs convey an appropriate image of chastity. Fortunately, CCC 2339 refers to GS 17, which points out that the dignity of the person, of which sexuality is an inevitable part, presupposes a “conscious and free choice” and is “moved and drawn in a personal way from within, and not by blind impulses in himself or by mere external

constraint”; the person “gains such dignity when, ridding himself of all slavery to the passions, he presses forward to his goal by freely choosing what is good and, by his diligence and skill, effectively secures for himself the means suited to this end” (2339, quoted from GS 17). The best means for baptised persons to “resist temptations” are “self-knowledge, practice of an asceticism adapted to the situations that confront him, obedience to God’s commandments, exercise of the moral virtues, and fidelity to prayer” (2340). Among the four cardinal virtues, “temperance” plays an important role, as it “seeks to permeate the passions and appetites of the senses with reason” (2341). Moreover, chastity is a moral virtue which is “a gift from God, a *grace*, a fruit of spiritual effort” (2345). But there is even more than this.

239. Chastity requires self-control, but that does not mean that it can be “acquired once and for all”. On the contrary, it is a “long and exacting work” and “presupposes renewed effort at all stages of life” (2342). CCC 2343 refers also to the “*laws of growth* which progress through stages marked by imperfection and too often by sin”.²¹⁵ The *Catechism* is thus aware that chastity has to be learnt and involves various stages. Furthermore, chastity cannot be thought of independently of society that shapes societal and cultural life, nor can it be considered independently of human rights, with particular reference to the right to education and upbringing (see 2344). So far, a positive view of chastity seems to prevail. This becomes even clearer when the focus is shifted from the “integrity of the person” to the “integrity of the gift of self”, i.e. to the holistic nature of human self-giving (CCC 2346-2347). While the integrity of the person is geared toward learning sexual self-control, the aspect of self-giving takes on a different shape of self-mastery: it includes love for one’s neighbour and the practice of what CCC 2347 rightly names “friendship”. In other words, “[c]hastity is expressed notably in *friendship with one’s neighbor*” (2347). However, the subordinate clause attached to the main clause is more interesting; it states that “friendship represents a great good for all”, regardless of “[w]hether it develops *between persons of the same or opposite sex*” (emphasis added). One might think that the *Catechism* is attempting to open the way more broadly to other forms of “chaste” self-giving love, thereby also including homosexual relations.²¹⁶ After all, what prevents us from viewing chastity as the archetype of charity, as something that CCC 2346 rightly describes as “the *form* of all virtues”, i.e. as the practice of charity or chastity that aims to overcome self-centredness and open oneself

²¹⁵ Those reading paragraph 2343 for the first time may not be aware that it does not convey a broad and holistic concept of chastity that one might expect but is restricted from the outset to the moral life of married couples. The paragraph refers to FC 34 but does not make it explicitly clear to the reader that the “law of growth” does not apply to all who aspire for a chaste life, as CCC 2343 seems to suggest, but only for spouses. In FC, Pope John Paul II clarified that a chaste life is mainly a matter for married people; for others, chastity means abstinence from sexuality, as we will explain more in detail below.

²¹⁶ A closer look at the *Youth Catechism of the Catholic Church* shows that, in contrast to central passages of the 1992 *Catechism* examined here, it takes a more open and comprehensive view of sexuality in terms of chastity. For instance, the term “chastity” is consistently defined as “chaste *love*”: “A person who lives chastely is not the plaything of his lusts but, rather, lives his sexuality deliberately, motivated by love, and as an expression of that love. Unchaste behavior weakens love and obscures its meaning. The Catholic Church advocates a holistic-ecological approach to sexuality. This includes sexual pleasure, which is something good and beautiful; personal love; and fruitfulness, which means openness to having children” (YOUCAT 404). See also *ibid.* 405: “Someone lives chastely when he is free to be loving and is not the slave of his drives and emotions. Anything, therefore, that helps one to become a more mature, freer, and more loving person and to form better relationships helps that person to love chastely, also.” Overall, the impression is that the *Youth Catechism* makes a sincere attempt to address the issues facing young people without resorting to prohibitive moralising. However, when it comes to homosexuality, the *Youth Catechism* merely condemns homosexual acts without providing any further explanation (see YOUCAT 415).

to others in a fruitful way? But here, the *Catechism* clearly reaches the limits it has set for itself.

240. It suffices to take a look at CCC 2357-2359, where homosexuality is listed among the various offenses against chastity, and homosexual acts are judged to be “contrary to the natural law” and “intrinsically disordered” (2358). Certainly, “homosexual persons are called to chastity” (2359), but the term chastity loses its meaning when it comes to sexual intercourse. Homosexual persons can of course be guarantors of “disinterested [selfless] friendship”, but the virtues of “self-mastery that teach them inner freedom” (2359), only works if sexual practice is eliminated.²¹⁷ Anyone who still doubts the true meaning of chastity will have been taught better. CCC 2337 clearly teaches that sexuality in its physical and corporeal aspects must be domesticated and first brought into a human form which is only possible if it is assigned to the lifelong sexual relationship between man and woman. Chastity is thus reduced to two actions: on the one hand, sexual intercourse must be limited to marriage and, on the other hand, all other forms of sexual expression outside marriage must be completely abandoned. The implications of this approach are far-reaching and grave, especially because it undermines the vision of the human person which Vatican II introduced. The Council no longer claimed, as pre-conciliar positions maintained, that human sexuality must be strictly confined to marital sexual intercourse; instead, *Gaudium et spes* described the love between man and woman as the desired and worthy goal of sexual relations which needs to be enriched and ennobled by expressions of body and mind, and proposed marriage as the distinctive ingredients and signs of friendship.²¹⁸ Although the *Catechism* acknowledges that chastity evolves and is subject to the “law of growth” (see CCC 2342 and 2343), it places greater emphasis on controlling sexual urges than on attentive self-awareness and progress in responsibly managing oneself, since responsible self-care ultimately has a great deal to do with self-development and the search for identity and authenticity as a sexual being. In contrast, the *Catechism* continues to suggest that the body still needs to be tamed, rather than integrating it into the “bodiliness” of the human being, forgetting that bodiliness stands for the ambiguity of the body (see the duality of “I am a body” that defines me and “I have a body” with which I must build a relationship) and for the impossibility of separating the sexual as purely physical from the unity of the soul and spirit of the human being.²¹⁹ One cannot help feeling that, from the perspective of the *Catechism*, sexuality loses all positive value if it is not inherently equated with the sexual act which is reserved for marriage.

241. The discomfort with the term sexuality is also evident in the “various forms of chastity” mentioned in CCC 2348-2350. Paragraph 2348 rightly insists that “[a]ll Christ’s faithful are called to lead a chaste life in keeping with their particular states of life”. With a reference to St Ambrose who distinguishes between chastity for married people, widows, and virgins,

²¹⁷ A striking example of the different meanings of “integrity of self-giving” can be seen when comparing the situation of homosexual persons with that of childless married couples. In CCC 2347, friendship between homosexual persons is described in an extremely positive way. One could think that the relation between spouses who have no children also “can radiate a fruitfulness of charity, of hospitality, and of sacrifice” (1654). The difference is, however, that childless marriages are measured against the concept of sexual procreation, while homosexual friendships must do without sexuality.

²¹⁸ See again GS 49,1: “This 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 marriage.”

²¹⁹ It is regrettable that the *Catechism* limits itself to describing sexuality only under the term “sex”, but not under the term “gender”.

the *Catechism* also extends chastity to those who are unmarried – however, with the obligation that they must “practice chastity in continence” (2349). The *Catechism* thus reiterates a doctrinal statement which has been ingrained in the Church for centuries, but it simply ignores that, according to findings in human sciences, sexuality cannot be confined to sexual intercourse but encompasses a much broader area of life than church teaching suggests. All human beings act as *sexual* persons, no matter whether they are in childhood or adolescence or whether they are unmarried, married, or celibate. To claim that the category of sexual abstinence is an adequate concept of humanity for virgins, celibates, or unmarried people, for example, would rob the human person of their holistic meaning, especially when forced into normative forms. This applies also to engaged couples; what CCC 2350 refers to as “grow[ing] in chastity” can no longer be measured by sexual intercourse, but rather by “expressions of affection”, which always have a sexual connotation and are part of the stages of development on the path to a chaste life.

242. The section “II. The Vocation to Chastity” concludes with a list of “Offenses against chastity”. Masturbation (2352), sexual intercourse between unmarried persons (2353), pornography (2354), prostitution (2355), and rape, which includes the sexual abuse of minors and which is classified as “intrinsically evil” (2356), are all mentioned.²²⁰ These condemnations are certainly to be welcomed; the paragraphs correctly point out that a self-sufficient and self-imposed expression of sexuality and the separation of sexuality from a relationship with another person would mean turning one’s partner into an object of one’s own satisfaction and that of another. In CCC 2351 we read: “*Lust* is disordered desire for or inordinate enjoyment of sexual pleasure. Sexual pleasure is morally disordered when sought for itself, isolated from its procreative and unitive purposes” (2351). While chastity is frequently paraphrased in terms of “self-mastery” (2339, 2342, 2346, and 2359), unchastity seems to be the opposite, namely letting go or a lack of self-control. It describes the unregulated enjoyment of sexual pleasure and the disordered desire for it. Up to this point, one can follow the reasoning of the *Catechism*. The break occurs when the previously mentioned developmental approach to chastity in stages is abandoned and replaced by a turning-point approach: it becomes a simple yes-or-no question. Nothing explains this better than the formulations of CCC 2339 and 2338. The “apprenticeship of self-mastery” needs an alternative decision: “either man governs his passions and finds peace, or he lets himself be dominated by them and becomes unhappy” (2339). We can recall Jesus’ words in the Sermon on the Mount about taking oaths, where he says, “Let what you say be simply ‘Yes’ or ‘No’; anything more than this comes from the evil one” (Mt 5:37; quoted in CCC 2153 and 2466). The same reference appears in CCC 2338: A “unity” that “tolerates neither a double life nor duplicity in speech” is required of the person.²²¹ Here again, the speech of “one language” resonates where clarity reigns and “exceptions, nuances, and multiple meanings of real *languages*, not to mention the need for a sense of proportionality”, are excluded.²²² The implications of this interpretation run through the concept of chastity, which determines “the powers of life and love” (2338), as well as through the meaning of

²²⁰ It should be noted that factors which extenuate or even nullify moral imputability (see CCC 1735: “Imputability and responsibility for an action can be diminished or even nullified by ignorance, inadvertence, duress, fear, habit, inordinate attachments, and other psychological or social factors”) are also taken into account in CCC 2352 with regard to masturbation and in CCC 2355 with regard to prostitution.

²²¹ See also the definition of the “unity of the person” in CCC 2340, with a quote from Augustine in *Conf.* 10, 29, 40: “Indeed it is through chastity that we are gathered together and led back to the unity from which we were fragmented into multiplicity” (emphasis added).

²²² J.A. SELLING: “You Shall Love Your Neighbour: Commandments 4-10 (Paragraphs 2196-2557)”, in: M.J. WALSH (ed.): *Commentary on the Catechism of the Catholic Church*, 367-394, 377.

lust or unchastity, which are labelled as “isolated from its [sexual pleasure] procreative and unitive purposes” (2351). What lies behind this is the conviction that sexuality can only be chaste, personal, and true when integrated “in the complete and lifelong mutual gift of a man and a woman (2337).

243. Two criteria guide the interpretation of (un)chastity: on the one side, that chastity is oriented towards the transmission of life, which stands for the “integrity of self-giving” and thus the *procreative* purpose, and on the other, that chastity has an orientation towards the other person which finds its achievement in the *unitive* meaning of conjugal love. The first criterion, procreation, will be further reviewed in the section on the “fecundity of marriage” (2366-2372). Let it just be said that from a life-history perspective, passing on life is not equally relevant for all married couples, for example, for couples where the woman has already reached menopause. The meaning of the unitive dimension of sexuality is probably more important. CCC 2353, for example, condemns non-marital sexual acts (referred to as “fornication”) as “gravely contrary to the dignity of persons and of human sexuality”, thereby assuming that sexual intercourse has a finality that is inherent in it by nature and from which universally valid rules for the act can be derived. The yes-or-no ruling prevailing in CCC 2338 and 2339 says that non-marital sexual intercourse is an offense to the dignity of the person and sexuality. This contradicts the understanding of sexuality and chastity that can also be found in various paragraphs of the *Catechism* which have encouraged a broader understanding of sexuality. To claim that sexual relations outside the marriage vow, even if lived in fidelity, mutual love, and care for children, *violates* the dignity of sexuality and the person, goes far beyond any reasonable conception of a person-centred anthropology and ethics. More than that, what has been said about non-marital sexual relationships can also be extended analogously to other marital and homosexual relations, if sexuality is considered to be anchored in the person and fertility can also be interpreted in a figurative sense. In childless couples or couples at an older age, the unitive and procreative purposes of marriage can be reinterpreted in such a way that the well-being or the good of the spouses comes to the fore and fertility takes on a different meaning. This could also apply to homosexual couples if it could only be recognised that the homosexual act, which does not beget life, has a different sense of fertility and that “sexual complementarity”, which CCC 2357 continues to defend as biological, genital, and procreative, is shifted to the psycho-affective level of the person.

244. In summary, the *Catechism* should distance itself from the dualistic view of sexuality that persists in certain passages and return to a person-centred view of sexual morality. Otherwise, the theology of marriage of Vatican II will also remain stuck in pre-conciliar ideas.

245. **CCC 2360-2379 (conjugal love):** The third section, entitled “The Love of Husband and Wife”, mainly aims to translate the “intimate partnership of life and love” (GS 48,1), which CCC 1601-1666 described in theological terms, to a moral level. One can only welcome that the *Catechism* has widely assumed the vision of Vatican II, although ambivalent and ambiguous connotations are still discernible. CCC 2360 begins with an interpretation of sexuality which finds its fulfilment in marriage. The attentive reader will be pleased to note that sexuality “is ordered to the conjugal love of man and woman”. In the first two opening paragraphs, procreation is no longer mentioned at all, thereby abandoning the traditional formulation of the ends of marriage and emphasising conjugal love as the centre from which the other purposes derive their meaning. It is also encouraging that sexuality is “not something simply biological” but “concerns the innermost being of the human person as

such” (2361). The wording comes from FC 11 where the next sentence states that the human way of sexual fulfilment must be integrated into love “by which a man and a woman commit themselves totally to one another until death”. The idea of the “totality” of self-giving, which we criticised earlier, may shine through here, but taken on its own, the quote does not imply any normative value. In contrast, lived sexuality is most protected as a way of self-giving when embedded in a holistic loving relationship. The goal that love should last forever does not mean that this permanence must be realised at any cost, regardless of the realities and experiences of life. The paragraph seems to create space for life paths that do not take the course originally proposed and desired. Something similar resonates also in CCC 2362, when sexuality is considered “a source of joy and pleasure”. A quote from GS 49,2 is cited as a reference, according to which sexual acts between spouses are “noble and honorable” and, when performed in a human manner, “foster...the self-giving they signify and enrich...the spouses in joy and gratitude”.

246. Some initial questions arise when one notices that in the same paragraph 2362, the term “sexual pleasure” is apparently attributed to an address of Pope Pius XII to midwives on 29 October 1951.²²³ In fact, the pope’s vision stems from a time when procreation was seen as the primary end of the hierarchical purposes of marriage. The quote from Pius XII confirms that the spouses can only “experience pleasure and enjoyment of body and spirit” when they serve the “[generative] function” (2362). Does that mean that the sexual acts, which the *Catechism* has described as “source of joy and pleasure”, are to be understood as acts with a procreative purpose? Confusion arises also from CCC 2363 which states that “[t]he spouses’ union achieves the *twofold end* of marriage: the good of the spouses themselves and the transmission of life” and, even more relevant, that “[t]hese *two meanings or values* of marriage *cannot be separated* without altering the couple’s spiritual life and compromising the goods of marriage and the future of the family” (emphases added). The immediate context of CCC 2362 seems to suggest that the “spouses’ union” (2363) is to be understood as the acts of conjugal sexual intercourse. If one does not follow this last interpretation, one could easily affirm the conciliar definition that “[b]y their very nature, the institution of matrimony itself and conjugal love are ordained for the procreation and education of children” (GS 48,1; similarly GS 50,1). But especially the second sentence of CCC 2363 (“these two meanings or values of marriage cannot be separated...”) seems to suggest a different interpretation, namely that what the paragraph calls the “meanings” and “values” of marriage concern nothing other than the conjugal sexual act. What resurfaces here again is the questionable idea which was expressed in HV 9, 11, 12, and FC 29, that each and every marital act must be procreative and that the connection between the unitive and procreative signification of the marriage act cannot be separated. The terminology used in CCC 2363 – “ends” along with “meanings” and “values” of marriage, “good of the spouses” and “transmission of life” along with “goods of marriage” and “future of the family” – indicates a great deal of confusion. We will examine this in more detail below. The words “conjugal fidelity” (2364-2365) and “fecundity of marriage” (2366-2379) will serve as references for further consideration. However, the statement that conjugal love is subject to the “twofold *obligation* of fidelity and fecundity” (2363; emphasis added) is astonishing, if not downright frightening: the Council never claimed that fidelity and fertility are moral and legal duties that must be fulfilled completely.

²²³ See PIUS XII: *Discorso alle partecipanti al Congresso della Unione Cattolica Italiana Ostetriche*, 29 October 1951, available at https://www.vatican.va/content/pius-xii/it/speeches/1951/documents/hf_p-xii_spe_19511029_ostetriche.html. For an English version see <https://www.ewtn.com/catholicism/library/allocution-to-midwives-8965>.

247. The two paragraphs (2364-2365) dealing with marital fidelity (understood as unity and indissolubility as essential properties of marriage) consist of a collection of references (from GS, CIC, biblical and patristic sources) that make a clear interpretation difficult. The conclusion that the “conjugal covenant” or the “irrevocable personal consent” (GS 48,1) “imposes on the spouses the *obligation* to preserve it as unique and indissoluble” (2364; emphasis added; see also 2397) goes beyond what CIC 1983 says: can. 1056 states merely that the essential properties of marriage “obtain a special firmness by reason of the sacrament”. The normative and legalistic aspects come into play when indissolubility is interpreted on the basis of the biblical quotation from Mk 10:9. The last reference to John Chrysostom (2365) appears to be less normative and more an expression of personal affection and love. In short, the interpretation of fidelity is once again fraught with ambiguity and confusion when it comes to the concept of conjugal love to which section three is dedicated.

248. The section on the “fecundity of marriage” is from the outset much clearer and more uncompromising in its approach to sexual morality. In the opening sentence, CCC 2366 makes clear that fecundity is “an *end of marriage*”. Without resorting to the traditional concept of the hierarchical ends, the term “ends” or “purposes” of marriage reappears here, a term which the Council Fathers deliberately avoided using and elaborating on.²²⁴ In fact, the *Catechism* takes up an idea which we have already noted in CCC 2363 when it speaks about the “twofold end of marriage”, which is based on two “goods”, the “good of the spouses” and the good of the “transmission of life”. What is adopted here is nothing other than the definition of marriage articulated in CIC 1983 can. 1055 §1, which says that the matrimonial covenant “is ordered by nature to the good of the spouses and the procreation and education of offspring”, in other words to the *bonum coniugum* and the *bonum prolis*. Apparently, the *Catechism* cannot find better words to describe the essence of marriage than to use the wording of can. 1055 §1, whereby it is worthy to note that the same quotation is also used in CCC 1601, which introduces the article about the “Sacrament of Marriage”.²²⁵ One cannot help but notice that the *Catechism* revitalises a concept of marriage that was dismissed by Vatican II. To elevate the “good of the spouses and their off-springs” (in the words of GS 48,1)²²⁶ to the level of purposes, or even equivalent purposes, is to misunderstand the concept of conjugal love, which represents an attitude to life that ultimately leads to the well-being of spouses and children, but is not a prerequisite for it. To instrumentalise marital love to other purposes, of which reproduction is one, would mean to deny the core of what conjugal love stands for, namely that mutual self-giving by which spouses enrich each other in joy and gratitude (see GS 49,2) and which finds its noblest and most chaste, *though not exclusive*, expression in sexual intercourse. This is precisely where the *Catechism* is at fault when it narrows the concept of marital love to the genital conjugal act.

249. What the *Catechism* has to say about the “fecundity of marriage” can perhaps best be illustrated when contrasted again with the documents of Vatican II. CCC 2366-2372 contain numerous quotations from *Gaudium et spes* but unfortunately interpret the conciliar texts in

²²⁴ The term “purposes of matrimony” is only used in GS 50,1, where it states that true married love has its own value, “while not making the other purposes of matrimony of less account (*non posthabitis ceteris matrimonii finibus*)”.

²²⁵ See section IV.2.1. (“CCC 1601-1666 [‘The Sacrament of Marriage’]”).

²²⁶ GS 48,1 adds that the “good of the spouses and their off-offsprings [sic]” includes also the good “of the society”.

a way that runs counter to the vision of the Council. To begin with, the Pastoral Constitution summarised in GS 50,1 the ordination of marriage and conjugal love to procreation in a striking way by stating that “[c]hildren are really the supreme *gift* of marriage (*praestantissimum matrimonii donum*) and contribute very substantially to the welfare of their parents” (emphasis added). This concurs in a certain sense with the statement of CCC 2366 that “[a] child does not come from outside as something added on to the mutual love of the spouses, but springs from the very heart of that mutual giving, as its fruit and fulfilment”. However, while GS 50 contents itself with expressing the Church’s joy that children contribute a great deal to the well-being of the parents and thus using the term *bonum prolis* with great caution,²²⁷ the *Catechism* returns more quickly than one might think to the concept of the purposes of marriage. Certainly, “[f]ecundity is a gift”, but its inevitable explanation is that it is the “*end of marriage*, for conjugal love naturally tends to be fruitful”.²²⁸ No further clarification is then needed for the next step, which involves adhering to the apodictic claim of *Humanae vitae* that “each and every marriage act remain ordered *per se* to the procreation of human life” (2366, quoted from HV 11).

250. Against this background, the original statement of *Gaudium et spes* that “[m]arriage and conjugal love are by their nature (*indole*) ordained toward the begetting and educating of children” (GS 50,1) takes on a different meaning. The Council wanted to emphasise that marriage and conjugal love *in their entirety* are ordained to children and that “the true practice of conjugal love, and the whole meaning of the family life which results from it”, means to “cooperate with the love of the Creator and the Savior” (GS 50,1). CCC 2367 refers again to GS 50 and reiterates that married couples have as their proper mission the task of transmitting human life and educating their children and that they “are thereby cooperating with the love of God the Creator and are, in a certain sense (*veluti*), its interpreters” (CCC 2367, quoted from GS 50,2, originally without emphases; the last emphasis added). The intention of the Council was to make clear that the so-called “interpretation function” of the married couples consists in listening to what God’s gifts and possibilities provide, in taking into account the good and welfare of family, society, and Church, and, equally importantly, in making decisions in mutual consultation and effort (see GS 50,2). The idea that the spouses surrender themselves to God’s providence in the most human way when they try to discern God’s will in each circumstance, to respond to God’s gifts and the needs of their neighbours, and to take the risk of making decisions seems, however, not to be on the radar of the authors of the *Catechism*. In fact, there is not much left of the task of spouses to work as “interpreters” of God’s love when one considers that the *Catechism* has narrowed the meaning of marriage and conjugal love to the “marriage act” which is by necessity procreative. The *Catechism* relapses into the pre-conciliar mentality that the best and safest way to responsible parenthood is to surrender blindly and unthinkingly to chance and the workings of biological laws. Not to mention that the *Catechism* completely ignores the key statement of Vatican II that “[t]he parents themselves and no one else should ultimately make this judgment in the sight of God” (GS 50,2; emphasis added).

²²⁷ GS 50,1 uses the term *bonum* in a different sense when it says that children “contribute very substantially to the welfare of their parents” (*ad ipsorum parentum bonum maxime conferunt*; emphasis added). The term *bonum prolis* (along with the other Augustinian term *bonum fidei*) is employed only once in GS (see GS 51,1), and only in reference to difficult situations when a harmonious marital life is no longer compatible with responsible birth control.

²²⁸ See also CCC 2398: “Fecundity is a good, a gift and end of marriage.”

251. A milder and more adequate interpretation of responsible parenthood can be seen in CCC 2368 in which the question of the birth control is addressed for the first time. Spouses may themselves “space the births of their children”, although they may not be “motivated by selfishness” but should make their decision in “conformity with the generosity appropriate to responsible parenthood”. It is commendable that the “objective criteria of morality” referred to in this paragraph are substantiated with a quotation from *Gaudium et spes* according to which, in accordance with the person-centred vision of the Council, “objective standards” must be “based on the *human person and his act*” (GS 51,3; emphasis added). However, *Humanae vitae* took a different view when it taught that God’s creative will for human sexuality and responsible parenthood is expressed “in the very nature of marriage and of its acts (*ipsa matrimonii eiusque actuum natura*)” (HV 10). This act-centred approach of *Humanae vitae* finds its way back into the two subsequent paragraphs of the *Catechism*.

252. In CCC 2366, the statement that each and every conjugal act must be procreative is immediately followed, without further explanation, by the annexing of 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 act” (quoted from HV 12). Contrary to the unfounded claim of *Humanae vitae* that this doctrine has been “expounded on numerous occasions by the Magisterium” (HV 12), the principle of the unbreakable link between the unitive and procreative dimensions has taken on an innovative meaning in post-conciliar church teaching. This is not because the twofold significance of marriage was unfamiliar to Vatican II’s theology of marriage but rather thanks to the assertion of *Humanae vitae* that the real meaning of marriage lies in the marital act. CCC 2369 provides the reasoning behind this doctrine, offering a brief quotation from HV 12: “By safeguarding both these essential aspects, the unitive and the procreative, the conjugal act preserves in its fullness the sense of true mutual love and its orientation toward man’s exalted vocation to parenthood.” In CCC 2370, the moral-theological conclusions are drawn. Birth control is allowed when the married couple only has sexual intercourse during infertile times and abstains in the fertile period (periodic continence); in both cases, the spouses follow the natural cycle of the reproductive system, thereby achieving the full fulfilment of their mutual love. It is different when they deliberately employ artificial methods of birth control. In that case, they interfere with the natural course of the generative process and, moreover, deprive mutual conjugal love of its full value and justification. The following quotation from FC 32 completes and, in a certain sense, tightens this view first hinted at in *Humanae vitae* by speaking of a “falsification of the inner truth of conjugal love”: according to *Familiaris consortio*, contraception undermines the innate and objective language that expresses reciprocal self-giving and prevents the spouses from giving themselves to each other in totality.

253. CCC 2373-2379, entitled “The gift of a child”, is dedicated to aspects of reproduction techniques. Further research aimed at reducing human infertility is briefly appreciated and encouraged (2375), while the following paragraphs take a critical and rejecting stance towards artificial insemination and fertilisation (2376-2377). The *Catechism*’s vision is almost exclusively based on the document of the Congregation for the Doctrine of Faith, *Donum Vitae* of 1987.²²⁹ Although issues related to reproduction technologies and the right

²²⁹ CONGREGATION FOR THE DOCTRINE OF THE FAITH: *Instruction on Respect for Human Life in Its Origin and on the Dignity of Procreation, Donum vitae*, 1987, available at

and dignity of the child are not the subject of our consideration, it is worth mentioning that the inseparable nexus between unitive and procreative dimensions of marriage, as affirmed by the *Catechism*, raises more questions than it can answer, especially when it comes to homologous in vitro fertilisation (see 2377). Since homologous fertilisation techniques pursue a procreative goal, the argument that these techniques “dissociate the sexual act from the procreative act” only makes sense if one presupposes that the “specific act of the spouses’ union”, or the “act by which two persons give themselves to one another” (2377), is inconceivable without sexual intercourse. However, the unitive meaning of marriage is broader than just the conjugal act, as the *Catechism* suggests. What prevails here is once again an act-oriented vision of marriage that does not correspond to the vision of Vatican II. Furthermore, the increasing role of technologies in modern times undoubtedly infringes on the dignity of the human person. The warning in *Humanae vitae* against the domination of technological means over the “force of nature” and “every aspect of his [man’s] own life” in the case of contraception (see HV 2), and the fear expressed in the *Catechism* regarding fertilisation techniques, are certainly good examples for this. But rejecting these technologies without further reflection is short-sighted and not helpful.

254. Whatever theological assessment one may make of the statements of CCC 2366-2372, especially in light of *Humanae vitae* and *Familiaris consortio*, the decades following the promulgation of Pope Paul VI’s encyclical have shown that the teaching of the prohibition of artificial contraception has not been received positively in the Church; on the contrary, it has been largely ignored and rejected. It is therefore imperative that the *Catechism* responds in a more critical and constructive manner to the challenges facing marital couples and to give the dual unitive and procreative meaning of marriage the importance that a person-centred vision deserves.
255. **CCC 2380-2391 (offenses against dignity of marriage):** The last and fourth section of the article on the “Sixth Commandment” endeavours to cover the “Offenses Against the Dignity of Marriage” which are listed as adultery (2380-2381), divorce (2382-2386), and “other offenses” such as polygamy (2387), incest (2388), sexual abuse (2389), “free unions” (2390), and “trial marriage” (2391). One cannot help getting the impression that the paragraphs represent a purely institutional and legal view of marriage: prohibitions predominate, there is barely any mention of the *dignity* of marriage, and the complexity of the problems facing people in today’s world is hardly addressed. The tone is already set in the opening paragraphs in which first a general definition of “adultery” is offered (2380) and then the negative after-effects are described: “[a]dultery is an injustice”, the marital covenant is equated with the “marriage bond” and the “contract”, to violate the sign of covenant means to transgress the rights of the other spouse, to undermine the institution of marriage and ultimately to jeopardise “the good of the human generation and the welfare of children who need their parents’ stable union” (2381). The same “don’t” propositions run throughout the entire section.
256. Divorce is considered a serious violation of the dignity of marriage, a topic already addressed by the *Catechism* in CCC 1614-1615, 1649-1651. Those who had expected a moral-theological response to the situation of divorced persons will be disappointed. Based on the biblical reference to Jesus’ prohibition of divorce, the step towards a theological interpretation of divorce is quickly taken and formulated in canonical terms: there is no

https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html.

dissolution of a validly performed and consummated marriage between baptised Christians except by death (2382, taken from CIC 1983 can. 1141); cases of the “separation” of spouses are permitted while maintaining the marriage bond (2383, based on CIC 1983 can. 1151-1155); and “civil divorce” is acceptable if certain legal rights, the care of children or inherited property, cannot be preserved in another way, whereby it is noted that in these circumstances civil divorce “does not constitute a moral offense” (2383). In all other cases, divorce is immoral, leading to disorder in family and society and having a contagious effect, making it a veritable “plague on society” (2385). Moreover, remarriage increases the moral gravity, as it forces remarried persons, even if civil law permits them to enter into a second union, into “a situation of public and permanent adultery” (2384).

257. As understandable as these judgements may be from a purely canonical point of view, they are hardly plausible from a theological perspective. Indeed, it should not be underestimated that the *Catechism* has pointed out for the first time that divorce is not in all circumstances equivalent to moral misconduct (see 2383). In a similar way, CCC 2386 mentions that a spouse who is the innocent victim of a divorce, who has tried to be faithful to the first union and who has been unjustly abandoned, “has not contravened the moral law”. Similar cases are also briefly addressed in FC 84 – although the apostolic exhortation, unlike the *Catechism*, did not venture to exempt certain circumstances of divorce from moral offense. But in all cases, post-conciliar documents have failed to raise even the question of whether there might be other circumstances in which a lesser degree of fault can be assumed, opening up the right to a civil divorce and the recognition of a civil remarriage.

258. Other offenses that contradict the dignity of marriage include polygamy (2387), incest (2388), and sexual abuse (2389). CCC 2387 recognises the internal conflict that a polygamous man may experience when wishing to convert to the Catholic faith, as he is obliged “to repudiate one or more wives with whom he has shared years of conjugal life”. However, conjugal communion is “radically contradicted” by polygamy and “contrary to the equal personal dignity of men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive” (quoted from FC 19). Consequently, the *Catechism* does not provide for any kind of pastoral help or guidance. Incest is considered a grave offense in CCC 2388, sexual abuse of children or adolescents by adults in CCC 2389. It seems strange that these offenses are still recorded under “against the dignity of marriage”, as they have little or nothing to do with the meaning of marriage. Fortunately, they are omitted in the “In Brief” statement in CCC 2400.

259. Non-marital and pre-marital relations are the subject of the last paragraphs of this article and are referred to as “free unions” (2390) and “trial marriages” (2391). The introductory sentences are helpful, briefly defining free unions as relations which represent a refusal “to give juridical and public form to a liaison involving sexual intimacy”, and trial marriage as relationships that have the “intention of getting married later”. Both types of non-marital sexual liaisons are uncompromisingly rejected, with the first, free union, being explicitly described as a “grave sin” that excludes one from the sacramental meal (2390), and the second, trial marriage, as “not tolerable” (2391). What connects the two types of relations as offenses against the dignity of marriage is that “the sexual act must take place exclusively within marriage” (2390) and “[c]arnal union is morally legitimate only when a definitive community of life between a man and woman has been established” (2391). Any attempt to distinguish between the types proves futile, mainly because the paragraphs operate with unfounded axiomatic assertions. For example, free unions are seen to be “fallacious”, since it must be assumed that partners “make no commitment to one another”, thus

“exhibiting a lack of trust in the other” (2390). On what basis can this be claimed? Similarly, the degree to which “the purpose of those who engage in premature sexual relations” is constant may in reality vary, but *the fact is*, according to the *Catechism*, “that such liaisons can scarcely ensure mutual sincerity and fidelity in a relationship between a man and a woman, nor, especially, can they protect it from inconstancy of desires or whim” (2391, quoted from *Persona humana*, 7²³⁰). With such assertions, the *Catechism* not only ignores current knowledge in the human sciences, but it loses above all its moral plausibility.

IV.2.2.2. Suggestions for Further Developing Church Teaching

260. **CCC 2331-2400 (adultery):** With regard to sexual morality, the *Catechism* should remove all remaining references to a prohibition-oriented morality and instead adopt a positive and appreciative approach to the dignity of human sexuality and marriage. Furthermore, CCC 2336 needs to be revised, as it erroneously claims that the Church has always and everywhere encompassed “the whole of human sexuality”, bearing in mind that the holistic nature of human sexuality has only recently become a topic of discussion. Likewise, church teaching should avoid attaching any value to normative prescriptions that are not historically, epistemologically, and theologically justifiable.
261. **CCC 2337-2359 (chastity):** The *Catechism* should adapt the concept of chastity to person-centred anthropology and ethics, according to which sexuality is not a biological drive that must be controlled but a pattern of behaviour rooted in the innermost being of the human person and affecting the person as a whole in terms of a morally responsible approach to sexuality.
262. **CCC 2366-2370, 2399 (fecundity):** The apodictic verdict that “each and every marriage act must remain open per se to the transmission of life” (CCC 2366, quoted in HV 11) is no longer theologically and morally defensible and should therefore be deleted. Instead, the *Catechism* should reaffirm the statement of Vatican II that the parents themselves and no one else has the responsibility to judge what constitutes responsible parenthood before God (see GS 50,2).
263. **CCC 2390-2391 (non- and premarital relations):** Given the widespread practice of cohabitation (mainly in the West), particularly before marriage, the *Catechism* must adapt its view of marriage theology to today's relationship patterns, recognising premarital sex as an integral component of a relationship that, in the best-case scenario, is on the path to marriage.

²³⁰ CONGREGATION FOR THE DOCTRINE OF THE FAITH: *Persona Humana, Declaration on Certain Questions concerning Sexual Ethics*, 1975, available at https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html.

V. Conclusion

264. The Second Vatican Council was, and still is, at the heart of our joint theological reflections on questions of marriage and family. However, more than half a century after the Council, times have changed, affecting both society and the Church. We live today in a time when traditions and institutions have lost some of their former significance; when the sense of the individual takes precedence over communal and collective rules; and where human life has been diversified and pluralised in all dimensions. Deinstitutionalisation, individualisation, pluralisation, and, not least, secularisation are the terms that best describe what characterises the present day, for which marriage and family life remain adequate indicators. In the Western world, marriage is still of great importance in interpersonal and child- and family-oriented relationships, both in practical and symbolic terms. But it is no longer what it was sixty years ago. Whereas marriage was long regarded as the start of a family relationship, currently an intimate partnership no longer coincides with the family phase. Most European countries show higher ages for the first marriage. The couple have children often years after they have lived together, frequently without getting married; in addition, rising life expectancy has led to an extension of the post-parenthood phase for married couples, resulting sometimes in divorce. New forms of expression in partnerships, with a focus on emotional affection, intimate trust, a sense of security, and reciprocal recognition, have also contributed to marriage being replaced by alternative, at times equally suitable, ways of life. Cohabitation is widespread, particularly in Northern Europe, as a preliminary stage or as a substitute for marriage, often related to increasing non-marital birth rates. The increase in childless couples, whether due to infertility or deliberately planned temporary or intentional lifelong childlessness, is also part of our contemporary everyday life. Current fertility rates in Europe are below those needed for population replacement. Likewise, we also see that marital breakdown continues to affect many couples and that stabilising divorce rates remain fairly high, which presents the Church with challenges for which general solutions do not seem feasible. On average one in five children aged 0-17 years are living with a single parent. These are just a few aspects of married and family life that could easily be expanded upon, all of which show that marriage is undergoing a constant process of transformation and redefining its former meaning. Today, we face lived realities and related challenges that are widely known, but which were not, or only marginally, known at the time of the Council.

265. Vatican II taught us an important lesson that we, as theologians and canonists, must not ignore. It states that in the “modern world” – which the Council has deliberately positioned itself within (see the title of *Gaudium et spes*: “The Pastoral Constitution on the Church *in the Modern World*”) – changing situations and realities are an integral part of human life and that these changes call for different and appropriate responses. This also applies, in particular, to Christian life. It would go against the spirit of the Council to assume that the treasure of the Christian faith is a vessel full of truths that must be protected from what the spirit of the times seems to dictate. The Christian faith can only be preserved and passed on if it enriches Christian believers with a *sense of reality*, an *attentive awareness of what is emerging*, and a *participatory ability to contribute to the community* – three fundamental insights that Vatican II stands for. With this in mind, we are all the more grateful for the achievements of the Council, of which the *Dogmatic Constitution on Divine Revelation*, the *Pastoral Constitution*, the *Decree on Ecumenism*, and the *Declaration on Religious Freedom* are prime examples. Our document is an attempt to give the Council the place and the spirit it had at the moment of its event and proclamation, and which it has maintained

throughout all the turbulent changes. In other words, our reflections are a renewed effort to *implement* the conciliar teachings, laws, and practices in the present day. The purpose of Part II of our document was therefore to reread and reflect on the teachings of the Council, especially the Pastoral Constitution, by addressing elements of post-conciliar interpretations that threaten to distort or even contradict the vision of Vatican II. Among these misconceptions, we highlighted a legalistic view of the marital relationship that undermines the conciliar definition of conjugal love, a concept of sexuality that overemphasises the function of procreation and neglects other forms of social fruitfulness, and an automatic perspective on the sacramental character of marriage that devalues the person-centred vision of God’s covenantal relationship with human beings by overlooking a key aspect of Christian anthropology, namely communal, relational, and well-formed consciences. The unease caused by disturbing interpretations of the Council prompted us also to pay closer attention to the *Code of Canon Law* and the *Catechism of the Catholic Church*, two doctrinal documents of great authority and influence, both of which claim to be a correct interpretation of Vatican II but do not always deliver what they should. Part IV was dedicated to this question.

266. In our document we have followed two guidelines, both of which originate from the view of Vatican II. The first is the *pastoral turn* initiated by the Council, the effects of which are still poorly understood and whose reception is still in its early stages in the post-conciliar period. In Part III, we have entered an area in which the difficulty of implementing the conciliar perspective is perhaps most evident: truly “giving a voice” to all the faithful, to use this metaphorical expression, is today a theologically well-grounded demand, but it cannot be realised immediately after centuries of hierarchy-oriented church life. Whatever the case may be, there is little reason to complain about this difficult undertaking. In fact, we are still at the beginning of the phase in the history of the Church in which we are called upon to give the realities and experiences, especially of married and family life, the theological significance they deserve. The Council Fathers have set in motion a process that is impossible to halt, but which needs to be considered much more deeply and will probably accompany us in the coming years or in the coming decades. In the second section of Part III, we have already attempted to outline a theological framework which could serve as a starting point for further reflection. Three aspects come to mind. Firstly, the term “human experience” is now firmly established in common usage but has not yet been fully developed in theology. Alongside the traditional sources of theological knowledge – Scripture, Tradition, and human reason – human experience still appears to play a subordinate role. Since the term was also hardly used in the documents of Vatican II, it is time now to pick up the thread again. The Pastoral Constitution undoubtedly called for the “signs of the times” to be recognised, and it emphasised the need for the Church to engage with the experiences and lived realities of people today. Secondly, the Council did indeed pay greater attention to the question of how the Church should pass on the Christian faith to the next generation. In particular, the *Dogmatic Constitution on Divine Revelation* made it clear that the magisterium is not the sole and exclusive teacher of the faith but that the teaching office is a matter for the whole Church, to which the faithful in their entirety and scholarly theology must contribute. Thirdly, the concept of the *sensus fidei fidelium* has been implemented even more effectively to date, with several new magisterial documents published on this subject. One of the questions preoccupying the Church currently, especially since Pope Francis called for a Synodal Process, is how the various church actors, be they bishops, priests, or lay people, should interact and work together in a sustainable and beneficial manner. In summary, Part III was intended to underpin the present-day lives of married people and families with a three-part theological framework that has a pastoral,

i.e. life-supporting, character, taking into account that this pastoral shift in the Church, decided upon by Vatican II, is still ongoing.

267. A second guideline concerns the concept of the *further development* of the Church's teachings, laws, and practices. Here, too, the *Dogmatic Constitution Dei verbum* unmistakably clarified that faith cannot be understood and lived as a treasure that must be protected from external attacks, nor as an entity that adapts to the sentiments of the times. It lives and flourishes only between the two extremes. Otherwise, it would be neither creative nor constructive nor life-giving. In Part IV, we have critically analysed the 1983 *Code of Canon Law* and the current *Catechism of the Catholic Church*, in particular canonical and doctrinal passages on the subject of marriage and family that do not favour the further development of the Church teaching but rather hinder it. Our intention and task were not to cast doubt on the magisterial statements but rather to examine the landscape and identify areas where distorting remnants could be removed, deep roots could be nurtured, and new seeds could be sown. We firmly believe that the teachings, legislations, and practices of the Church remain in a continuous state of development, and that ignoring or abandoning this process would be detrimental to the Christian faith. Our critique of certain canonical and doctrinal statements must be understood against this background, based on sound theological hermeneutics emerging from Vatican II.

268. To sum up, our document is not aimed at rewriting a theology of marriage that provides accurate and appropriate answers to all the questions that arise today in Christian life. It would be far too ambitious and, in fact, nonsensical to claim anything like that. Our purpose is much more humble. Above all, we wanted to remind the post-conciliar Church that any obsolete teachings, laws, and practices must first be cleared up before the "power of development", which the Holy Spirit has promised to the Christian community, can take effect. The words of the Council continue to resonate with us: "The tradition which comes from the Apostles *develops* in the Church with the help of the Holy Spirit. (...) For there is a *growth* in the understanding of the realities and the words which have been handed down" (DV 8,3; emphases added). Our theological considerations are based on these premises. However, how the theology of marriage will develop in the next three quarters of the 21st century is only fragmentarily within the scope of our document – it is the joint responsibility of the faithful as a whole, of the competence of theological thinking, and of the magisterium to shape the life and theology of marriage and family in a way that supports life. As theologians and canonists, we hope to have made a modest contribution by remaining faithful to the vision of the Second Vatican Council and looking forward to its full realisation so that new horizons can open up.

What does it mean to speak of marriage today in a Church still coming to terms with the vision of the Second Vatican Council?

Grounded in a person-centred, pastoral approach, this study offers a re-examination of the theology of marriage, bringing together theological insight and canonical analysis while understanding marriage as a dynamic, life-giving communion of love. At its heart lies the vision of Vatican II, still compelling and unfinished, yet continuing to shape the Church's self-understanding.

Attentive to the lived realities of couples and families, the contributors engage with current Church teachings and norms, highlighting areas where development and greater pastoral sensitivity are needed. No easy answers are offered here.

Instead, the reader is invited into a process of dialogue and discernment in which tradition is not abandoned but allowed to grow.

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