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Christians' Divisions, Fragmented Marriage
Historical roots and contemporary frontiers of the marital bond in Orthodox, Protestant and Anglican legal systems

Abstract
The many pressures to which the marital bond (as well as the notion of family itself) is subjected today often lead scholars and legal practitioners to question its constituent components. In this sense, an essential – even though often underestimated – element needed to understand this institution in our legal culture to date is the contribution provided by the different models that germinated following Christian divisions over time: not only Catholic, but also Orthodox, Protestant and Anglican. This essay therefore addresses the legal approaches developed in each of these denominations, both in their historical evolution and in light of the norms currently in force in each legal system, to investigate their specificities and identify common or contrasting aspects. Within this general framework, the examination of different 'marriage laws' will also inform the topics that today appear to be the most delicate – and often openly conflicting – showing how the different Churches and Ecclesial Communities frequently find triggering factors for new fractures precisely in disagreements concerning marital matters.

Keywords: Marriage, Law, Orthodox Churches, Protestantism, Anglican Communion

Abstract
Le innumerevoli pressioni a cui è sottoposto oggi il vincolo matrimoniale (così come, ancor prima, la nozione stessa di famiglia) inducono spesso studiosi e operatori del diritto a interrogarsi sulle sue componenti costitutive. In questo senso, un fattore essenziale – ma troppo spesso sottostimato – per comprendere la configurazione di tale istituto così come la nostra cultura giuridica l'ha conosciuto fino a oggi si rivela l'apporto fornito dai differenti modelli germinati a seguito delle divisioni sperimentate nella storia del cristianesimo: non solo quello cattolico, quindi, ma anche quelli rispettivamente propri degli universi ortodossi, protestanti e anglicani. Il presente contributo si rivolge perciò agli approcci giuridici sviluppati in ciascuna di queste prospettive, tanto nella loro evoluzione storica quanto alla luce delle discipline attualmente vigenti in ogni ordinamento, per indagarne le specificità e individuare eventuali elementi comuni o contrastanti. All'interno del quadro generale così descritto, la disamina di questi differenti 'diritti matrimoniali' permetterà inoltre di individuare gli ambiti che appaiono maggiormente delicati – e non di rado apertamente conflittuali –, osservando come oggi le diverse Chiese e Comunità ecclesiali trovino spesso proprio nelle divergenze in materia matrimoniale la causa scatenante di nuove fratture.

Parole chiave: matrimonio, diritto, Chiese ortodosse, protestantesimo, Comunione anglicana

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1. An indispensable component of (and for) Western legal civilization: the institution of marriage and the multiplicity of religious models

If one aims to research the institution of marriage as seen through the lens of a religious legal system, the scholar trained in our cultural context cannot but immediately turn to the law of the Catholic Church. Its historical relevance and current vitality, the juridical sophistication it developed over the centuries and the impact it had (and still has) on secular systems make it an obvious point of reference. "In a history that has been widely scoured in every corner, though filled with lights and shades, [...] no one has ever dreamed of ignoring the centrality of the law of the [Catholic] Church"[1] in this matter. If such an association of ideas therefore appears to be more than justified, at the same time it is also necessary not to forget that, just as Christianity has experienced a painful series of splits in its history, at the same time the gazes pointed towards the institution of marriage have been multiplying as well, in a number that corresponds to the Churches and the Ecclesial Communities emerging from these fractures[2]. This inevitably leads

[1] Boni (2023: 30-31), who in this regard also states: "Un esempio archetipico era rappresentato proprio dal primo Codice civile dell'Italia unita, nel quale la regolazione del matrimonio ricalcava pedissequamente fisionomia e requisiti del connubio così come raffigurati dallo *ius Ecclesiae*; tra l'altro, non ne veniva compromessa neppure l'indissolubilità, rigettando il Codice Pisanelli il divorzio che, sulla falsariga del *Code Napoléon*, si era invece estesamente sancito in tutta Europa, e non scalfendo così l'unitarietà e il nucleo essenziale del matrimonio ricevuto in eredità".
As a general premise consider that, for a better comprehension of the text, we chose to translate the sources that were not originally in English: therefore, when no other indication is given, translations are by the author. In the footnotes, instead, adherence to the original versions of the texts is preferred, and consequently cited in the source language.

[2] The above-mentioned terminology corresponds to the one used by the magisterium of the Catholic Church in matters of ecumenism, especially following the Second Vatican Council, as it is recalled by the editorial *Sulla distinzione tra Chiese e Comunità ecclesiali*, in *La civiltà cattolica* (2003: 4): "Il termine 'Chiesa' è usato molto spesso nei documenti del Vaticano II per far riferimento alle Chiese Ortodosse, e l'espressione 'Comunità ecclesiale' si applica principalmente alle Comunità sorte dalla Riforma protestante". The theological reasons behind these terms are explained by the Congregation for the Doctrine of the Faith as well, in the Declaration *Dominus Iesus* of August 6, 2000 (n. 17: "Therefore, there exists a single Church of Christ, which subsists in the Catholic Church, governed by the Successor of Peter and by the Bishops in communion with him. The Churches which, while not existing in perfect communion with the Catholic Church, remain united to her by means of the closest bonds, that is, by apostolic succession and a valid Eucharist, are true particular Churches. Therefore, the Church of Christ is present and operative also in these Churches, even though they lack full communion with the Catholic Church, since they do not accept the Catholic doctrine of the Primacy, which, according to the will of God, the Bishop of Rome objectively has and exercises over the entire Church. /On the other hand, the ecclesial communities which have not preserved the valid Episcopate and the genuine and integral substance of the Eucharistic mystery, are not Churches in the proper sense; however, those who are baptized in these communities are, by Baptism, incorporated in Christ and thus are in a certain communion, albeit imperfect, with the Church. Baptism in fact

us to ask what marital bond norms in Orthodox and Protestant Christianity are like: both in comparison with the Catholic model, in order to discover differences or elements of continuity[3], and in their autonomous development in the respective legal outlooks.

On the other hand, as we are going to see, the multiplicity that for different reasons characterizes both the Eastern and Western perspectives will also require us to limit the scope of the research in order to focus on the characteristics which appear as the most significant. In this sense, for example, among the innumerable and heterogeneous currents derived from the common root of Protestantism, we will limit our observations to the evolution of marriage in the communities that arose directly from the Reformation movements of the 16th century: that is, what is commonly referred to as 'historical Protestantism'. In addition to being necessary, this delimitation also proves to be anything but arbitrary, since it not only allows us to evaluate the non-obvious impact of such historical upheavals on the marital bond, but is also in line with the consolidated tendency of scientific literature towards the comparison of the experiences of Lutheranism, Calvinism and Anglicanism (once again, both among themselves and with respect to Catholicism); the purpose is to identify the contribution provided by each to the gradual transformation of the institution of marriage in the more general framework of Western legal culture[4]. In the itinerary we are about to begin – following the chronological progression of the

tends per se toward the full development of life in Christ, through the integral profession of faith, the Eucharist, and full communion in the Church": the Declaration was originally published in *Acta Apostolicae Sedis* [2000: 742-765]; for an English translation, see: www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20000806_dominus-iesus_en.html [accessed on 03.22.2024]). Clearly, such a nomenclature is not necessarily shared by those directly involved: among the self-definitions of which, for example, one can find the term 'Evangelical Lutheran Church' (about the appropriateness of this name, suffice it to recall the explanation given by Bouchard [1992: 15], the conclusion of which also applies here: "'Chiesa luterana' è un titolo di comodo. Lutero aveva espressamente proibito di dare il suo nome alle comunità nate dalla sua protesta, e la maggior parte delle chiese di cui tratta questo capitolo preferiscono esser chiamate semplicemente 'evangeliche' [*evangelisch*], oppure 'Chiese della Confessione di Augusta'. Ma in pratica la dizione 'Chiesa luterana' è entrata nell'uso comune e la useremo anche noi"). In any case, since the terminological issue is obviously not the main interest of this survey, here we will make use of the various expressions from case to case, according to the suitability of each.

[3] Let us also consider what was underlined regarding comparison and canon law by Parlato (2013: 135): "Nello studio del diritto canonico c'è anche l'interesse della comparazione tra diverse concezioni ecclesiali, e, nel caso in specie, paragonare la normativa e la prassi consolidata nelle due realtà ecclesiali diverse: quelle della chiesa cattolica, quelle della comunione delle chiese ortodosse; normative e prassi che, pur partendo da un medesimo dato scritturistico, in alcuni casi sono difformi in quanto condizionati da differenti presupposti teologici, pastorali, storici e sociali; il fondamento scritturistico è comune, comuni sono anche i principî contenuti nei *sacri canones* del primo millennio; la differente normazione odierna è dovuta all'accentuazione di altri principî, principî che si possono qualificare come 'secondari', ma che hanno permeato le specifiche realtà ecclesiali; essi sono costituiti come dati di base da cui derivano necessariamente soluzioni giuridiche difformi".

[4] In this regard, suffice it to see the work of Witte (2012: 113-116). We must not believe, however, that the comprehension of the factors fueling the evolution in question represents a desirable objective exclusively from a 'reconstructive' perspective, entirely focused on our cultural horizon. On the contrary, the same result is indeed necessary also for the purpose of approaching different legal cultures in a not trivializing way, as highlighted by M. Ricca (2004: 8): "La modernità è infatti riuscita a immunizzarsi dai conflitti religiosi che hanno accompagnato la fine del Medioevo e il tracollo dell'unità dell'orbe cristiano d'Occidente relegando la religione nell'ambito del privato, nell'area della libertà, della differenza individuale, della coscienza e sottraendo questi domini al controllo politico. In questo modo essa ha però occultato il debito che la tradizione culturale d'Occidente, e quella giuridica in modo particolare, aveva contratto con il

above-mentioned divisions – it will also be interesting to note the presence of factors that are common to very different developments, such as, for example, the impact on the various models of relationship with the respective secular powers.

2. Wedlock in the Orthodox universe: common heritage and intrinsic plurality

2.1. The contribution of the 2016 'Holy and Great Council of the Orthodox Church' to the definition of the marital bond and its discipline

Let us begin this examination looking at 'Orthodoxy': a denomination that the Eastern Churches made their own in the aftermath of the great schism of 1054, which ended up separating them from the Latin Church in a definitive manner. As it is known, such date – although not merely conventional, as it actually corresponds to the occasion of the exchange of mutual excommunications between Rome and Constantinople – should not be overestimated in its real importance, since the division between East and West had been progressively growing for centuries[5], just as the relationships between the two 'lungs of the Church' (to recall the evocative expression used in several occasions by Saint John Paul II)[6] continued on gradually divergent paths even in the following years, without drastic solutions of continuity.

Moreover, if we look at the fractures in Eastern Christianity which still maintain some relevance today, the time horizon proves not to be 'exclusive' either. In fact, alongside the great majority of Chalcedonian Orthodox Churches, which accepted the formulations of the eponymous Ecumenical Council of 451, we can also find a heterogeneous group of ancient Eastern Churches that, although differing in their uses and traditions, are united precisely by the refusal that at the time they opposed to the results of this assembly (hence the denomination of 'non-Chalcedonian' Orthodox Churches: in particular, they are the Armenian Apostolic Church, the

cristianesimo. Ma la collocazione periferica della religione rispetto alla dimensione pubblica, il suo riposizionamento nell'area del privato, della differenza, della coscienza individuale deliberato dalla modernità sembra inconciliabile con le esigenze che nascono dal confronto sia con i mutamenti sociali contemporanei, sia con le altre culture e le istanze di riconoscimento giuridico che da esse germinano. Queste infatti si pongono in antagonismo con le categorie di fondo dell'esperienza giuridica occidentale che il cristianesimo aveva contribuito a forgiare e delle quali la ragione giuridica laica si è appropriata soprattutto per merito dell'umanesimo giusnaturalista del XVII secolo. In discussione non sembrano perciò tanto e soltanto gli spazi di libertà cultuale, quanto piuttosto i modi di pensare la famiglia, la persona, il soggetto di diritto e la sua capacità giuridica, i canali della reciprocità tra i soggetti di diritto e i loro contenuti, il fondamento e le modalità di articolazione degli obblighi contrattuali, i confini sostantivi tra ciò che è giuridicamente valido e ciò che è privo di effetti o nullo. Questo antagonismo ha una esplicita radice culturale, ma soprattutto mette in mostra una connotazione religiosa che fa tutt'uno con la forza delle richieste di riconoscimento. Nel crogiuolo della metamorfosi multiculturale della società occidentale la religione sembra quindi abbandonare i territori della differenza, e sfruttando le enunciazioni universaliste contenute nelle Costituzioni democratiche aggredisce criticamente quel *plafond* di assiomi razionali e normativi che ha costituito l'asse portante dell'esperienza giuridica dell'Occidente moderno, mettendone a nudo dialetticamente l'ascendenza religiosa e il carattere sotterraneamente mistificatorio ed etnocentrico di ogni suo tentativo di occultamento".

[5] Cf. Boni, Samorè (2023: 15-17).

[6] For example, cf. John Paul II (1980a: 704); John Paul II (1980b: 653). In a broader sense, see also Cazzago (1996: 51 ff.); Czaplak (2022: 79 ff.).

Coptic Orthodox Church, the Ethiopian Orthodox Church, the Syro-Malankara Orthodox Church and the Eritrean Orthodox Church, to which we can add the Syrian or Assyrian Orthodox Church of the East too, since it had not even accepted the previous Council of Ephesus in 431): even though, today, "it is believed that the difference in the Christological formulation between these Churches and those that accept Chalcedon is a purely lexical issue"[7]. In the same way, the Orthodox physiognomy did not remain unchanged afterwards either, compared to what was 'photographed' by the Eastern schism. Suffice it to consider the new Patriarchates that, in the following centuries, joined the historical ones of Constantinople, Alexandria, Antioch and Jerusalem: among which, for example, the Patriarchate of Moscow, rising to this prestigious rank in 1588, is today considered to be the head of "the largest among the Orthodox Churches [...] as well as the largest local Church in the world"[8]. Nor it is to be believed that similar dynamics are relegated to the past centuries, as the most recent events also teach[9].

In addition to relativizing the weight of all-too-punctual chronological divides, these brief preliminary remarks allow us to ascertain first-hand how the Orthodox world, although united by a fundamental identity of tradition and doctrine, is by its nature 'particularist', being founded on the principle of autocephaly: according to which – in a nutshell – "the Church of a given region has the right to elect its own head (κεφαλή) that is, its own primate"[10], with the consequent right to self-government. From a legal point of view, then, it ought to be remembered that "the Orthodox Churches are governed by the 'sacred canons' of the first millennium and by their own Statutes, issued at various times up to today by the respective councils, and by the State legal condition in which they find themselves in their respective nations"[11]. A similar conformation cannot but be reflected in the matrimonial context as well, where completely homogeneous base lines sometimes overlap with interpretations and determinations differing on the discipline that is to be reserved for more limited (but not irrelevant) aspects[12]. Consequently, with the aim of

[7] Morelli (2010: 197). Cf. also Dorfmann-Lazarev (2010: 515-534).

[8] Introvigne, Zoccatelli (2013: 127). Cf. also Codevilla (2008: 34-37, 54-58); Merlo (2010: 395-427); Alfeev (2013: 143-175); Goldfrank (2020: 3-20).

[9] The best-known case in recent years is undoubtedly that of the Orthodox Church of Ukraine, as recalled by Boni, Samorè (2023: 17, n. 40): "L'ultima Chiesa ortodossa che si è formata è quella dell'Ucraina, fondata il 15 dicembre 2018 con un 'concilio di riunificazione' tra la Chiesa ortodossa ucraina-patriarcato di Kiev e la Chiesa ortodossa autocefala ucraina, con l'autorizzazione del patriarcato ecumenico di Costantinopoli che ha riconosciuto alla nuova Chiesa l'autocefalia. Tale decisione è stata però fortemente contestata dalla Chiesa ortodossa russa, che riconosce una differente Chiesa ortodossa ucraina, e che ha quindi denunciato lo 'sconfinamento' del patriarcato di Costantinopoli, rompendo le relazioni con esso e dichiarando la nuova Chiesa 'scismatica'. Questa crisi religiosa è comunemente denominata 'scisma ortodosso del 2018'". On this point, see also Bottoni (2019: 281-316); Parlato (2019: 1-16); Cimbalo (2021: 485-510); Codevilla (2022: 21-52); Gianfreda (2024: 55-60); Macrì (2024: 83-92). More generally, cf. Cimbalo (2020a: 24-61); Cimbalo (2020b: 262-304); Cimbalo (2022a: 1-34); Cimbalo (2022b: 1-30); Cimbalo (2022c: 1-50).

[10] Zizioulas (1980: 3). For more detailed studies on this matter, cf. Papastathis (2005: 179-192); DeVille (2008: 460-496); Grigoriţă (2019: 495-526).

[11] Salachas (2010: 710).

[12] Cortés Diéguez (2006: 706): "En cuanto a la disciplina sacramental matrimonial propia de la Iglesia ortodoxa, lo primero que hemos de indicar es que ésta lleva siglos sin ser revisada, puesto que las disposiciones más recientes datan de la alta Edad Media. No obstante, han adoptado cierto número de medidas pastorales, muy similares en los diversos países, aunque no ha mediado acuerdo común sobre este asunto. La falta de un acuerdo común, no sólo en este asunto sino también en otros, se debe a que la unidad entre las Iglesias ortodoxas autocéfalas deja mucho que desear. Ciertamente ha habido

referring first and foremost to the common heritage of Orthodoxy in nuptial matters, here we will necessarily have to settle for an examination that involves the most transversal issues among the various traditions, possibly pointing out (for the sole purpose of example) the most indicative factors of divergence in this internal variety: with an overview which, due to the very morphology of its object, will therefore require resorting to some inevitable, but hopefully not pernicious, simplification[13].

In order to overcome the uncertainties that such a configuration could generate, a useful basis for comparison is provided by the so-called 'Pan-Orthodox Council': a name commonly used to refer to the 'Holy and Great Council of the Orthodox Church' that was held in 2016, despite some significant defections (starting from the one of the already mentioned, the Russian Church) that have undermined the universal scope implied by this unofficial denomination[14]. For what matters most here, however, the conclusions that the assembly managed to reach correspond to widely shared positions: among these, a short but dense document concerning marriage is also present[15], the first part of which is meant to summarize its fundamental dimension. The text starts precisely by stating that "The Orthodox Church maintains, as her fundamental and indisputable teaching, that marriage is sacred" (n. 1), specifying immediately afterwards that marriage also represents "the oldest institution of divine law" (n. 2)[16]. Without delving into the most strictly theological aspects, in this regard we can therefore confirm the substantial continuity between East and West. As previously highlighted, "the Catholic tradition and the Orthodox tradition recognize the sacramental character of marriage and the difference between natural and sacramental marriage. Furthermore, both traditions recognize ecclesiastical competence in matrimonial cases and the particular grace that gives special strength to marriages between baptized people"[17].

diversos intentos de unión, pero si bien es cierto que, aunque desde el II Concilio ecuménico, Constantinopla ha intentado llevar a cabo un primado panortodoxo, sin embargo, también lo es que estos intentos no han triunfado"

[13] Moreover, as anticipated, this plurality is not limited to the sphere of canon law alone. Only to mention a reference from a different branch of the 'sacred sciences', see Pulcinelli (2022: 81-82): "Per quanto riguarda i cristiani ortodossi – che come Sacra Scrittura fanno riferimento alla versione greca della LXX – finora essi non hanno mai preso una decisione ufficiale circa il canone [dei libri dell'Antico Testamento] (ad esempio convocando un sinodo sul tema); pur avendo posizioni variegate all'interno dei distinti patriarcati e Chiese autocefale, nelle loro liturgie gli ortodossi tendono ad adottare il canone lungo, includendo a volte anche alcuni 'apocrifi' come 2Esdra o 3Maccabei. Dunque, pur non avendo un 'canone' ufficiale, a far testo è soprattutto la prassi e l'uso liturgico".

[14] Cf. Farrugia (2016: 521-533); Parlato (2017: 1-28).

[15] In addition to the text available on the official website of the Council (https://holycouncil.org/marriage [consulted on 03.22.2024]), the English version of the document, bearing the title *The Sacrament of Marriage and its Impediments*, was also published by Melloni (2016: 1350-1377).

[16] For further considerations about the concept of marriage in the Orthodox Churches, cf. D. Ford, M. Ford (2010: 763-764); Dură, Petrescu (2014: 115-130); Prader (2015a: 1236-1237).

[17] Sabbarese, Lorusso (2018: 28). In this regard, we can also usefully recall the recent document of the Joint International Commission for Theological Dialogue between the Catholic Church and the Oriental Orthodox Churches, *The Sacraments in the Life of the Church*, June 23, 2022 (2022: 733-746), in which ns. 31-44 are specifically focused on marriage, explaining that "All our Churches are in complete agreement that Christian marriage is a sacrament, in some traditions known as the Mystery of Crowning. We accept the same biblical and patristic sources as the grounds for our belief that the Sacrament of Matrimony is a divine institution. The narratives of the Old Testament present marriage and parenthood as a gift from God so that 'the two become one flesh' (Gen. 2:24) and respond to God's commandment 'be fruitful and multiply' (Gen. 1:28). The teachings of Jesus and Saint Paul in the New Testament emphasize the indissoluble

On the other hand, the document also mentions those unions that cannot be considered a marriage according to these criteria, from which they are seen to progressively distance themselves. First of all, it recalls that "A civil marriage between a man and a woman registered in accordance with the law lacks sacramental character since it is a simple legalized cohabitation recognized by the State": the faithful involved in it should be treated with pastoral responsibility, so that they can understand the value of the sacrament of marriage and the blessings connected to it (n. 9). Even more so, it is reiterated that the Orthodox Church "does not allow for her members to contract same-sex unions or any other form of cohabitation apart from marriage" (with regard to the first case, the text underlines on several occasions that marriage is by its nature 'between a man and a woman'), being rather required to exert "all possible pastoral efforts" so that those who live in such situations can "understand the true meaning of repentance and love as blessed by the Church" (n. 10).

2.2. The 'substantial conditions' of marriage. From physiological differences to the battleground of mixed marriages

Even though it occupies most of its content, however, the attention of the aforementioned document is not limited to defining marriage. An opening to more specific questions is in fact provided, in the first part, by n. 6, in which the Orthodox Churches claim to have always treated "with the necessary strictness and proper pastoral sensibility [...] both *the positive preconditions* (difference of sexes, legal age, etc.) and *the negative impediments* (kinship by blood and affinity, spiritual kinship, an existing marriage, difference in religion, etc.) for the joining in marriage". This circumstance is justified by the fact that "Pastoral sensibility is necessary not only because the biblical tradition determines the relationship between the natural bond of marriage and the sacrament of the Church, but also because Church practice does not exclude the incorporation of certain Greco-Roman natural law principles that acknowledge the marital bond between man and woman as *a communion of divine and human law* (Modestin) compatible with the sacredness of the sacrament of marriage attributed by the Church". The topics of this premise are then taken up again in the second part of the text, which – albeit in a synthetic manner and without any claim to self-sufficiency – has marriage impediments as its main object[18].

Before venturing onto this ridge, however, a clarification is necessary. Precisely by virtue of the already mentioned closeness between Orthodoxy and Catholicism in various aspects, including marriage, and in consideration of the use of an apparently coincident terminology, the risk of falling into misunderstandings should not be underestimated when moving into the more specifically juridical sphere; we could be misled by those which, if we were in a different field of study, could probably be considered 'false friends'. In fact, continuing with the linguistic

bond of marriage, rooted in the mutual love of husband and wife that is a sacramental participation in the mystery of Christ and his Church (Matt. 19:6, Mark 10:9, Eph. 5:32). Marriage, by its very nature ordered to the mutual love of the spouses and to their care for their children has been raised by Christ the Lord himself to the dignity of a sacrament" (n. 32).

[18] It is worth recalling what was noted, in his review on the Pan-Orthodox Council, by Farrugia (2016: 531): "Il parlare poi di impedimenti matrimoniali dal punto di vista sia canonico sia pastorale sta a significare che certi problemi, che sono stati affrontati già da molto tempo in Occidente, sono diventati all'ordine del giorno anche in Oriente".

comparison, it has been underlined that "the Eastern canonists use a vocabulary and categories that are different from those of Catholic canon law. [...] Orthodox law provides formal conditions that essentially concern the liturgy of the sacrament. Furthermore, there are substantial conditions both of a positive nature, i.e., age, legal capacity and free consent of the spouses, and of a negative nature, i.e., impediments"[19]. This dynamic will therefore need to be adequately taken into account, now that we are about to address the 'substantial conditions'.

To this purpose, however, this general framework still requires some further elements in order to be capable of adequately orienting us. In addition to the differences in the language and categories used by Catholic canon law compared to the Orthodox one, the internal indeterminacy of the latter should not be overlooked either. In other words, it must be noted that, in such a context, "it is often not certain whether an impediment in the respective Church is considered diriment or prohibitive, whether it is still in force or repealed due to desuetude, whether a specific dispensation has been granted or not"[20]. On the other hand, the importance of the link between the different Churches and the corresponding secular legislations must also be duly considered: towards this aspect, the document of the Pan-Orthodox Council also turns its attention in its final part, recalling that "The practice adopted in implementing ecclesiastical Tradition with respect to impediments to marriage should also take into account the relevant provisions of State legislation, without going beyond the limits of ecclesiastical economy".

A first attestation in this respect can be identified in relation to the aforementioned condition of the age required for marriage, regarding which the Orthodox Churches normally refer to the minimum limit established for their territory by State laws, only eventually reserving for themselves the faculty of giving autonomous provisions: which is what happens in those countries where the regulation of marital discipline or at least some of its aspects are delegated to the religious laws of the various denominations, among which one or more Orthodox Churches may also be present. This is for example the case of Syria, where "personal statute regulates the matter of marriage (the conditions of substance and form, the rights and duties that arise from marriage, dissolution, filiation, guardianship and curatorship) and the right of succession (will and legitimate succession)", providing that "for the Christian and Jewish communities, the respective religious law applies with regard to the conditions of substance and form of marriage, the effects of marriage, the dowry, filiation, maintenance of spouses and children, nullity and dissolution of marriage"[21]. Consequently, we can observe how the Syriac Orthodox Church provides for a minimum age of eighteen for both men and women, without the possibility of exceptions, while other Orthodox Churches recognized in the country (those of the Greek rite and the Armenian rite) lay down different terms, with the possibility of exceptions[22].

On the contrary, total uniformity of views can be found about the other elements to which we already referred as 'substantial conditions' or 'positive preconditions'. In this regard, if it does not seem necessary to add anything about the 'difference of sexes' mentioned by the Council, the same can be said regarding the role played by the full and free consent of the bride and the groom to the wedding: in fact, the same document recalls that "The freely entered union of man and

[19] Sabbarese, Lorusso (2018: 82).
[20] Prader (2003: 56).
[21] Prader (1986: 510).
[22] Cf. van Eijk (2016: 61).

woman is an indispensable precondition" (n. 1). This entails some physiological consequences, such as the fact that the error regarding the identity of the person is peacefully recognized as a cause of nullity, since consent is radically lacking: and, in relation to the malicious error regarding personal qualities, it is worth pointing out that there are "certain physical and moral qualities that are considered essential for Eastern traditions, [among which] the virginity of the woman of first marriage or, in the case of second marriages, the fact that the woman is not pregnant by another man are of particular importance"[23].

The internal variety existing among different Churches cannot but emerge again in relation to those negative impediments on which the text of the Council focuses in the second part, in order to state that "Concerning impediments to marriage due to kinship by blood, kinship by affinity and adoption, and spiritual kinship, the prescriptions of the canons [...] and the church practice derived from them are valid as applied today by local autocephalous Orthodox Churches, determined and defined in their charters and their respective conciliar decisions" (n. 1). In fact, it can actually be seen that even a biblical and very ancient impediment such as the one concerning consanguinity experiences some fluctuations among different traditions: collaterally, marriage is precluded up to the fourth degree in the Churches of the Byzantine rite, with the possibility of requesting a dispensation for marriages between uncle and nephew and between first cousins, while the same limit extends up to the fifth degree in the Patriarchate of Antioch and even up to the seventh degree in the Ethiopian Orthodox Church[24]. Again: among the Coptic Orthodox, marriage is permitted between first cousins, but is prohibited between uncle and great-grandson[25].

Equally variable guidelines can also be found with regard to those ties that the Council indicates as 'kinship by affinity'[26], while the circumstances that the *Codex Iuris Canonici* and the *Codex Canonum Ecclesiarum Orientalium* regulate as the impediment of public propriety were taken into consideration in the past – under the name of 'quasi-affinity' – only by a small number of Orthodox Churches, which over time have completely dropped their interest in similar profiles. Similarly, approaches that are not entirely coincident are reserved for the last case mentioned, that is the 'spiritual kinship' binding the godfather and godmother with the baptized person and his

[23] Prader (2003: 182).

[24] Cf. Tzadua (1973: 137). As underlined by Mureşan (2009: 262) in regard to the 18th century Romanian context as well, "An extremely severe conditioning imposed by the Orthodox Church was from the point of view of kinship between the future spouses, the interdiction going as far as the seventh degree of kinship, including spiritual kinship resulting from baptism, Marriage within kinship was considered by the Church as an even greater sin than immorality. There were no exemptions for such cases and, if discovered, they were severely punished".

[25] Cf. Masson (1970: 108-119).

[26] See Kuźma (2017: 33): "The issue of the degree of kinship by blood and kinship by affinity was mainly decided on the basis of Canon 54 of the Council in Trullo. However, it seems that the formulation in the document was more strict than the canon itself, which did not permit marriage in the context of kinship 'with the daughter of one's brother.' This would mean that a relationship to the third degree is not allowed, however a marriage to the fourth degree of kinship would be permitted. In the opinion of certain local Church representatives, such a solution should be applied. Textbooks of Canon Law indicate that marriages to the fourth degree of kinship are not permitted, however such relationships to the fifth degree of kinship are permitted with the bishop's blessing. In the text accepted in 1982, it was stated that marriage at the fifth degree of kinship is not permitted. The problem seems to not have been fully resolved and for this reason, the document which was accepted by the Council in Crete does not outline specific degrees of kinship, but the authors of the text make reference to Canons 53 and 54 of the Council in Trullo, calling for its application and *ecclesiastical practices as currently applied in local autocephalous Orthodox Churches* (II,1)".

family: this is an impediment that in some contexts had made its way into civil legislation as well (as in the case of the Greek Civil Code, which – as a consequence of the system of compulsory religious marriage that was maintained until the 1982 reform – contemplated this and other impediments borrowed from the discipline of the respective Orthodox Church)[27], while in others it is ignored even on a religious level (which is what happens among the Coptic Orthodox)[28].

As regards to the impediments deriving from the connection with the sphere of the sacred, a relatively uniform interpretation is reserved for the consequences of monastic tonsure, which by the great majority of Orthodox Churches is considered "an absolute and diriment impediment"[29] as long as one belongs to such state. However, the consideration given to the relationship between marriage and holy orders is less unambiguous. Indeed, while it is a fact of common knowledge that the Orthodox world allows the ordination of men who are already married[30], it should be noted that the prohibition concerning the opposite hypothesis – that is, the marriage of a man who has already received sacred orders – affects all degrees of the sacrament according to a largely dominant, but not exclusive interpretation: among the Syrians, Armenians, Copts and Ethiopians the prohibition applies only to priests and bishops, while deacons are still allowed to marry.

[27] See Prader (1986: 259): "Il Sinodo permanente della Chiesa greco-ortodossa ha dichiarato, con decreto del 19.5.1982 [...], che gli impedimenti abrogati dalla legge civile restano in vigore per la Chiesa ortodossa, e particolarmente quelli previsti dagli articoli 1350 (concernente l'età di 18 anni per l'uomo e di 14 per la donna), 1353 (religione diversa), 1355 (terzo matrimonio), art. 1364 (ordine sacro e voti monastici). Per quanto concerne invece gli impedimenti previsti negli articoli 1358 [affinità tra i consanguinei di un coniuge e i consanguinei dell'altro], 1361 [parentela spirituale tra il padrino e la figlioccia o la madre di quest'ultima], 1363 [adulterio] è possibile dispensa (*oikonomia*)". About the 1982 reform of the Greek civil legislation on marriage, cf. Mantuano (2004: 186 ff.); Martín de Agar (2008: 134-135). Obviously, in former times other areas of Europe had known the same influence, that extended well beyond the impediments to marriage: as recalled by Roman (2021: 240), for example, "Matters concerning the family, such as marriage, dowry, divorce, and control of inheritance, were managed almost exclusively by the Orthodox Church in Wallachia until the mid-nineteenth century. The Byzantine-influenced *Îndreptarea Legii* (The guide to the law, 1652) known as *Pravila* (codex) continued to be taken into account until 1818, when it was partially replaced by *Legiuirea Caragea* (Caradja's legislation). At the beginning of the eighteenth century, Metropolitan Antim of Iviria (1650-1716), who was considered the head of the Orthodox Church in the principality of Wallachia, made a first draught of a dowry contract, accompanied by recommendations. In his version, the dowry contract divided goods by categories. Parents and guardians of girls had to value each object given in monetary terms and even calculate a general total to avoid quarrels afterwards. This had to be reinforced by the signatures of parents, witnesses, and the recipient of the dowry. The conversion of objects into abstract monetary values already hints at the dowry perceived as a form of provisional inheritance".

[28] The impediment of spiritual kinship is no longer envisaged by the *Codex Iuris Canonici*: instead, it was addressed by canon 1079 of the 1917 Code and still is by the *Codex Canonum Ecclesiarum Orientalium*. In this regard, cf. Salachas (2009: 133-135): "Il *CCEO* giustamente ritiene il canone congruentemente alle tradizioni orientali, come risulta dal can. 53 del concilio Trullano (691-692), il quale estende l'impedimento anche ai genitori del battezzato".

[29] Prader (2003: 128), who, on the other hand, points out: "Presso i siri (giacobiti) vi è dubbio circa la forza irritante della professione monacale" (while no questions arise in the Chaldean Church, since there are no religious orders in the first place).

[30] As recalled by Levin (1989: 5), "Unlike the Roman Catholic Church, the Orthodox Church preserved the ancient institution of married clergy. Consequently, the body of canon law dealing with sexuality in the lives of Orthodox priests has no direct analogue in the West. In the Orthodox world, autocephalous national churches became the rule, and each provided the liturgy in the vernacular. This type of organization limited the degree of control that the Byzantine church could exercise over the Slavs. The use of the vernacular similarly contributed to the independence of Slavic churches, because as a rule Greek hierarchs did not study Slavic or oversee the content of Slavic texts. As a result of these structural features, canon law tended to diverge among the Slavic states in response to native conditions and values, especially in the regulation of sexual expression".

Finally, even more disparate positions – not infrequently capable of catalyzing very heated debates – are recorded with regard to the question of mixed marriages. In order to properly illustrate this aspect, however, it is necessary to introduce a notion dear to the Eastern tradition, which has already been implicitly hinted at and which, above all, will be useful in the continuation of this examination: that is, the one concerning the binomial of 'canonical *akribeia*' and 'ecclesiastical *oikonomia*'. Even beyond the matrimonial context, this is in fact a couple of concepts that is central in order to understand the juridical dimension of Orthodoxy, having as its object the application of the canons of a disciplinary nature: in a nutshell – with a synthesis that is inevitable here, but obviously cannot explain the richness and the complexity of similar terms –, its two poles can be defined respectively as a criterion of rigorous observance of the norm, that suggests inflexibility towards unrepentant transgressors and situations that could be risky for the good of souls (*akribeia*), and as a pastoral principle in resorting to law, whenever the repentance of the faithful or other circumstances that appear to be favorable to eternal salvation lead to the preference for an elastic interpretation (*oikonomia*)[31].

It is within the tension between these polarities that the openness or the reluctance recorded among Orthodox Churches towards the problem of mixed marriages still find their explanation today. The roots of such problem date back in time: namely at the end of the 7th century, since its first seeds can be identified in that "Trullan or Quinisext Council (in Greek: Πενθεκτη), issuing 102 canons, the importance of which, for the Eastern Christian world and especially for the Orthodox Churches of Constantinopolitan tradition, is well known to all Christian orientalists"[32]. In fact, if Eastern tradition had always frowned upon the prospect of a mixed marriage, it was precisely on the occasion of the Council *in Trullo* that an apparently definitive determination was taken in this regard, with can. 72 sanctioning the nullity of marriages contracted 'with heretics'[33]: a prescription that at first glance appears to be decisive,

[31] Cf. Patsavos (2003: 12-15); Psarev (2011: 98-100); Mihai (2014: 4-9); Aoun (2022: 215). In a broader perspective, see also Gefaell (2000: 101-115).

[32] Ceccarelli Morolli (1996: 29). Regarding the circumstances and the meaning of these determinations, suffice it to recall the summary offered by Salachas (2010: 701-702): "L'unico momento in cui in Oriente si procedette ad un'opera di ridefinizione canonica, era quello del grande concilio costantinopolitano del 691-692, detto Trullano, il quale, certo, non rappresenta un riordino *sistematico* del diritto canonico, una vera e propria 'codificazione' con i dovuti adattamenti ai tempi, ma piuttosto una più autorevole determinazione ufficiale dei canoni precedentemente emanati da riconoscersi in vigore in tutta la Chiesa d'Oriente. Questo concilio, convocato e presieduto dall'imperatore Giustiniano II, è conosciuto come 'Trullano', cioè celebrato nella sala a cupola (*trullos*, in greco) del grande palazzo imperiale di Costantinopoli. Più correttamente viene definito *Quinisesesto* (*Penthekti*), convocato non allo scopo di dirimere una questione dottrinale, ma precisamente per ratificare la legislazione precedente e per completarla, con la promulgazione di una nutrita serie di 102 canoni; infatti i due ultimi concili ecumenici costantinopolitani, il quinto ed il sesto (553 e 680-681), non avevano promulgato dei canoni. Per questo motivo il concilio Trullano figura nell'elenco ufficiale per la Chiesa ortodossa dei sinodi ecumenici, ma non come settimo, perché con i suoi 102 canoni, costituisce l'appendice normativa del quinto e del sesto concilio. Sebbene non considerato formalmente come ecumenico, per le Chiese ortodosse il concilio Trullano è ritenuto '*ad instar conciliorum oecumenicorum*' e come tale gode di autorità normativa".

[33] Ceccarelli Morolli (1995: 141-142): "La legislazione del Concilio Trullano (anno 691) sembra essere quella 'definitiva', infatti nel Niceno II la nostra tematica non è trattata e dunque possiamo asserire che il canone 72 del Trullano rappresenti la 'soluzione' (almeno in Oriente) al problema nonché la specificazione giuridica di tali matrimoni. [...] Il canone 72° Trullano, prendendo atto di tali unioni, sembra voler spingere la riflessione giuridica dei Padri Conciliari oltre quanto detto dai precedenti concili e sinodi. I punti principali di tale normativa sono i seguenti. Divieto assoluto di unioni tra cristiani

but would later give rise to "a great variety of practical solutions given, on the one hand, the lack of clarity in the distinction between heretics and schismatics and, on the other, the varying identification of heretics by Orthodox ecclesiastical authorities", with the consequence that there are contexts, still today, in which "the rigidity of the Trullan law is preserved and Catholics are subjected to the measures envisaged for heretics" and others in which "economy is applied and mixed marriages are permitted under certain conditions"[34].

Now, in order not to get lost in the thousand streams of the history and geography of the Orthodox world, it is best to go back once again to the document of the 2016 Council, in which these elements are clearly reflected: starting from the strong contrasts aroused by the theme in question, to the point that the preparatory version of the text itself was approved "without the signatures of the patriarchs of Antioch and Georgia [precisely because] they were against mixed marriages"[35]. In this preliminary draft, in particular, the document confirmed the general disfavor of Orthodox Churches for such unions but, distinguishing the cases based on whether the faithful intended to get married to a non-Christian or to a non-Orthodox Christian, it recognized in the latter hypothesis a case of application of the aforementioned pastoral discernment, on the condition that the offspring were baptized and raised in the Orthodox faith (a solution that several Churches already adopted)[36].

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ed eretici, inoltre tali matrimoni sono considerati nulli ed ugualmente è nullo il contratto matrimoniale; riguardo le pene, se erano generiche quelle di Calcedonia, ora sono qui più precise: vi è la scomunica. Quindi una legislazione chiara e puntuale, ma il Trullano prende in considerazione anche il caso in cui una coppia sia formata da entrambi eretici, in questa circostanza se uno dei due passa alla fede cristiana, il matrimonio continuerà ad esistere perché il coniuge credente 'santificherà' il coniuge non credente e ciò è in accordo con il privilegio paolino (*I Cor. 7, 12*). Dunque il Trullano segna un po' un punto di stacco rispetto alla legislazione precedente, che pur prendendo in esame tali unioni non aveva dato evidentemente sufficiente chiarezza in merito; inoltre sembra perfezionare – giuridicamente parlando – la sostanza di tali matrimoni, li considera infatti per la prima volta nulli ('*irritum matrimonium*' – 'ἄκυρος γάμος'). Quindi il can. 72 del Trullano da un lato esprime rigore (ἀκρίβεια) in merito alle unioni tra cristiani e non-cristiani, e dall'altro concede accondiscendenza (οἰκονομία) verso quelle nuove unioni di non-cristiani di cui però una parte, successivamente, pervenga alla comunione con la Chiesa". In the same respect, see also Dură, Petrescu (2013: 117-130).

[34] Petrà (2011: 313-314). Historically there were, of course, also different problems emerging in different places and times: for example Gheorghe (2021: 503), who refers to the Metropolitan See of Bucharest in the 17th century, recalls that "If the law forbade marriage to a partner from a religious background other than Orthodox, it allowed, instead, marriage to a partner of another ethnicity, but with the same religion. The problem raised by these marriages was the impossibility of controlling the marital status of those who came from neighboring countries. Because of this, Metropolitan Antim obliged the parish priests to ask them for 'a letter of testimony from the priest of their place' and to investigate, in parallel, whether the future couple are not relatives, if they are of the right age and especially if they are at fourth marriage, all of which are forbidden by the church. The punishment of those who committed such crimes was 'investigation according to the will of the judge' and consisted either in 'confinement in the dungeon' or in walking naked, on a donkey, through the fair; in both cases all the goods were confiscated in favor of the lord 'since he has lost his honor and is a disgrace'".

[35] Sala (2016: 266).

[36] To limit ourselves to an example from a context that we have already mentioned, we can recall the encyclical n. 2141 of April 19, 1977, by the Holy Synod of the Orthodox Church of Greece (an Italian translation of which was quoted in the *Vademecum per la pastorale delle parrocchie cattoliche verso gli orientali non cattolici* of February 23, 2010, by the National Office for Ecumenism and Interreligious Dialogue and the National Office for Legal Affairs of the Italian Conference of Catholic Bishops, in *Enchiridion della Conferenza Episcopale Italiana*, VIII, *Decreti, dichiarazioni, documenti pastorali per la Chiesa italiana [2006-2010]* [2011: 1640, n. 53]): "i matrimoni misti (tra ortodossi ed eterodossi) si celebrano secondo le norme della Chiesa ortodossa a condizione inviolabile che i figli che nasceranno da questi matrimoni siano battezzati ed educati secondo i

The definitive version, however, appears significantly different. On the hand, it maintains the aforementioned partition, indicating marriage with a non-Orthodox Christian as "forbidden according to canonical *akribeia*" and the one with a non-Christian as "categorically forbidden in accordance with canonical *akribeia*", but on the other hand it completely modifies the remaining part of the text, leaving the entire issue to the decision of each Church: as stated in the new n. 5, "With the salvation of man as the goal, the possibility of the exercise of ecclesiastical *oikonomia* in relation to impediments to marriage must be considered by the Holy Synod of each autocephalous Orthodox Church according to the principles of the holy canons and in a spirit of pastoral discernment"[37]. The theme of mixed marriages, for which a line of general disapproval clearly emerges, thus stands out as one of the most indicative examples of Orthodox heterogeneity in matters of impediments to marriage[38].

2.3. The 'formal conditions' of marriage. Centrality and implications of the 'crowning rite'

We have already mentioned the fact that, together with the 'substantial conditions', an essential role for the celebration of marriage is also played by the 'formal conditions'. In this regard, it should be kept in mind that in the first centuries of the Christian era, both in the East and in the West, marriage did not have an autonomous form, it being normally concluded according to local customs. As early as the 4th century, however, the blessing imparted privately by the bishop or by a presbyter at the end of the wedding feast began to be surrounded by an increasingly complex liturgy, which at different times made its way into the legislation of the various Churches (the Armenian one, for example, was the first to officially recognize the essential importance of the rite for the conclusion of marriage)[39].

dogmi della nostra santissima Chiesa, sottoscrivendo ambedue le parti in precedenza una dichiarazione firmata dinanzi al notaio". About the Sacred Orthodox Archdiocese of Italy and Exarchate of Southern Europe, see also the provisions recalled by Zambon (2010: 550-551, note 61).

[37] Cf. Perşa (2018: 348, n. 7), who also notes, as a consequence of the new wording, that "It is not clear if the passage regarding *oikonomia* can be applied to all canonical marriage impediments, or just to mixed marriages with non-Orthodox".

[38] Extensive attention to mixed marriages in the Orthodox Churches, also with reference to different experiences, is given by Gianesin (1991: 91-111); Lorusso (2008: 232-236); Sabbarese, Lorusso (2018: 82, 100-111). Furthermore, these problems are also echoed in the aforementioned document by the Joint International Commission for Theological Dialogue between the Catholic Church and the Oriental Orthodox Churches, *The Sacraments in the Life of the Church* (2022: 742): "The Catholic Church permits marriage with other baptized persons under certain conditions and is actively seeking joint agreements with other Churches about marriages between their faithful. Some Oriental Orthodox Churches have already established such pastoral agreements with the Catholic Church. Others require that the prospective spouse who is not in communion with their Church formally join it. In certain cases, this may require baptism and/or chrismation, as baptism in other Churches is not recognized. It must be noted that legal, social, and cultural contexts, especially in countries where Christians are in the minority, can also shape their view that spouses must belong to the same Church. /In the multi-confessional, multi-religious, and secular contexts of today, some of the faithful seek to marry those who are not Christian. For all our Churches, marriage between Christians and non-Christians cannot be sacramental because sacraments may be received only by the baptized. Such marriages are discouraged by the Catholic Church, though the Church will offer prayers as well as pastoral provision of ecclesial and spiritual support to the Christian spouse and will affirm the validity of the marriage. These marriages are not in any way recognized by the Oriental Orthodox Churches and are thus considered outside the ministry of the Church" (nn. 42-43).

[39] Cf. Prader (2003: 221-223).

Naturally, the kinds of celebration were equally variegated. Even without entering into the more strictly liturgical aspects, nor into the details of the different traditions[40], some recurring elements can still be identified: the most significant of which is undoubtedly the crowning of the spouses, which has come to assume such a characterizing role that the wedding rite is also commonly referred to as the 'crowning rite'[41]. The imposition of crowns on the heads of the bride and the groom – floral crowns in the Byzantine tradition, metallic ones in the Slavic tradition[42] – in fact represents the central moment of the wedding ceremony, full of symbolic meanings[43] and concomitant to the blessing imparted by the priest. As regards to the Byzantine liturgy, for example, we can observe how marriage is normally preceded by the rite of engagement, culminating in the exchange of rings, which is immediately followed by the procession towards the center of the church accompanied by the singing of the entrance psalm, which ends with the recitation of the litany of peace and the three wedding prayers. At this point the couple is crowned and blessed by the priest: afterwards, the rite continues with the proclamation of the readings and the offering of a cup of wine from which the spouses drink together (it is not consecrated wine, as this liturgical form takes place outside the Eucharistic celebration, but only a blessed cup, as "a symbol of the common life opening up")[44], concluding with the circular procession known as the 'dance of Isaiah' and with the laying of the crowns[45].

The importance of this rite should not be underestimated, since – along with the consent of the bride and the groom – it constitutes the efficient cause of marriage, which can only be concluded through the participation of the priest[46]. More precisely, it is the blessing imparted to the spouses by the bishop or a presbyter – never by a deacon[47] – that is considered a condition of validity of the marriage. This is a concept that unites all the Eastern Churches, both the Orthodox

[40] For further information on this matter, see Day (1993: 183-185).

[41] Cf. Viscuso (2008: 31). For a concrete example, limited from a geographical viewpoint but even broader from the lexical one, see Vaccaro (2011: 125): "Ancora oggi, in Albania, il sacramento del matrimonio è chiamato 'corona del matrimonio'. 'Mettere corona' vuol dire sposarsi legittimamente; 'donna senza corona' e 'donna con corona' sono da intendersi rispettivamente come donna concubina e donna sposata legittimamente".

[42] Cf. Sandu (2011: 381).

[43] Cf. Fortino (1986: 21-22).

[44] Petrà (2011: 301, 304), who furthermore explains: "La liturgia ortodossa del matrimonio è l'unione di due celebrazioni distinte: il fidanzamento e il matrimonio o coronazione. Si noti che i libri liturgici suppongono che tale rituale sia celebrato dopo la celebrazione eucaristica: questa indicazione conserva la memoria di una connessione antica tra eucaristia e matrimonio; oggi tuttavia è abituale la celebrazione fuori dell'eucaristia. [...] Dopo l'incoronazione, si ha ora una sorta di 'messa dei presantificati' poiché non ci sono più i doni eucaristici come era nel primo millennio ma una coppa di vino". In the same sense, see Fortino (1986: 25): "Ha luogo quindi la benedizione di un bicchiere di vino che si offre agli sposi. Inizialmente questo era un rito che si svolgeva nella casa degli sposi e indicava l'inizio della vita coniugale. 'Si chiama calice comune perché per mezzo di esso si esprime la concordia, la comunione di vita e la gioia' (*Simeone di Tessalonica*, [*Patrologia graeca*, 155], col. 207). Il 'calice comune' con vino solo benedetto ha praticamente sostituito – impoverendone la liturgia – la partecipazione all'Eucarestia. Ancora al tempo di Simeone di Tessalonica (†420) prima del 'calice comune' gli sposi si comunicavano all'Eucaristia con le Sacre Specie, consacrate in una precedente Liturgia, con i Presantificati 'perché è al cospetto di Cristo che si compie i l matrimonio ed Egli è, per gli sposi, comunione e unione, nella santità, nella retta fede e nella castità' (*Simeone di Tessalonica*, ibidem, col. 507). In realtà dopo la recita del Pater si può ben inserire la comunione ai Presantificati". In this regard, also cf. Zymaris (2016: 105-125).

[45] Cf. Meyendorff (1984: 29-42); Morini (2022: 286-292).

[46] Cf Prader (2015b: 1238).

[47] Cf. Prader (2003: 226).

ones[48] and those in communion with Rome, as it is also explained in the section dedicated to the celebration of marriage of the *Catechism of the Catholic Church*, with n. 1623 reading as follows: "In the Latin Church, it is ordinarily understood that the spouses, as ministers of Christ's grace, mutually confer upon each other the sacrament of Matrimony by expressing their consent before the Church. In the Eastern liturgies the minister of this sacrament (which is called 'Crowning') is the priest or bishop who, after receiving the mutual consent of the spouses, successively crowns the bridegroom and the bride as a sign of the marriage covenant"[49]. Such a tradition is obviously also reflected in the *Codex Canonum Ecclesiarum Orientalium*[50]: thus giving rise to a divergence on "certain points that are not in perfect harmony between the provisions of the Code of Canon Law and the Code of Canons of the Eastern Churches" for the overcoming of which, in consideration of today's growing number of Eastern faithful in Latin territories and the consequent need to reach "a harmonious discipline that offers certainty in the method of pastoral action in concrete cases"[51], Pope Francis intervened in 2016 with the *Motu proprio De concordia inter Codices*[52].

Given the centrality of these profiles, it is also not surprising that Orthodox marriage does

[48] About the specificity of Orthodox Churches, it is worth recalling what was underlined regarding 'the discrepancies with the corresponding legislation of the Roman Catholic Church' by Morini (2022: 286-287): "La prima differenza è data dalla relativizzazione, presso gli ortodossi, del consenso espresso dagli sposi, che, com'è noto, costituisce invece, nell'insegnamento della Chiesa cattolica, la materia del sacramento. Esso rappresenta certamente una condizione indispensabile al matrimonio cristiano, ma non è quest'elemento, obiettano gli ortodossi, a operare la trasformazione propria del sacramento, cioè quell'azione divina e invisibile che si manifesta visibilmente nella materialità dei segni. [...] Di conseguenza ministro del sacramento non possono essere gli stessi sposi, come insegna la Chiesa cattolica, ma il sacerdote, anzi il vescovo, 'all'insaputa del quale', come scriveva sant'Ignazio di Antiochia, il Teoforo, 'nessuno si sposi'. In questa prospettiva, il sacerdote tiene luogo del vescovo, il quale, a sua volta, tiene luogo del Cristo. [...] Infine il sacramento non ingloba il contratto, ma i due momenti, quello misterico e quello giuridico, nella dottrina e nella prassi della Chiesa ortodossa, restano distinti: da non separare certo, ma anche da non confondere. Questa differenziazione è espressa dalla struttura bipartita che il rito del matrimonio ha assunto nella Chiesa ortodossa".

[49] See www.vatican.va/archive/ENG0015/__P52.HTM [consulted on 03.22.2024]. The same principle is also recalled by the above-mentioned document by the Joint International Commission for Theological Dialogue between the Catholic Church and the Oriental Orthodox Churches, *The Sacraments in the Life of the Church* (2022: 741): "In all our traditions, a sacramental marriage requires the free consent of both the man and the woman, the presence of witnesses, and a blessing within the Church by an ordained minister. The Oriental Orthodox and Eastern Catholic Churches require the blessing of a priest or bishop, while the Latin Catholic Church also allows a deacon to confer the blessing, since in their view the sacrament is administered by the couple in their profession of vows to each other. The Catholic Church includes both traditions and does not see them as a point of division but rather as mutually enriching. Both traditions express the same mystery of God's love for humankind and the active work of his grace in the community of the Church" (n. 37).

[50] Kadzioch (1997: 231-232): "I due Codici segnano senza dubbio l'ultima espressione delle due tradizioni, orientale ed occidentale. Leggendo i primi canoni riguardanti la celebrazione del matrimonio in ambedue i Codici, subito si evidenziano le differenze esistenti fra di essi. Per la valida celebrazione del matrimonio il Codice latino stabilisce la presenza attiva del 'teste qualificato': vescovo, sacerdote, diacono e anche, in determinate circostanze, il laico, e la presenza di due testimoni. Il Codice dei canoni per le Chiese orientali stabilisce per la valida celebrazione del matrimonio il rito sacro, cioè il rito liturgico, dove la presenza attiva del vescovo e del sacerdote non consiste solo nel chiedere e nel ricevere il consenso dei contraenti, ma anche nel compiere il rito sacro, e come minimo impartire la benedizione agli sposi, naturalmente alla presenza dei due testimoni. Il Codice orientale esclude il diacono e il laico, che non possono essere delegati alla celebrazione del matrimonio". Cf. also Prader (1993: 469-494).

[51] Francis, Apostolic Letter in the Form of a *Motu proprio De concordia inter Codices*, May 31, 2016 (2016: 602-606).

[52] Cf. Catozzella (2017: 1-40); Sabbarese (2017: 589-632).

not foresee the possibility of extraordinary forms of celebration[53]. This does not mean, however, that the conditions that we have just described are the only ones, necessary and sufficient for the valid conclusion of the wedding, throughout the whole Orthodox universe: individual Churches may in fact have different methods and additional requirements. This is for example the case of the Ethiopian Orthodox Church: which, in addition to the exchange of consent and the priestly prayer of benediction, also considers the reception of Holy Communion by the couple during the celebration as a condition for the validity of marriage[54].

2.4. An 'indissoluble' marriage? The new unions in the Orthodox Churches: a delicate field of application of the principle of *oikonomia*

Up until now, we have referred to areas that, although stemming from an undoubtedly common origin, have given account of the differences existing not only within the Orthodox world, but also between the latter and the marriage system of the Latin Church: two approaches which, despite many divergences, have retained a certain degree of comparability, proceeding on parallel tracks and proving to be capable of dialoguing on the same themes, albeit with different languages. However, this structure seems destined to fail when the discussion falls on an essential element such as the indissolubility of marriage, which is proclaimed as an ideal condition by the Orthodox Church as well[55], but is then made the subject of very conflicting solutions in practice. Only to mention a particularly 'qualified' attestation of this incommunicability, we can cite the words of the dicastery of the Roman Curia that is ideally meant to guard the legal dimension in the Church – at the time still called the Pontifical Council for Legislative Texts –, which in 2012 specified, as a preface to an explanatory note regarding the canonical significance of 'Orthodox divorces': "First, it should be noted that very few non-Catholic Eastern Churches have norms providing for the nullity of marriage. The majority of these Churches have instead a discipline that cannot be reconciled with the doctrine of the Catholic Church on the indissolubility of marriage. In fact, in these Churches the matrimonial bond is dissolved through *oikonomia*, by a sentence or an administrative act"[56].

[53] Schembri (2015: 127, n. 21): "the Orthodox Churches do not admit: extraordinary forms of marriage, dispensations from the proper celebration of marriage, marriages by proxy, and *sanatio in radice*". Ruyssen (2013: 38) too reiterates the principle according to which "Orthodox Churches, with the notable exception of the Assyrian Church of the East, do not admit any extraordinary canonical form (i.e. in the absence of a competent blessing priest)", with the following clarification concerning the aforementioned exception: "Based on an ancient source of the VIIIth century the Assyrian Church of the East allows both spouses to marry before at least two witnesses in those regions where there are no priests available, provided they receive later as soon as possible a priestly blessing".

[54] Cf. Prader (2003: 222); Prader (2015b: 1238).

[55] Another document by the Pan-Orthodox Council, the *Encyclical of the Holy and Great Council of the Orthodox Church*, also addresses marriage, by stating that "The Orthodox Church regards the indissoluble loving union of man and woman as a '*great mystery*'... of Christ and the Church (Eph 5.32) and she regards the family that springs from this, which constitutes the only guarantee for the birth and upbringing of children in accord with the plan of divine Economy, as a '*little Church*' (John Chrysostom, *Commentary of the Letter to the Ephesians*, 20, PG 62.143), giving to it the appropriate pastoral support" (n. 7). This text too was published by Melloni (2016: 1114–1187).

[56] Pontifical Council for Legislative Texts, *Nota explicativa* about the Canonical Significance of Divorced Orthodox, December 20, 2012: the English translation that we use here, made by Martens and Jenkins, and subsequently reviewed

If we want to understand the dynamics that lead to such a distant outcome, it is essential to remember what has already been reported regarding the lack of coincidence between the structure we are going to talk about and the canonical categories that are specific to the Latin tradition – and shared by the Eastern Catholic Churches as well –, which are univocally aimed at pointing out the different hypotheses of nullity of marriage, dispensation *super rato*, separation with the bond remaining, etc. On the contrary, the condition of extreme heterogeneity of the former, which is also complicated by very little interest in the procedural dimension on the Orthodox side, becomes manifest precisely when a faithful intends to contract a new union: because, in order to certify this faculty, the relevant religious authority may indifferently "have released documents declaring that the marriage was no longer valid, that it has been dissolved, that the blessing has been removed (or something similar – the terms used vary and do not always have a clear canonical meaning), and that permission to remarry has been granted to the person in question"[57].

Aside from similar uncertainties, what remains as a transversal factor among the Orthodox Churches is the tendency to tolerate, albeit 'reluctantly' and not without limits, the possibility of new unions contracted following the failure of the first marriage. The origin of this discordance is to be found first and foremost in the different interpretation given to the notion of the 'indissolubility' of marriage, preached by both the Catholic and Orthodox Churches: which is recognized by the former as an objective and ontological character (which means that marriage, by its nature, 'cannot' be dissolved), while it is read by the latter as a moral imperative (which means that marriage 'must not' be dissolved). Like any moral imperative, however, this commandment is susceptible to being infringed in practice: a fracture that will require penance and expiation, but which will nevertheless have caused its effects[58]. Therefore, in similar circumstances Orthodox Churches tend to admit that this aspect of marital discipline can also become the object of the application of the aforementioned *oikonomia*: thus judging divorce as a serious sin, but at the same time admitting for those who committed it the possibility of 'a new beginning', if they show repentance for their conduct.

Moving from this starting point, Orthodox theology have proposed many and variegated attempts at theorization, which are tendentially attributable to some different, but still deeply intertwined, main strands[59]. For example, there are those who have referred to the thesis of 'rejected grace', stating that marriage is a gift of grace that is meant to bind the spouses both in earthly and eternal life, and that as such it requires them to accept and make this gift bear fruit with the help of their human effort: however, if this does not happen and the spouses, in their freedom, betray their commitment by refusing the sacramental grace that was granted to them, divorce would have no other effect than certifying this state of affairs[60]. Similarly, there are also those who talk about a 'spiritual death of marriage', which – just like the physical passing of one of the spouses – lead to the extinction of the bond in a series of cases recognized by the Orthodox

and approved by the Pontifical Council itself, was published in *The Jurist* (2015: 253-256). On the same point, see also Gefaell (2016a: 115-134).

[57] Vasil' (2014: 94).

[58] Cf. Loda (2014: 100).

[59] Cf. Vasil' (2014: 123-125).

[60] Cf. Meyendorff (1984: 54-58).

tradition: in this sense, divorce is seen as "a declaration about the absence, the disappearance, the destruction of love, and therefore it simple declares that a marriage does not exist. It is analogous to the act of excommunication; it is not a punishment, but a *post factum* determination of a separation that has already taken place"[61]. Among these arguments, the preeminent is undoubtedly the one regarding adultery, which among the causes of divorce that are admitted by Orthodox Churches constitutes a sort of 'lowest common denominator' of the different experiences[62]. In fact, the reflection linked to this cause coincides with the oldest and more widespread of the above-mentioned currents, since it is common for the Orthodox Churches to read the references to the 'unlawful marriages'[63] referred to in chapters 5 and 19 of the *Gospel according to Matthew* as an exception to the principle of indissolubility, namely with regards to adultery.

In addition to what was elaborated in the field of theology, at least according to some interpretations, the development of a more permissive approach towards divorce by Orthodox Churches may also have been encouraged by a historical fact, concerning the relationships they established with secular power: not because of an immediate assimilation of the fluctuating Greco-Roman divorce legislation, against which the Eastern ecclesiastical hierarchies opposed strenuous resistance for several centuries, but rather as a consequence of the appointment of the Church itself as the only legally competent institution in matrimonial matters. In other words, the fact that the application of civil law for the examination of matrimonial cases became one of the tasks of ecclesiastical courts, in an exclusive and definitive manner starting from the second half of the 11th century, is said to have entailed a progressive metabolization of similar practices and a more general tolerance towards them[64]. Beyond historical analyses which would evidently require much more in-depth consideration than the one we can afford here, one factor is nevertheless worth noting: looking at the issue in a contemporary perspective, we can observe how the relevance of the relationships between the two spheres (the religious and the civil one) in matrimonial matters has not disappeared.

In fact, although in principle Orthodox Churches maintain their autonomy in judging whether the faculty to contract a new union can be granted on the basis of the reasons and according to the criteria established by them, this evaluation usually follows the recognition of a civil divorce, to the point that it was stated that "Many Orthodox Churches do little more than simply ratify the divorce sentence issued by the civil court"[65]: in other words, "in the presence of certain facts, behaviors and elements determined by the Church, directives are given to the

[61] Evdokimov (1995: 189). For further information in this regard, see also Plekon (2017: 381-396).
[62] Dvořáček (2013: 103-104): "Gli autori ortodossi generalmente indicano l'indissolubilità come una delle principali caratteristiche del matrimonio secondo il Vangelo. Ammettono però anche delle eccezioni nell'ambito della prassi; e qui si vede la differenza fra teologi e canonisti: mentre i primi considerano come unico motivo di divorzio l'adulterio, e eventualmente si richiamano alla tradizione, che ammette anche altri 'motivi gravi', i secondi, nonostante la primaria accentuazione dell'indissolubilità del matrimonio, si limitano all'enumerazione dei potenziali motivi di divorzio".
[63] This is how the *New American Bible* (also available at the following website: www.vatican.va/archive/ENG0839/_INDEX.HTM [consulted on 03.22.2024]) translates the Greek term *porneia*. Similarly, the 2008 translation by the Italian Conference of Catholic Bishops reads: "unione illegittima". In this regard, only to recall some of the studies that we have already mentioned here, see Prader (2003: 32-33); Loda (2014: 96-98).
[64] Cf. Prader (2003: 34-39); Prader (2015c: 1239-1240); Müller (2014: 152); Vasil' (2014: 99-105); Gefaell (2016b: 249-251).
[65] Vasil' (2014: 127). In the same sense, see Lorusso (2008: 240).

Pastors in order to recognize the civil declaration of divorce for two Orthodox faithful, but also to resolve and find an ecclesial balance, proposing a path towards the *salus animarum* of the two spouses, by granting the possibility of a new union"[66]. This may happen according to relatively 'smooth' procedures in those countries where one can recognize that 'beneficial harmony' in the relations between State and Church to which the Orthodox world traditionally refers to with the term '*symphonia*' (the main example, at least from the historical point of view, is once again the Greek one)[67], or according to more complex dynamics – which allow the ecclesiastical authority to better evaluate the correspondence between the circumstances that led to the civil divorce and the ones required from a religious perspective – where this consonance is missing: but, in any case, the determination originating in the civil sphere represents the starting point for the one that is to be taken on the religious level[68]. This is a scheme that structurally fails only in those systems – such as the ones in the Middle East that we have mentioned above – in which exclusive competence in matrimonial matters is entrusted to the ecclesiastical authorities, which will therefore be required to independently issue their own provisions by appealing to the principle of *oikonomia*[69].

In regard to the situations possibly leading to the *extrema ratio* of acknowledging the extinction of the marital bond by the ecclesiastical side, their identification differs from Church to Church, albeit with some common cases that are always present. Just to offer an example with reference to two contexts that we have already mentioned multiple times due to their relevance, from the comparison between "the Russian Orthodox and Greek Orthodox Churches' policies and practices, we see that valid motives for divorce can be divided in three groups: 1. Adultery and other similar immoral acts; 2. Physical or legal situations similar to death (disappearance, attempted homicide, incurable illness, detention, separation for a long period, etc.); 3. Moral impossibility of a common life (encouragement of adultery)"[70]. Despite the variety of reasons

[66] Loda (2014: 118, 141), who furthermore adds: "Per risolvere ogni situazione pratica, qualora il matrimonio sia fallito, le chiese ortodosse, tenendo presente una situazione peculiare creatasi, sussumono la dichiarazione di divorzio emanata dalle autorità civili, laddove l'autorità ecclesiastica, guardando la debolezza della creatura umana del *Christifidelis* decide secondo la modalità pastorale, applicando il criterio dell'*oikonomia* e concedendo il permesso di una nuova unione".

[67] Cf. Pitsakis (2003: 3-31).

[68] Although involving a relatively small number of faithful, a concrete example can be observed also in Italy: "Per il rilascio del divorzio ecclesiastico nell'arcidiocesi ortodossa di Italia, occorre che sia già stato rilasciato il divorzio civile e che la parte interessata al divorzio religioso presenti relativa domanda all'arcidiocesi, menzionando le ragioni per cui la convivenza è stata sciolta; unitamente alla domanda di divorzio vengono presentate copie autentiche dei certificati del matrimonio religioso e del matrimonio civile" (Sabbarese, Lorusso [2018: 32]). On the other hand, regarding Russia as well – where, in reaction to the Soviet legislation, the ecclesiastical authority had established the principle according to which "A marriage blessed by the Church cannot be the object of a divorce granted by the State, nor would the Church recognize civil divorces", reiterating that "The decision to concede an ecclesiastical divorce falls under the competence of the ecclesiastical tribunals, which work at the request of the spouses, provided that the reason presented for divorce conforms to those approved by the Holy Synod" – it has been said that "Often one simply finds in this documentation an ecclesiastical divorce decree, together with the request presented by the interested party, a statement that the couple has not been living together, and an indication that a civil divorce has been granted. Following this, the dissolution of the religious marriage and permission to remarry is granted" (Vasil' [2014: 109-111]).

[69] Cf. Lorusso (2008: 240-241); Vasil' (2014: 127).

[70] Vasil' (2014: 118-119). An overview of the practices of other Orthodox Churches is also offered by Lorusso, Gallaro (2016: 498-499): "The Coptic Church permits divorce only on the grounds of the adultery or apostasy of one of the

justifying divorce according to Orthodox canon law[71], it is worth noting that among them we can also recognize cases that are known as diriment impediments in the law of the Catholic Church, but which we have not encountered in the aforementioned list of 'substantial conditions' of marriage among Orthodox ones. This is for example the case of impotence, which is considered a "classic cause of divorce in Orthodoxy"[72]: it still must be irremediable and prior to the wedding, but instead of representing a motive for the nullity of marriage, it gives the spouses the right to request its subsequent dissolution[73].

If the circumstances provided for by the respective Church exist and once the corresponding ruling has been granted, the faithful can then move on to a new union. As anticipated, however, this faculty is not without limits: after the third marriage there is an absolute ban on the conclusion of further bonds, as it is also recalled by the document of the Pan-Orthodox Council. Indeed, in the part concerning the impediments, we read: "A marriage that is not completely dissolved or annulled and a third marriage constitute absolute impediments to entering into marriage, according to Orthodox canonical tradition, which categorically condemns bigamy and a fourth marriage" (n. 2). Beyond the third union, which is already subjected to a stricter penitential treatment than the previous one[74], not even *oikonomia* can extend its field of application.

Net of any contingent attitudes of 'pastoral laxity', we must not believe that the Orthodox world treats divorce and remarriage in the same way as a first marriage. As anticipated – and as it is implied in the need to resort to the principle of *oikonomia* –, subsequent unions are only 'tolerated' out of pastoral condescension: a circumstance that is also proved by the imposition

spouses. Impotence can also be considered a grounds for divorce. The dissolution of marriage is granted only by the ecclesiastical authority. /The Ethiopian/Eritrean Churches allow remarriage in church only if one of the spouses dies. A cleric can marry only once. If his wife dies, he is obliged to embrace the monastic life in order to continue in his priestly ministry. Separation is allowed on the grounds of adultery. In the case of divorce both parties – guilty or not – are considered ineligible to receive Holy Communion. Reconciliation takes place through the sacramental mystery of Penance and submission to the sacred canons. /The Armenian Church recognize adultery as the only ground for the dissolution of marriage. In practice, divorce is also granted for other very serious reasons. The local bishop can grant a dispensation for a new marriage which then is celebrated in a less solemn or private form. /The Syrian-Orthodox Church seems to be the strictest community regarding marriage indissolubility, and so divorce on the ground of adultery is rarely given. Even the religious betrothal with the blessing of rings has a binding character. /The Churches of the East (Assyrian, Malabar) consider divorce of its members as dishonorable, so it is very rare. Even if separation today seems more common, it is generally disapproved and unpopular. Only a religious divorce, very rarely granted as a last resort, may end the marriage contract".

[71] Here, we will not make reference to the well-known bipartition between the possible reasons for the dissolution of marriage dating back to Justinian's legislation, since – as underlined by Vasil' (2014: 125-126) – in the Orthodox Churches today one can notice "not only the inadequate expansion of the legitimate causes for divorce compared with the criteria that are indicated in the *Nomocanon*, but also the total disappearance of the differences between the divorce conceded *bona gratia* and the divorce conceded *cum damno*".

[72] Dvořáček (2011: 45), who also adds: "Nel diritto canonico cattolico invece [l'impotenza] è un impedimento dirimente, come anche nella Chiesa copta, che così si dimostra essere un'eccezione fra le altre Chiese ortodosse".

[73] Prader (2003: 109).

[74] Cf. Petrà (2015: 658): "Current discipline of the Orthodox Church dates back to the Constantinopolitan Council of 920, assembled under Patriarch Nicholas the Mystic, which established the following: *recognition* without canonical penalty of a second wedding, concluding with the blessing of the Church; canonical *sanction* of a third wedding; and absolute *interdiction* of a fourth".

of a period of penance preceding the new religious ceremony[75]. In particular, "Those in a second marriage cannot access the priesthood: this means that the status of the second marriage (widowed or divorced and remarried) does not conform to the *akribeia* or strictness of the norm [...]. Regarding third marriages [...], the interested party must be over forty years old and have no children. He is deprived of communion for five years. However, if one is thirty years old and also has children, he can marry a third time, after having completed the *epitimia* (canonical penance, which includes the deprivation of communion) of four years"[76].

In the same sense, even the liturgy of this kind of celebration does not follow the forms that we have already described for the first wedding, rather showing its primarily penitential character at every turn. The unions in question are in fact justified in the name of a plurality of functions, such as the exercise of mercy towards human weaknesses, the remedy for the concupiscence of the subjects involved, the prevention of scandals for a Christian community faced by the risk of even more disorderly situations, the granting of a reparative act in favor of the innocent spouse, and so on: but what these bonds are lacking, according to a relatively common interpretation in the Orthodox Churches, is the sacramental value – or at least the fullness of the sacramental value – which distinguishes only the first marriage[77]. Finally, it should be noted that the 'sacramental uniqueness' of the latter also emerges in relation to the state of widowhood[78], since according to Orthodox Churches "not even the death of one of the two spouses dissolves the bond of marriage; only the bishop can decide to admit his diocesan faithful to a second or a third wedding, which is also celebrated with austerity"[79].

3. The institution of marriage in the theater of the Protestant Reformation: an unsuspected protagonist

3.1. Lutheranism: from a new theological concept to a different legal approach

If one is to think about the historical events of the Protestant Reformation, the first image coming to the mind is unlikely to be that of a wedding ceremony. It seems more plausible that a similar association of ideas could fall, for example, on the 'scandal' of the sale of indulgences: an often-misunderstood *casus belli*, which, in popular imagination, not infrequently ends up replacing the

[75] Cf. L'Huillier (1987: 260).
[76] Petrà (2011: 312). See also Morini (2022: 291).
[77] Cf. Salachas (1973: 62). From a terminological viewpoint as well, Loda (2014: 141) explains: "la teologia e la dogmatica ortodossa, non avendo approfondito e stabilito se il primo matrimonio-sacramento sia stato celebrato validamente oppure no, così come se la seconda unione sia sorta dalla sola separazione o divorzio, parlano di *digamìa*, seconde nozze in generale, come nuove unioni che non sono tecnicamente né sacramentalmente *nuove nozze*".
[78] Joint International Commission for Theological Dialogue between the Catholic Church and the Oriental Orthodox Churches, *The Sacraments in the Life of the Church* (2022: 741): "All our Churches permit the widowed to remarry. The Oriental Orthodox Churches have simplified forms of the rite of matrimony for second or third marriages, whether for the widowed or the divorced, so as to recognize the uniqueness of the first sacramental marriage" (n. 40).
[79] Parlato (2016: 8, 11), who consequently states: "la Chiesa ortodossa concede ai divorziati, tramite appunto il principio dell'*oikonomia*, la possibilità di contrarre un nuovo matrimonio, equiparando lo *status* di divorziato a quello di vedovo e quindi permettendo una seconda possibilità di vita matrimoniale". Al riguardo, si veda anche Martinelli (2017: 4-5, 14-18).

profound reasons for the Reformation, eclipsing its theological core at the expense of a correct understanding[80]. Or it could be the case of the famous posting of the 95 theses to the door of the castle church in Wittenberg: an episode that never occurred historically, since Luther's criticisms regarding indulgences were originally meant not for a material exposition *coram populo* but for circulation in the academic community, and which nonetheless came to represent the ideal origin of the movement he started[81]. Let us even admit that, in the imagination of those who are more versed in canonical studies, the flames of the stake in which the German reformer burned the papal bull of excommunication along with theological works and legal texts may flash: but in any case such a combination will rarely result, in the first instance, in the institution of marriage.

While a similar order of priority is certainly justified, the weight of the latter in the context of the Reformation should not be underestimated either. Martin Luther himself – and with him the other protagonists of early Protestantism – focuses on this theme in a particular way, not only from the point of view of a theological speculation but also from the legal one: so much so that scientific literature has stated that it is precisely in the issues relating to the doctrine and legislative discipline in matrimonial matters that one can recognize an epitome of the cardinal aspects of the whole Protestant Reformation[82]. This observation is also confirmed by the concrete actions of the time: in fact, for priests and religious adhering to the Reformation, getting married becomes a sort of 'status symbol' – as we would say today – of the disobedience to Rome and of their new denominational membership[83].

Moreover, the legal revolution affecting the nuptial sphere is nothing else than a consequence of the theological concept that is developed in this regard by the reformers: who – only to mention the culminating aspect – deny the sacramental nature of marriage. For Luther, marriage is indeed an institution of divine origin, placed at the foundation of the family, but it belongs to the natural level of creation and not to the supernatural level of redemption and grace: in his opinion, "no one can deny that marriage is an external, worldly matter, like clothing and food, house and property, subject to temporal authority, as the many imperial laws enacted on the subject prove"[84]. The consideration for marriage thus faces two apparently opposing trends: the one guiding towards a devaluation on the religious level, with its citizenship in the sacramental dimension being rejected and its spiritual meaning being consequently greatly reduced; the other

[80] Cf. dal Covolo (2019: 115-124).
[81] Cf. Pani (2016: 213-226).
[82] Cf. Witte (2002: 199); Witte (2012: 113-116).
[83] Safley (1996: 20-21): "More striking still were clerical marriages. Scholars have emphasized the immediate impact of the call for clerical marriage in terms of the number of religious who abandoned the cloister and celibacy to join the forces for religious change in the sixteenth century. Certainly Luther and all his associates at Wittenberg had married and established households by the end of 1525. Whether this was the case generally cannot be determined, but clerical marriage remains undoubtedly one of the most visible and controversial innovations of the Reformation. Despite evidence that the practice of concubinage had become increasingly commonplace among the clergy and that the laity were more and more willing to accept these illicit relationships in the late Middle Ages, the open legal marriage of priests was a tangible sign of a new religious order, one even the illiterate and uninformed could not fail to notice and understand". As also stressed by Crowther (2017: 670), "while different Protestant groups vehemently disagreed on a number of theological issues, on the subject of clerical marriage and the innate, divinely implanted sexual urges of both women and men there was a high degree of consensus".
[84] Martin Luther, *On Marriage Matters, 1530*, in *Luther's Works. American Edition*, XLV, *Christian in Society III* (1967: 265). Cf. also Léonard (1971: 94-95).

pointing to an incisive strengthening on the social level, within which the family is considered as the most ancient and essential state, with all the other orders of human society deriving from it, as well as the one more responsible for the containment of vices and the reinforcement of virtues. A synthesis of these divergent movements can be found precisely in the exaltation of the married condition compared to celibate life, which the reformers attack with all their energies with the aim of subverting its traditional primacy in the ecclesiastical sphere.

Along with celibate commitment, canonical discipline in matrimonial matters is also mocked as an entirely Roman superfetation, judging the casuistry of its impediments as a useless and harmful disincentive to marriage. Still, despite the desire to entirely reject the provisions of the *ius canonicum* on the subject, the reformers soon realize the need to resort to them in order to regulate these profiles: and, in front of the same sources, they rather decide to proceed with an operation of selection and re-elaboration with the purpose of crafting a new law. In fact, after a brief and fruitless attempt to manage family affairs entirely within reformed communities, the conclusions that we have outlined are soon reached: with the consequence that "As an estate of the earthly kingdom, marriage was subject to the prince, not the pope. Civil law, not canon law, was to govern marriage. Marital disputes were to be brought before civil courts, not Church courts"[85]. It is not to be believed, however, that the reformers conferred *carte blanche* to civil authority in this regard. On the contrary, Luther and his followers have a fundamental role in shaping the new legislation, contributing to its formation through various channels: from the preaching to the opinions rendered by theology faculties and by individual authors at the request of civil courts, from the participation of pastors in judging panels up to their personal and direct involvement in the drafting of the laws.

A first attestation of the impact of this operation can be found precisely in the aforementioned field of impediments: from the list of which not only those relating to sacred orders and the vow of chastity disappear, their *raison d'être* having dissolved altogether, but the great majority of impediments then known by canon law vanishes as well, in the perspective of promoting the marital state recalled above. In line with the principle of *sola Scriptura*, according to which "against the Catholic principle of tradition, the exclusive authority of the Old and New Testaments in matters of faith is affirmed"[86], only those cases for which the reformers are able to identify an immediate explanation in the Sacred Scripture are preserved – but still strongly simplified, compared to their Catholic counterpart –: as it happens with the prohibitions deriving from consanguinity, contemplated in the books of *Leviticus* and *Deuteronomy*. Theological arguments also animate the debate within the Protestant group itself regarding other impediments, such as that of crime, of which Luther advocates the abolition: while further aspects are left to local customs, as for age requirements, or to the decisions of the judiciary, which considers marriage precluded due to impotence or serious illnesses. All the other provisions and conditions excluding the possibility of a valid marriage, as it has been underlined, are instead "swept aside by the necessity of marriage"[87].

[85] Witte (2002: 253).
[86] Schrey (1980: 705).
[87] Safley (1996: 19-20): "Luther rejected nearly the entire Catholic canon of marital impedimenta. Consanguinity and affinity had to be limited to the second degree as prescribed in *Leviticus*, but they remained valid because they were

The point on which Lutherans focus their attention in a specific way, however, is undoubtedly the one regarding the formation of the bond. In particular, intense attacks are directed to the purely contractual theory of the marital bond, as regulated by the canon law of the time: which, by considering the sole exchange of consent between the engaged parties as essential, leaves room for the inconvenience of the so-called 'clandestine marriages', until then rejected but *de facto* tolerated. In addition to the legal uncertainties inevitably – and often cunningly – brought by such unions, which therefore attract unanimous blame[88], there is now an unprecedented factor that concurs in making them unbearable in the eyes of the reformers: as anticipated, the theology of the Reformation produces "a new legal concept of marriage, involving not only, as before, a personal bond between the spouses, but also a social bond, in which the parents of the spouses, the congregation, and the whole community are involved"[89].

In order to conform the new legal architecture of marriage to this ideal re-elaboration, Luther intervenes on various fronts. First of all, the entire matter of marriage promises is rethought. In this respect, canon law distinguished between a commitment made for the future (revocable if not followed by cohabitation and consummation) and a commitment made for the present (corresponding to marriage itself, as it coincides with the exchange of consent)[90]. The discipline resulting from the Reformation, however, is based on the desire to institutionalize an engagement that is formally distinct from marriage: in this sense "the promises create 'the state of marriage', but do not immediately establish life as a couple. They give each party a right to marriage, which can be pursued legally; a right 'not to contract marriage, but to consummate a marriage already contracted'. This commitment therefore precedes carnal union, which however is considered guilty if it is not preceded by mutual promises"[91]. However, as we have already mentioned, the perimeter of the engagement and its consequences surround not only the couple. In fact, the promises necessarily presuppose the consent of the parents of both the engaged parties, thus assuming the guise of a condition for the validity of marriage. They must also be pronounced in the presence of two witnesses, and possibly of the entire community: just as the ceremony that

biblically justified. Coercion, too, continued to be a grounds for annulling marriage because it violated the spiritual freedom of all Christians. All other rules and statutes that barred certain persons from wedding legally – a considerable list, including spiritual relationship, legal kinship, mixed religion, criminal condemnation, public decorum, solemn vows, personal error, personal unfreedom, holy orders, episcopal prohibition, restricted seasons, local custom, and physical defect – were swept aside by the necessity of marriage".

[88] As it is known, shortly thereafter the issue would also be at the center of the attention of the Council of Trent, in respect to which Jemolo (1993: 54) writes that: "la grande questione del Concilio fu l'invalidazione dei matrimoni clandestini".

[89] Berman (2006: 184).

[90] Barbagli (1996: 584-585): "Ignorato nell'alto Medioevo, il fidanzamento fu riscoperto e introdotto nel diritto canonico nel XII e XIII secolo. Fu allora che i canonisti introdussero la fondamentale distinzione fra *verba de futuro* e *verba de presenti*, parole per il futuro e parole per il presente. Il contratto per *verba de futuro* costituiva una promessa, un impegno per l'avvenire, il vero fidanzamento. Questo rapporto si trasformava automaticamente in matrimonio (detto 'matrimonio presunto') se i due promessi sposi andavano ad abitare insieme e avevano rapporti sessuali. Ma, se questo non avveniva, il fidanzamento era revocabile e coloro che l'avevano stipulato erano liberi di sposarsi con un'altra persona. Il contratto *per verba de presenti*, con il quale i due fidanzati si scambiavano, di fronte a testimoni, formule come 'io prendo te in moglie' e 'io prendo te per marito', costituiva il matrimonio e non era dunque revocabile. Fino alla metà del XVI secolo era questa cerimonia, e non quella in chiesa, che creava l'obbligo legale vincolante".

[91] Gaudemet (1987: 280).

marks the actual conclusion of the wedding takes place publicly[92] and with the pastor presiding over it in the temple[93]. The role exercised by the pastor, as it has been highlighted, is also profoundly different from the one that the Council of Trent confirms for Catholic priests, who receive the consent of the spouses: here, instead, "the pastor creates the matrimonial state by uniting the two spouses"[94].

If a substantial re-elaboration effort is channeled on this point, though, an even more immediate and disruptive effect of the reformers' different look on the nuptial bond is recorded in relation to its possible dissolution. The denial of the sacramental nature of marriage, the juridical regulation of which is delegated entirely to secular legislation, leads to admitting the possibility of putting an end to the union, even if validly contracted and consummated: divorce, although frowned upon and discouraged in the light of the capital importance of the family, thus finds a theoretical justification and progressively makes its way both in the reformers' reflections and in civil legislation[95]. In this framework as well, the main case is represented by adultery, recognized as such on the basis of those same Matthean clauses that we have already encountered regarding the legitimation of new unions by Orthodox Churches – which does not mean, however, that the reading of the passages in question by the latter coincide with the one proposed by the Lutherans –. Luther himself, after some initial hesitations regarding the possibility of divorce also due to supervening impotence and refusal of conjugal duties[96], maintains that the dissolution of the bond can be allowed in only two hypotheses, which are adultery and malicious abandonment of the spouse who is left without resources (a case to which the much broader case of *quasi-desertio*, consisting of any serious disturbance in marital life, is also assimilated in the following centuries). Furthermore, the guilty party is "denied the religious celebration of a second marriage"[97].

3.2. Calvinism: from a different legal approach to a new theological concept

Different trajectories, although inevitably linked to the one that we have just traced, are followed by the other denominations of the so-called early Protestantism. The most significant example is provided by the branch that takes root in Switzerland through the work of Zwingli, later finding

[92] Cf. Engammare (1990: 43-65).
[93] Wiesner-Hanks (2004: 1721): "Orderly households required a proper foundation, so consistories and courts paid great attention to the wedding ceremony, requiring it to be public and have a pastor officiating. Parental consent was another key issue, and marriage ordinances in many Protestant areas required parental consent even for children who were no longer minors. Authorities in many areas also prohibited their citizens from marrying those of different denomination, although mixed marriages continued to occur, particularly in areas where Catholics and Protestants lived in proximity to one another". Cf. also Witte (2012: 139-145).
[94] Gaudemet (1987: 281).
[95] Cf. Kałużny (2013: 24-26).
[96] Strohl (2014: 376): "Luther recognizes the need for divorce in a sinful society and regards its regulations as a matter for the civil authority. At the same time he wants Christians to do their best to exceed secular expectations and hold their marriages to a higher spiritual standard. In *The Estate of Marriage* (1522) Luther identifies three legitimate grounds for marital dissolution: inability to fulfill one's conjugal duty (impotence or frigidity) so that one's spouse is deprived of children; adultery; and refusal to fulfill one's conjugal duty or to live with one's spouse. The resistance of the partner in the last case may well become the cause of the other's fall. Luther suggests that he or she be called to public accountability, and if that does not shame the errant spouse into cooperation, divorce is appropriate. The issue here is one of fraud".
[97] Prader (2003: 40).

its champion in the figure of Calvin: who, in particular, "in Geneva, reformed since 1535, [...] exercised from 1541 to the year of his death, 1564, an authority without precedent, at least on the moral level"[98]. Such authority, in its breadth, clearly cannot exclude the matrimonial sphere: in relation to which it does not manifest itself only 'on the moral level', but rather directly affects the juridical dimension as well[99]. This is furthermore concretely attested by the interest reserved to marriage both in the Ecclesiastical Ordinances of 1541, submitted by Calvin to the city council for the definition of the areas in which his reformed Church was going to operate[100], and in the consequent activity of the Genevan consistory, as the body combining the functions of self-government of the same, of ecclesiastical court and of social mediator, also exerting a general function of supervision "over religious discipline, censorship and the moral life of the city", even through the use of the "much discussed power of excommunication"[101]. The same goes, even more explicitly and directly in the years immediately following, for the specific nuptial liturgy (the observance of which is prescribed as an essential condition for the validity of marriage) and the Marriage Ordinance of 1545-1546, both crafted on the initiative of the reformer himself[102].

Even without delving into the intricacies of the complex system that is built on similar cornerstones, one can recognize *ictu oculi* in its overall architecture an approach that in many ways is similar to the Lutheran one, but at the same time presents some elements of originality. For example, we can notice once again the involvement of the whole community in the preparatory phases of the formation of the bond, to which the parents must necessarily consent: but with the specification that, in case of a disagreement, the binding opinion is the father's one. This approval, however, constitutes only an additional element, providing that even a marriage concluded and consummated without the consent of the families is valid, although accompanied by the imposition of a public penance[103]. For the engagement as well, on the basis of the model that we have already observed in the communities arising from the activity of the German reformers, strict prohibitions are established against anyone who, on such an occasion, intended to indulge in any form of frivolity or intemperance. Furthermore, the exchange of promises must be followed by the

[98] Introvigne (1998: 64).

[99] In a broader perspective, we also need to remember that "Pour Jean Calvin, l'Eglise a une autorité doctrinale, législative et juridictionnelle d'origine divine. Cette autorité est exercée par des ministres particuliers (les Anciens) chargés de veiller à l'ordre et de favorises la sanctification des fidèles. L'organisation ecclésiastique est originale. L'Eglise est dirigée à plusieurs échelons par des conseils composés de pasteurs et de laïcs : conseils de paroisses, colloques, synodes régionaux et nationaux. Chaque conseil élit ses délègues à l'échelon supérieur. A l'époque de Calvin, les conseillers presbytéraux étaient soit désignés par les conseils de la ville, soit cooptes. Il remplace la hiérarchie descendante du catholicisme par une hiérarchie ascendante de représentants des paroisses. Pour lui, c'est le peuple de l'Eglise (c'est-à-dire tous les croyants en vertu du sacerdoce universel) anime par l'Esprit-saint qui, par cette succession d'assemblées, prend les décisions" (Wydmusch [2001: 23]). See also Willaime (2022: 232).

[100] From a lexical point of view, suffice it to remember what is stressed by Ferrario (2010: 199): "Si definiscono 'riformate' le Chiese evangeliche (o protestanti: i due termini sono sinonimi) nate dalla Riforma svizzera, che costituisce un filone distinto dalla Riforma luterana di origine tedesca. L'aggettivo 'riformato' (che corrisponde, propriamente, al tedesco *reformiert*) viene spesso usato nella nostra lingua, anche nella letteratura scientifica, per indicare globalmente le Chiese 'della Riforma' (genitivo che corrisponde all'aggettivo tedesco *reformatorisch* e che comprende le Chiese luterane, riformate in senso proprio, unite): ciò è però inesatto".

[101] Turchetti (2014: 128). About the impact of the relationship between civil authority and ecclesiastical authority within the consistory, see also Miegge (2011: 19-20).

[102] Cf. Witte, Kingdon (2005: 12-13).

[103] Cf. Lipscomb (2018: 181-182).

actual celebration of the wedding as soon as possible, so as to prevent the risk of pre-marital relations, which are severely punished [104]. The issues concerning the promises and their implications occupy a significant portion of the activity carried out by the consistory in matrimonial matter: the many forms of which already constitute, by themselves, a preponderant portion of the cases discussed before the same body. For its part, it exerts its supervisory task in this field with pervasive alacrity, at the same time intending to verify the actual degree of adherence of the population to the new concepts established by the Reformation in every area of life[105]: a purpose that is ordinarily pursued through the autonomous imposition of spiritual sanctions, "even if the consistory not infrequently transmits the documents to the [city] council, thus risking to become almost a sort of public prosecutor's office"[106].

The results provided by this inspection, however, are not destined to appear satisfactory in the eyes of Calvin: who soon cannot but observe both episodes of dissent and resistance on the part of the population to the invasiveness of the jurisdiction of the consistory (the extent of which is much broader than what Genevans were accustomed to prior to the Reformation)[107] and the fact that, despite his efforts, immorality and immodesty have not yet been eradicated from the lifestyle of the inhabitants of the Swiss city. This awareness pushes the reformer to question himself

[104] Of course, this was not a matter that only Protestant communities were concerned about: for example, going back to the Orthodox world – namely to the 18th century Romanian society –, Vintilă-Ghiţulescu (2009: 127) recalls that "a father's authority over his children was most obvious before and after they married. A father's main duty consisted of raising and feeding his children, of endowing and marrying them, a responsibility which was part of the collective mentality and was restated by the central power when deviations occurred. Thus when Metropolitan [of Muntenia and Dobruja] Cozma discovered in 1792 that there was an alarming raise in premarital relationships and births out of wedlock, he scolded the parents and primarily the fathers. He advised them to make sure that they followed the right steps towards marrying the children, that girls were provided with dowries and married to 'suitable' men".

[105] Witte (2012: 167): "The consistory was designed to control the behavior of the entire population, to see to it that all Genevans not only accepted the new Reformed teachings set out in sermons and statutes but also lived them in their daily lives. It penetrated life in almost all of its variety in sixteenth-century Geneva. Some of the consistory's work was remarkably officious – intruding on the intimacies of bed and board with unusual alacrity. Some of its work was also remarkably solicitous – catering to the needs of the innocent, needy and abused with unusual efficiency".

[106] J. Luther (2011: 359). As recalled by Watt (2021: 301), "from the moment it started functioning in 1541, the Consistory passed three types of sentences against sinners: it could admonish them (the most common sentence); it could exclude them from the Supper; and it could refer them to the city council for criminal sentencing. By the later 1540s, Calvin's Consistory could also oblige people to do *réparation publique*, a public confession of their sin in church, a penalty that was commonly used later for people who had committed apostasy in France during the Wars of Religion".

[107] Cf. Watt (2020: 15 ff.), who, at the beginning of the chapter titled "The Consistory Encounters Resistance", points out that "In its efforts to change the behavior and piety of Genevans, the Consistory attacked certain misdeeds, such as fornication and blasphemy, that were universally viewed as sins in sixteenth-century Europe and could have resulted in prosecution in Catholic areas as well. The Consistory, however, had jurisdiction over a much broader range of behavior than did Catholic institutions such as the Inquisition and episcopal courts. As we shall see, the Consistory frequently summoned people because of quarrels, whereas Catholics never ran the risk of being called before the Inquisition solely because they were angry with others. Reformed leaders in Geneva also tried to root out certain diversions, such as dancing, games of chance, and secular songs, which, to varying degrees, Catholic leaders had long tolerated. Moreover, Calvin and his colleagues aggressively sought the elimination of practices that had become an important part of Catholic piety, such as saying prayers for the dead and to the Virgin Mary and celebrating saints' days. Genevans were forbidden to attend Mass in neighboring Catholic communities but were required to attend regularly services at one of the city's three (later four) churches. Given the ambitious goals of reforming the behavior of the rank and file, it is not at all surprising that the pastors and the Consistory encountered some opposition, both active and passive, to their efforts".

further about the marital condition: thus, a path starts developing in the opposite direction than the one followed by Lutheranism, with the legal reform providing the impulse for a further theological re-elaboration on the marital bond. If previously, along with Luther, Calvin had also championed a mere worldly citizenship of marriage, in the distinction between the earthly kingdom and the heavenly kingdom, in this second phase he instead looks at the institution of marriage according to the biblically rooted interpretative key of the 'covenant'. An alliance which, in this case, involves not only the spouses but the entire community of the faithful in carrying out the different functions incumbent upon each: from the pastor who blesses the union as the holder of spiritual power, to the civil authority who registers the marriage and protects its effects as the holder of temporal power, in representation of an assent which in any case resides, ultimately, in the sphere of the divine. None of these interventions can therefore be omitted without severing this theological rooting, according to a vision that implies a significant reevaluation of the spiritual dimension of marriage, but without going as far as recovering its sacramental nature[108].

Obviously, such a general rethinking also involves changes on more specific profiles, sometimes with reverberations on a legal level as well. Just to consider the aspect against which Calvin himself rails most vehemently, we can refer to adultery: a transgression that the Genevan reformer considers to be of the most serious order, as it betrays the aforementioned alliance in all its dimensions, and in respect to which he blames the secular legislations of his time for their 'laxity' in providing adequate punishments. Consequently, according to this vision, adultery represents the only case that can give rise to the dissolution of the marital bond. However, it is worth noticing that this position, apparently more restrictive on the subject of divorce than the one developed by Lutheranism, actually ends up producing outcomes that are not so different from the latter, by tracing a variety of conduct back to the root of adultery: the above-mentioned abandonment of the marital home, for example, is considered by Calvin a potential cause of divorce because it can lead to the presumption of adultery by the fugitive spouse. In fact, the law of reformed Geneva ends up considering adultery and *desertio* as causes of divorce, exactly as we have seen happening in the lands of German Protestantism.

Instead, where the attitude remains rigorous is in the procedural sphere, since the consistory imposes extremely demanding burdens of proof on those who make the request to put an end to a validly celebrated and consummated marriage, in order to prove both the guilt of others and their own innocence[109], firmly pushing at the same time towards a reconciliation between the spouses: with the consequence that for a long time the number of divorces granted in Geneva remains very low (a result also determined by the restoration of the canonical institution of separation with the bond remaining, as established by the same organ despite Calvin's strong disapproval).

3.3. Weddings in the current horizon: a legally marginal space, but not devoid of conflicts

If the ones that we have just described constitute some of the most representative elements of the 'shock wave' that historically hit the institution of marriage in a continent already shaken by the

[108] Cf. Pitkin (2017: 215-216). For a comparison between the different marital concepts of the two reformers, see also Parsons (2005); Witte (2019: 72-105).
[109] Cf. Seeger (1989: 464-465).

broader upheavals of the Reformation, it is at this point legitimate to wonder what the developments of the discipline are in the contemporary horizon, at least in relation to those same communities that directly derive from early Protestantism. In answering such a question, one fact immediately stands out: in the evolution of the approach to the institution of marriage in today's Lutheran and Reformed Churches, net of the obvious changes that the passing of the centuries has brought, a continuity with the premises that we have found at its origins is clearly recognizable. In increasingly secularized societies, the fact of considering marriage as an area of primarily secular relevance – at least on a juridical level – has translated into a progressive abandonment of the competences that initially the same Churches had claimed as their own in matters of wedlock and civil status. Therefore, today they limit themselves to maintaining little more than a specific form of celebration: as it has been significantly underlined, "Protestant churches do not claim the existence of a marriage 'of their own', different from the civil one, but they 'offer' the spouses their form of celebration in order to stipulate a marriage that for all intents and purposes remains a civil marriage"[110].

In other words, if what the Churches themselves indicate as 'the Christian concept of marriage' is obviously preserved, consisting of a hopefully perpetual monogamous union based on the free choice of the spouses, for everything that concerns the regulation of this bond they abdicate any competence, deferring to civil authority. A clear testimony to this approach can be found in the official statements by the Evangelical Church in Germany – within which, as it is known, Churches of both Lutheran and Calvinist traditions coexist –: which in its documents, for example, declares that "Evangelical Churches agree that marriage is based on publicly expressed consent between the spouses, thus recognizing marriage celebrated according to civil law as fundamentally valid. Evangelical Churches are also of the opinion that it is not up to them to give provisions regarding the legislation of marriage and divorce when the State recognizes and protects

[110] Long (2008: 134). The relevance of this approach is not limited to the confessional level: on the contrary, it historically places itself at the basis of the fundamental distinction that is still found between the different methods adopted by secular legal systems in attributing civil effects to religious marriages. In fact, as summarized by De Agar (2008: 129-130): "La maggior parte dei paesi europei riconoscono una certa effettività al matrimonio confessionale, specie cristiano, in consonanza con le radici religiose della società. Seguono quello che la dottrina ha chiamato sistema di *matrimonio opzionale* o *facoltativo*, che ha come caratteristica la coesistenza e parità di effetti di entrambi i matrimoni (religioso e civile), insieme alla libertà di ciascuno di scegliere quale celebrare. Per i credenti questo sistema dualista esprime rispetto della loro sensibilità in quanto la sola cerimonia in cui si riconoscono, quella religiosa, ha gli effetti di costituirli in marito e moglie dinanzi allo Stato oltre che alla confessione di riferimento. [...] Ci sono però due specie o modalità di questo sistema che corrispondono storicamente alle due concezioni cristiane del matrimonio, quella cattolica e quella protestante. La prima considera che il matrimonio è un sacramento, e che perciò la sua regolamentazione giuridica compete alla Chiesa; invece le dottrine sorte dalla Riforma non lo ritengono tale ma un istituto sociale ordinato dalla legge civile, la cui dimensione religiosa e limitata alla celebrazione. In consonanza a queste due nozioni sono sorti il sistema opzionale *latino* o *cattolico* e quello *anglosassone* detto anche *protestante*. Ci sono comunanze e diversità fra queste due modalità del sistema facoltativo in corrispondenza alle diverse vedute teologiche. Entrambe reclamano uno spazio per il matrimonio religioso nell'ordinamento statale, ma questo spazio e tanto differente quanto lo sono quelle vedute. Il matrimonio cattolico si pone dinanzi a quello civile come un istituto a sé, disciplinato dal diritto canonico in tutto ciò che riguarda la sua valida e lecita costituzione. Il matrimonio delle comunità riformate non è altro che il matrimonio civile celebrato secondo il rito della comunità. Nel sistema *latino* si può scegliere tra due matrimoni ciascuno regolato dal suo ordinamento di origine, nel sistema *anglosassone* la scelta riguarda soltanto la forma (civile o religiosa) di celebrare il matrimonio civile. Uno è sostanziale, l'altro formale; il sostanziale riguarda soprattutto il matrimonio canonico, il formale qualsiasi matrimonio religioso nella sua celebrazione".

the premises and essential contents of marriage, thus leaving room for the Christian concept of marriage"[111]. Only in case secular legislation proves to be openly hostile to the latter, causing the aforementioned recognition and protection to fade, the text specifies that the Churches could find themselves forced – a term that by itself is evocative of a clear recessive nature – to establish legal provisions for their faithful[112].

As it is evident, even in this situation we must always keep in mind the extreme fragmentation inherent to the Protestant world, much more marked than the variety of particular or local Churches encountered when talking about Orthodox Christianity, from which we have also seen deriving non-univocal positions on marriage: therefore, if in that context the search for a common denominator could sometimes prove delicate, in this case the same operation becomes even more difficult. Even the Second Vatican Council had to deal with this same fragmentation when addressing the theme of ecumenism and unity among all Christians, stating in the Decree *Unitatis redintegratio* that "since these Churches and ecclesial Communities, on account of their different origins, and different teachings in matters of doctrine on the spiritual life, vary considerably not only with us, but also among themselves, the task of describing them at all adequately is extremely difficult"[113] (n. 19). It is therefore not surprising that, even in the matrimonial context, here we must limit ourselves to those approximations that come closest to a common line: without forgetting that very different solutions can still be found from Church to Church and from place to place.

As it is easily understandable, this applies above all to the most sensitive questions: as it happens, for example, in the matter of divorce and remarriage, the approach to which varies based on theological and exegetical currents, but also – as it has been underlined – on the pressures of social contexts, the conditioning of civil laws and the influence of local customs[114]. In general terms, however, it can be said that the Protestant Churches, acknowledging the 'normalization' of

[111] German Conference of Catholic Bishops, Council of the Evangelical Church in Germany, *Raccomandazioni comuni delle chiese per la preparazione al matrimonio fra partner di confessione diversa*, March 1974, in *Enchiridion Oecumenicum. Documenti del dialogo teologico interconfessionale*, II, *Dialoghi locali (1965-1987)* (1988: 526). On the topic of marriages 'between partners from different denominations', which the joint document intends to specifically address, see Della Torre, Sbaffi (1980); Eckert (1995); Long (2003: 313-354); Long (2009: 249-257).

[112] P. Ricca (2019: 794): "Sia i Riformatori del XVI secolo sia il protestantesimo odierno insistono nel considerare il matrimonio non come un fatto privato che riguarda solo gli sposi e i loro parenti, ma come un fatto pubblico che riguarda la società. Il matrimonio non è una semplice convivenza decisa privatamente, un 'mettersi insieme' ignorando la società. Lutero, affermando che il matrimonio è 'un affare mondano', lo ha sottratto alla giurisdizione ecclesiastica e ha affidato in esclusiva allo Stato il compito di legiferare in materia. Lo Stato infatti regola il matrimonio, esplicitando diritti e doveri di ciascun coniuge rispetto all'altro, e di entrambi nei confronti dei figli. Il compito della Chiesa in questo campo non è di legiferare, ma unicamente di accompagnare pastoralmente le coscienze. È però importante che i cristiani riconoscano il ruolo dello Stato in questo campo e lo onorino facendo del loro matrimonio un atto pubblico e non solo privato".

[113] The English translation of the conciliar Decree on ecumenism *Unitatis redintegratio* of November 21, 1964 – the original text of which was published in *Acta Apostolicae Sedis* (1965: 90-112) – is available at the following website: www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19641121_unitatis-redintegratio_en.html [consulted on 03.22.2024].

[114] Westerfield Tucker (2004: 606): "No Protestant denomination takes delight at the dissolution of a marriage. However, different responses to marital breakdown are registered among the denominations, and even within a single ecclesiastical communion. Historical and current theological reflection affect a denomination's understanding of divorce, as do contemporary approaches to biblical exegesis and interpretation. Social contexts and pressures, civil laws, and customs also have an influence, whether the denomination chooses to accommodate to them or to be countercultural".

divorce, while proposing a marital union that lasts for life, still leave the painful determination of its eventual break-up to the (hopefully) responsible decision of the spouses, as assumed in the intimacy of their conscience after questioning themselves on the religious meaning of their spousal condition[115]. The circumstances that led to the separation of the couple, however, do not remain without consequences, since they become relevant once again when a divorced person intends to contract a new marriage: in fact, Protestant Churches usually admit this possibility with a religious rite only if the faithful show the seriousness of their approach towards both their past situation and the new marital adventure they are about to undertake. In this sense, a particular attention is maintained towards the vicissitudes affecting the matrimonial sphere, which however is expressed exclusively on a pastoral level, while any claim to autonomy on the juridical one has instead been abandoned[116]. A concrete attestation of this configuration can be found, for example, in the position adopted by the Evangelical Lutheran Church in Italy, which – on its official website – concludes its presentation of the institution of marriage 'in the Lutheran perspective', declaring itself "available – after having clarified the reasons for the failure of the previous marriage – to allow divorced people to marry in church as well"[117].

It goes without saying that, if historically debated issues still attract heterogeneous views, the same is even truer for the ones emerging in recent times. The most evident proof is provided by the attitudes variously adopted by different communities towards same-sex unions: a topic which, as it has been underlined in literature, still seems destined to divide Protestantism for a long time to come[118]. In fact, even though "nearly all Protestant denominations remain officially opposed to homosexual expression"[119], in a relatively short period of time a kaleidoscope of opinions – and consequently of practices – has emerged in this regard: ranging from those who have established the possibility of blessing such ties to those who have confirmed their refusal to a similar prospect, up to those who have left 'freedom of conscience' to their pastors, as long as they do not actively oppose to such blessing being imparted by others, thus returning to a solution that had already been used – and in some cases still is – in relation to the aforementioned problem of the remarriage of divorced faithful[120].

4. The Church of England: from the family as a 'little commonwealth' to today's fractures in the Anglican Communion

In the overview of the main denominations that were born from the splits suffered by Christianity during the 16th century, a few words need now to be dedicated to the discipline of the nuptial

[115] Cf. Grimm (2006: 367-368).
[116] Cf. Reymond (2022: 498-499).
[117] The section dedicated to marriage on the official website of the Evangelical Lutheran Church in Italy is available at the following website: www.chiesaluterana.it/teologia/matrimonio/ [consulted on 03.22.2024].
[118] Cf. Thatcher (2004: 1163).
[119] Siker (2004: 882).
[120] Cf. Reymond (2022: 499-500). Again, for an example from the Italian context, we can take into consideration the document that in 2011 the aforementioned Evangelical Lutheran Church in Italy dedicated precisely to the theme *Benedizione di persone etero- o omosessuali in varie forme di comunione di vita*, the text of which was also published by Kampen (2019: 76-86).

bond in the Anglican Communion, with particular attention to the Church of England[121]: the fruit of a schism which, for obvious historical reasons, this time immediately brings to mind events that are linked to the marital sphere, although certainly not ordinary ones[122]. Contrary to what this historical genesis might lead one to suppose, however, it must be noted that at the time the regulation of the institution of marriage did not undergo such drastic alterations as those we have observed in the other European regions affected by the upheavals of the Reformation. Such a development, though, proves consistent with the 'specificity' claimed by the Communion, since notoriously "Anglicans consider themselves a 'bridge Church' between Catholicism and Protestantism, retaining characteristics that are specific to one and the other"[123], although in recent decades this configuration has significantly shifted towards the second pole. As it has been stressed, in fact, "The English law of marriage did not yield so easily to the Protestant belief system underlying England's two Reformations. The Tudor and Stuart regimes accepted the Protestant view that marriage is not a sacrament; nevertheless, they called it 'a sacramental', and they preserved the Roman Catholic prohibition on full divorce with the right to remarry (Henry VIII's divorces were all accomplished under the guise of annulments), and they also preserved the earlier Roman Catholic rule – repealed in 1563 by the Council of Trent – that it was the words of consent to be united as man and wife that constituted marriage and that an ecclesiastical ceremony was not necessary"[124]. Thus, after a brief initial period during which an attempt to model Anglican marriage in imitation of the rules already adopted in Protestant communities is carried out in vain, the English legislation returns to positions that are completely similar to the ones prior to the fracture with Rome, therefore very close to pre-Tridentine canon law. Nevertheless, this arrangement starts gradually diverging from this original model as well: not as a consequence of drastic changes but rather through slow yet inexorable cycles of reforms, which have lasted for centuries[125].

[121] As it is known, "Guardano in effetti a Canterbury [...] come a una sorta di Chiesa madre [oltre] quaranta Chiese nazionali autonome che formano la Comunione anglicana e si riuniscono a partire dal 1867 ogni dieci anni nelle Conferenze di Lambeth": Introvigne, Zoccatelli (2013: 179).

[122] Regarding the well-known historical events that we have mentioned, suffice it to recall the summary offered by Introvigne, Zoccatelli (2013: 179): "Enrico VIII (1491-1547), re d'Inghilterra all'epoca della Riforma, si segnala come oppositore di Lutero e riceve dal Papa Leone X (1475-1521) il titolo di 'difensore della fede'. Nel 1527, tuttavia, chiede al Papa Clemente VII (1478-1534) l'annullamento del suo matrimonio con Caterina d'Aragona (1485-1536) zia dell'imperatore di Spagna Carlo V, che Enrico aveva potuto sposare solo grazie a una dispensa papale, trattandosi della vedova di suo fratello. Complesse questioni politiche si intrecciano con questa vicenda matrimoniale, e si collegano al rifiuto del Papa di concedere quello che egli considera un divorzio. Nel 1531 la Camera dei Lord proclama Enrico 'Capo supremo della Chiesa e del clero d'Inghilterra'. È lo scisma, consacrato dall'instaurazione del filo-luterano Thomas Cranmer (1489-1556) – che nel 1533 si affretterà ad annullare il matrimonio fra Enrico e Caterina – come arcivescovo di Canterbury. L'*Atto di Supremazia* del 1534, che fa seguito alla scomunica romana, consacra la nascita di una Chiesa nazionale". For further considerations on this subject, see Ferrante (2018: 17-18), who specifies: "sembra potersi asserire che lo scisma anglicano abbia radici assai più profonde di un paio di cause di nullità matrimoniale, per quanto regali, essendo fondato su ragioni di natura dinastica e politica".

[123] Gianazza (2015: 18, n. 10).

[124] Berman (2006: 352).

[125] Granata (2022: 59): "il sistema giuridico anglosassone ha tradizionalmente escluso la possibilità di ottenere per via giudiziale la dissoluzione del vincolo matrimoniale, conseguibile *medio tempore* esclusivamente per atto del parlamento, fatta eccezione per il breve governo di Oliver Cromwell durante il quale furono celebrati solo matrimoni civili da parte dei giudici

What shapes the face of Anglican marriage in this long period of time is, once again, a new concept of the institution itself: which – in conformity with the political line simultaneously developing in a peculiar way in the British State – is conceived as a 'little commonwealth', inscribed within the 'big commonwealth' in which the whole English society is organized. As such, marriage imposes on family members a series of mutual responsibilities and duties, the respect of which – as the term itself etymologically implies – is considered essential for the purposes of the common good of both the 'little' and the 'big' commonwealth: the hierarchy of social institutions of which the latter is formed requiring the contribution of well-ordered communities that only the former can provide[126]. It goes without saying that, as the socio-political concept attributed to the commonwealth changes, this bond cannot but entail a parallel evolution of its declination in the family sphere: with the consequence that, driven by the philosophical currents emerging with the advance of modern age, the corresponding marital model undergoes an inevitable process of liberalization[127]. Moreover, such a connection is not 'only' limited to a cultural influence, but it also extends to the field of law, at least as far as the Church of England is concerned: since the latter, being a 'Church established by law', notoriously "is governed by a variety of rules, norms and laws, some of which are made by the Church itself, others are imposed by the State or are the product of both Church and State. By dint of its 'established' status, the Church of England is constitutionally linked to the English executive, legislative and judiciary"[128].

However, one must not believe that the evolution that we have briefly outlined here has exhausted its driving force on the threshold of the contemporary era. In fact, while today there are no particularly controversial issues in relation to the formation of the bond, the same cannot be said for the events concerning its possible dissolution. As regards the genetic phase of marriage, it is clearly required that both parties be in a position to contract marriage according to civil law and to freely and consciously give their consent, provided that the minister does not detect the presence of impediments (for example, the *Canons of the Church of England* expressly mention age limits and prohibited degrees of kinship)[129] and that the proper form of celebration is observed (the same collection refers to the rite prescribed by the *Book of Common Prayer*, ordinarily preceded by the banns of marriage, or alternatively accompanied by the license granted by competent authorities, and followed by its recording in the corresponding register)[130].

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di pace. Infatti, si è dovuta attendere l'approvazione del *Matrimonial Causes Act* del 1857 e l'istituzione della *Court for Divorce and Matrimonial Causes*, per vedere affidata a una corte secolare la giurisdizione matrimoniale anglicana, ivi compresa la competenza sul divorzio, fino ad allora riservata alla giurisdizione dei tribunali cristiani secondo le modalità ivi contemplate. È il caso di ricordare come in Inghilterra, già a partire dal secolo XI, le corti ecclesiastiche godessero del monopolio assoluto sulla materia matrimoniale, e specificamente sulle cause che ne determinavano la nullità, lo scioglimento e la separazione, ammessa esclusivamente *quoad mensam et thorum*".

[126] Cf. Witte (1999: 241-259).

[127] Cf. Perzyński (2017: 125-126).

[128] Doe, Sandberg (2010: 740). The English translation of the text that we use here was published by the Authors themselves in the institutional repository of Cardiff University, under the title *Order and Canon Law of the Church of England and Anglican Communion*: see https://orca.cardiff.ac.uk/id/eprint/78299/ [consulted on 03.22.2024]. See also Doe (1996: 7-32). Clearly, this configuration cannot fail to involve the matrimonial matter as well: so much so that Hill (2018: 11), in presenting the sources of the Church of England law, cites as the first example of acts of the Parliament producing effects on the Church itself precisely the Marriage Act 1949.

[129] Cf. Doe (2018: 286-287).

[130] Cf. Garth Moore (2013: 101 ff.).

On the contrary, the breakup of a validly established marital union, with its consequences, is a prospect that has stirred the waters of the Anglican Communion – historically supportive of indissolubility, as already noted – for more than a century now, with implications also extending to current times. Addressed on several occasions in the periodic plenary meetings of the Communion (that is, the 'Lambeth Conferences'), the question was initially left to the decisions of the various local Churches, although united by the commitment to support the ideal of indissolubility and by the responsibility to provide due pastoral attention to those who failed to comply with this principle through divorce. Even today, the picture in this regard appears to be tinged with strong contrasts, since – as it has been observed – "Anglicans have divided themselves into different groups: some continue in the traditional line by refusing Eucharistic communion to divorcees; others refuse divorced people a new marriage in church, while accepting a new civil marriage and admitting divorced people to Eucharistic communion, sometimes even granting a prayer service following the new civil wedding. Some Churches (Canada, USA, Australia, New Zealand, India, Kenya) admit divorced people to a new church marriage"[131]. Among these different solutions, there is also room for the one consisting in leaving the choice of celebrating or not celebrating a new marriage to the conscience of the individual minister, in a similar way to what we have already seen in other Protestant denominations: this is the path followed by the Church of England, which in 2002 established that there may be 'exceptional circumstances' in which a divorced person is allowed to enter into a new religious marriage[132], but at the same time gave priests the right to refuse officiating the rite and deny the availability of their church for such use[133].

Still, an even more troubled discussion for the Communion – once again, in a completely parallel manner to what we have seen above – has been the one regarding the approach that is to be adopted in respect to unions between people of the same sex: in fact, the subject has been at the center of heated debates since the end of the last century, as well as being at the origin of "deep divisions resulting from the opposite attitude of the [Anglican] Churches of the Global North and South towards homosexuality"[134]. A tangible attestation of these centrifugal forces, emerging specifically from the perspective of Anglican law, can be found in the developments of the compilation concerning *The Principles of Canon Law Common to the Churches of the Anglican Communion*, the drafting of which was entrusted by the Anglican Consultative Council to a specifically designated group of scholars, resulting in the presentation of the first version of the work at the 2008 Lambeth Conference[135]. Within a few years, however, the need for a revision of the text became evident: and this objective was going to be achieved through a process in which the profiles linked to marriage would prove to be the most problematic, even exceeding the

[131] Prader (2003: 41).
[132] In this case as well, the aforementioned 'exceptional circumstances' require an overall assessment of the applicant's condition. As recalled by Motilla (2019: 247), for example, "Conditions to the Episcopal licence for a new marriage include: the impossibility of re-establishing a true marriage relationship between the partners of any former marriages; the person is repentant for the failure to keep marriage vows and considers himself able to make new vows; understands the Church doctrine and truly intends to enter such a marriage; and is prepared to fulfil his responsibilities, both moral and legal, with respect to any former marriage".
[133] Cf. Doe (2011: 223); Hill (2018: 150).
[134] Sala (2022: 488).
[135] Cf. Hill, Dewhurst (2022: 208-212).

expectations that one could forecast on the basis of the disagreements already experienced[136]. In fact, as reported in the document itself, the item concerning the definition of the institution of marriage represented an *unicum* in the drafting of the second edition, which – after acknowledging the impossibility of identifying a common principle of law on the point – introduces the corresponding n. 70 stating that "Unlike the other 2022 revisions, which proceeded by consensus, the revision committee decided the method to record this development by majority vote"[137]. Moreover, both the 2008 and the 2022 assemblies, during which the two editions of the work was brought to the attention of the Anglican episcopate, were strongly marked by tensions: in fact, "as it had already happened at the Lambeth Conference of 2008, a significant number of bishops, belonging to the Global South Fellowship of Anglican Churches (GSFA) chose not to participate [in the 2022 Conference] because of the strong dissent existing among the bishops of the Anglican Communion on issues of gender and sexual orientation"[138].

To date, the most recent development of this diatribe is represented by the decision taken by the general synod of the Church of England at the beginning of 2023, which returned to the issue by reiterating, on the one hand, the teaching according to which by its nature marriage is exclusively between a man and a woman, but on the other hand admitting the possibility of blessing civilly united same-sex couples[139]. As it was to be expected, however, this determination proved not only to be controversial within the same assembly of the Church of England that approved it, with the corresponding "chambers of lay people and pastors divided almost in half"[140] in voting the resolution, but above all it caused deeper and more definitive fractures in the whole Communion, based on the virtual geographical line that we have already mentioned: to the point that "as a reaction, on February 20, 2023, a dozen Anglican primates, belonging to the Global South Fellowship of Anglican Churches [...], stated that they no longer recognize the primacy of the Archbishop of Canterbury over the Anglican Communion"[141].

[136] Commenting on the text of the first edition of *The Principles of Canon Law Common to the Churches of the Anglican Communion* a few years after its presentation, for example, Hill (2012: 401-402) stated that "While some churches (or dioceses) are discussing the possibility of official rites for the blessing of same-sex unions, there is no apparent question – at least at the time the Working Party met – of equating such a blessing with marriage. The principles common to Anglicans in relation to marriage law would therefore seem to be unchanged, at least for the time being. Crucial for the future will be whether some provinces or national churches would wish to officially sanction faithful same-sex unions as distinct from marriage or, more problematically, legally open marriage itself with respect to same-gender partnerships. The latter course – taken by the Church of Sweden because of gender-neutral state marriage law – would point to a serious divergence of canonical marriage principles within the Anglican Communion. Though this is not yet the case within the Anglican Communion, it already has its forceful advocates as well as its opponents".

[137] Anglican Communion Legal Advisers' Network, *The Principles of Canon Law Common to the Churches of the Anglican Communion* (2022: 47). The amending procedure is retraced by Dewhurst (2023: 63 ff.), who defines n. 70 as "the most difficult and controversial Principle discussed in the revision process".

[138] Gamberini (2022: 134).

[139] For further reflections on the discussion that had shaken the same Church in the previous years in relation to the innovations introduced by English secular legislation, cf. Di Prima (2015: 181-225); Harris (2015: 67-86).

[140] Guzzetti (2023: 13).

[141] Sala (2023: 193). On similar topics, occasions for conflict had also previously emerged in even broader contexts, as recalled for example by one of the exponents of the Anglican episcopate whose recent conversion to Catholicism has received considerable prominence in the *media*: "The problem of authority arose in another, arguably more intense form with the increasingly common practice of ordaining to the priesthood those in active homosexual relationships. This

5. Conclusions. From the divisions on marriage to new fragmentations among Christians

From what we have described so far, albeit selectively – an approach that proved inevitable, since we had to deal with traditions the roots of which date back so far in time and unfold such composite ramifications –, it can be said with certainty that, in the broader framework of the history of Christianity and its divisions, the institution of marriage does not play the role of a 'background actor' at all: instead, the evolution of its discipline faithfully mirrors the hairpin turns of the path that was traveled by each community in its centuries-old journey, of which the subject in question indeed proves more than once to be a privileged witness, if not even a protagonist. This can already be a first element of surprise, which leads us to see the regulation of the marital bond not as a mere product of dynamics hovering over it, but rather as their vector and sometimes as a driving factor. At the same time, also by virtue of this role, the object of our research has proved that it cannot be confined within the boundaries drawn by the respective religious laws, since its full understanding requires a comparison with multiple profiles: the focus on the internal trends of each Church needs to be combined with a specific attention to the parallels or the discrepancies that can be recognized among the different families of Christianity, as well as to the relationships they maintain with secular power and the mutually exercised influences.

In this sense, the prospect of a double outcome opens up: that is, on the one hand, the possibility of comparing more consciously the experiences of relatively homogeneous religious contexts, since such operation cannot be conducted on the basis of a mere 'still image' of the respective current regulations – or of the absence of current regulations –; on the other hand, the capability to fully appreciate the contribution they provide to a Western culture which, considering itself ineluctably headed towards a destiny of 'provident secularization', is too often led to treat these constituent components almost with annoyed embarrassment, not seldom ending up deliberately forgetting them altogether[142]. Yet, both the outlooks mentioned offer reasons of interest not only for

matter came to a head in 2003, when the Episcopal Church ordained to the episcopate a divorced man who was also in an active homosexual relationship, which was later formalized and subsequently dissolved. The 1998 Lambeth Conference had already overwhelmingly ruled out ordaining those in same-sex unions; yet the U.S. church was eagerly followed by the Canadian Province, Brazil, Scotland, New Zealand, and now Wales – with other provinces, including England, seemingly poised to follow suit. In the 1995 ARCIC [Anglican-Roman Catholic International Commission] statement *Life in Christ: Morals, Communion and the Church*, Anglicans and Catholics appeared to agree to the traditional teaching of the Church that homosexual acts fall short of the divine purpose in creation, even if they had different pastoral approaches to the issue. But these actions disregarded that agreement. I was present at the stormy ARCIC meeting that followed the ordination of a practicing homosexual bishop, and once again the question of authority came to the fore. How could Anglicans agree about one thing with their ecumenical partners and then go and do something quite different? The disagreement threatened the future of ARCIC, which has never fully recovered its original mission of clearing the ground for the restoration of communion between Anglicans and Catholics" (Nazir-Ali [2022], who also notes: "I was troubled by more than controversies over ordination and biblical anthropology, however. There was a breakdown of marriage discipline in many parts of the communion, even among clergy and bishops, and there seemed to be no mechanism for checking this unfortunate trend").

[142] Only to mention a reference concerning marriage, see Fumagalli Carulli (2014: 50-51): "la nascita del matrimonio civile, sotto la pressione dell'illuminismo settecentesco è affermazione della gelosa sovranità dello Stato, che tuttavia modella l'istituto civilistico sulla secolarizzazione del matrimonio canonico, dal quale, si noti, mutua diritti e doveri, indissolubilità compresa, escludendo soltanto i profili sacramentali. Di secolarizzazione in secolarizzazione siamo giunti oggi all'eclissi del matrimonio civile". In the same sense, cf. Dalla Torre (2012: 211-222).

those looking 'backwards', wanting to investigate how the interaction of similar ingredients could lead to today's developments, but also for those possibly looking at their 'future'.

Regarding the sphere that is properly focused on religious law, we have in fact had the opportunity to ascertain how the paths taken by each community encounter some of the most pressing challenges that current times place in front of them precisely in marital matters: the comparison with which is not painless at all, first of all for the internal unity of the various confessions, as we have seen happening in the Orthodox world regarding the issue of mixed marriages or in the Anglican Communion regarding the bonds between people of the same sex. In this sense, one could almost conclude that the perspective from which the present considerations started proves to be, at the end of this journey, paradoxically overturned: if it is true that, historically, the divisions suffered by Christianity have led to a multiplication of the approaches on the institution of marriage, ending up generating models that are distinct in many respects, today it is instead the divergences originating in matters of marriage and family that appear as one of the main sources of new divisions within each Church and among them.

The mention of similar circumstances cannot but bring to mind the events recently triggered, even in the Catholic context, following the Declaration *Fiducia supplicans* by the Dicastery for the Doctrine of the Faith[143], which indeed provoked 'magmatic' developments that appear far from over even while we are writing. And if in this regard we must be careful not to lightly propose parallelisms that would be inappropriate, considering both the diversity of contexts (a factor proving one more time the need to approach different religious systems in a non-superficial manner) and the fact that the topic on which the mentioned document overtly intends to focus "is not the possibility of blessing couples in irregular situations" but rather "the invitation to distinguish between two different forms of blessings: 'liturgical or ritualized' and 'spontaneous or pastoral'"[144], the fact remains that the reactions elicited so far confirm once again that the area we are addressing here is undoubtedly one of the most complicated for religious legal systems themselves. Moreover, this has proven to be true in an ecumenical perspective as well, as recently shown by the decision of the Holy Synod of the Coptic Orthodox Church to "suspend the theological dialogue with the Catholic Church, reevaluate the results achieved by the dialogue from its beginning twenty years ago, and establish new standards and mechanisms for the dialogue to proceed in the future"[145] as a consequence of the aforementioned Declaration by the Dicastery for the Doctrine of the Faith.

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[143] The text of the Declaration *Fiducia supplicans* of December 18, 2023, is available at the following website: www.vatican.va/roman_curia/congregations/cfaith/documents/rc_ddf_doc_20231218_fiducia-supplicans_en.html [consulted on 03.22.2024].

[144] We are quoting the press release from the Dicastery of the Doctrine of the Faith concerning the reception of *Fiducia supplicans* of January 4, 2024, the text of which was originally published the same day in *L'osservatore romano* (2024: 6). The English translation that we use here is available at the following website: www.vatican.va/roman_curia/congregations/cfaith/documents/rc_ddf_doc_20240104_comunicato-fiducia-supplicans_en.html [consulted on 03.22.2024]. In this regard, see also da Silva Gonçalves (2024: 177-186).

[145] The results of the March 2024 sessions of the Holy Synod of the Coptic Orthodox Church, dated March 7, 2024, are available at the following website: https://copticorthodox.church/en/2024/03/07/general-session-of-the-holy-synod-2024-in-logos/ [consulted on 03.22.2024]. Even though the decree and the related statement on "The Belief of the Coptic Orthodox Church on the Issue of Homosexuality" do not explicitly mention the Declaration *Fiducia supplicans*, Pentin (2024) specifies that "The Coptic Orthodox Church has confirmed that its decision last week to suspend dialogue with the Catholic Church was due to Rome's 'change of position' on homosexuality. In a video released on Friday [March 8,

As for the second dimension that we have recalled – the one looking at the vicissitudes experienced by the same topics through the lens of secular law –, retying the threads of the evolution of the institution of marriage as it has matured over the centuries in Western and Eastern legal culture through the fundamental contribution given by the different religious experiences turns out to be an operation that is anything but idle, at a time in which not only secular legislators and judiciaries are struggling with regulations that appear increasingly unstable[146], but the very concept of family seems to be suffering a 'crisis of identity'. On the contrary, the deepening of such an awareness proves to be more necessary than ever, also in the perspective of learning to address in the most appropriate way the different paradigms that the inevitable need to face different legal civilizations brings to the attention of the State with ever-increasing insistence: such paradigms, in fact, are themselves the result of analogous paths, in which the notion of 'marriage' – as well as that of many other institutions – cannot be separated from the religious or cultural presuppositions that intimately inform it, whether they are overt or hidden[147].

In addition, there is a further fact that is worth underlining, and which is linked to the function properly played by law. Certainly, clues of the role we are referring to can be found in relation to more 'disruptive' issues as well, but we can see it manifesting itself in a particularly effective way in the above-mentioned treatment reserved for divorces in Orthodox Churches. This is a profile which, as we have tangentially pointed out, due to its practical implications has also largely affected the law of the Catholic Church: starting from the questions emerging from the activity of ecclesiastical

2024], Coptic Orthodox spokesman Father Moussa Ibrahim said 'the most notable' of nine decrees emanating from the church's annual Holy Synod, which took place last week in Wadi El-Natrun in Egypt, was 'to suspend theological dialogue with the Catholic Church after its change of position on the issue of homosexuality'. [...] Ibrahim's video statement came after some observers had said on social media that the statement made no specific reference to the Vatican's Dec. 18, 2023, declaration *Fiducia Supplicans*, which allowed a 'nonliturgical' and 'spontaneous' blessing of same-sex couples. They also said it did not state that the decision to suspend the dialogue was related to the document". See also Luxmoore (2024).

[146] In this respect, see Zanotti (2024).

[147] Consider in particular what is highlighted by M. Ricca (2018: 28-29): "I problemi cognitivi di una comparazione *non in movimento* e orfana di *sintesi teoriche e antropologico-giuridiche* attengono anche alle esigenze di applicazione del diritto statale. Quando si applica una norma secolare dello stato a una persona appartenente a una fede o a una cultura differenti da quelle della maggioranza, o comunque del gruppo sociale che ha preminentemente forgiato le categorie giuridiche di quel paese, si può incorrere in gravi fraintendimenti. Una conoscenza puramente normativo/testuale non può risolverli, anche perché l'apparenza morfologica delle norme e delle condotte religiosamente orientate non è mai un *dato* ma un *risultato* dell'applicazione dei criteri interpretativi e degli schemi assiologico/cognitivi dell'interprete. Tuttavia, per affrontare la questione con spirito genuinamente pluralista e inclusivo, la conoscenza delle religioni altrui, delle loro proiezioni normative e comportamentali, non è sufficiente senza l'acquisizione della consapevolezza che anche il proprio diritto secolare ha matrici religiose ancora vive al suo interno. La loro invisibilità dipende dalla prossimità tra cultura e religione realizzatasi attraverso la storia e dalle rughe impresse dalla tradizione all'interno di qualsiasi sistema giuridico-secolare. Sfortunatamente, la resilienza della religione è molto spesso invisibile agli autoctoni ma visibilissima agli *altri*: circostanza che genera, a sua volta, specifici usi contrastivi e invocazioni identitarie del proprio diritto religioso, quando non del proprio diritto (presunto come assolutamente) secolarizzato e religiosamente neutro. Anche i giudici secolari dovrebbero dunque essere formati a una conoscenza *mobile*, *dinamica*, dei diritti religiosi, dei loro apparati assiologico-culturali ed etico-pratici. Diversamente, sarà impossibile sia capire sia tradurre l'alterità e se stessi, e quindi produrre applicazioni normative dello stesso diritto positivo statale che siano eque, ragionevoli, ponderate".

tribunals[148] – not only in the West[149] –, the attempts at a resolution coming from which must be considered in the light of the interventions advanced by the institutions of the Roman Curia as well[150]; just as local episcopates have not been able to avoid dealing with the same problems[151], nor have canon law scholars failed to propose their own interpretations[152]. Now, even without going into the merits of such profiles, since here we have intended to concentrate our gaze exclusively on the internal dynamics of the Orthodox and Protestant universes respectively, a basic fact appears noticeable to an 'external' eye as well: namely, as underlined by many voices, it is the one showing that "In the decisions in these matters reached by the authority of the Orthodox Churches, the distinctions between a 'declaration of nullity', 'annulment', 'dissolution', or 'divorce' is usually lacking or is practically unknown, and often in these declarations the underlying motivations of the decision are not indicated. Furthermore, a fundamental uncertainty exists regarding the seriousness of the canonical process in verifying the eventual validity or nullity of a marriage in the Orthodox Churches"[153]. This perspective, even regardless of the terminology used, is deliberately placed beyond a strictly legal horizon. On the other hand, it is certainly more than legitimate to allow oneself to be

[148] Cf. for example Montini (2008: 244-255); Palumbo (2021: 695-711); Gravino (2023: 364-384).

[149] Ruyssen (2013: 11-12): "Not only in Europe, but also in India, the celebration of mixed marriage between Catholics and the Orthodox constitutes an increasing pastoral reality due to greater social and economic mobility, migration and the intermingling of persons of different Christian denominations. On the internet [...] one frequently encounters questions such as: 'I am a Malankara Syrian Orthodox boy and I am in love with a Roman Catholic girl; can we marry?' From a canonical point of view, this question raises two issues. The first issue concerns the increasing number of mixed marriages celebrated between Catholics and the Orthodox. The second issue concerns the increasing number of Orthodox, previously married, who wish to enter a second marriage with a Catholic partner and who therefore have to present before Catholic tribunals a nullity case concerning their previous marriage. On the pastoral level, this rather new reality imposes a specific burden on bishops, parish priests and pastoral workers, namely to become more familiar with the canonical and disciplinary norms regulating marriages between Catholics and the Orthodox. Also the judges of the ecclesiastical tribunals are expected to have a more profound knowledge of the law of matrimony governing the Orthodox faithful, especially when an Orthodox desires to celebrate a second marriage with a Catholic spouse". About the mentioned Malankara Syrian Orthodox Church, see specifically Kadamthodu (2013: 143-160).

[150] In fact, the aforementioned *Nota explicativa* by the Pontifical Council for Legislative Texts certainly did not represent the first occasion on which the problem in question was addressed, as recalled by Gefaell (2007: 788-789) "La discussione sulla prassi del divorzio nelle Chiese ortodosse ed il suo influsso sulle Chiese greco-cattoliche viene da lontano: p. es., proprio per questi problemi, nel 1858 la Congregazione di Propaganda Fide aveva inviato ai Vescovi Greco-Cattolici Romeni un'Istruzione sull'indissolubilità del matrimonio e nel Concilio Vaticano I si discusse sull'opportunità di dichiararla dogma di fede". In more recent times, it is necessary to mention at least the *Declaratio* of October 20, 2006, by the Supreme Tribunal of the Apostolic Signatura (in *Communicationes* [2007: 66-67]), concerning once again the significance of the declarations of free state issued by the Orthodox Church in Romania in favor of Orthodox faithful who have previously contracted marriage according to the norms of the Orthodox Church: in this respect, see Bianchi (2008: 256-265).

[151] Suffice it to recall, with reference to the Italian context, the aforementioned *Vademecum per la pastorale delle parrocchie cattoliche verso gli orientali non cattolici* of 2010: which, in the section dedicated to 'sharing sacramental liturgical worship with the faithful of Non-Catholic Eastern Churches', addresses marriage in nn. 31-47 (2010: 1638-1645). In this regard, see also Zambon (2011: 332-336).

[152] Cf., *ex multis*, Vasil', Gallaro (2013: 119-143); Schembri (2015: 121–141); Orzolek (2015: 221-241); Connolly (2021: 209-243).

[153] Vasil' (2014: 127). Likewise, Gefaell (2007: 787) reiterates: "nella maggioranza delle Chiese ortodosse la 'dichiarazione di nullità' è piuttosto un semplice permesso per accedere a nuove nozze, che implica lo scioglimento del primo matrimonio. Appunto, al momento attuale quasi nessuna delle Chiese ortodosse emette dichiarazioni di nullità del matrimonio a causa della prassi di concedere semplicemente il passaggio a nuove nozze per *oikonomia* in caso di fallimento del matrimonio, sebbene sostengano in teoria la sostanziale indissolubilità matrimoniale".

questioned by the suggestions arising from it: and this to the point of allowing oneself to be inspired by it in an attempt to elaborate new models of interpretation. In this direction, however, one must also imagine a limit and bind oneself to respect it. The elaboration of possible new models must not lead one to overlook (or, worse: to provide a pretext for forgetting) that even and especially in such sensitive areas "a law 'packaged' in an unimpeachable manner, including through the well-concerted contribution of legal science, is absolutely inescapable if truth is to be attested and consolidated in the substantive relations between persons"[154].

[154] Boni (2021: 21).

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