

MINISTER OF THE SACRAMENT OF MARRIAGE IN THE EAST AND THE WEST

The minister of the sacrament of marriage has come to the fore recently as a topic of discussion. It has drawn the attention of those engaged in Catholic-Orthodox ecumenical dialogue and aroused the interest of canonists, especially after the promulgation of the Code of Canons of the Eastern Churches (1990). New horizons of mutual understanding seem to have been opened in an area of past Catholic-Orthodox controversy. Not all problems, however, have been resolved. Neither liberal irenicism nor conservative rigidity can help further the ecumenical rapprochement. Surprisingly, some canonists who have written on the subject have ignored the progress registered in the ecumenical field. Not a few also seem to be working with wrong presuppositions that hinder the approach to the fuller truth and slow down the progress of the ecumenical dialogue. In the following study we shall survey the field, identify and bring to light those presuppositions, and explore the new paths of reflection in view of a synthesis beyond East and West. What we propose to do may be presented briefly for an overview under the following heads:

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1. Terminology

At the outset we have to define the terms we use. As is well known, most theological disputes arise, polemics flame up, and misunderstandings are fostered owing to the failure to define one's terms; lack of precision in their use confounds confusion and complicates issues, as has been seen through the hindsight obtained from the recent ecumenical dialogues on the Chalcedonian and Ephesian christological dogmas. It is mostly a like failure to define one's terms that has confused the question of the minister of the sacrament of marriage, which has set aflame East-West controversy in the past. Our first task, then, is to achieve terminological clarity and precision, which should go a long way towards the solution of the question itself.

The term «minister» is not univocal and is used in a variety of senses. Thus, for example, in liturgy the term «minister» may refer to the ordained person who administers a sacrament («minister of the sacrament of penance») or to a subordinate helper, like an acolyte or Mass server. The term can refer to the president of a liturgical service, in which a sacrament may or may not be administered. Even in canon law, where usually great care is taken to use terms in the same sense,

the term «minister» appears with different meanings. In the two codes of the Catholic Church, the *Codex Iuris Canonici* (CIC) of the Latin Church (1983) and the *Codex Canonum Ecclesiarum Orientalium* (CCEO) of the Eastern Catholic Churches (1990), it is not in a univocal sense that the term minister is used in such expressions as «minister sacer» (CIC c. 1127 §1), «minister non catholicus» (CIC c. 1127 §3) and «minister acaatholicus» (CCEO c. 839; cf. CIC 1917 cc. 1063, 2319) in the context of marriage. In these cases «minister» does not always refer to the minister of the sacrament of marriage in the theological sense. In theology, the same word «minister» may have a still different meaning, as in the expression «the minister of the new covenant». Thus it is easily seen that «minister» is a polyvalent term with different meanings in theology, liturgy, and canon law. This has contributed not a little to confusion in interdisciplinary understanding.

Further, in the theology of marriage we have to reckon with theological pluralism. Which theology do we have in mind, Western or Eastern? And if one is speaking of Eastern theology, what does this East in the singular number refer to? Prior to the Second Vatican Council, «Eastern Church» in the singular was standard, as is borne out by the name of the Roman dicastery, called then the «Congregation for the Eastern Church», in the singular. Its subsequent change to the plural «Congregation for the Eastern Churches» should alert one to the question if all these Churches share one and the same Eastern theology. In fact these Churches are said to be diversified broadly on the basis of rites, according to the decree of the Second Vatican Council on

the Eastern Catholic Churches (OE 3). The word rite, too, is a polyvalent term and has been used in more than twenty meanings. Vatican II has helped define it more narrowly and precisely as a fourfold composite of theology, liturgy, spirituality, and discipline or canon law (UR 17). And this composite is diversified owing to culture and the circumstances of history (CCEO c. 28 §1). Such a notion of rite raises the question about *theologies* (in the plural) of these Eastern Catholic Churches. And further it may be asked whether these theologies correspond to those of the Orthodox Churches. We shall meet with the implications of these considerations further on.

The question of terminology should alert us to the limits of all reflection *in vitro*, devoid of contact with the complex pluralistic reality. The danger of a purely speculative approach to an issue that has divided minds and led to polemics in the past is that, though the structure erected is magnificent, it has no buyers. To ward off this mishap we should try not to lose our hold on the historical ground. Let us, however, first state the question more in detail from the canonical and theological perspectives.

2. Minister of the Sacraments

Although the codes of canon law are not theological treatises, they often contain working definitions of realities studied by theology and regulated by the discipline of the Church. However, neither CIC nor CCEO contains any definition of the minister of the sacraments in general or of marriage in particular. Indeed, the expression *minister* of the sacrament of

marriage does not even appear in these codes. This is not casual but significant since for each of the other sacraments the Latin Code speaks expressly of its minister. The Eastern Code is more reserved than its Latin counterpart in its use of the term minister with regard to the other sacraments as well, as can be seen from the following comparative survey.

In fact for each of the seven sacraments, except marriage, the Latin Code has a chapter each devoted to the minister of that sacrament. Thus we find «De baptismi ministro» (CIC cc. 861-863), «De confirmationis ministro» (cc. 882-888), «De sanctissimae Eucharistiae ministro» (cc. 900-911), «De sacramenti poenitentiae ministro» (cc. 965-986), «De ministro unctionis infirmorum» (c. 1003), «De ordinationis celebratione et ministro» (cc. 1010-1023). But, in the case of marriage there is nothing of the kind. One could have expected, on analogy, a chapter possibly entitled «De matrimonii (celebratione et) ministro / ministris». Instead, what we have is chapter IV «De consensu matrimoniali» (cc. 1095-1107) and chapter V «De forma celebrationis matrimonii» (cc. 1108-1123).

The Eastern Code, as we have said, is more sparing than the Latin Code in the use of the term minister with reference to the sacraments. Only under holy orders do we find an article (not chapter, given the particular structure of CCEO) entitled «De sacrae ordinationis ministro» (CCEO cc. 744-753). With regard to the other sacraments the substantive «minister» is not used at all. Instead, the verb «ministrare» is used for baptism (cc. 676-678, 688-690), chrismation with the holy myron (cc. 693-695), penance (cc. 722-726), and the anointing of the sick (cc. 739-741). As regards the Holy

Eucharist, neither the substantive «minister» nor the verb «ministrare» is used, instead «celebrare» (c. 699) and «distribuere» (c. 709) have been employed. As for marriage, CCEO avoids, as did the Latin Code of 1983 and its predecessor CIC 1917, not only the substantive «minister» but even the verb «ministrare»; instead, it uses «celebrare» as in the case of the Eucharist. Further, «contrahere matrimonium» of CIC (cc. 1095, 1096, etc.) is invariably replaced in CCEO with «celebrare matrimonium» (cc. 818, 821, 828, etc.).

This *silence* of both the codes about the *minister of the sacrament of marriage* does not of course mean that they *deny* that there is such a minister (or ministers). According to sacramental theology, there can be no sacrament without a minister to accomplish or administer it. In the Christian economy the sacraments are not consumer goods of self-help available as push-button service but gifts of the Risen Christ who accomplishes his salvific mission through the Church, which is commissioned to use as means these life-giving signs of grace. Thus in olden times we meet with the liturgical practice whereby not even the president of the eucharistic assembly helped himself with the Holy Communion: he received communion from another, according to a rubric that contained a profound theology of the Eucharist as God's gift (and not the Church's cookie), a rubric that also raises the theological question about the minister of the Eucharist as a sacrament. Likewise, if marriage is conceived as a sacrament of the Christian economy, then the question of its minister necessarily arises in theology.

Although both the codes have avoided the term minister of the sacrament of marriage, as CCEO has

done also with regard to all the other sacraments except sacred order, the concept of minister is implicit in certain canons where the term itself is not expressed, as for example in CCEO cc. 828 §2 and 834 §2. This fact could perhaps raise the question if the term minister could possibly have been avoided altogether from the codes, a question which need not detain us here since it refers to the technique of codification. In any case, one would still be left with the theological question about the minister of the sacrament of marriage. Indeed, the question about the minister of the sacrament of marriage is primarily a theological question, not a canonical question. The mere fact that canonists have dealt with this question (in spite of the absence of the term in the codes) does not necessarily make it a canonical question. However, given the intimate connection between theology and canon law, the canonist cannot be barred from dealing with it, provided he is aware that he is doing so rather as a theologian than as a canonist. Before undertaking such a task, however, the canonist would be well advised to sit down and ask himself if he is well equipped to do the theologian's job, lest after laying the foundation he is not able to complete the construction, or his construction ill suits the panorama, or is blown off in the whiff of a wind – a consideration that should make doubly wary Latin canonists venturing into Eastern theology.

Undoubtedly, there is a theology of marriage that underpins the canons on marriage. It would be too easy and too tempting to proceed on the presupposition that the Latin Code follows Western theology and that the Eastern Code follows Eastern theology. Apart from the question mentioned earlier about the

appropriateness of speaking of Eastern theology in the singular, there is no single theology that uniformly underlies the canons of the Eastern Code. Thus, if we might suppose, for example, that the canons of CCEO on the sacraments of baptism and chrismation (corresponding to confirmation, in CIC) are inspired by Eastern theology, those regarding the primacy and the infallibility of the Bishop of Rome are borrowed stock and barrel from Western theology. Hence it cannot be taken as axiomatic that any given section of CCEO has necessarily a specific basis in Eastern theology distinct from Western theology. One can be misled into a trap by following this line of thinking and acting on such a presupposition¹. How relevant this caution is with regard to the question of the minister of the sacrament of marriage, we shall see shortly.

In dealing with the question of the minister of the sacrament of marriage according to the Eastern Code, there is another false clue to be alerted to, namely the expression «celebrare matrimonium». If in the matter of the Eucharist the person who «celebrates» it, (or, to be liturgically more accurate, the one who presides over the Eucharistic celebration) is the minister of the Eucharist (the Eucharist as sacrifice, in the Tridentine precision), this is not necessarily so also in the case of the sacrament of marriage. In fact, «celebrare» is used in CCEO in a number of different senses which do not always involve the

¹ An example is G. KADZIOCH, *Il ministro del sacramento del matrimonio nella tradizione e nel diritto canonico latino e orientale*, Tesi Gregoriana, Serie Diritto Canonico 22, Roma 1997.

minister of any sacrament at all. Here are a few examples.

Omnes clerici *laudes divinas celebrare* debent secundum ius particulare propriae Ecclesiae sui iuris (c. 377).

In singulis domibus ordinum et congregationum *laudes divinae celebrentur* ad normam statutorum et legitimarum consuetudinum (c. 538).

Si contingit, ut Sedes Apostolica durante *Concilii Oecumenici celebratione* vacet, [...] (c. 53).

[...] eorum [parochorum], qui decesserunt, *funera digne celebrentur* (c. 278 §3).

[...] celebratio verbi Dei vero opportune foveatur (c. 607).

Not all celebrations are celebrations of sacraments, nor are all those who celebrate ministers of sacraments. This is not surprising since «celebrare» in Latin means in the first place «to throng», or «to crowd around», or «to frequent», and hence «to hold a festival or party» or «honour with ceremonies, crowds», etc.². In the «celebration of the word of God» (CCEO c. 607), all who take part in it celebrate the word, are celebrants; so too, in a funeral (278 §3). And yet, those who conduct such services are celebrants in a special or narrower sense. Similarly, the wedding couple «celebrate their marriage» or are celebrants of their marriage. There is also a further consideration about the use of «celebrare matrimonium» in CCEO. In the terminology of CCEO, the spouses do not «contract marriage» but «celebrate» it (cf. CCEO cc. 818, 819, 821, 824-827). This terminology was adopted during the codification of CCEO in order to avoid a predomi-

² *Oxford Latin Dictionary*, ed. P.G.W. Glare, Oxford 1982, reprint 1990, s.v.

nantly contractual idea of the Christian marriage³. Hence, according to CCEO, marriage is not contracted as a juridical act in the first place but is celebrated as a sacramental act. And, most importantly, when it is said that the couple celebrate their marriage, there is no necessary implication that they are the ministers of this sacrament. Here are a few examples:

Sunt incapaces matrimonii celebrandi qui sufficienti usu rationis carent (c. 818).

Matrimonium celebrantes saltem non ignorent matrimonium esse consortium permanens (c. 819).

Qui matrimonium celebrat deceptus dolo (c. 821) [...]

Celebrare intendentes verum matrimonium (c. 832 §1) [...]

Si pars catholica [...] matrimonium celebrat cum parte [...] acatholica (c. 834 §2), etc.

It is to be underscored that from the fact that in these canons the couple are said to «celebrate» their marriage it does not follow that they are the ministers of the sacrament of marriage since this terminology was adopted not to identify the minister of marriage but to avoid, as we said, the suggestion of a contractual idea of the sacrament⁴. Who then is the minister of the sacrament of marriage according to CCEO?

³ *Nuntia* 8 (1979) 23: «Parochus et loci Hierarcha [...] matrimonium [...] celebrant» (c. 52); «[...] possunt facultatem [...] matrimonium celebrandi [...] delegare» (c. 53).

⁴ In as much as the couple «celebrate marriage» sacramentally, it would only be logical to call them *celebrants* of the *liturgical rite* of marriage without necessarily implying at the same time that they are also the *ministers* of the sacrament of marriage.

3. «*Minister benedictionis matrimonii*»

One of the major differences between CIC and CCEO in the matter of legislation on marriage is, as is well known, that in the latter the nuptial blessing is for the validity of marriage (CCEO c. 828 §1), whereas in the former it is not (CIC c. 1108 §1). As regards this nuptial blessing it is further laid down that for its validity it should be imparted by a «minister sacer» who has the «*facultas matrimonium benedicendi*» (cc. 829-833). His role, according to CCEO, therefore, is not only to assist at the celebration of marriage but to bless it (c. 828 §2), while the sacred minister, according to the Latin Code, only assists at it in as much as he «*exquirat manifestationem contrahentium consensus eamque nomine Ecclesiae recipit*» (CIC. c. 1108 §2)⁵. The faculty to bless marriage according to CCEO contains the faculty to assist at it, but not necessarily vice versa, in as much as the two witnesses who are also required for validity of the marriage may be said to assist at it. Regarding the so-called «qualified» witness, namely the priest, CCEO qualifies his role uniformly as «*benedire matrimonium*» instead of «*assistere matrimonio*», which is found in CIC and in Pius XII's 1949 *motu proprio Crebrae Allatae* (CA). This peculiarity, however, does not mean that the priest does not assist at the marriage which he blesses. Rather, the role of assisting is included in the role of blessing. More importantly, this peculiarity is no

⁵ U. NAVARRETE, «*Sensus verborum exquirat et recipit manifestationem consensus*», *Periodica de re canonica* 83 (1994) 611-634.

proof that the one who blesses the marriage is to be identified as the minister of the sacrament according to CCEO⁶. On this question of the minister of the sacrament of marriage CCEO does not innovate on CA, which had not used the term «minister matrimonii» either.

In the Eastern Code, as we saw, the nuptial blessing is a necessary element in the celebration of marriage in the ordinary form under pain of nullity. This provision preserves the «ius antiquum» and is in continuity with the Eastern tradition codified already in CA in 1949⁷. But the significance of this nuptial blessing is sometimes misunderstood by being overrated or by being underrated. It is overrated when it is construed as essential to the sacrament of marriage as if it were its sacramental form. It is underrated when it is contended that it is not a blessing reserved to priests or that the role of the priest can be

⁶ Following CIC 1917, the Motu Proprio of Pius XII *Crebrae Allatae* regularly used «contrahere matrimonium» (passim) and «assistere matrimonio» (cc. 85-92). This usage was revised in CCEO: «Loco vocum "contractus matrimonialis", "matrimonium contrahere", "matrimonio assistere" aliae voces in toto schemate ponuntur, quae vocabulo biblico "foedus" necnon Orientalium de matrimonio sacramento conceptionibus magis respondent, ut sunt "matrimonium inire vel celebrare", "matrimonium benedicere"»; *Nuntia* 10 (1980) 12.

⁷ *Crebrae Allatae*, c. 85:

«§1. Ea tantum matrimonia valida sunt quae contrahuntur ritu sacro, coram parocho vel loci Hierarcha vel sacerdote cui ab alterutro facta sit facultas matrimonio assistendi et duobus saltem testibus, secundum tamen praescripta canonum qui sequuntur, et salvis exceptionibus de quibus in cann. 89, 90.

§2. Sacer censetur ritus, ad effectum de quo in §1, ipso interventu sacerdotis adsiscentis ac benedicentis».

fulfilled by a delegated deacon. In the Eastern tradition it is a blessing that is imparted by the «sacerdos». And since the ordination of the deacon is not «ad sacerdotium», in the Eastern tradition the nuptial blessing is not imparted by the deacon, who is ordained «ad diaconium». As a consequence, a deacon (whether oriental or latin) cannot be delegated (even by a bishop, whether oriental or latin) as a substitute for the priest's specific role in the celebration of marriage: he can assist but not bless, and the law requires the same person to do both under pain of nullity (c. 828 §2). This is of course only a matter of positive law, not a question of the essence of the rite of marriage. Just as, in the ordinary form, a latin marriage celebration without the presence of a person having «*facultas assistendi*» will be invalid, so too an oriental marriage celebration without a priest having «*facultas benedicendi*» and imparting the nuptial blessing will be invalid. Such an interpretation of CCEO c. 828 §1 might appear forced or too strict till it is seen in the light of the lodestar canon 2, according to which canons of CCEO in which «*ius antiquum Ecclesiarum orientalium recipitur*» are to be assessed or interpreted primarily in the light of that ancient Eastern law. Contrary opinions expressed by some canonists seem to have overlooked the force of canon 2, which is specific to CCEO, while they seem to have looked for light instead to CIC.

Whatever be one's preferred solution to that particular question, it does not condition our further discussion of the question of the minister of the sacrament of marriage. Commenting on the nuptial blessing in the above mentioned CA canon 85, Emil Herman, an outstanding scholar of Eastern canon

law and member of the First Pontifical Commission for the Eastern Code, wrote in 1949 in a comprehensive historico-juridical study that by imparting the nuptial blessing the priest is *not administering the sacrament of marriage*.

Haec benedictio, ut manifestum est et ex can. 1 (= can. 1012 C.I.C.) liquet, non est sacramentum neque forma sacramenti, sed condicio validitatis contractus matrimonialis ideo sacramenti quoque matrimonii, eadem ratione atque assistentia sacerdotis in iure latino et orientali praescripta⁸.

The nuptial blessing is *not sacramental*, that is, it is not a *constitutive* element of the sacrament of marriage; it is not even the *form of the sacrament* but is *part of the canonical form* of the celebration of the sacrament⁹. As such it is only a *condition* for valid celebration, a condition that is not different in kind from the condition required in latin (and oriental) canon law that there should be a qualified witness (a sacred minister) to assist at the celebration of marriage along with two other witnesses. In fact the priestly blessing, according to a reply of the Commission for the Redaction of the Code of Oriental Canon Law (3 May 1953), is a simple blessing, which may consist of a gesture or word, and needs no particular formula, though for liceity the priest

⁸ E. HERMAN, «Adnotationes ad Motu Proprio *Crebrae allatae sunt*», *Periodica de re morali canonica liturgica* 38 (1949) 93-125, at p. 111.

⁹ Here Herman is adhering faithfully to the teaching of St. Thomas Aquinas: «Verba quibus consensus matrimonialis exprimitur sunt forma huius sacramenti; non autem benedictio sacerdotis, quae est quoddam sacramentale»; S. Th., q. 42, a. 1, ad 1.

will follow the formula as is prescribed in the liturgical book. In short, there is nothing to show that in CA the minister of the sacrament of marriage is identified with the sacred minister who imparts the nuptial blessing. Such a misreading of CA canon 85 is not rare among Western canonists, as we shall see.

The same canonical norm of CA has been retained unchanged in the legislation of CCEO. In short, if in the latin law there are two conditions in the ordinary canonical form of the celebration of marriage, in oriental law there are three conditions. This can be expressed schematically as follows:

CIC 1917/1983

1. two witnesses,
2. a qualified witness receiving the manifestation of consent

CA / CCEO

1. two witnesses
2. priest as qualified witness receiving the manifestation of consent
3. nuptial blessing imparted by the priest

Just as none of the two conditions required by CIC is a constitutive element of the sacrament of marriage, so too, none of the three conditions required by CCEO is a constitutive element of the sacrament of marriage. The reason is not far to seek but is imbedded in Christian tradition. It is a matter of historical fact that valid Christian marriages were celebrated without them in the first centuries when marriage was conducted as a domestic rite or a social celebration, though that certainly did not mean it was a purely secular thing. All the above conditions are later prescriptions of positive ecclesiastical law. The fact that they can affect the validity of marriage does not mean that they are constitutive of marriage: they

are not essential elements, but necessary conditions added by law for good reasons. Indeed, long before the Council of Trent, in the Byzantine East, imperial law had prescribed the nuptial blessing as a condition for the validity of marriage as a legal measure against «clandestine marriage» (see below).

Hence it follows that the requirement of the nuptial blessing (the third condition in the above scheme) in CCEO does not *per se* raise the question about the minister of the sacrament of marriage any more than does the presence of the qualified witness (the second condition) in CIC or CCEO.

The extraordinary form of marriage is the same in both CIC and CCEO. Historically it is not the extraordinary form as such that gave rise to the question about the minister of the sacrament of marriage. If so, is this question about the minister of the sacrament of marriage in CCEO canonically relevant? Is it not rather a theological question best left to theologians? This might well be so. However, since few theologians seem to want to profit from the terminological precision canon law contains and offers, a canonist may be excused for stepping (but not for «rushing») where angels fear to tread.

4. Canonical or Theological Question?

If the question about the minister of the sacrament of marriage is properly a theological question, it follows that it is not primarily a canonical issue. Indeed, it has no real relevance for the legislation of either of the Codes, whether Latin or Oriental. That is to say, the canons of CIC as well as CCEO can be exegeted properly and applied without ever raising

the question about the minister of the sacrament of marriage. In fact, during the work of the codification of CCEO, the Pontifical Code Commission does not seem to have been ever concerned about this question about the minister of the sacrament of marriage. There is no hint anywhere in any of the thirty-one issues of *Nuntia* that the question was ever raised by anyone or by any of the various organs consulted. Nevertheless, given the connection between canon law and theology, a canonist cannot simply prescind from the fact that, as it is commonly understood, the priest who imparts the nuptial blessing is regarded as the minister of the sacrament of marriage in Eastern theology. It is then proper to ask if such is also the theology underlying CCEO.

There is nothing in CCEO that leads to such a conclusion. The mind of the Commission can perhaps be best read in the *Index Analyticus* of CCEO compiled by the Secretary of the Commission Father Ivan Žužek, S.J. Under the lemma «ministri», we find: «(minister) baptismi», «chrismationis sancti myri», «Divinae Eucharistiae», «sacramenti paenitentiae», «unctionis infirmorum», and «sacrae ordinationis». For the last sacrament, marriage, there is a departure from the uniformity of the entries for these six sacraments. What we find is not «matrimonii» or «sacramenti matrimonii», but «benedictionis matrimonii»¹⁰. This variation with the insertion of *benedictionis* is surely not accidental but purposeful and significant. There is no reference to the minister of the *sacrament* of marriage in the *Index Analyticus* of

¹⁰ I. ŽUŽEK, *Index Analyticus Codicis Canonum Ecclesiarum Orientalium* (Kanonika 2), Rome 1992, 198-199.

CCEO but to the minister of the *nuptial blessing*. And, as the entry in the *Index* reads, «Minister *benedictionis matrimonii* est sacerdos assistens, cc. 828 §2, 834 §2»¹¹. Clearly, the insertion of *benedictionis* makes it quite clear that the assisting priest is only the minister of the *blessing* of marriage and not of the sacrament of marriage. Thus, we are led to understand that CCEO abstracts from the question about the *minister of marriage* while legislating that in the ordinary form there is to be a sacred minister to impart the nuptial blessing.

If so, nothing can be deduced from the Eastern Code about the theology of the minister of the sacrament of marriage: the Code has of set purpose pre-scinded or abstracted from that question. As a consequence, in this matter the Code is per se open to any theology that is Catholic, whether Eastern or Western – and indeed it can even be accommodated to a theology that perhaps transcends both and is inclusive of each, if and when such a theology evolves.

A second conclusion is the following. From a purely canonical point of view, the question of the minister of marriage is irrelevant. As we said, the canons on the sacraments of marriage in the two codes can be explained and applied without ever raising the question of the minister of this sacrament. There is no norm or canon dealing with the minister of marriage in particular or ministers of sacraments in general. Thus, for example, Christ's faithful have the right to receive sacraments, and there is a corresponding duty of the Pastors of the Church, not of the ministers of

¹¹ I. ŽUŽEK, *Index Analyticus* (cf. nt. 10), 199.

the sacraments: «Ius est christifidelibus, ut ex spiritualibus Ecclesiae bonis, praesertim ex verbo Dei et sacramentis, adiumenta ab Ecclesiae Pastoribus accipiant»¹². Not surprisingly, there is no chapter or section dealing with the minister of the sacrament of marriage in the first full-length study to appear on the matrimonial legislation of CCEO after the promulgation of the Eastern Code¹³. This is not without significance since the author, Monsignor Joseph Prader, was the Relator of the *Coetus de matrimonio* of the Pontifical Commission for the Eastern Code.

An analogy may perhaps illustrate our point. Both the codes have a canon about the infallible *magisterium* (CIC c. 749, CCEO c. 597). But infallibility is a theological concept, not a canonical concept. What is canonically relevant and has juridical consequences (cf. CIC cc. 750, 752, 753; CCEO cc. 598-600) is not infallible *magisterium* as such but what is taught «definitivo actu» or «definitively». In this context, it is significant that CIC 1917 contained no canon about infallibility at all – the term does not occur even once in that code. This silence, coming on the heels of the First Vatican Council, which defined papal infallibility, speaks volumes about the canonical irrelevance of infallibility. This is of course not to call into question the truth value or theological weight of infallibility, but simply to prescind from the subject. Not all truth has legal value. If infallibility had legal value, it would be really sur-

¹² CCEO c. 16 = CIC c. 213: «a sacris Pastoribus» (CIC), «ab Ecclesiae Pastoribus» (CCEO).

¹³ J. PRADER, *Il matrimonio in Oriente e Occidente* (Kanonika 1), Rome 1992.

prising that canonists of the calibre of Gasparri and Wernz (the brains behind CIC 1917) did not see it! The insertion of infallibility into the two new codes – through the ill-fated *Lex Ecclesiae Fundamentalis*, in which the mention of infallibility might arguably have been relevant and apposite – has given them a theological overweight without adding to their juridical utility. Analogous would be the case of CCEO if it mentioned the minister of marriage. This mention could plausibly have been made in canon 828 §2, perhaps as follows: *Sacer hic censetur ritus ipso interventu sacerdotis assistantis et benedictis tamquam ministri matrimonii*. Such an addition, however, would have been a canonical dead weight, as redundant as infallibility is in the two codes, but also contrary to the mind of CCEO.

However, both the codes provide for the extraordinary form of marriage (CIC c. 1116, CCEO c. 832), according to which in very exceptional circumstances a valid sacramental marriage can be celebrated by the spouses without the intervention of any sacred minister or priest. Thereby the codes essentially do nothing other than retain the ancient form of marriage celebrated by Christians whether of Jewish or gentile extraction in the early Christian centuries, when for the expression of the religious dimension of marriage the presence of a priest was not a *sine qua non* but only, and if at all, *ad melius esse*. In other words, and paradoxically, what is now called in canon law the «extraordinary form» was then the «ordinary form». And it is precisely the presence of this extraordinary form in CCEO that has led some canonists to raise the theological question (not the canonical question!) about the minister of the sacrament of marriage.

5. The Theological Question

A good starting point to discuss the theological question about the minister of the sacrament of marriage is perhaps the *Catechism of the Catholic Church*, which is evidently a common authoritative magisterial text for the whole Catholic Church both of the East and of the West. Besides expounding matters of faith the *Catechism* occasionally drops also some valuable theological hints. Regarding the minister of the sacrament of marriage what we find in the *Catechism*, in its lately revised version, differs from its earlier or unrevised version. That first version had read 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 (c. 1623)¹⁴.

Here the *Catechism* spoke of the minister of the sacrament of marriage in the Eastern *liturgies*, and not in Eastern *traditions* or rites, which would be inclusive of theology and discipline. This restriction may strike as odd, especially when it is compared with the broader statement «in the Latin Church». Even more puzzling is the silence about the priestly blessing needed in the Eastern marriage. Instead, undue importance was given to «crowning» (στεφάνωμα =

¹⁴ *The Catechism of the Catholic Church*, London 1994, 364.

crown, crowning; στεφάνωσις = crowning), to which even the mutual consent of the couple seems to be subordinated, as is suggested by the phrase (or subordinate clause) «after receiving the mutual consent of the couple, he crowns [...]» (principal clause). Thus, the reader is induced to understand that the priest (canonically inclusive of both bishop and presbyter) is the minister of the sacrament of marriage in that he crowns the couple after receiving their mutual marriage consent.

There are several critical observations to be made here. Firstly crowning is not, contrary to a perhaps widespread notion¹⁵, part of the marriage ritual in *all* the Eastern Churches without exception¹⁶. Crowning is not mentioned in CCEO. Secondly,

¹⁵ The article in DDC VI cols. 787-802, «mariage en droit orientale» (by C. de Clerq), states wrongly that the crowning of the bride is common to all the Eastern Churches: «Le couronnement des époux par le prêtre apparaît des époques diverses dans chacune des Églises orientales comme le rite principal et définitif des premières noces. Il était interdit lors des secondes noces» (col. 799).

¹⁶ Crowning is not part of the wedding ritual notably in the Indian culture, and is understandably not part of the marriage rite in the Church of the Thomaschristians. See in G. FRANEDI (ed.), *La celebrazione cristiana del matrimonio. Simboli e testi* (Analecta Liturgica 11), Rome 1986, in particular, the studies of C. PAYNGOT, «The Syro-Malabar Marriage», 261-282 («there was no coronation ceremony in Malabar», p. 263); and L. CHENGALIKAVIL, «The Hindu Celebration of Marriage», pp. 361-373. For a general survey of the various liturgical rites of the celebrations of marriage, see F. VAN DE PAVERD, «Forme celebrative del matrimonio nelle Chiese orientali», in *La celebrazione del matrimonio cristiano*, Atti della V Settimana di Studio dell'Associazione Professori di Liturgia (5-10 settembre 1976), Studi Liturgici 5, Bologna 1977, 11-116.

even where crowning is normative or customary according to particular law, it is not a substitute for the nuptial blessing, which is necessary for the validity of marriage and is prescribed in CCEO. Hence the second sentence in the above text of the *Catechism* needed to be recast. This was indeed done subsequently in the *editio typica*, that is to say, the authentic edition in the Latin language. We give below the new Latin text.

Secundum traditionem latinam, sponsi, tamquam ministri gratiae Christi, sibi mutuo Matrimonii conferunt sacramentum, suum consensum coram Ecclesia significantes. In traditionibus Ecclesiarum Orientalium, sacerdotes – Episcopi vel presbyteri – testes sunt consensus mutuo ab sponsis praestiti, sed etiam eorum benedictio ad validitatem sacramenti est necessaria (c. 1623)¹⁷.

The changes introduced in the revision are not merely redactional but significant and they affect substantially the theme of our present study of the minister of the sacrament of marriage. Instead of a detailed commentary on these changes we limit ourselves to a few remarks.

In the first sentence, the changes are minimal but not negligible. First of all, instead of «in the Latin Church» we have now «according to the Latin tradition». This change involves a clear distinction between matters of ecclesial faith and questions of mere tradition. The question of the minister of the sacrament of marriage is a matter of theological tradition,

¹⁷ *Catechismus Ecclesiae Catholicae*, Libreria Editrice Vaticana 1997, 433. For translation of the corrected text in Italian, see *Catechismo della Chiesa Cattolica Corrigenda di contenuti*, Libreria Editrice Vaticana, s.d. [1997], n. 1623.

not of faith involving the Church. Hence the change from «Church» to «tradition» ensures better precision. Secondly, the unnecessary circumlocution «it is ordinarily considered that» has been dropped, and the statement is now forthright: «According to the Latin tradition, it is the spouses who, as ministers of Christ's grace, mutually confer upon each other the sacrament of Matrimony».

More numerous and more substantial are the changes in the second sentence dealing with the East. We shall point out seven of them:

1) First, in place of the former «in the Eastern liturgies» what we have now is «in the traditions of the Eastern Churches», which is a close parallel to «according to the Latin tradition».

2) Secondly, and most notably, the mention of «the minister of the sacrament» in the East as was found in the earlier version has simply disappeared from the *Catechism of the Catholic Church*. It does not any more talk about the *minister of the sacrament of marriage* in the Eastern traditions. This is quite significant. We shall return to this question later.

3) The third change, too, is remarkable: the former statement that «this sacrament is called "Crowning"» has been dropped. For it is not true that «crowning» stands for marriage in all the Eastern Churches¹⁸. The earlier version had created the

¹⁸ In the West Syrian rite marriage is called *mestutho* (feast, nuptial banquet). In the Syro-Malabar rite marriage is called *vivāham* (a special carrying, *domumductio*); in the latter if there is crowning it is not derived from Indian culture but from the East Syrian rite: cf. C. PAYNGOT, «The Syro-Malabar Marriage» (cf. nt. 16), 261-282. On crowning as a liturgical

wrong impression as if crowning were an essential part of the sacramental rite and of greater importance than the nuptial blessing, which was not mentioned at all.

4) Fourthly, in the new text, the term *priest* (*sacerdos*) stands for both bishop and presbyter (reversing the former order «presbyters and bishops»); he performs a priestly ministry in the marriage celebration by imparting the nuptial blessing.

5) Fifthly, the first role of the assisting priest is to be «the *witness* of the mutual consent exchanged by the spouses». The priest is called upon to be a public witness of the marriage before the Church. This was in fact the primary scope of the priestly blessing required for the validity of marriage by the Byzantine Emperor Leo VI in the ninth century¹⁹. This role

rite, see in the same volume, D. GELSI, «Punti di riflessione sull'ufficio bizantino per la "incoronazione" degli sposi», 283-306, in which we read: «Si sa che le Chiese ortodosse hanno sempre affermato che non sono gli sposi a conferirsi il sacramento nuziale» (p. 293). We shall see below how off the mark and mistaken this «sempre» is.

¹⁹ Emperor Leo VI in his Νεαζά or Novella 89 legislated to remove the confusion resulting from the non-observance of public legal formality in the celebration of marriage even as he had done so in the matter of adoption. Just as for the validity of the latter he had already prescribed «a sacred rite and hymns» as an aid (Novella 24), so now «we order that marriage is to be confirmed by the proof of a sacred blessing» (τὰ συνοικέσια τῇ μαρτυρίᾳ τῆς ἱερᾶς εὐλογίας ἐρρῶσθαι); P. NOAILLES – A. DAIN, *Les nouvelles de Léon VI le Sage*, Paris 1943, 297: «nous ordonnons que les mariages soient confirmés par le témoignage d'une bénédiction sacrée» («se iubere matrimonia testimonio sacrae benedictionis confirmari»). To see the priest as the minister of marriage in this imperial novel is as good as

involves ascertaining and «receiving the mutual consent of the spouses»²⁰.

6) Sixthly, the second role of the priest is to impart «a blessing», which «is necessary for the validity of the sacrament» (see below). This crucial element had surprisingly and inexplicably been overlooked in the former text of the *Catechism* but has been now happily accorded its due place.

7) Seventhly, the undue emphasis formerly laid on the crowning has been removed. Crowning was, as said above, accessory and did not have the same importance as the nuptial blessing. The mention of crowning has been dropped by simply omitting the phrase that the presbyter or bishop «successively crowns the bridegroom and the bride as a sign of the marriage covenant»²¹. Naturally, where crowning is customary or is prescribed in the liturgical books it is retained and is not suppressed by the sole omission to mention it in the *Catechism of the Catholic Church*.

For our present purpose, the most important change is the disappearance from the *Catechism* of any mention of the minister of the sacrament of mar-

seeing him as the minister of adoption!. See also E. HERMAN, «De benedictione nuptiali quid statuerit ius byzantinum sive ecclesiasticum sive civile», *Orientalia Christiana Periodica* 4 (1938) 189-234, at 211.

²⁰ Compare CIC c. 1108, «exquirat» et «recipiat» and CCEO c. 828 §2 «assistentis et benedicens», which phrase is identical with that of canon 85 §2 of *Crebrae Allatae*, where «adsistere» means «requirere et excipere consensum» (CA c. 86 §1, 3°).

²¹ Crowning is not mentioned in CCEO, even as it was not mentioned in CA, but of course it is not to be omitted where it is customary or is prescribed as a liturgical law, as in the Byzantine rite: «In sacramentis celebrandis accurate servantur ea quae in libris liturgicis continentur» (CCEO c. 674 §1).

riage in the Eastern traditions. With this omission, the authority of the *Catechism of the Catholic Church* can no more be invoked in favour of any theology or theory regarding this subject. The theological question is open.

6. Eastern Theology or Theologies?

At the outset a preliminary question needs to be raised. Are we to speak of «Eastern theology» in the singular or «Eastern theologies» in the plural? The designation «Eastern theology» in the singular may be a convenient term, but it can be deceptive, since it excludes from the beginning any theological pluralism in the East. The plural is hardly in vogue even after the change from the singular into the plural of the designation Eastern Churches²². Perhaps such a change may come about with regard to «Eastern theology» only after the patristic sources of the as yet less well known Eastern theologies, like Syriac theology, are edited and are made more widely available. As it is, most people in the West understand by the designation «Eastern theology» Greek or Byzantine theology.

Even when, by convention, «Eastern theology» denotes Byzantine theology, there is still the danger of identifying it with one theological school, as if all Byzantine theological schools said the same thing. This is comparable to the reduction, for example, of

²² Symptomatic is the change of name of the Roman dicastery once called «Congregatio pro Ecclesia Orientali», in the singular, but now called, since 1967, «Congregatio pro Ecclesiis Orientalibus», in the plural.

western or Latin theology to the Thomistic school, ignoring the Scotist or the Suarezian; or when the disputed question of *de auxiliis gratiae* is considered as resolved according to one of the two contending schools, the Dominican or the Jesuit.

Similarly, in the particular question about the minister of the sacrament of marriage, Eastern theological positions vary so much that it is only at the risk of an over simplification that one may assert that according to Eastern theology, or in the Eastern tradition(s), the minister of the sacrament of marriage is the priest (in contrast to western theology, according to which the spouses are the ministers). The fact is that in the Christian East both these positions are represented. There is no justification to take one of them as representative of the whole, to the exclusion of the other.

Let us repeat for the sake of emphasis. As we noted above, Byzantine theology is often presented as *the* Eastern theology. Even apart from the appropriateness of regarding Byzantine theology as a concordant structure, free of divergent or even contradictory schools, to take Byzantine theology as representative of Eastern theology, though undoubtedly it is the most vast and significant of all Eastern theologies, is to ignore theological pluralism in the East – which is as good or as bad as speaking of the Eastern Church in the singular, ignoring the obligatory «Churches» in the plural. Having said that, we must also recognize that not all the other Eastern traditions have as yet been sufficiently explored, and many of their treasures still lie in manuscript form, so that for our present purpose we shall have to limit ourselves mostly to a few references to selected authors of Byzantine theology.

If a «privileged» treatment of Byzantine theology may thus be legitimized methodologically, what cannot be so legitimized is the presumption that the theological position of the Byzantine Orthodox theology is necessarily shared also by the Byzantine Catholic Churches so as to form the tradition of the latter. This methodological error was made by the first version of the *Catechism of the Catholic Church*, but it was later corrected in the revised version. Not a few canonists, who have written about the minister of the sacrament of marriage according to CCEO, have not escaped falling into the same error. The truth is far too nuanced (see below).

7. Marriage Consent in Historical Perspective

The marriage of the first Christians, whether they were of Jewish or gentile extraction, was celebrated, as we know, as a family and social function, not as a temple or synagogue rite. Like all other marriages it also contained some religious rite²³, but not necessarily with a priest's intervention. In fact, as we saw, what is now called by Catholic canonists the

²³ The religious element is alluded to in the well-known definition of marriage by Modestinus: *Nuptiae sunt coniunctio maris et feminae et consortium omnis vitae, divini et humani iuris communicatio*. In the Roman marriage, the bride left her household gods (*lares et penates*) and shared (*communicatio*: κοινωνία) those of a new household. This sharing is not free of problems, especially in second or subsequent marriages, in mixed marriages and marriage with a partner of a different cult. Here lie the hidden roots of some of the theological problems of the mixed marriage, also of Christians.

extraordinary form of marriage was the *ordinary* form in the early centuries. A priestly blessing imparted to the Christian bride substituted the former pagan rite of fertility²⁴. Later this blessing will be imparted in the church, and no more in the nuptial chamber. From the fourth century marriage was associated with the celebration of the Holy Eucharist. Thus, the ecclesial dimension of the union between man and woman came to be better expressed. As a rule, marriage was also freed of clandestinity with its attendant abuses in the Roman Empire when the priest came to fulfil the double role of sacred minister and notary public after Constantine. Later, in the Western part of the Roman Empire, after the collapse of state organs through the feudal system and largely through the influence of the pseudo-Isidorian decretals, marriage will come under the jurisdiction of the Church and will be systematized by theologians as one of the seven sacraments.

Marriage in classical Roman law was consensualist rather than contract. The classical definition of marriage, formulated by the Roman jurist Modestinus in the third century, «Nuptiae sunt *coniunctio* maris et feminae et consortium omnis vitae, divini et humani iuris communicatio» (D. 23, 2, 1), did not

²⁴ The pre-Christian fertility blessing was not repeated for the second marriage seemingly to avoid provoking a possible rival deity who could render the second union infertile. The custom of not blessing the second marriage was bound to reflect negatively on the second marriage itself as something inferior to the first, if not worse. The original meaning having been lost sight of, the custom survived inexorably as a taboo, which was then buttressed with «theological» reasons invented for legitimization.

refer to marriage *in fieri* (the act creating the marriage union) but *in facto esse* (the state of being married)²⁵. Saint Thomas Aquinas, too, understood marriage as a *coniunctio*: it is a union similar to a contract rather than a contract properly so called²⁶. Gratian did not qualify marriage as a contract but as a *pact*. But by the 13th century marriage had become a contract for the Romanists and for popes like Gregory IX and theologians like Albert the Great. Since the 13th century marriage is generally held to be both sacrament and contract²⁷.

Western theology of marriage developed under the aegis of Roman law with its adage «non concubitus, sed consensus facit nuptias». The emphasis was rightly on *consensus*, but with attention focused on it almost exclusively, insufficient thought was given to the Christian mystery of marriage. If in the formula *consensus facit matrimonium* (as with Isidore of Seville) or *consensus facit nuptias*, this *facit* meant originally and principally *requiritur*, it shifted by degrees to *sufficit*.

One important milestone in the evolution of canonical interpretation was the teaching of Pope Nicholas I (858-867) about the consent of the couple. This pope is often quoted to lend support to

²⁵ J. GAUDEMET, «Le mariage en droit romain: *justum matrimonium*», in J. GAUDEMET, *Sociétés et mariage*, Strasbourg 1980, 47-48.

²⁶ «Cum coniunctiones materialium contractuum fiant per mutuum consensum, oportet quod hoc modo etiam fiat matrimonialis coniunctio» (S. Th. Supplementum, q. 45, a. 1).

²⁷ J. GAUDEMET, *Église et Cité. Histoire du droit canonique*, Paris 1994, 563-564; see also J. GAUDEMET, *Le mariage en occident*, Paris 1987.

the view that the consent of the couple by itself is constitutive of marriage. The facts, however, are briefly as follows. Pope Nicholas I wrote in a rescript to the King Bogor of Bulgaria, who had embraced Christianity together with his people shortly before, that for a valid marriage there was no need of coitus in addition to consent. For, «if consent is lacking all celebrations including also coitus, would be to no purpose»²⁸. In this sense the pope asserted: «Sufficiat secundum leges solus eorum consensus, de quorum coniunctione agitur». This *solus consensus* does not mean, in the context, that it is by itself constitutive of the marriage sacrament but that coitus is not required to constitute it. What is meant is this *negative* sense, not, as it has often been construed to mean in the *positive* sense that consent, and consent alone, constitutes marriage: «consensus facit matrimonium». This is the *mantra* that helped the birth of the theory that the couple are the ministers of the sacrament of marriage. But in the context the sense of the *solus* used by the pope is not constitutive, as is clear also from a text he cited from [pseudo-]Chrysostom: «Ioanne Chrysostomo magno doctore testante, qui ait: "Matrimonium non facit coitus, sed voluntas"». Clearly, the pope is excluding the supposed (but customary) necessity of *coitus* for a valid marriage. He was not saying: «nothing else is necessary, consent *alone* is sufficient», as if he were discounting the consent of the parents or the liturgical celebration of marriage containing a nuptial

²⁸ «Consensus si solus in nuptiis forte defuerit, cetera omnia, etiam cum ipso coitu celebrata, frustrantur»; Epistula 97, PL 119, 980C; DzS 643.

blessing. Briefly, his «sufficiat solus eorum consensus» did not mean «consensus facit matrimonium» in an exclusively constitutive theological sense²⁹.

This restrictive canonical interpretation influenced theology, which evolved as juridical theology, and thus shaped the medieval scholastic principle *consensus est causa efficiens matrimonii*, supplying Duns Scotus with the premiss from which to draw the conclusion that the spouses are the *ministri sacramenti matrimonii*. Since then this view has become the common doctrine in the West, though it has not lacked opponents (like Melchior Cano) who emphasized that to constitute Christian marriage as a sacrament besides the mutual consent of the couple establishing a contract also the blessing of the priest was needed. It is to be noted, however, that neither the Council of Florence nor the Council of Trent canonized the more common doctrine as a dogma of the Catholic Church. Nor did the *Syllabus of Errors* of Pius IX condemn what is known as the Eastern doctrine regarding the priest as the minister of the sacrament of marriage³⁰. The theological qualification of the *doctrina communis* of the Latin Church is simply

²⁹ Here we may note that while CIC states: «Matrimonium facit partium consensus inter personas iure habiles legitime manifestatus, qui nulla humana potestate suppleri valet» (c. 1057 §1), the corresponding canon in CCEO omits the first part of the text and keeps only the second part, as follows: «Consensus matrimonialis nulla humana potestate suppleri potest» (c. 817 §2). This omission is theologically significant.

³⁰ The *Syllabus* censured the proposition: «Matrimonii sacramentum non est nisi quid contractui accessorium ab eoque separabile, ipsumque sacramentum in una tantum nuptiali benedictione situm est» (DzS 2966).

theologice certum. Contemporary ecumenical theology, however, does not feel quite at home in it, as we shall see, since it is basically a juridical theology that sees the essence of Christian marriage as a human construction accomplished through the exchange of consent often called a contract, the priest's role being simply that of an official witness needed for the juridical validity of the act. And the marriage would be valid even without any liturgical rite or priestly blessing or prayer, raising the question how it differed essentially, and not simply juridically, from a civil marriage. In the historical context of Church-State power struggle and secularisation the present canonical determination is understandable and even justifiable juridically, but alternative determinations are not excluded theologically.

The theological doctrine in the Latin Church that the couple are the ministers of the sacrament of marriage is heir to the above juridical view. If marriage is the product of the consent or the contract between the marriage partners, in them must be seen also its *causa efficiens*, and since the *causa efficiens instrumentalis* is the minister of the sacrament – the *causa efficiens principalis* being God –, it follows that the marriage couple who posited the *consensus* are its ministers. But in actual fact in the patriarchal societies of old, the *consensus* was not posited exclusively, or sometimes even principally, by the couple: in arranged marriages (especially of the royalty for political reasons, of the nobility for honour, and of the simple folk for poverty) till far into recent times, the will of the father or guardian, especially of the girl, was so predominant as to become the dominant *causa efficiens conjunctionis* in many if not most marriages. On that ground it was not impertinent to

ask if in such cases the father or guardian was not the dominant minister of the sacrament as well, if *consensus facit matrimonium*. In any case, this Western juridico-theological development is foreign to the East as a whole.

In the Eastern part of the Roman Empire, the celebration of marriage *coram Ecclesia* with a priestly blessing became obligatory in the same ninth century when Pope Nicholas I wrote to King Bogor of Bulgaria. The Byzantine Emperor Leo VI (866-912) legislated with his Novella (or Novel) 89 of the year 895 that for the civil (and, given the «symphony» between the Church and the State, also for the canonical) validity of marriage it had to be celebrated with a priestly blessing³¹. In the East Syrian Church, this obligation had been upheld even earlier in the fifth century, though not perhaps universally. As for the crowning, which was originally a pre-Christian Greek³² rite of festive nuptial banquets, it was done at first by the father of the bride at home, or in a banquet hall, often in the precincts of a temple – in family liturgy the *paterfamilias* was the priest. Later the crowning rite was transferred to the priest celebrant in the church and gradually became

³¹ P. L'HUILLIER, «Novella 89 of Leo the Wise on Marriage: An Insight into its Theoretical and Practical Impact», *The Greek Orthodox Theological Review* 32 (1987) 153: «Novella 89 gives legal sanction to an already widespread practice» in order to ensure public proof of marriage consent.

³² Crowns were used in marriage feasts in ancient Greek and Roman cultures and were naturally used also in the marriages of Christians as well in the Graeco-Roman culture. See K. RITZER, *Le mariage dans les Églises chrétiennes*, Paris 1970, 65. 76. 135-137.

an integral part of the Christian marriage rite, at least of the upper strata of society. In 1095 the Byzantine Emperor Alexis I Comnenus made crowning obligatory in the marriage rite of all, including slaves. Still later the blessing and crowning came to be invested with a role and value other than and superior to their original social role and juridical value. This was facilitated by the accompanying sacerdotal prayer asking for divine grace to perfect the human covenant with the seal of the Holy Spirit and make it *indissoluble*³³. Theology would later discern the sacrament of marriage in this seal.

Given the place accorded to the nuptial blessing under pain of nullity of the marriage, it was easy for the idea to arise and spread that the priest is the minister of the sacrament, as it seemingly occurred to a Jasite monk called Job the Sinner (XIII c.). Saint Symeon, Archbishop of Thessalonike (1416/17-1429), tells us of the nuptial blessing imparted by the priest to the couple with the prayer asking God «to send out his hand and unite them to each other». Then they are united by Christ: «Christus eos con-

³³ P. VISCUSO, «The Formation of Marriage in Late Byzantium», *St Vladimir's Theological Quarterly* 35 (1991) 309-325. Marriage is viewed in the East, particularly by canonists like Matthew Blastares (14th c.), following closely Theodore Balsamon (12th c.), as being accomplished through a process of successive acts and not as taking place in a single instant at the moment of the exchange of consent between the couple (p. 321). And in order to effect the marital union in Christian marriage are operative not only two human wills but also divine grace, obtained through the blessing (εὐλογία) of the priest, who acts «as a mediator between humankind and the Divinity» (p. 324).

jungit». And this ministry «opus est pontificis sed sacerdotibus conceditur». Symeon teaches implicitly, says Jugie, that the marrying couple are the ministers of the sacrament, and his teaching was followed generally till the nineteenth century. In the Orthodox Church no council has ever defined this doctrine. However, East and West had no difficulty regarding the minister of marriage at the union councils of Lyon (1274) or Florence (1439). In the XIX century, however, the current took an opposite turn, swayed by anti-Latin polemics. But Symeon was canonized on 3 May 1981 through an unanimous decision of the Holy Synod of the Orthodox Church of Greece held in Thessalonike and proclaimed a saint³⁴. This is doubly significant, since according to Byzantine theology, no one who taught a heresy may be canonized as a saint. Moreover, the anti-Latin polemical theology has begun to give way (though not without some strident exceptions) to a more eirenic theology in the matter of the minister of the sacrament of marriage, as we shall see below. Given then such a history of change of currents and diversity of theological positions, it is *not* true to say that according to the *tradition* of the Eastern Churches the priest is the minister of the sacrament of marriage, – the point of departure of the theological reflection of some Western canonists.

It may be noted that most Byzantine writers do not pose at all the question about the possible dis-

³⁴ SYMEON OF THESSALONIKE, «De honesto et legitimo conjugio» (PG 155, cols. 503-515). See D. BALFOUR, «Saint Symeon of Thessalonike as a Historical Personality», *Greek Orthodox Theological Review* 28 (1983) 54-72.

inction between the minister of the nuptial blessing and the minister of the sacrament. And it would be unwise to read such a distinction into them, all the more so since Orthodoxy is allergic to too clear distinctions, which are usually shunned, if not despised, as Western or Latin. Indeed, the question was raised about the minister of the sacrament of marriage in the last two centuries mostly as a polemical response to Western scholastic theology. Although the nuptial blessing was made obligatory for the validity of marriage by Byzantine imperial legislation already in the ninth century, when as yet there was no systematic reflection of sacramental theology, it is not surprising if the question about the minister of the sacrament of marriage (as possibly distinct from the liturgical minister) was not raised at all³⁵.

In modern times, among the Western scholars, mention may be made of Martin Jugie, who has studied the question of the minister of the sacrament of marriage according to the Greek and the Russian theologians³⁶, and of Emile Herman, who has researched the meaning and role of the nuptial blessing³⁷. Among the Byzantine theologians cited in their works we can see two trends on the basis of the emphasis they place on the nuptial blessing imparted by the priest or the consent expressed by the spou-

³⁵ In an Orthodox symposium on the meaning of marriage the question about the minister of this sacrament was not dealt with at all, to judge by the evidence of the acts published in three articles: «They Become One Flesh», *St. Vladimir's Seminary Quarterly* 8 (1964) 5-47.

³⁶ M. JUGIE, *Theologia Dogmatica Christianorum Orientalium ab Ecclesia Catholica dissidentium*, vol. III, Paris 1930.

³⁷ E. HERMAN, «De benedictione nuptiali» (cf. nt. 19).

ses. The priest is *possibly* the minister of the sacrament of marriage according to monk Job mentioned above. This position became more clear with Anthony Moschopulos and others whose stated or implicit premiss was that marriage was a secular thing (a view shared by the sixteenth century Reformers in the West as well); and consequently, only the priest could communicate grace through a sacrament, or perfect it, and thus be its minister. This position was adopted by Nicholas Bulgaris, Macarius Bulgakov and most others so that it became common doctrine in opposition to the teaching of the Latins since the middle of the nineteenth century. For Greek theologians like Dyobuniotis and Andrusos the Latin position is absurd since «For the *perfection* (*telesis*) of the sacrament the blessing of the priest is absolutely necessary»³⁸. It is such a theology of the mediatorial role of the priest that has conditioned and influenced the foregoing current of thinking about the minister of the sacrament being the priest.

According to another current of Eastern thought, however, the spouses are the ministers of the sacrament of marriage. Among the theologians who hold this view Jugie mentions Symeon of Thessalonike (only implicitly), Gabriel Severus (XVI c.), Peter Moghila (XVII c.), and Sylvester Lebedinskii. This teaching has been expressed also in the *Great Catechism* of Lawrence Zizanii (printed in Moscow, in 1627), and the code *Kormtchaia Kniga* of Patriarch

³⁸ KONSTANTINOS DYOBUNOTIS, τὰ μυστήρια τῆς Ανατολικῆς Ορθοδόξου Εκκλησίας ἐξ ἀπόψεως δογματικῆς (*The Sacraments of the Eastern Orthodox Church from the Dogmatic Point of View*), Athens 1913, 172.

Joseph (1650) and of Patriarch Nikon (1653), which was since reprinted several times till 1904. It was the common teaching in the Russian Church till the XIX century. Many of its representatives were influenced by Latin theology. It then gave way to an anti-Latin trend beginning with the XIX century.

But there are also other internal and contingent reasons for this general change of trend and the consolidation of the doctrine that the priest is the minister of the sacrament of marriage. Jugie gives three reasons³⁹ and they help us to understand better how and why the priest-minister-theology became the common doctrine of the Russian Orthodox Church.

1) The first reason is that ever since the blessing and coronation by the priest were made legally necessary for the validity of marriage, the officiating priest (celebrant or president) of the liturgical rite assumed an importance he did not have before and was gradually seen to be identical with the theological minister of the sacrament. Or rather, the distinction between the two (the liturgical minister and the theological minister) faded out and was lost sight of in the general aversion for clear distinctions as being typically Western, scholastic or Latin.

2) The second reason is the difficulty to regard the same persons who receive the sacrament as also its ministers, which does not happen in any other sacrament.

3) The third reason is rather a matter of church-politics than theology: the antagonism to the Old Believers (*raskolniki*, «Old Ritualists»), who rejecting the liturgical reforms of Patriarch Nikon (1652-

³⁹ M. JUGIE, *Theologia Dogmatica* (cf. nt. 36), 456-458.

1658) provoked a schism (1667)⁴⁰. In the eyes of mainstream Russian Orthodoxy they were thus not only deprived of valid priesthood but also, in consequence, their marriage was invalid without priests to administer it (since they did not have priests at all!). Thus the theological view about the priest being the minister of the sacrament of marriage hardened into a strategy of ecclesiastical policy, to the point of becoming the hallmark of Russian orthodoxy in opposition to heterodoxy.

It is to be noted that after all, in the eyes of the average Christian faithful, whether Orthodox or Catholic, as distinct from savants, the officiating ministers of the liturgical rites of the Church are indifferently ministers of the sacraments. If this applies to the Eucharist in the first place, and to all the other sacraments generally, why should it not apply also to marriage? For most people who assist at a nuptial liturgy the priest who presides over it is the minister of the sacrament of marriage. For them this is simply «common sense theology», and it has the potential to win mass support in times of inter-confessional polemics and controversies.

Moreover, it is natural that the great diversity of Churches and traditions in the East be reflected also in the theological question of the minister of the sacrament of marriage. Evidently, then, this question cannot be adequately dealt with by looking solely at the Byzantine East. That would be like dealing with the canon law of the Latin Church and calling it «*Katholisches Kirchenrecht*».

⁴⁰ P. MEYENDORF, *Russia, Ritual, and Reform*, Crestwood (N.Y.) 1991.

We have to limit ourselves here to one example, but we shall choose the richest of the non-Byzantine theological tradition in the Christian East, namely the Syriac tradition, which in its turn presents considerable variety. Marriage is celebrated as one of the sacraments today in the Syriac Churches with beautiful liturgical prayers. However, their theological traditions vary regarding the number of sacraments and the rites that are regarded as sacraments. Prejudicial is the question whether marriage is a sacrament at all. In the East Syrian tradition, there was a respectable current of thought traceable from Aphrahat (fl. 340) onwards down through Abdisho (+1318) that marriage is «a secular thing», not a sacrament⁴¹. In the tradition of the West Syrian Church till after Bar Hebraeus (1226-1286) there is no evidence that marriage was regarded as a sacrament at all. However, marriage came to be regarded as a sacrament according to a later East Syrian theological current stemming probably from the liturgical graecization operated by Patriarch Isoyahb III (ca. 647-658)⁴². Today, when a marriage is blessed by the

⁴¹ This idea will recur and become more widely known with Martin Luther's «Ehe ein äußerlich weltlich Ding». For an ecumenical discussion of such a concept of marriage, see H.J. URBAN – H. WAGNER (ed.), *Handbuch der Ökumenik*, III/2, Paderborn 1987, 175.

⁴² «Wenn wir ehrlich sein wollen, müssen wir eingestehen, daß wir nicht nachweisen können, daß die syrischen Theologen die Ehe als Sakrament betrachten». However, «Es ist heute keine Frage, daß die Ehe als Sakrament angesehen wird. Und zwar gilt die Segnung durch den Priester, die vom Ehevertrag verschieden ist, als Sakrament»; W. DE VRIES, *Sakramenten-theologie bei den Syrischen Monophysiten*. *Orientalia Christiana Analecta* 125, Rome 1940, 246. 244; see also W. DE

priest, for the «sensus fidei» of the Christian people it is a sacrament, and hardly anyone pauses to ask the question, who is the minister of the sacrament of marriage?

A theologian cannot of course be satisfied with that. But it would be a perilous presumption and oversimplification to assume that there is a typically Eastern theological thesis that the minister of the sacrament of marriage is the priest. On the other hand, in the West, too, this position has been maintained by a respectable number of theologians who saw the sacrament of marriage conferred through the blessing of the priest. Such has been the thesis of the School of Paris, and in particular of William of Paris. Other names in this connection are Hugo de Saint-Cher, Saint Bonaventure, Melchior Cano, Drouin, and Tournely etc. But the common theological doctrine that prevailed in the West was against them, though it did not ever become a Catholic dogma⁴³. And in the East-West contraposition, it has become a rather common assumption in the West that the doctrine that the priest is the minister of the sacrament of marriage is proper to and distinctive of Eastern theology, both Orthodox and Catholic. It is with this presumption that not a few Western canonists have written recently on the sub-

VRIES, *Sakramententheologie bei den Nestorianern* (OCA 133), Rome 1947; W. DE VRIES, «La théologie sacramentaire chez les Syriens orientaux», *L'Orient Syrien* 4 (1959) 71-94; F. PERICOLI RIDOLFINI, «I sacramenti negli scritti del "Sapiente Persiano"», *Studi e Ricerche sull'Oriente Cristiano* 2 (1979) 157-171.

⁴³ E. SCHILLEBEECKX, *Marriage: Human Reality and Saving Mystery*, New York 1966; P. ADNÉS, *Le mariage*, Paris 1965.

ject of the minister of the sacrament of marriage according to CCEO. But apart from the question of the methodological appropriateness of such a procedure, it is a matter of no little surprise that East is still so distant from the West and seems so enveloped in darkness in spite of «*Orientale Lumen*». Here are a few Orthodox writers⁴⁴: P. TREMBELAS, *Dogmatique de l'Église orthodoxe catholique*, III, Chevetogne 1968; J. MEYENDORFF, *Marriage: An Orthodox Perspective*, Crestwood (N.Y.), St Vladimirs's Seminary Press, 2nd ed. 1975; P. EVDOKIMOV, *The Sacrament of Love*, New York, St Vladimirs's Seminary Press, 1985; K.T. WARE, «The Sacrament of Love: The Orthodox Understanding of Marriage and its Breakdown», *Downside Review*, April 1999, 79-93. Contrary to all presumptions, there is no particular «Eastern theology» underlying CCEO, which is, so to say, «neutral», being open to any good theology of the minister of the sacrament of marriage.

⁴⁴ For Orthodox sacramental theology the following book (with bibliography) was once in use as a manual at the Pontifical Oriental Institute: THEOPHILUS SPÁCIL, *Doctrina theologiae Orientis separati de Sacramentis in genere* (OCA 113), Roma, PIO, 1937. The requirements to be a minister of the sacraments are: «ut sit *persona sacra* per sacrum ordinem ad hoc munus deputata, ad hierarchiam pertinens, sacrae potestatis apostolorum datae particeps; ideoque episcopus vel presbyter [sacerdos, in the text]» (p. 112). Given this hierarchical notion, it follows that, according to this Orthodox theology, laypeople cannot be the minister of any sacrament, whether of marriage (as marriage partners) or even of baptism (baptism conferred by a layman in an emergency must be completed by chrismation by a priest).

8. Input of Ecumenical Discussions

The theology and canonical discipline of marriage in the Catholic Church is not simply an *ad intra* matter but is of ecumenical importance. As Vatican II has directed, «Sacred theology and other branches of knowledge, especially those of a historical nature, must be taught with due regard for the ecumenical point of view, so that they may correspond as exactly as possible with the facts» (UR 10). And CCEO stresses that it is necessary in ecumenism to know «what is truly taught and handed down by the Catholic Church and other Churches or ecclesial communities» (c. 906).

Now, the respective Catholic and Orthodox positions regarding the minister of the sacrament of marriage has been stated as follows by an Orthodox theologian:

The Roman Catholic teaching holds that the couple itself, the man and the woman, are the proper ministers of the rite of marriage. The role of the minister-priest is disciplinary rather than theologically necessary. Thus, the Church's ritual is not essential as it is in the Orthodox rite⁴⁵.

As commonly understood by the Orthodox, a Catholic marriage without priestly blessing, even though it is assisted by a deacon, is not valid; all the more so a marriage conducted following the extraordinary form. Evidently, this increases the difficulties in the interecclesial recognition of

⁴⁵ R.G. STEPHANOPOULOS, «Marriage and Family in Ecumenical Perspective», *St. Vladimir's Theological Quarterly* 25 (1981) 21-34, at 29-30.

mixed marriages⁴⁶. In view of this in the *Agreed Statement on Mixed Marriages* by the United States Orthodox-Catholic Consultation on 20 May 1970 it was stated:

According to the view of the Orthodox Church, the marriage of an Orthodox can only be performed by an Orthodox priest as the minister of the sacrament. In the view of the Catholic Church, the contracting partners are the ministers of the sacrament, and the required presence of a Catholic major cleric as witness of the Church can be dispensed with for weighty reasons. In view of this, we recommend that the Catholic Church, as a normative practice, allow the Catholic party of a proposed marriage with an Orthodox to be married with the Orthodox priest officiating⁴⁷.

That proposal seemed to go counter to the principle of reciprocity and give an unfair advantage to the Orthodox. Progress was reached in 1978 through the Eastern Orthodox-Roman Catholic Consultation (U.S.A.) in «An Agreed Statement on the Sanctity of Marriage». Here are a few extracts.

In the teaching of the Orthodox and Roman Catholic Churches a sacramental marriage requires both the mutual consent of the believing Christian partners and God's blessing imparted through the ministry of the Church⁴⁸.

⁴⁶ L.J. PATSAVOS, «“Mixed” Marriages and the Canonical Tradition of the Orthodox Church», *The Greek Orthodox Theological Review* 23 (1978) 242- 256, at p. 255.

⁴⁷ E. KILMARTIN, *Toward Reunion: The Orthodox and Roman Catholic Churches*, New York 1979, 75-76.

⁴⁸ «An Agreed Statement on the Sanctity of Marriage», *The Greek Orthodox Theological Review* 23 (1978) 318-322, at 321.

Referring to the difference of positions about the need for priestly ministry for validity, it was agreed that it

must be considered to pertain more to the level of secondary theological reflection than to that of dogma. Both the Churches have always agreed that the ecclesial context is constitutive of the Christian sacrament. Within this fundamental agreement various possibilities of realization of the ecclesial context are possible, as history has shown, and no one form of the realization can be considered to be absolutely normative in all circumstances⁴⁹.

This conclusion about «various possibilities of realization of the ecclesial context» was reached, as was stated by a participant in the Consultation, on the basis of a historical study. From this study the following conclusion emerged.

The Orthodox theology of the minister of marriage is only relatively ancient. In the first millennium marriages of Christians before a civil magistrate, for example, were recognized as Christian marriages in the East and West. Moreover, even now, in practice, the Orthodox recognize marriages between Roman Catholics as Christian marriages despite the intention of the priest to act only as an official witness. Also in several places Orthodox Churches allow, under certain conditions, marriages between Orthodox and Roman Catholics to take place in a Roman Catholic Church (Patriarchate of Moscow, Polish Orthodox Church)⁵⁰.

As a consequence of better knowledge of the practice of Christian marriage in the patristic age, the realization is setting in that the current Orthodox

⁴⁹ «An Agreed Statement» (cf. nt. 48), 322.

⁵⁰ E. KILMARTIN, *Toward Reunion* (cf. nt. 47), 28.

theology of the minister of the sacrament of marriage is too young to be held up as traditional. It is devoid of the support of the Fathers of the Church, which is vital for Orthodox theology.

Hence, the commission is of opinion that a reconsideration of the Orthodox theology of the minister of marriage is needed. But it also agrees that the Roman Catholic theology of the minister of marriage should be critically evaluated for it is not altogether clear, and this is the opinion of many Roman Catholic theologians, in what sense the partners can be called the ministers of the sacrament⁵¹.

There are already signs of such rethinking among Orthodox theologians. Here is an Orthodox voice that is drastically self-critical of the commonly held Orthodox theology of the minister of the sacrament of marriage.

On the Orthodox side, the priest should not be isolated as the presumed «minister» of the sacrament. [...] The notion in Orthodox theological scholarship that the priest is the «minister» of the sacrament of marriage should once and for all be laid to rest as a probable reaction to the Roman Catholic teaching that the couple is essentially the «minister» of the sacrament and as a telling error of the ingrained habit of doing theology by eager refutation of others⁵².

⁵¹ E. KILMARTIN, *Toward Reunion* (cf. nt. 47), 29. The full text of «An Agreed Statement on the Sanctity of Marriage» is given in the Appendix, 88-92.

⁵² T. STYLIANOPOULOS, «Toward a Theology of Marriage in the Orthodox Church», *The Greek Orthodox Theological Review* 22 (1977) 249-283, at pp. 275-276. The Rev. Dr. Theodore Stylianopoulos is professor of New Testament at Holy Cross Orthodox School of Theology, Brookline, Mass., U.S.A.

Historically, just as the Second Vatican Council acknowledged how the West is indebted to the East for so much of its spiritual heritage, liturgy and doctrine⁵³, so too perspicacious Orthodox scholars do not hesitate to admit the indebtedness of Eastern Orthodoxy to the Latin West for much of its sacramental theology⁵⁴. Having first received the scholastic sacramental theology⁵⁵, in a later critical anti-Catholic reaction several Orthodox theologians rejected it, adopting a contrary doctrine in a polemical spirit. This polemical rejection was generally routine, not all having the profundity and dexterity of George Florosky.

On the Catholic side, too, there has been some rethinking about the traditional Latin theology of the minister of the sacrament of marriage. A well-known liturgical theologian has written:

It is highly probable that the minister of the sacrament [of marriage] should be identified as the one who offi-

⁵³ «From the very origins the Churches of the East have had a treasury from which the Church of the West has drawn largely for its liturgy, spiritual tradition and juridical order»; UR 14.

⁵⁴ «Eastern presentations of the sevenfold sacramental system and of the place of chrismation within it showed heavy Latin influence long before the days of Peter Moghila, and they continue to show it even now, as a glance at the most widely circulated Orthodox catechisms, popular handbooks and dogmatic treatises, whether "Greek" or "Russian" reveals»; J.H. ERICKSON, «The Reception of Non-Orthodox into the Orthodox Church: Contemporary Practice», *St. Vladimir's Theological Quarterly* 41 (1997) 1-17, at p. 6.

⁵⁵ On the phenomenon and theology of ecclesial reception see Y. CONGAR, «La "réception" comme réalité ecclésiologique», *Revue de Sciences Philosophiques et Théologiques* 56 (1972) 369-403.

cially represents the Church in the cultic act in which the partners enter into a new relation with the ecclesial community⁵⁶.

That looks like the swinging of the ecumenical pendulum from the traditional Orthodox and Catholic extremes to the opposite ends. Orthodox-Catholic ecumenical dialogue has undoubtedly made much progress⁵⁷. Real progress cannot of course consist in a mere irenicist compromise, *pro bono pacis*. It is not simply by laying to rest the priest-minister theory or the couple-minister theory that a fully satisfactory solution will be found. What is needed is a deeper theological reflection transcending both East and West but inclusive of what is valuable in both. This will be the future task of ecumenical theology.

9. Fresh Reflections

No one claims that an ecumenically satisfactory synthesis of the theology of the minister of the sacra-

⁵⁶ E. KILMARTIN, *Christian Liturgy: Theology and Practice*, I. Systematic Theology of Liturgy, Kansas City 1988, 374, note 1.

⁵⁷ For a collection of agreed statements, see J. BORELLI – J.H. ERICKSON (eds.), *The Quest for Unity: Catholics and Orthodox in Dialogue*, Crestwood (N.Y.) 1996. For a brief survey, see G.C. WINGENBACH, «Improvement in Orthodox/Roman Catholic Relations: Issues of Marriage and Family Life», *St. Vladimir's Theological Quarterly* 35 (1991) 359-379. Deserving of consideration is the Appendix (pp. 376-379), which presents a liturgical rite for a Catholic-Orthodox marriage with the participation of a Catholic priest and an Orthodox priest, a rite that represents a «compromise procedure, taking into account differing theologies [as to] the minister of the sacrament» (pp. 373-374).

ment of marriage has already been found. What we have is various attempts in this direction, and what we can offer is a renewed reflection.

9.1 Consensus and the Contractualist Theory

In the Byzantine East, *consensus requiritur* was never questioned or doubted. But the passage to *sufficit* was closed by the requirement of the priestly blessing in the ninth century and of the crowning in the eleventh century. The *specificity* of the Christian marriage was underscored by emphasizing these rites of blessing and crowning performed by the priest during the marriage liturgy, thus drawing attention with greater symbolic effect to the intervention of the divine partner in Christian marriage. Christian marriage is not made between two but among three! – it is not simply what two have brought about through their consent but a union into which a «Third Partner» has intervened, sanctioning the union and forbidding separation: «What God has united let no man separate» (Mt 19:6). Indeed, if consent was the total cause of the union, where consent (or *affectio maritalis*: Ulpian) ceased, logically and according to the Roman law tradition, separation (divorce or repudiation) was lawful (licit and valid). But the *sacramentum* («coniunctionis inseparabilis sacramentum»: Augustine) in the Christian dispensation foreclosed that way and stood for indissolubility.

Influenced perhaps unduly by a narrow conception of *consensus* that later shrank into *contractus*, the Western theology and discipline of marriage, in spite of the «baptizing» of Roman law, came to be less and less nourished by Sacred Scripture and the

*lex orandi*⁵⁸. If the emphasis on *consensus* was necessary and proper in Roman law, and was quite rightly taken over into *canon law*, it was not enough to construct a *theology* of marriage in the Christian dispensation. If, following a rather contractualist juridical theology, the Western common doctrine has come to hold that in marriage the spouses are the ministers of the sacrament, who by manifesting their mutual matrimonial consent, constitute marriage and impart to each other the grace of the sacrament, this doctrine cannot interpret adequately the specificity and the novelty of the Christian marriage. No wonder then if not all theologians in the West have been or are quite happy with such a theology of the minister of the sacrament of marriage.

9.2 Deeper Reflection

Among the canonists, the renowned canonist of the Gregorian University Urbano Navarrete initiated a renewed reflection on the minister of the sacrament of marriage soon after the promulgation of the *Codex Canonum Ecclesiarum Orientalium* (CCEO) for the Eastern Catholic Churches in 1990. By comparing this Eastern Code with the Latin Code, the *Codex Iuris Canonici* (CIC) for the Latin Church, promulgated in 1983, he wrote in the first of his several comparative studies of matrimonial legislation in the two codes as follows:

⁵⁸ For a recent collection of liturgical texts, see M. SEARLE – K.W. STEVENSON, *Documents of the Marriage Liturgy*, Collegeville 1992. Of the 28 texts 2 are Eastern: Byzantine rite (7) and Coptic rite (8).

Novus CC [CCEO] occasionem praebet ad profundio-
rem reflexionem institutendam circa ministrum sacramenti
matrimonii in theologia orientali. Saepe enim repetitur
hac in re magnum intercedere discrimen theologiam lati-
nam inter et orientalem. Dicitur iuxta theologiam latinam
ministros huius sacramenti esse sponso ipsos, dum iuxta
theologiam orientalem ministrum esse sacerdotem qui
matrimonium benedicit⁵⁹.

The appearance of CCEO provided to the writer
the occasion for «a deeper reflection on the minister
of the sacrament of marriage in oriental theology».
For, people say («dicitur») «that in this matter there
is great difference between Latin theology and orien-
tal theology». Navarrete's later studies on the subject
are attempts at a closer analysis and synthesis. It is
comparative studies on the matrimonial legislation
contained in the Latin and Oriental Codes of the
Catholic Church that suggested a theological discus-
sion of the particular subject of the minister of the
sacrament of marriage⁶⁰. His thesis was subse-
quently taken over and his conclusions confirmed by

⁵⁹ U. NAVARRETE, «Ius matrimoniale latinum et orientale. Collatio Codicem latinum inter et orientalem», *Periodica* 80 (1991) 609-639, at p. 636.

⁶⁰ U. NAVARRETE, «Il matrimonio in Oriente e in Occidente», *Orientalia Christiana Periodica* 58 (1992) 563-569; U. NAVARRETE, «De ministro sacramenti matrimonii in Ecclesia Latina et in Ecclesiis Orientalibus. Tentamen explicationis concordantis», *Periodica* 84 (1995) 711-733; U. NAVARRETE, «Differenze essenziali nella legislazione matrimoniale del Codice latino e del Codice orientale», *Acta Symposii internationalis circa Codicem Canonum Ecclesiarum Orientalium*, 24-29 aprilis 1995, Kaslik (Liban) 1996, 273-304; U. NAVARRETE, «Questioni sulla forma canonica ordinaria nei Codici latino e orientale», *Periodica* 85 (1996) 489-514.

a student of his, Grzegorz Kadzioch, in a doctoral dissertation⁶¹ in which the disciple has fleshed out the thesis of his master with citations of authorities and sources.

Synthetically, these works raise the problem of the minister of the sacrament of marriage in CCEO and attempt a solution in the following way. As is well known, according to the Latin tradition, the baptized spouses are the ministers of the sacrament of marriage, who administer the sacrament to each other, while the assisting priest is but a qualified witness required for the valid celebration of the sacrament in its ordinary form. In the extraordinary form the priest is absent. This creates no problem as regards the Latin Code, since according to the Latin sacramental theology, the spouses are the ministers of the sacrament of marriage in as much as with their mutual consent they posit the substance and essential rite of the sacrament.

Things are different, say these authors, in the Eastern Churches, in which the priest who imparts the blessing is regarded as the minister of the sacra-

⁶¹ G. KADZIOCH, *Il ministro del sacramento del matrimonio* (cf. nt. 1). Navarrete's thesis is clearly and elaborately presented in this book. It presupposes that a single, distinct, Eastern theology of the minister of the sacrament of marriage underlies CCEO, the common code of the Eastern Catholic Churches. But the representative theologians cited are all Byzantine *Orthodox*, which seems to assume gratuitously that their theology is also that of the Eastern Catholic Churches. The book does not show acquaintance with the works of Spáčil, Trembelas, Meyendorff (nt. 40 above), or Spiteris (nt. 64 below) or of recent developments in ecumenical theology.

ment of marriage. Though this does not create any problem in the ordinary form, a theoretical problem arises in the extraordinary form: how can there be the sacrament of marriage at all without a minister to administer it? The solution is to suppose, according to these authors, that the spouses are the ministers who posit the substance of the sacrament contained in the essential rite, which is the manifestation of their mutual consent. In the ordinary form, however, we have to see three ministers (not two), namely the spouses and the priest: the spouses are the ministers, as in the Latin Church, but the priest is also a minister, whose blessing is required for the validity of the sacrament as an intrinsic or essential element. The priest is then more than a qualified witness and represents the Church and God who unites the spouses and blesses them. According to the authors, these two traditions, the Western and the Eastern, are not contradictory but complementary. The former, heir to the Roman law tradition, underscores the sacrament as consisting essentially in the mutual consent of the baptized spouses who are invested with the dignity of the common priesthood of the Christian faithful: by exchanging their mutual consent the spouses build up the «domestic church» as ministers of the sacrament of marriage. The Eastern tradition, on the other hand, emphasizes the mystical aspect by giving prominence to the «*ritus sacer*» (sacred rite) of the priestly blessing in the celebration of marriage, which maintains the gaze on the great *mysterion* (Eph 5:32) of the Christian marriage and secures its sacrality.

Surely, it must be recognized that here we have a systematic synthesis, which is very clear and logical. This synthesis may seem new with its three-minister

formula. Some readers might feel that it is all too clear and all too logical to suit the oriental mindset! The three-minister formula may even alarm some tradition-bound Easterners. At any rate this thesis of Navarrete invites a second look and closer study.

Joseph Prader, another leading authority on the recent canonical legislation on marriage, has lent his support to the thesis of Navarrete. Though Prader had not mentioned the subject of the minister of the sacrament of marriage in his erudite book *Il matrimonio in Oriente e Occidente*, he held that according to CCEO the spouses are the ministers of the sacrament⁶². He has since elaborated on this subject in a substantial article published in a German periodical⁶³.

9.3 *Sacramental Economy*

Marriage as a sacrament needs to be studied in the larger framework of the sacramental economy. In theology, as in all other disciplines, elucidation of the terms is of capital importance, though not quite in the sense of the critical philosophy of Wittgenstein. As is now well known, the Chalcedonian ecumenical experience, according to which Chalcedo-

⁶² J. PRADER, *Il matrimonio in Oriente e Occidente* (cf. nt. 13); IDEM, «La forma di celebrazione del matrimonio», in *Il matrimonio nel codice dei canoni delle chiese orientali*, Città del Vaticano 1994, 283-300, see pp. 288-290, «Il sacerdote ministro del sacramento del matrimonio», where there are some inaccurate statements, chiefly through oversimplification.

⁶³ J. PRADER, «Wesen und Spender des Ehesakramentes in den unterschiedlichen Traditionen der Katholischen Kirche und der Nichtkatholischen Orientalischen Kirchen», *De Processibus Matrimonialibus* 4 (1997) 155-179.

nian and non-Chalcedonian formulas are equally valid expressions of the same christological faith (though the Council of Chalcedon was regarded as the touchstone of christological orthodoxy), seems to offer a moral in ecumenical theology: not to judge one's adversary on one's own terms. In the present context, the key terms are *sacrament* and *minister*.

On the notion of the *sacrament*, instead of citing any single theological tome, however weighty, let us start with the following succinct and clear text of the *Catechism of the Catholic Church* (abbr. CCC), which contains the essentials.

The Greek word *mysterion* was translated into Latin by two terms: *mysterium* and *sacramentum*. In later usage the term *sacramentum* emphasizes the visible sign of the hidden reality of salvation which was indicated by the term *mysterium*. In this sense, Christ himself is the mystery of salvation: «For there is no other mystery of God except Christ» («non est enim aliud Dei mysterium nisi Christus»; St. Augustine, *epist.* 187, 11, 34). The saving work of his holy and sanctifying humanity is the sacrament of salvation, which is revealed and active in the Church's sacraments (which the Eastern Churches also call «the holy mysteries»). The seven sacraments are the signs and instruments by which the Holy Spirit spreads [*effundit*, «diffuses» or pours forth] the grace of Christ the head throughout the Church, which is his Body. The Church, then, both contains and communicates the invisible grace she signifies. It is in this analogical sense that the Church is called a sacrament (CCC 774).

Since in order to pour forth the grace of Christ the Holy Spirit uses as instruments the sacraments administered by the Church's ministers, sacraments and ministry are interrelated.

No one can bestow grace on himself; it must be given and offered. This fact presupposes ministers of grace, authorized and empowered by Christ. From him bishops

and presbyters receive the mission and faculty («the sacred power») to act *in persona Christi Capitis*, the deacons the force to serve the People of God in the *diaconia* of the liturgy, of the word and of charity, in communion with the bishop and his presbyterium (CCC, revised 1997 version, 875).

In the Orthodox Churches there is no such unified catechism nor magisterial statement about the sacraments. Indeed it can be stated forthright that sacramental theology among the Orthodox as a whole is an underdeveloped sector⁶⁴. This has been frankly recognized by Orthodox theologians themselves like Constantinos Dyobuniotis (1872-1943)⁶⁵ and Ioannis Karmiris (1903-)⁶⁶. Dyobuniotis, who is the first systematic writer on sacramental theology, openly avowed that he followed the doctrine of the Western Church in so far as it was conformable to Sacred Scripture and Tradition. He receives the Latin sacramental theology taking his distance only on certain minor points. He defines sacraments as follows. «Sacred celebrations instituted by Jesus Christ and the Apostles, which through sensible signs transmit mysteriously the grace of God»⁶⁷.

⁶⁴ Y. SPITERIS, *La teologia ortodossa neo-greca*, Bologna 1992, 176.

⁶⁵ Y. Spiteris cites (*La teologia ortodossa neo-greca* [cf. nt. 64], 176) the Greek Orthodox theologian Dyobuniotis who recognizes in his treatise on the sacraments τὰ Μυστήρια τῆς Ὀρθοδόξου Εκκλησίας (n. 40), the first Greek Orthodox treatise of sacramental theology: «With us the doctrine of the sacraments has been hardly developed».

⁶⁶ Y. SPITERIS, *La teologia ortodossa neo-greca* (cf. nt. 64), 176.

⁶⁷ Y. SPITERIS, *La teologia ortodossa neo-greca* (cf. nt. 64), 177.

Only an ordained minister, not a lay person, can be the minister of sacraments⁶⁸. Consequently, for example, a baptism conferred by a non-ordained person would be invalid⁶⁹; so too, a marriage that is not blessed by a priest is invalid. Far from both the partners being ministers of the sacrament of marriage, lay people cannot validly exchange their marriage consent without the blessing of a priest, the only minister of the sacrament of marriage.

This is different from the teaching of the *Catechism of the Catholic Church*, according to which there is manifold ministry in the Church, ordained or non-ordained, sacramental or non sacramental (of the word, of charity, etc.). According to the Western theological tradition, in the Christian marriage, the man and the woman administer the sacrament of marriage to each other as non-ordained ministers. The understanding of marriage, previously shaped in the juridical mould of Roman law (with *consensus* being interpreted as *contractus*) and systematized by theologians with the Aristotelian philosophical categories of matter and form, essence and substance⁷⁰,

⁶⁸ Y. SPITERIS, *La teologia ortodossa neo-greca* (cf. nt. 64), 178.

⁶⁹ Most Orthodox writers do not admit the distinction between validity and liceity. Still, it is generally admitted that a baptism conferred by a layman can be perfected (through economy) by chrismation or anointing with the holy myron by an Orthodox priest.

⁷⁰ We cite two sample studies: L. GODEFROY, «Ministres des sacrements», in DTC X/2, 1776-1793: «Mariage. C'est encore un sacrement tout spécial, puisqu'il n'est autre chose que le contrat de mariage élevé pour les chrétiens, à la dignité de sacrement. Les ministres du sacrement sont donc les ministres du contrat, c'est-à-dire les contractants» (1779). H. LENNERZ,

is now being deepened in the light of sacramental theology.

Though slow to develop a systematic theology of marriage, the East as a whole has viewed marriage as a *mysterion* in which Christ unites the consenting couple (two) into one. Orthodox sacramental theology in general, which long remained an underdeveloped sector, grew at first largely by borrowing from the West; and then asserted itself in the modern period through a widely diffused anti-Latin affect and rejection. Savvas Agouridis, a leading biblical Greek Orthodox scholar, avows: «In certain milieux the anti-Western propaganda has become the only

De sacramentis Novae Legis in genere, Romae 1950³, 290: «The substance of the *rite* is composed of what theologians generally call the matter and the form; but the substance of the *sacrament* is composed of the rite as a material element and of the signification as the formal. Thus, for instance, in Marriage, the essential is the due manifestation of consent; but the manner of this manifestation may be very different: either through words, a nod of the head, living together with matrimonial mind, or a contract made by proxy. The manner in which the Marriage is made does not affect the substantial meaning; and the ceremony might consist in the giving and acceptance of gifts». Rendered into English by B. LEEMING, *Principles of Sacramental Theology*, Westminster (Maryland) 1956, 416. People could contract marriage even by correspondence before CIC 1917. For the contrast between the legal cultures of the West and the East, O. BUCCI, «Per la storia del matrimonio cristiano fra eredità giuridica orientale e tradizione romanistica», in *Il matrimonio nel codice dei canoni delle chiese orientali*, Città del Vaticano 1994, 7-92, see pp. 25, 29, 55 in the uncontrolled eruption of erudition of the author. Also, J. WITTE (JR), *From Sacrament to Contract: Marriage, Religion and Law in the Western Tradition*, Louisville (KY) 1997.

means to hide our theological and ecclesiastical weaknesses»⁷¹.

A fruitful dialogue between the Western theology and the Eastern theology should frankly recognize the strengths and weaknesses on either side.

9.4 *Christ, the Ur-Minister of the Sacraments*

Synthesizing the idea of Saint Augustine, Pope Pius XII wrote in his encyclical *Mystici Corporis* (29 June 1943), «Ipse [Christus] est qui per Ecclesiam baptizat, docet, regit, solvit, ligat, offert, sacrificat»⁷². The Second Vatican Council in its constitution on the liturgy, takes over the same idea: Christ as the mediator of the New Covenant, is the first minister of the word and of the sacraments – the «Ur-Minister», so to say. As the Council teaches,

Christ is always present in his Church, especially in her liturgical celebrations. By his power he is present in the sacraments so that when anybody baptizes it is really Christ himself who baptizes [St. Augustine, *In Ioannem* VI, 1, 7] (SC 7).

Christ's is a sacerdotal ministry, which he shares with the chosen members of his Body through the Holy Spirit. According to the conciliar teaching:

The liturgy, then, is rightly seen as an exercise of the priestly office of Jesus Christ. In it is signified by means of signs and in a manner proper to each sign the sanctification of human beings. In it is exercised by the Mystical Body of Christ, that is by the head and its members, the whole public worship.

⁷¹ *Synaxe* 33 (1990) 76, cited by Y. SPITERIS, *La teologia ortodossa neo-greca* (cf. nt. 64), 322, n. 92.

⁷² AAS 35 (1943) 200ss; DS 3806.

Hence every liturgical celebration, in as much as it is an action of Christ the priest and of his Body, which is the Church, is a sacred action surpassing all others (SC 7).

Vatican II teaches also that Christians share in Christ's priesthood in two ways: the common priesthood *all* the Christian faithful and the ministerial or hierarchical priesthood of the ordained ministers (LG 10). In virtue of the former all the faithful not only «offer spiritual sacrifices» to the Father (LG 34) but share in the ministry of the word, the manner of which is to be specified by law, and *receive* the sacraments (LG 10) and administer some of them like baptism and the Eucharist (Holy Communion). What about marriage? Who is its proper minister?

To start with, we can frankly recognize that this question is not a crucial one. If within the Catholic Church there is no one answer to this question, but different and even opposed views have been expressed, and in fact can be held according to the Catechism of the Catholic Church without the faith or discipline suffering harm, it is as well to regard it as an instance of healthy theological pluralism. If so, much less is it a matter for divided Churches to clash over. In other words, seen from this perspective, the question is irrelevant for ecumenism.

That being said, it is proper to look for some point of convergence beyond divergence. The minister of a sacrament is Christ's instrument in conferring the grace proper to that sacrament. According to the teaching of the *Catechism of the Catholic Church*, which has developed and synthesized the conciliar theology of the sacraments, sacraments are efficacious signs of grace, instituted by Christ and entrusted to the Church, by which divine life is dispensed to us. The sacraments are actions of the Holy Spirit at work

in his Body, the Church (CCC 1116). They manifest and communicate to men the mystery of communion with God, who is love, being-one-in-three-persons (CCC 1118). «Sacramental grace» is the grace of the Holy Spirit, given by Christ and proper to each sacrament. The Spirit heals and transforms those who receive him by conforming them to the Son of God (CCC 1129). The visible rites by which the sacraments are celebrated signify and make present the graces proper to each sacrament (CCC 1131).

The Holy Spirit is sent by Christ, who dispenses his mysteries through the ministers of his Church (CCC 1115) in order to bring us into communion with Christ and so to form his Body (CCC 1108). The ordained priesthood guarantees that it really is Christ who acts in the sacraments through the Holy Spirit for the Church. The ordained minister is the sacramental bond that ties the liturgical action to what the Apostles said and did and, through them, to the words and actions of Christ, the source and foundation of the sacraments (CCC 1120). The blessing (imparted by the sacred minister) is a divine and life-giving action, the source of which is the Father (CCC 1078).

9.5 Ministers of the Sacraments

By minister of a sacrament is meant «the person who confers the sacrament» (DS 1312), but the doctrine and the practice of the Church has varied as to who can confer or administer the sacraments. Originally, only the Apostles baptized, but soon others also like Philip baptize (Acts 8:38); soon bishops or presbyters preside over the Eucharist. Thus in the case of baptism and the Eucharist we see an early development towards a fanning out of

ministers. In the Catholic Church there are differences in discipline between the Latin Church and the Eastern Catholic Churches regarding the minister of various sacraments. Let us note this variety today by taking a brief look at each of them in the current discipline.

9.5.1 Baptism

As to the question who can baptize, the *Catechism of the Catholic Church* states, citing the two codes:

The ordinary ministers of baptism are the bishop and the presbyter and, in the Latin Church, also the deacon (CIC c. 861 §1; CCEO c. 677 §1). In case of necessity any person, even someone not baptized, can baptize, if he or she has the required intention and uses the trinitarian baptismal formula. The required intention is to want to do what the Church does when she baptizes (CIC c. 861 §2)⁷³.

The *Catechism* seems rather reticent about the Eastern discipline and partial to the Latin discipline. According to the Eastern Code, the deacon is not an ordinary minister but an extraordinary minister of baptism. Moreover, the Eastern Code does not say that «in case of necessity any person, even someone who is not baptized, can baptize [...]» (cf. CIC c. 861 §2), but *any Christian faithful* may baptize (CCEO c. 677 §2). Accordingly, the practical difference between the Latin and Eastern disciplines would be: for the former, a Hindu doctor who baptizes a baby is an extraordinary minister of the sacrament of baptism;

⁷³ The text incorporates the correction contained in the Latin edition.

for the latter, he is not⁷⁴. The Latin discipline grew out of a conception of the «absolute need» of baptism for salvation (cf. «*nulla salus extra Ecclesiam*»), which has made progress with Vatican II.

9.5.2 Confirmation / Chrismation

Vatican II has recalled that «the original (*originarius*) minister of confirmation is the bishop» (LG 26). This tradition is preserved in the Latin rite, in which the bishop is also the ordinary minister of confirmation. In the East, it is the presbyter who ordinarily administers this sacrament called *chrismation*, or anointing with chrism or *myron*. This reflects a later development of tradition, with the increase in the number of infant baptisms throughout the year and the multiplication of rural parishes. In the Latin rite, a presbyter may confer confirmation if he has got the faculty from a bishop, or in the danger of death of a Christian (CCC 1312-1314; CIC cc. 882-884; CCEO c. 694).

9.5.3 The Eucharist

The minister of the Eucharist is twofold: the one who presides over (celebrates) the Eucharist and the one who distributes Holy Communion. The first kind is the priest (bishop and presbyter), while regarding the second kind the Latin and the Eastern disciplines vary. Besides the priest, the deacon is the ordinary

⁷⁴ However, the Latin theology and discipline in this matter had been extended to the Armenians by Pope Eugenius IV with the bull «*Exsultate Deo*» of 22 November 1439 (DS 1315).

minister in the Latin rite (CIC c. 910 §1), whereas in the Eastern rites the deacon can distribute communion only if the particular law of his Church *sui iuris* permits it. The extraordinary minister of Holy Communion in the Latin rite is the acolyte and any other Christian faithful duly deputed (CIC c. 910 §2). In the Orthodox Churches, lay people are not permitted to distribute Holy Communion and so never function as ministers of the Eucharist. In the Eastern Catholic Churches, legislation can be made to permit this by the Synod of Bishops of the Patriarchal Churches and the Council of Hierarchs of Metropolitan *sui iuris* Churches (CCEO c. 709 §2).

9.5.4 Penance and Anointing the Sick

Besides confirmation (chrismation) it is true also with regard to most other sacraments that the «original (*originarius*) minister» is the bishop: so for Eucharist, so for penance, so for the anointing of the sick. In all these cases there has been a successive fanning out from bishop to presbyters. So in the later and current discipline the minister of the sacraments of penance and of the anointing of the sick is the priest (bishop or presbyter).

9.5.5 Order

In the sacrament of order the above mentioned fanning out from bishop to presbyter has not been permitted, so that the original minister still continues to be the ordinary minister of order, prescinding from the orders of the lower clergy. These minor orders have been suppressed in the Latin Church but are preserved by particular law in the Eastern Catho-

lic Churches, though they are not generally regarded as sacramental.

9.5.6 Marriage

Regarding the minister of the sacrament of marriage, as we noted already, valid marriages were celebrated by the first Christians even without the intervention of any ordained minister. Building on this fact, theological reflection in the West has reached the currently dominant conclusion, not without striking dissident voices both in the past and today, that the marriage partners themselves are the ministers of the sacrament of marriage.

Byzantine Orthodox theology, too, had long held the same theological view till the XIX century polemics. In the more recent polymorphic Orthodox theology, a significant theological opinion shares the nuanced view that the couple posit the natural bond of marriage, but that this bond is sanctified by the liturgical action which is presided over by the sacred minister and which elevates the bond to the dignity of the sacrament⁷⁵.

In sum: It is true that the minister of most sacraments is an ordained minister. In the case of baptism and the Eucharist (for the distribution of the Eucharist), lay people can be extraordinary ministers in certain circumstances. On the whole, the Latin Church allows more easily lay people to be ministers of the sacraments of baptism and of the Eucharist. If one

⁷⁵ P. TREMBELAS, *Dogmatique de l'Eglise orthodoxe catholique* (trans. P. Dumont), III, Chevetogne 1968, 363-364; Athens 1979².

allows that lay persons can be ministers of baptism and of (the distribution) of the Eucharist, then logically there can be no basic objection from sacramental theology in general to the thesis that in Christian marriage the spouses are the ministers of the sacrament, even though not in an absolute sense. As to the minister of the sacrament of marriage in particular the International Theological Commission has stated as follows:

In the Eastern Churches, from ancient times, Church Pastors had an active share in the celebration of marriage in the place of family-fathers or together with them. This transfer was not a usurpation but was brought about by the petition of the families themselves and with the approval of civil authorities. Thus, ceremonies which were once performed in the family were gradually included in the liturgical rites, and thus the view gained ground that the ministers of the rite of the sacrament of marriage were not only the couples but also the pastor⁷⁶.

Historically, the original role of the *paterfamilias* (family-father) in the celebration of marriage was very prominent and his will decisive: what counted

⁷⁶ INTERNATIONAL THEOLOGICAL COMMISSION, «De matrimonio christiano (1-6 December 1977)», *Gregorianum* 52 (1978) 453-464; also *Enchiridion Vaticanum* 6/479-510. The text in the original Latin (1.5) is as follows: «In Ecclesiis orientalibus, iam antiquitus, pastores Ecclesiae ipsi partes activas obtinuerunt in celebratione matrimonii loco patrumfamilias vel una cum eis. Haec mutatio non effecta est per usurpationem, sed secundum petitionem familiarum et cum approbatione auctoritatum civilium. Sic caeremoniae in sinu familiae peractae, paulatim inclusae sunt in ritibus liturgicis, et ministri ritus mysterii matrimonii non reputabantur amplius soli coniuges, sed etiam pastor ipse». In its succinctness this text is open to erroneous understanding, as will be seen below.

was his will, not so much the consent of his offspring, especially of the daughters, as can be seen in the biblical story of Laban giving his daughters Leah and Rachel in marriage to Jacob (Gen 29:15-30). It may be asked whether before the above mentioned transfer of the role of the *paterfamilias* to the Church pastor the former rather than the latter was effectively the minister of the sacrament of marriage. If so, neither the couple nor the pastors can be regarded as the original ministers of the sacrament of marriage in an exclusive sense.

9.6 *Multiform Ministers*

Theologically, the minister of a sacrament is the person who as instrument of Christ posits the essential rite and thereby produces grace as an instrumental efficient cause. Christ can call anyone to this role and is not «tied down» to the sacraments or their ministers to impart grace. According to the teaching of St. Thomas Aquinas, which has become common doctrine in the West, a non-Christian who baptizes in an emergency confers valid baptism if he «intendit facere quod facit Ecclesia, et formam Ecclesiae servat in baptizando; et sic operatur ut minister Christi, qui virtutem suam non alligavit baptizatis, sicut nec etiam sacramentis»⁷⁷.

Navarrete, writes: «In omnibus sacramentis “minister” dicitur persona vel personae humanae, quae, debitis potestatibus ornatae, agentes in persona Christi, uti instrumenta Ecclesiae, cum debita intentione,

⁷⁷ S. Th. III, q. 66, a. 5, ad 2.

signum sacramentale conficiunt»⁷⁸. If we take this as a definition applicable to the minister of all and each of the seven sacraments, we have to say that, for example, when baptism is administered by a layman (or even a non-Christian having the proper intention to do what the Church intends: CIC c. 861 §2), such a person is positing the sacramental sign and is acting in the person of Christ as the instrument and representative of the Church. And by «sacramental sign» according to Navarrete, is to be understood «substantia sacramenti, id quod ex voluntate Christi servandum est; et, si quae sunt, ea quae Ecclesia ad valorem servanda statuit»⁷⁹. This is admittedly a bare minimum. «Ritus essentialis consistit in eo minimo quod sive ex voluntate Christi sive ex voluntate Ecclesiae, in ipso signo sacramentali servandum est ad validitatem sacramenti matrimonii»⁸⁰.

It may be noted that while the *Decretum pro Armenis* of the Council of Florence applies the hylo-morphic structure of matter and form to all the other sacraments and specifies their minister, exceptionally this is not done in the case of marriage (DS 1314-1327), whose minister was not determined at Florence. Instead, the Council stopped with the statement: «Causa efficiens matrimonii regulariter est mutuus consensus per verba de praesenti expressus» (DS 1327). This reserve of the Council left

⁷⁸ U. NAVARRRETE, « De ministro sacramenti matrimonii» (cf. nt. 60), 729-730.

⁷⁹ U. NAVARRRETE, « De ministro sacramenti matrimonii» (cf. nt. 60), 728.

⁸⁰ U. NAVARRRETE, « De ministro sacramenti matrimonii» (cf. nt. 60), 729.

room for further development in the theology of the minister of the sacrament of marriage. However, Trent did not advance beyond Florence. The question was raised in the theological commission that prepared the schema on marriage for Vatican I, but the council closed before the schema could be discussed. Vatican II has shown great appreciation for marriage, family and the lay state, but did not state that the marrying couple are the ministers of the sacrament of marriage.

The thesis that the couple – and they *alone* – are the ministers of the sacrament of marriage is a juridical offshoot that is theologically inadequate just like the thesis opposed to it that the priest (bishop or presbyter) is the *only* minister of the sacrament of marriage. Neither the couple-minister theory nor the priest-minister theory is self-sufficient in their isolation. This *only* is an absolutiser, and as such is partial and even a falsifier. Just as with *sola fide*, or *sola Scriptura*, a truth that is affirmed positively is falsified in the exclusivity of the *sola*, so too the *couple alone* and the *priest alone* are isolationist absolutisers obstructing the way to the fullness of the truth. To throw open that way the two must be brought into relation to each other; in other words, what is needed is the «marriage» of the two in a synthesis of the East and the West⁸¹.

⁸¹ Karl Rahner's warning to those who «die Funktion des assistierenden Priesters dogmatisch aufwerten zu müssen glauben» (K. RAHNER, «Die Ehe als Sakrament», in *Schriften zur Theologie*, Bd. VIII, Einsiedeln 1967, 519-540, at p. 535, n. 33), is appropriate to guard against the tendency to favour the hierarchy at the cost of the laity but not against proper relativisation.

The first step towards this synthesis is to de-absolutise the entrenched positions that are often buttressed with half truths. If the consent of the couple is «*causa efficiens matrimonii*», it seems to have *ex opere operato* causality to produce sacramental grace. But, like all other sacraments, marriage, too, confers grace in virtue of the action of Christ through the Church. This truth is given more adequate symbolic expression in the priest-minister theory. Christian marriage is «sealed by the *blessing*» of the priest, according to Tertullian, the third century Western Christian jurist with an Oriental accent⁸². According to Symeon of Thesalonike, «the priest joins their (of the bride and bridegroom) right hands as a sign that they have become united in Christ and become one and that the husband receives his wife from the Church»⁸³. This «in Christ» and «from the Church» is expressed symbolically and sacramentally through the role of the ministerial priest and the Eucharist, as is stressed in the Ethiopian tradition, in which it is through the reception of the Holy Communion that marriage becomes indissoluble. In this view, just as Christian initiation is achieved by degrees (decision to become a Christian, catechumenate, baptism, chrismation/confirmation, eucharistic communion), so too, the fullness of Christian marriage is achieved by degrees: mutual

⁸² «Unde sufficiamus ad enarrandam felicitatem matrimonii, quod ecclesia conciliat, et confirmat oblatio, et obsignat benedictio, angeli annuntiant, pater rato habet?»; *Ad uxorem*, VIII, 6 (Corpus Christianorum, I), 393.

⁸³ See «A Symposium on the Meaning of Marriage», *St. Vladimir Seminary Quarterly* 8 (1964) 42.

promise, formal engagement, wedding, sexual consummation, and eucharistic communion. A similar progressive view of the conclusion of marriage is not foreign to the classical canonical tradition in the West⁸⁴.

If, according to Roman law, a marriage union could be effected through the consent of the parties, it was still not *iustae nuptiae* without the consent of the titular of the *patria potestas*⁸⁵. Something similar may be said to hold good analogously for matrimonial union *in Christo* of a couple who as Christian faithful are incorporated in Christ and his Church and are members of the *Body of Christ*. In the Christian economy, their marriage union cannot be *iustae nuptiae* without reference to the *iustitia regni Dei*. Hence their union cannot be sacramental without the consent of the Father, who calls all to *koinonia* with himself in the Spirit. This happens through the highpriestly mediation of Christ, through whom is exercised the *patria potestas* of the Father, «the Father from whom all pater-nity [πατριὰ, family] in heaven and on earth is named» (Eph 3:15). In the sacramental economy of salvation in Christ, this ratification is signified and

⁸⁴ J. GAUDEMET, «Les étapes de la conclusion du lien matrimonial chez Gratien et ses commentateurs», in J. GAUDEMET, *Sociétés et mariage*, Strasbourg 1980, 379-391.

⁸⁵ According to the jurist Paulus, «Nuptiae consistere non possunt nisi consentiant omnes, id est qui coeunt quorumque in potestate sunt» (D. 23, 2, 2). See J. GAUDEMET, «Le mariage en droit romain: *justum matrimonium*», in J. GAUDEMET, *Sociétés et mariage*, Strasbourg 1980, 46-103, at p. 57-58; S. TREGGIARI, *Roman Marriage: Iusti Coniuges from the Time of Cicero to the Time of Ulpian*, Oxford 1991.

achieved through the priestly or ordained ministry of the Church⁸⁶.

The practice of marriage by Christians in the New Testament times and the first centuries is not necessarily a perfect expression of the mystery of Christian marriage leaving no room for subsequent development. Such is not the case with the sacraments of the Eucharist or of penance. It is but proper to recognize a doctrinal and a canonical development similar to the development in the trinitarian or christological dogmas and the administration of the sacraments. Without in anyway detracting from the normative value of the New Testament, it can be said that a fixation in the Church's infancy would be suspiciously singular in the case of marriage as long as doctrinal, liturgical, and disciplinary developments in the case of the minister of the other sacraments are all too evident. For example, before the sacramental rite of penance developed from public penance into private penance or auricular confession in the East and in the West, it is proper to ask if the Christian faithful who were not subjected to public penance obtained the remission of sins as the *sacramental* grace of penance without the intervention of the ordained minister. If they did, it may perhaps also be supposed that the absence of the ordained priest in the marriage rites of Christians in the first

⁸⁶ P. VISCUSO, «The Formation of Marriage in Late Byzantium», *St Vladimir's Theological Quarterly* 35 (1991) 309-325. In effecting the *sacramental* union in Christian marriage is operative besides the two human wills of the couple also the blessing (εὐλογία) of the priest, who acts «as a mediator between humankind and the Divinity» (p. 324).

centuries, did not prevent the couple from obtaining the *sacramental* grace of marriage in the context of the sacramental economy of salvation, even if one does not see them as ministers of the sacrament of marriage.

Without bartering away the inalienable role of the matrimonial consent of the parties, due value is to be given to its ecclesial setting. We cite the concluding observations of two recent studies: «A fare il matrimonio è allora veramente la volontà espressa degli sposi, ma ricevuta legittimamente e autenticamente da parte della comunità ecclesiale, nella varietà dei suoi ministeri costitutivi»⁸⁷. And a seasoned canonist and theologian observes: «Our Western enchantment with what is minimally needed for the covenant and the sacrament needs a strong corrective from the Eastern tradition»⁸⁸. This «corrective», for which not a few attempts have been made by theologians and canonists⁸⁹, is not to be seen as the correction of a Western error

⁸⁷ R. GERARDI, «I problemi della determinazione della struttura ileomorfica e del ministro nel sacramento del matrimonio», *Lateranum* 54 (1988) 288-368, last sentence, p. 368.

⁸⁸ F.R. MCMANUS, «The Ministers of the Sacrament of Marriage in Western Tradition», *Studia Canonica* 20 (1986) 85-104 at p. 104.

⁸⁹ E. CORRECO, «Der Priester als Spender des Ehesakramentes», in *Ius Sacrum*, ed. A. Scheuermann and G. May (Festschrift Klaus Mörsdorf), München 1969, 521-557, while trying to look for a corrective not only from the East but from a minority Western tradition itself championed by Melchior Cano, overvalues the priestly blessing as a «constitutive» element of the sacrament of marriage in Pius XII's MP *Crebrae allatae* canon 85 (p. 555): Correco has overlooked the study of Emil Herman (n. 9 above).

but rather as a complementary enrichment, according to the poetic imagery of the two lungs of the Church, Eastern and Western, made popular by Pope John Paul II.

10. Towards a Synthesis Beyond East and West

Christian marriage is not a mere empirical union achieved by the consent of a couple but is a mystery in which «God unites» two of his children in «one flesh» (Mt 19:6). It is not only a horizontal union between the partners but a vertical union with God and in God, hence «a triangular union». In this union *in Christ*, the Father through the Holy Spirit makes the couple one flesh as Christ and the Church are one (Eph 5: 31-32), in an indissoluble and holy union, so that they are one as the Father and the Son are one (Jn 17:21) together with the Holy Spirit. And this union is effected by the Son's gift of the «glory» he has from the Father (Jn 17:22), which is a specific sacramental grace that enables the spouses to love each other with an undying love. With their love they actualise and symbolise the love of Christ and the Church (Eph 5:25). By virtue of the specific grace of the sacrament of marriage, which, as the Second Vatican Council teaches, is a healing and perfecting grace by which God purifies, elevates and perfects human love, the partners are enabled to combine in their marriage human and divine love in a free and mutual self-gift (GS 49).

The gift of being united into «one» by marriage involves a task which in reality is a *process*. It is a life-long process of mutual cleaving and continually becoming «one» at different levels, physical, emotional, mental and spiri-

tual. The task can only be accomplished by God's grace and the couple's freely-chosen and deliberate pursuit to overcome selfishness⁹⁰.

Since not simply *generatio et educatio prolis* but the qualified *educatio christiana prolis* counts among the ends of *Christian* marriage, the specific sacramental grace of marriage enables the couple not only to love each other after the model of Christ-Bridegroom and Church-Bride but to be living icons of God's paternal-maternal love to their children, thus contributing to their development to the fullness of the stature in Christ. However, as the couple also receive in their very act of giving, they cannot fully represent iconically the wholly altruistic, self-emptying divine love. The Spirit, however, comes to their aid in their weakness, and of this the sacramental sign is the ministry of the ordained minister. As the *Catechism of the Catholic Church* (875) teaches, «The ministry in which Christ's emissaries do and give by God's grace what they cannot do and give by their own powers, is called a "sacrament" by the Church's tradition. Indeed, the ministry of the Church is conferred by a special sacrament».

In Eastern theology, with its traditional accent on the role of the Holy Spirit, the role of the priest as the minister of the sacraments is epicletic and mediatorial for the *perfecting* (τελείωσις, perfection, completion, fulfilment, consummation) of sanctification. The sacred minister invokes the grace of the Holy Spirit, and his mediation brings to completion or perfection what is being sanctified. His mediation

⁹⁰ T. STYLIANOPOULOS, «Toward a Theology of Marriage in the Orthodox Church» (cf. nt. 52), 282.

shares in and actuates in the Church the unique mediation of Christ operating efficaciously through the Holy Spirit (the so-called *ex opere operato* efficacy)⁹¹. But this epicletic and mediatorial role is not exhausted in the person of the sacred minister; in marriage the spouses too are mutual mediators of sanctification. As members of the Body of Christ, in which the Holy Spirit is active by sanctifying the Church, they are instruments of grace and of nuptial sanctification for each other. In this sense they are ministers of the sacrament of marriage, as is affirmed in the dominant Western theological tradition. And this need not be objected to by those who follow the now dominant Eastern theological tradition and stresses the role of the sacred minister.

Marriage according to Roman law is not the measure of marriage according to the law of Christ. The Christian couple are *sacramentally* married not so much because *they* have united themselves through mutual *consent* as because *God* has united them through that consent to each other and to Himself (CCEO c. 776 §2: «sacramentum, quo coniuges ad imaginem indefectibilis unionis Christi cum Ecclesia a Deo uniuntur»). In the present sacramental

⁹¹ A. RAES, *Le mariage, sa célébration et sa spiritualité dans les Églises d'Orient*, Chevetogne 1958 [The title on the dust jacket is *Le mariage dans les Églises d'Orient*]. «Les fiançailles sont belles; le prêtre y joue le rôle de médiateur, l'anneau confirme la promesse [...]» (a canon from the rite of betrothal in the Chaldean rite). «L'importance accordée par les théologiens occidentaux à l'élément [...] contractuel du mariage a fait qu'on a perdu un peu de vue la richesse doctrinale des prières et des cérémonies liturgiques» (Introduction).

economy inaugurated by Christ, the high priest and head of the Church, the ordained minister represents him through apostolic succession in a unique way, having the Christ-given mission to reconcile and unite all under the headship of Christ. Hence the ministerial priest has a unique and *symbolic* (that is, serving as an effective symbol) and therefore *sacramental* role in effecting the sacramental union of man and woman in Christian marriage. This union in Christ and in the Church is, moreover, not a static union but one open to «perfection», according to a New Testament theology of priesthood that has been developed particularly in Eastern theology⁹². The ministerial or

⁹² According to the Letter to the Hebrews, Christ the high priest «has *perfected* for all time those who are sanctified» (Heb 10: 14); and we «look to Jesus, the pioneer and *perfector* of our faith» (12: 2). This Jewish-Christian theology of the priesthood has left its mark in particular on the East Syrian liturgy of the Eucharist or *Qurbana*, in which the priest celebrant requests the prayer of the assembly (as in the «Orate fratres» of the Roman Mass) as follows: «Pray for me, my brothers, that this *qurbana* may be *perfected* through my hands!» The celebrating priest's role is not so much to *effect* the transubstantiation of the species as to *perfect* the sacrifice of the Church in its union with that of Christ, who «perfects our faith» or us «who are sanctified».

The Armenian theologian Gregory Datheve (XVI c.) underscored this perfecting function of the priestly blessing in marriage as follows: «[...] duarum enim voluntatum consensus conficit matrimonium; *perficitur* autem et confirmatur per benedictionem sacerdotis et copulam corporalem»; H. DENZINGER, *Ritus Orientalium. Coptorum, Syrorum et Armenorum* [...] tom. 1, Würzburg 1863, 153.

In the XVII century Nicholas Bulgaris taught in his *Catechism*: «The sacrament of marriage is *perfected* and symbolized through the prayer and the blessing of the priest, according to the rite of the Euchologion»; κατήχησις ἱερὰ, Venice 1681, 14.

ordained priest, acting in the person of Christ the head, mystically engages the entire Body-Church. According to St. Thomas Aquinas, the minister of a sacrament acts not only in the person of Christ the head but in the person of the Church and as its minister⁹³. By making the priestly blessing necessary for the validity of a sacramental marriage, the Church engages its role as the Sacrament of sacraments in the teleological prospect of the Christian priesthood. In view of this «perfecting» the priestly blessing may be seen as an integral part of the sacrament of marriage, though not essential to the *esse* of the marriage of Christians. Not all marriages of Christians are *Christian* marriage, just as not all *actus hominis* are *actus humani*, nor are all Christian marriages *perfect* Christian marriages for grace and symbolism. Following a juridical theology, the West has traditionally looked at the minimum, whereas following a mystical theology, the East has traditionally looked at the fullness of the mystery. The two approaches thus diverge as minimalist and maximalist⁹⁴.

But this does not mean a dichotomy between the East and the West. The East has been in the West

⁹³ «Minister sacramenti agit in persona totius Ecclesiae, cuius est minister»; S. Th. III, q. 64, art 8, ad 2; art. 9, ad 1. Minister of the sacrament represents both Christ on the one hand and the Church on the other.

⁹⁴ For example, according to Syriac theology, the minister of a sacrament must be filled with the gift of the Holy Spirit. «Die durchgehende Auffassung der syrischen Theologen ist es, daß nur der durch die Handauflegung mit der Gabe des Hl. Geistes erfüllte Ausspender der Geheimnisse der Kirche sein kann»; W. DE VRIES, *Sakramententheologie bei den Syrischen Monophysiten* (cf. nt. 42), 66.

with the «school» of Melchior Cano. Already Tertulian (in many respects the most Eastern of the early Western ecclesiastical writers!), had exclaimed: «Who can describe the happiness of the couple whom the Church unites in marriage and confirms with the Eucharistic sacrifice and seals with the *blessing* of the priest? It is proclaimed by the angels in heaven and ratified by the Father!»⁹⁵. That sounds like the mystical voice of the East. But, vice versa, the later juridical Western voice has been echoed from the East as well.

Counting one minister of the sacrament of marriage, or two ministers, or three or more (which is not anything new in the history of theology) is ultimately not a question of arithmetic but a matter of theological terminology and depth. Minister is an analogous concept. In an absolute sense, or ultimately Christ, the only High Priest and Mediator who «came to serve», is the only Minister of the economy of salvation and therefore of the sacraments. But since Christ exercises his ministry through the Church, his Body, members of this Body are given a share variously and vicariously in this ecclesial ministry. As the Eastern Code says, clerics, called to the ministerial priesthood, and «constituted in various degrees participate in diverse ways in the one divinely instituted ecclesiastical ministry»⁹⁶.

⁹⁵ *Ad uxorem*, VIII, 6 (Corpus Christianorum, I), 393.

⁹⁶ «Clerici [...] unum ministerium ecclesiasticum divinitus institutum diversimode participant» (CCEO c. 324). The idea expressed here, with a slightly different terminology, is contained already in Vatican II: «In the Church there is diversity of ministry but unity of mission» (AA 2).

The mission is one, the ministers are many. Thus there is in the Church a pluralism of mediators through participation, which is not confined to the ministerial priesthood but extends to the common priesthood, but in a different way. In the first centuries, as well as in the so-called extraordinary form of marriage preserved in the Catholic discipline in continuity with the early Christian tradition (for the Orthodox, who are particularly strong on tradition, this continuity should be welcome) the marriage couples may be said to be ministers of the common priesthood, but not «sacred ministers» or «ministers of the Church deputed through the gift of the Holy Spirit received in the sacred ordination» (CCEO c. 323 §1). In the developed theological understanding of the Church today as well as in canonical practice, without the intervention of such an ordained (and priestly, in the Eastern vision) minister, something will be wanting to the sacramental fullness. In contemporary canon law (both Catholic and Orthodox) this idea is rendered juridically by regarding that such a marriage (in the ordinary form, in Catholic canon law) is not valid. For a fuller theology of the minister of the sacrament of marriage, the extraordinary form (in Catholic canon law) is a false starter or is not the proper point of departure.

In a synthesis beyond East and West, and inclusive of both, we may speak of the ministerial roles of the spouses as well as of the sacred minister, but using analogy. «The presence of the *Church's minister* (and also of the witnesses) visibly expresses the fact that marriage is an ecclesial reality and introduces one into an ecclesial *order*» (CCC 1631). If juridically the role of the Church's minister is to be a qualified witness, theologically it is much more. If

the couple are seen as the ministers of the sacrament of marriage from one perspective, from another the priest imparting the nuptial blessing may be seen as the minister of the sacrament of marriage. Still different theologically is the ministerial role of the deacon as a qualified witness in the Latin canonical discipline; and when a non-ordained person is delegated to be the qualified witness, his or her role is still different, theologically. Thus even the three-minister thesis needs expansion in a theological synthesis.

To attempt to answer the question «Who is the minister of the sacrament of marriage?» by looking primarily at the extraordinary form of marriage, is to risk failure to exploit the riches of the sacramental theology. Vice versa, with a maximalist starting point one may fail to see the reality of the redeemed world as was lived by the Christians of the first centuries, though they did not celebrate their marriage *coram Ecclesia*. The proper approach pursues a synthesis – or shall we say, marriage? – of East and West.

Conclusion

The question of the minister of the sacrament of marriage is a theological question, not a canonical one. The *Code of Canons of the Eastern Churches* does not raise this question any more than does the Latin Code. CCEO does not require or presuppose a theology that holds that the minister of the sacrament of marriage is the priest imparting the nuptial blessing, but it is open to such a theology or to any other good theology, even the Latin theology. The presence of the «blessing priest» is canonically required for the validity in the Eastern marriage, just

as in the Tridentine form of marriage the «assisting priest» is required for validity. Both had historically the same scope of putting an end to clandestine marriages. Both the East and the West have known diverse theologies about the minister of the sacrament of marriage. There is no warrant for the presumption that the East stands exclusively for a theology that sees the minister of the sacrament of marriage in the priest; nor is there any warrant for the presumption that such a theology is the theology of the Eastern Catholic Churches, or of CCEO⁹⁷.

The Second Vatican Council has stated that Western theology and Eastern theology are complementary and that «it is hardly surprising if sometimes one tradition has come nearer to a fuller appreciation of some aspects of a mystery of revelation than the other, or has expressed them better» (UR 17). Mutually enriching would indeed be a synthesis of both, save theological pluralism, in an ecumenical horizon looking beyond East and West.

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⁹⁷ The handbook of D. SALACHAS, *Il sacramento del matrimonio nel Nuovo Diritto Canonico delle Chiese orientali*, Rome – Bologna 1994, contains the following statements that seem to need nuance or are not exact in the light of the present study: 1) that «in the East, the minister of the sacrament of marriage is the priest» (René Metz, Prefazione, p. 8); 2) that there was no norm against clandestine marriage before the Council of Trent (p. 179); 3) that coronation is a constitutive element of the sacrament of marriage in the various Eastern Churches (p. 186). This book does not cite the key study of Herman (see nn. 21, 39 above).