

## BENEDICT XIV AND HIS SACRAMENTAL POLITY ON THE EASTERN CHURCHES (1740-1758) – PART II

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The author searched, in the first part of this article, into the the method employed in the letter *De Sacramentis*, and exposed Benedict XIV's systematic presentation of the sacraments for the Eastern Catholics. In this second part she discusses the authority of the minister and the multiplication of grace through the sacraments of penance, anointing of the sick, holy orders and matrimony.

### **3. The Authority of the Minister and the Multiplication of Grace<sup>26</sup>**

The purpose of the sacramental system was to offer a multiple opportunity of divine grace which avoided superstitious practices or the superimposition of spurious elements to the substance of the sacraments, which should remain untouched. Lambertini, with the

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For the first part of this article, see, *Iustitia*, Vol. 4, no. 1, (June 2013) 101-120.

<sup>26</sup>The numbers of the footnotes as well as titles in this second part continue from the first part.

aid of the Roman congregations, wanted to act so as to allow the Eastern liturgical customs that were confirmed by ancient and proven authorities, to eliminate any practice which would include a more or less marked distance from Catholic dogmas, and to avoid superstitions and abuses in the sacraments. The theological heritage handed down by the scholastic school permitted the breaking down of the sacraments into sections and summaries of gestures, use of words, oils, water, bread and wine: on this analytical possibility Lambertini based his interventions in order to activate comparisons, selections and eliminations of specific portions of the ritual by reducing all actions within the sacramental number seven or classifying them into devotional or non-sacramental practices. His analysis proceeded regularly according to an order that first examined form, matter and minister of each sacrament; then it went on to study, case by case, the difficulties in accepting both the Eastern and the Latin discipline, and finally rejected 'particular abuses.' The synthesis of the argumentation permits us in some sacraments to develop his analysis that alternated continuously between rigor and clarity of the normative datum and the necessity to eliminate the scruples caused in the most delicate consciences by the incongruities and difficulties that scholastic theology raised about the efficacy of the *signs*. Lambertini embraced the considerations of Cardinal Giovanni Bona<sup>27</sup> "when he writes that 'one should not criticize an ancient rite that was not according to our own on account of the difficulties that Scholastic theologians raised against it: *Hic ego non disputo, sed constant rasserò, hunc fuisse Ecclesiae morem per plura saecula, qui in Ecclesia Orientali adhuc viget. Hunc convellere scholasticis difficultatibus, audax consilium est*' [=Here I do not contend but continue to assert that such was the custom of the Church for many centuries and it still exists in the Eastern Church. To avoid such a position on account of the difficulties of the Scholastics would be an unwise decision]; since, in order to maintain it, it would be sufficient to hold any possible answer that is given to the objections lodged against it, thus following at the same time the teaching of Pope Innocent III."

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<sup>27</sup> *Opera Omnia...* [=Entire body of works...], Antwerp 1694: *De sacrificio Missae tractatus asceticus* [=Ascetical treatise on the sacrifice of the Mass], book 1, chapter 18 No. 9: the consideration was caused by scruples in reciting the formula of consecration in the Eucharist by the priest together with the bishop.

**a) Penance**

The Eastern sacramental discipline confirmed the Latin Catholic discipline against Protestant objections. In fact, in analyzing confession, in particular the aspect of the full disclosure of every single mortal sin committed by the penitent (without holding back, out of reticence or shame), the pope considered Luther's objection, against which he opposed the perfect consistency of the Eastern and Western Churches. The German theologian indeed had denied the power of the keys on mortal and venial sins (which latter sins constitute sufficient but not necessary matter of the sacraments). The pope confirmed the Catholic discipline existing also in the Orthodox Greek Church. Lambertini discussed both the indicative and the deprecatory formulas of absolution, the latter being the one in use by the Greeks. The indicative formula, in conformity with the Council of Trent (Session 14, Chapter 30) and the Roman Rituals, he said, was to be preferred because it stressed the judicial value of the absolution and offered the certainty of forgiveness to the penitent, while the deprecatory formula, which implied the mediation of the minister, since it was in the form of a prayer, did not express adequately the "dogma defined by the Council of Trent... that the sacramental absolution of the priest is a judicial action, and that to pronounce and declare to the penitent that his sins are forgiven is not merely a ministerial function;" such a formula would leave the penitent in doubt vis-à-vis the possibility that the prayer would be accepted.<sup>28</sup>

Certainty of the remission of sins, sacramental absolution as a judicial act and authority of the ordained minister went hand in hand as parts of the same equation, whose final result was the remission of the sins of the faithful and attaining the grace of God. The organization of the sacramental structure forced the strict adoption of the indicative form taught by the Council of Trent; however, the witnesses found in the Latin rituals until the XII century opened the way to the dangerous possibility and the "terrible assumption of having to admit as invalid all the absolutions given for many centuries in both the Latin and Greek Churches." The deprecatory formula therefore had been valid and Lambertini limited himself to repeat the necessity that at present the Eastern Catholic Churches (Armenian, Maronite, Chaldean, Greek-Melkite,

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<sup>28</sup>Ed. Heiner, Title III, Chapter 2, Nos. 1-8, quotation on page 334, with reference to Session 14, Chapter 6 and Canon 9 on Penance in the Council of Trent.

Ruthenian) should adopt the indicative formula, perhaps by combining it with the deprecatory one which could also be recited.<sup>29</sup> Finally his reasoning concluded with the condemnation of the practice of individually absolving every single sin that had been confessed according to a pious custom suggested by some Armenian priests, “so that, by the multiplication of the absolutions, [the faithful] would obtain new grace which is connected with the *ex opera operato* [=by the work performed] of the sacrament.”<sup>30</sup> The integrity of the confession of sins by the penitent and the total judicial single absolution by the priest were the only means to establish the certainty of forgiveness, thus eliminating pious practices that led to confusion and uncertainty.

Equity and balance were the objective of the penitential satisfaction that the priest had to impose on the penitent after the confession of his sins: it was medicine for the spiritual infirmity and a good safeguard of the new life, but also penal retribution for the sins committed. Hence, the Greek custom of recommending as satisfaction the anointing of the sick was rejected for the purpose of bringing the penitential discipline on a par with the teaching of the Roman Church, “mother and teacher of all the faithful.” Indeed, the Greeks were, on the one hand, too lax by imposing on wealthy penitents guilty of serious sins the anoint of themselves with the oil

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<sup>29</sup>Ibid., p. 335.

<sup>30</sup>Ibid., p. 338. The absolution of every single sin, as practiced by the Armenians, was rejected because “after the penitent had confessed a mortal sin, there may be others of similar gravity to confess; now, if the penitent received the absolution after confessing the first mortal sin, it would be given to him before a complete confession of all his sins, which would be a sacrilege condemned by the Church. Indeed, even if the confessor were certain that, after the penitent had confessed a mortal sin, he did not have any other mortal sin to confess, giving the absolution after the first mortal sin he had heard he would act against the practice of the Church in a very serious matter. According to the Church’s practice the absolution is given after the penitent has completed his confession; by multiplying the absolutions the door would be open to a very serious error, namely that the final absolution would not be sufficient to forgive all sins.” Benedict XIV placed on the same level the multiplication of absolutions as the request to receive the Eucharist under both species or to receive more than one consecrated host in order to achieve greater holiness, thus confuting the assertion that a greater amount of the sacrament would grant a greater grace (Ibid., pp. 338-339).

of the sick," and on the other too severe with the priests who confessed sexual sins "by imposing as penance to abstain from the celebration of the Divine Liturgy for a long time or even all their lives."<sup>31</sup> The 1720 Ruthenian Synod of Zamość rejected the rigid Eastern discipline and returned the practice to the Latin norm which gave to the confessor the power to "determine, at his discretion, but with prudence, the most convenient satisfaction" on the basis of the position of the penitent and on the quality of the person.<sup>32</sup> The same instruction, namely of moderating the old rigors of the penitential canons that was directed mostly to public sinners, had been given by Gregory XIII to the patriarch of the Maronites. On the other hand the severity had been suggested by Benedict XIV in the circumstances reflected by the constitution *Apostolica Constitutio*, as a preparation to the jubilee year, which imposed on confessors the delay the absolution of the penitent in case of a visible absence of signs of sorrow or of obvious detestation of sin, a lack of resolve not to sin in the future, or the lack of restitution of stolen goods when he could do so.<sup>33</sup>

As concerned the secrecy of confession, whose common doctrine was imposed by natural, divine and ecclesiastical law, Benedict XIV pointed out the unanimous position of the Eastern and the Catholic Church, only marred by some Eastern errors, such as the public denunciation of priests who had been guilty of fornication and the practice of accepting by the bishop the witness of the confessor in favor or against his spiritual son when he was a candidate for the sacrament of orders.<sup>34</sup>

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<sup>31</sup>Ed. Heiner, Title III, Chapter 3, No. 5, p. 341.

<sup>32</sup>Ibid., p. 342.

<sup>33</sup>Constitution 19, §22, MPR Book iii, pp. 155-156: Benedict XIV appealed to *Proposition* No. 60 of Innocent XI of March 2, 1679. The pope stressed that in the Roman ritual (and not in a work by a strict theologian) there was the indication that the confessor, when denying or delaying the absolution, had to explain to the penitent his situation, the gravity of the sin committed, and the abomination of his condition thus leading him to abandon sin.

<sup>34</sup>Ed. Heiner, Title III, Chapter 4, Nos. 11-12. From the obligation of maintaining the secrecy of confession in all cases there derive three undisputed principles: first, that "there is no case in which the secrets of confession can be revealed; secondly, that, even following the principle of

### **b) Anointing of the Sick**

The anointing of the sick as well is the object of an analytical comparison of ritual conformity and sacramental value that united the Catholic Latin Church and the Eastern Churches despite the division. *Vis-à-vis* this harmony the practice of the Syrian-Nestorians and the Armenians stood out as an exception. It is undoubtedly very interesting that Benedict XIV in his examination injected also the objections presented in the 17th century by the missionary in China who found that the local Catholic female believers refused to be touched by the priests in certain parts of the body. Benedict XIV confirmed the intangibility and integrity of the rite of the anointing of the sick against the opposition of the shame that this sacrament caused in Chinese women. The missionaries in fact had feared that the shame caused in women by this sacrament could spell the end of Christianity in China;<sup>35</sup> however the question had been clearly closed by the condemnation of Innocent XI of March 2, 1679 with the statement: "In conferring the sacraments it is not forbidden to follow a probable opinion on the value of the sacrament, setting aside the safer one, unless this is forbidden by law, custom or the danger of incurring serious harm. Hence to follow the probable opinion is not applicable in conferring baptism, priestly or episcopal ordinations."<sup>36</sup>

### **c) Holy Orders**

Special attention is given to the subjects of guaranteeing the preservation of the entire church organization, regularity in the

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the Greek law, the witness of the spiritual director [=confessor], either in favor or against his spiritual son, cannot be admitted; and third, that it is too dangerous to accept the witness of the confessor in order to regulate the ordination to orders" (Ibid. p. 350).

<sup>35</sup> According to the doubts submitted to the congregation of Propaganda Fide on September 12, 1645 and answered by the decree of Innocent X; resubmitted to the Holy Office and answered by a decree of March 23, 1656 under Alexander VII, reinterpreted by the Holy Office under Clement IX in 1669, according to the publication of the collection of bulls of Propaganda Fide that was being printed at the time of Benedict XIV, see *Bullarium Pontificium de Propaganda Fide...* [=Collection of papal bulls of Propaganda Fide], Urban College Press, Rome 1839-41, in 5 volumes.

<sup>36</sup> Ed. Heiner, Title III, Chapter 7, p. 361.

administration of holy orders and the mutual acknowledgment of validity in the two Churches, the Eastern Churches and the Catholic Church. Ordinations conferred by the bishops of the Orthodox Churches in the East were considered as having the same value as the ordinations conferred by the Catholic Church in the West, in the same manner as baptism conferred by heretics; in other words, the act of ordination was illicit but valid. Just as the baptism of heretics imprinted the character on the soul, and the heretical person, after the abjuration and the absolution of incurred penalties, was admitted fully into the Catholic Church, the Orthodox orders, after the abjuration and the dispensation of the Holy See, did not require a new ordination and the ordained minister was allowed to administer the sacraments appropriate to his rank.<sup>37</sup> Benedict XIV defined this line of conduct, in which he put explicitly the legislative interventions promulgated under his authority, as *epikeia*

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<sup>37</sup>Ed. Heiner, Title IV, *De Ordine* [=Sacred Orders]. Chapter 2, *Del ministro scismatico della sacra ordinazione...* [=Orthodox minister of sacred ordination...], p. 376, went over the history of the Orthodox separation and reconciliations between the Orthodox Church and the Roman Church; the schism of the 9th century with Photius and of the 11th century with Michael Caerularius, patriarch of Constantinople; in the 13th century there were four reconciliations with the Greeks, in the Fourth Lateran Council under Innocent III, another with Innocent IV (attested by the letter to the bishop of Tusculum, his legate in the kingdom of Cyprus), another under Alexander IV, and the fourth during the Council of Florence, where the union was sanctioned and a strict examination of the Greek rites was conducted; in the 16th century, with Clement VIII there took place the union with the Ruthenians: in none of these unions was there any demand to repeat the ordination of the ministers ordained by the Orthodox bishops; from this there follows the "uniformity of discipline" as long as in such ordination the legitimate rite was kept as regards the essence of the sacrament". This position was confirmed by Benedict XIV in the first instruction to the Coptic doubts, *Eoquamois*, §11, where "we granted to the pastors of Coptic rite, although Orthodox but validly ordained, not only to be able to exercise the orders they had received, but also to administer the parish sacraments, however, after having received the necessary absolution and the dispensation from the irregularity and the censures and penalties imposed by the Church against the Orthodox and heretics and limiting the administration of the parish sacraments only to those that the ecclesiastic superior had recognized as deserving of the grace, and provided their conversion was sincere." See also the same chapter in prior versions, kept in BUB Ms. 268, title I i; Vat. Lat. 11835 No. 2.

[=benevolent interpretation], by interpreting this position not as weakness but as just condescension which explained the obscure portion of the law and mitigated cases of extreme severity.

According to Benedict XIV, the Church had the authority to add to the matter and the form of the sacraments some necessary conditions which, if not observed, made the act null and void. This was the case of the Tridentine form of marriage and of the approval of the bishop for priests to hear confessions, of the distinction in the sacred orders between the character, the substance and the exercise connected with the sacrament. This latter condition reinforced the bond with the Church's authority: the character, which was indelible if conferred respecting the essence of the sacrament, was received independent from the Church, but the exercise connected with the order depended from the authority of the Church. Hence, Benedict XIV justified the lack of recognition of the ordinations by the Anglican bishops on the part of the Catholic Church, unlike the ordinations of the Orthodox bishops of the East, because, in the case of the Anglicans, the essence of the sacrament had not been observed as appeared from the *Book of Common Prayer*.<sup>38</sup> The invalid ordination at the hand of Matthew Parker, from which came the subsequent ordinations, had interrupted the apostolic succession. It was in fact conducted by a minister deprived of the episcopal character, since all the Catholic bishops had been imprisoned by Queen Elizabeth. The ritual, modified by King Edward, demanded the prior recognition of the king of England as head of the official religion and of spiritual matters. This carried with it a lack of the Catholic form and a profession of heresy.

As opposed to the controversy and the rupture of contacts between the Catholic Church and the Protestant ecclesial communities, the agreement between the Orthodox Church of the East and the Catholic Church in matters of the sacraments presented a confirmation and a chance for discussing any differences about the sacraments. The differences on the number of sacred orders, or the non-observance of the Latin discipline were tolerated in the case of

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<sup>38</sup>*The Book of Common Prayer and Administration of the Sacraments & Other Rites and Ceremonies of the Church according to the Use of the Church of England* was consulted by Lambertini in the London edition 1727, quoted in Ed. Heiner, Title IV *De Ordine* [=Sacred Orders], Chapter 2, pp. 378-379; Archbishop Parker, born in 1504 and deceased in 1575, was the theologian founder of the Anglican Church of England.



the Eastern Catholics, "since it was not certain that the minor orders were of divine right or that they were sacraments."<sup>39</sup> Trent had officially sanctioned the number 7 of the sacraments and the various degrees of the sacrament of order.

Priestly celibacy connected with the sacred orders was defined as a precept of ecclesiastical law, since it was not matter of dogma or of prohibition of divine right. It was rather motivated by the necessity of protecting the clergy from the involvement in material things which the presence of wife and children tended to increase, and of favoring the love for study. Despite all this, the popes never forbade the marriage of the Greek priests, which was based on the Trullan Council; indeed they had allowed Eastern Catholic priests, deacons and sub-deacons to keep their wife if married before ordination and to live with her. Along the line of the first Instruction on the Italian-Greeks of Clement VIII, Benedict XIV requested the abstention from sexual intercourse for a week or for at least three days before celebrating the Eucharist, basing himself on biblical reasons. In fact he cited the first Book of Samuel, chapter 21, where the priest Ahimelech offered the "sacred breads" to David and his soldiers provided they had abstained from sexual intercourse for three days.<sup>40</sup> Indeed, "if between the sacred bread and the body of Christ there is the difference that exists between the shadow and the body

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<sup>39</sup>Ed. Heiner, Title IV, Chapter 4, No. 4, p.273.

<sup>40</sup>Ed. Heiner, Title IV, chapter 6, Nos. 6-7. Benedict XIV, in addition to the Instruction of Clement VIII, based himself on the reconciliations of the Councils of Lyons and Florence, in which this point did not represent an obstacle, and on the admission of Gregory XIII in his letter to the patriarch of the Maronites. The provincial Synod of the Ruthenians renewed what had been established by Clement VIII by extending the discipline that imposed abstinence from sexual intercourse with a wife even to the deacon who was called to serve at the altar if he was to receive communion. This synod was confirmed by Benedict XIV with his constitution *Singularis* of September 1, 1741, NBR Title I, No. 31, pp. 274-278. Even in the constitutions Nos. 43, 57 and 129 we have the confirmation of the disposition "both in order to follow the instructions of our predecessor Clement VIII as well as out of due reverence to the holy sacrifice of the Mass", Ed. Heiner, Title IV, Chapter 6, p. 364. Moreover the authority of the Council in Trullo is discussed in the ensuing chapter 7, Nos. 6-9, where the value of "general" council was not given to it, since it was not approved except for the canons that were not opposed to the decrees of the Roman popes.

or between the image and reality, there is no reasonable person in the world that would not admit a good basis for the married Greek priest to abstain from sexual intercourse at least three days before celebrating Mass."<sup>41</sup>

#### **d) Matrimony**

In considering matrimony, prescribed for Catholics in the Tridentine form, Benedict XIV took into account the promulgation of the Council of Trent itself. In the Dutch territory, the dioceses of the "Ruthenian Province," the East Indies or in the kingdoms of Albania and Serbia, or again for the Armenian Catholics of the patriarchal vicariate of Constantinople, the differentiating element was whether the decrees had been promulgated, or simply whether the *Roman ritual* containing the form of the decree had been received in the individual parishes.<sup>42</sup>

The sacramental validity/efficacy required that the union should have been celebrated between a Catholic and an unbeliever, between a Catholic and a heretic, or again that the marriage should have established a rapport of mutuality with the natural unions contracted before the conversion of either one or of both spouses. The dissolution of marriage contracted and consummated while in the condition of non-belief, as contemplated by the papal constitutions, on the basis of what the Apostle Paul had granted, offered "the privilege of freedom directly to the believing spouse in consideration and in respect of the faith embraced, and indirectly also to the non-believing spouse on account of the reciprocity of the contract."<sup>43</sup>

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<sup>41</sup>Ibid., p. 394, where the Pope confirmed the custom existing in the Armenian Church of abstaining from sexual intercourse for forty days before and after the celebration of Mass. The appeal from the Latin rite bishop of Aspaham in Persia, who asked the authority to moderate this custom, had been rejected by the Congregation of the Holy Office, convened with Clement XI on May 14, 1705.

<sup>42</sup>Ed. Heiner, Title V, *De Matrimonio* [=On marriage], Chapter 8, *Dell'errore, della condizione, del ratto, ...* [= On error, condition and kidnapping], Nos. 9-13, pp. 444-445.

<sup>43</sup>Ed. Heiner, Title V, *De matrimonio* [=On marriage], Chapter 1, *Del sacramento del matrimonio quanto all'indissolubilità dello stesso* [=About marriage concerning its indissolubility], p. 416. The analysis on the opinions on marriage and the Pauline privilege was discussed by Lambertini on

Concerning the cohabitation between a believing spouse and an unbelieving one, "without offense to God," laws were at odds: on the one hand, the Fourth Council of Toledo (concerning Jews marrying Christian spouses, Canon 28, question 1) forbade such cohabitation; on the other, the second chapter of "*Quanto*" and "*Gaudemus de divortiis*" did not forbade it if it was peaceful. Benedict XIV suggested respecting the local laws and customs; he allowed the judgment of the ecclesiastical superior to evaluate the individual situations; and he concluded citing the opinion of Father Carlo Francesco Breno, according to whom cohabitation was very difficult and who advised to leave to the believing spouse the freedom to enter a second marriage.<sup>44</sup>

Polygamy by the faithful before conversion, with reference to the neophytes of the East and West Indies, was regulated by the constitutions of Pius V and Gregory XIII, where the decision had been adopted "by independent initiative and on sure knowledge and in the fullness of apostolic authority."<sup>45</sup> Benedict XIV, who did not

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March 29, 1727, and in the discussion about the Florentine case of January 17, 1722, whose data are found in *Thesaurus resolutionum Sacrae Congregationis Concilii* [=Collection of decisions of the sacred congregation of the Council], Rome 1739, Title II, p. 117; Title III, pp. 346 and 350; Title IV, p. 30.

<sup>44</sup>The opinion of Carlo Francesco Breno was maintained in the *Epitome manualis missionariorum orientalium ad admodum...* [=Brief manual for the Eastern missionaries....], Rome 1736 (Anthony de Rubeis printing). Which was divided into four parts: I *De Romano pontifice...*; II *De sacramentis in genere et in specie. De variis orientalium erroribus et in specie moraliter consideratis*; III *De sacramentis in genere... at in specie moraliter consideratis*; IV *De dubiis moralibus virtutes concernentibus...* [=I, About the pope.; II, Sacraments in general and in particular. Various errors of the Easterners; III, Sacraments in general... and in particular under the sacramental aspect...; IV Moral doubts concerning the virtues...]. The opinion quoted was found in part III, chapter 7, *De sacramento matrimonii* [=The sacrament of marriage], question 1, No. 659.

<sup>45</sup>Benedict XIV, through Father Breno, quotes a concession by Urban VIII to the converted faithful to live with one of the wives who accepted to be baptized; he ignores or does not quote the document *Romani pontifici* by Pius V (August 2, 1571), which established the criterion that faith could dissolve polygamist marriage, whereby the one being baptized remained with the wife willing to receive baptism; see the remaining part of the constitution in J. Metzler, *America Pontifici a primi saeculi evangelizationis*

cite the first disposition on the marriage of infidels, *Altitudo divini consilii* of Paul III, extended the validity of these dispositions to the Christians who were in similar conditions all over the world, even in Europe, in the document *Apostolici ministerii* of September 16, 1747.<sup>46</sup>

Concerning the indissolubility of marriage, the Greek discipline, that legitimized separation on the basis of Mosaic Law applied restrictively to the single case of adultery, was contradicted by the decisions of the Roman popes who did not allow divorce to those Eastern Catholics subject to the jurisdiction of the Latin bishops.<sup>47</sup> The definition of the Council of Trent on the indissolubility directly condemned the position of Luther, but did not condemn the Orthodox Greeks subject to the Republic of Venice: the dogma of the indissolubility of marriage was formulated in such a way as to oppose the open contestation and include other matrimonial situations in an "equitable" manner.<sup>48</sup>

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1493-1592 [=Pontifical America of the first century of evangelization, 1493-1592], Vatican City 1991, II, pp. 894-895. Following the reasoning found in Ed. Heiner, Title V, On Marriage, Chapter 1, p. 418, I think I can say that Benedict XIV did not have direct knowledge of the three constitutions of Paul III, Pius V and Gregory XIII, since the respective reasoning is confused among them.

<sup>46</sup> See G. Oesterlé. *Privilège Paulin* [=Pauline privilege], in *Dictionnaire de droit canonique* [=Dictionary of Canon Law]. Paris 1965, Columns 229-280, particularly 267-268: Benedict XIV granted to the Jewish neophyte the possibility of using the Pauline privilege.

<sup>47</sup>Ed. Heiner, Title V, *Ibid.*, Chapter 2, *Dell'indissolubilità del vincolo matrimoniale...* [=Indissolubility of the marriage bond...], pp. 420-421.

<sup>48</sup>*Ibid.*, Chapter 3, pp. 423-424. Benedict XIV adopted the common feeling approved by the Roman tribunals and the Sacred Penitentiary which held that there was no sufficient reason to grant the annulment of marriage if it was contracted according to the custom of the country that included the possibility of repudiation; namely, the fact that both or just one of the contracting parties had conditioned their will with an explicit pact containing the freedom to repudiate, and without such freedom would not have contracted marriage. In this case, the marriage had to be considered null and void, and the converted party could enter another marriage; however, the nullity did not derive from the option offered by the wrong laws allowing the dissolution of the bond of matrimony, but from the fact that a condition opposed to the essence of marriage had been inserted, namely the fact that repudiation could be given.

The impediment of the disparity of religion had been dealt with by Benedict XIV in the constitution *Singulari Nobis*, which sanctioned the nullity and unlawfulness of marriage contracted by parties with different religion; the dispensation could be obtained for serious reason and without danger to the faith.<sup>49</sup>

In the case of the Chinese and Japanese, a prudential stand had been adopted, with the decision that the missionaries could grant dispensations, according to the decree of the Holy Office of January 23, 1669, on the authority of Clement IX, since in those places the number of Christians was lesser than that the one of non-believers.<sup>50</sup> The Eastern Church, on the basis of the 72<sup>nd</sup> Canon of the Council in Trullo established the nullity and unlawfulness of marriage between a heretic and a baptized person, to which Benedict XIV gave value for its antiquity concerning Eastern Catholics, even if the context of the canon concerned marriages between Saracens and Christians.<sup>51</sup>

The teaching of the Council of Trent on the celibacy of the clergy, which went back to the 11th-12th century, was defined by the Council in the Session 24 *De Matrimonio* [=On Marriage] against "the Protestants of the time who rejected ecclesiastical celibacy and taught that all could or should take a wife, both those who were ordained as well as those who had taken religious vows; and whoever nowadays, either in the West or in the East should dare to annul a contracted marriage, let him be excommunicated."<sup>52</sup> However, the Pope added, basing himself on the instruction of Clement VIII expressed in the document *Etsi pastoralis* (§ 7, No. 27), that the discipline of the Italian-Greeks had been made to conform with the

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<sup>49</sup>Constitution of February 9, 1748, MRP Title III, pp. 4-15, which was directed to Cardinal Enrico, duke of York.

<sup>50</sup>The decree was cited in the collection of the constitutions and briefs for the missions of China and Tonkin, published in Paris in 1676 (p. 38).

<sup>51</sup>Ed. Heiner, Title V, *De Matrimonio* [=On Marriage], Chapter 5, *Della disparità di culto...* [Disparity of religion], Nos. 3-7, pp. 431-432.

<sup>52</sup>*Ibid.*, Chapter 6 *Del Matrimonio contratto dopol'Ordine...* [=Marriage contracted after the orders...], p. 436. The definition of Trent, according to Benedict XIV, did not include the Eastern Church which had its special discipline in the matter, as was explained by Propaganda Fide on September 26, 1631.

Latin discipline since the *law* of the Eastern Greeks should not be confused with the *law* of the Italian-Greeks.”

The gradual restriction of the obligation not to marry within the seventh degree of consanguinity, sanctioned by Gregory the Great for the English neophytes in the beginning of their conversion and later re-sanctioned by both the Roman Councils (under Nicholas II and Alexander II), became the common discipline with the Second Lateran Council which established the fourth degree for all Christians. This case is used by Benedict XIV to speak about the delicate question of Roman authority regarding dispensations, going back to a question which had been dealt with many times. A very serious obstacle prevented the pope to give a dispensation if there were no cases and precedents of such dispensations: even in the case of marriage contracted within the first degree of the direct line of affinity between stepfather and stepdaughter or stepson and stepmother. There had been cases during the pontificate of Benedict XIII and the pope had been advised by the then canonical expert Lambertini not to grant the dispensation, even if, in a particular case, the stepfather and the violated stepdaughter risked being condemned to death. Despite this fact, the dispensation was denied, although the pope had intended to use “every care so that the unfortunate people should be spared the penalty of death, since this role would befit a priest just as much as it would be inappropriate for the pope to grant a dispensation never before granted by any of his predecessors.”<sup>53</sup>

Analysis of the rites of purification and abstention from the sacraments after a birth presented the opportunity to enter into the method of the study of the rituals. The first comparison is carried out with the rules of purification and legal impurity imposed by the Mosaic law to which even the Blessed Virgin Mary freely subjected herself, although she belonged already to the new economy of grace. The rite, which included a pious and practically universal custom, was not obligatory and consisted of a procession of the new mothers to the church, with a candle in their hands; they were received by the priest at the doors of the church and received his blessing; after which, repeating the gesture of the Gospel woman affected by a flow of blood who was healed by Jesus, they held the end of the priestly

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<sup>53</sup> Ed. Heiner, Title V, Chapter 7, *Dell'impedimento dell'età...* [= Impediment of age...], No. 9, p. 440.

stole, entered the church, knelt before the altar and thanked God for the gift of life they had received.<sup>54</sup> This rite could not be confused with the purification of the women of India after childbirth, because this was part of the so-called Malabarese Rites and was based on the period of delay imposed by the Indian neophytes before allowing the women to go to church and to confession after childbirth or during the menstruation periods. As prescribed by the decree of the cardinal of Tournon of 1703, accepted and approved also by Benedict XIV with his *Omnium sollicitudinum*, the custom was “based on some popular superstition” and could not be admitted on the basis of a simple similarity with the customs of the Leviticus, chapter 15.

In addition, there existed for the pope the question of the relationship between the Christian rites and the Jewish rites and, without an explicit reference, between the Christian sacraments and the Jewish liturgies. Was it permitted for Christians to maintain the Jewish rites even in the new economy of the Gospel? Maintaining such a tradition was impossible “if it concerned the rites of the old law that foretold the coming of the Messiah; similarly it was not permitted as regards the basic and essential ritual ceremonies, such as sacrifices and the priesthood. The same is not forbidden, however, when it involves unimportant things which are not followed exactly as was done in the old law and which are done nowadays out of concern for a moral reason rather than a ritual one.”<sup>55</sup>

As concerns the relationship of the Orthodox and the Eastern Catholic rites, Benedict XIV confirmed the intention of the Holy See not to “forbid the Greeks all those things they practice which can be tolerated without offense to our religion,” so much so that it was wisely resolved not to change anything that refers to the impurity of the body and the impurity of the soul, since the words of the Greek prayers can receive a benign interpretation, such as prayer to God

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<sup>54</sup>Ibid., Chapter 11, *Della purificazione dopo il parto* [=Purification after childbearing]: the rite is defined according to the description given in the *Rituale Romano* [=The Roman ritual] by Paul V; Van Espen, in his work *Iuris ecclesiastici* [=Ecclesiastical law] (Book I, Part 2, Title 2 Chapter 5) pointed out that the rite was still in use “beyond the mountains. Lambertini left the freedom to submit to the rite, “however, the woman who does not follow it, does not commit sin, unless she does so out of spite (cited in Ibid., p. 451).

<sup>55</sup>Ibid., p. 454.

that he fully free the soul from sin, and the body from such impurity, not so much legally but rather naturally, which affects the impurity of the soul, since the purity of the body influences the reverence due to the churches and the sacred things.”<sup>56</sup>

### **Conclusion**

The councils of the Middle Age borrowed from Scholastic theology a language and a logical system for the purpose of analyzing the sacraments. The encounter with the religious realities outside Christianity, e.g., the Jews who were baptized against their will in Spain, or the coming face to face with new people conquered by the Europeans in the Western and Eastern Indies prompted the modern papacy to deal with the sacraments within the area of their interventions. The formulas adopted by the Council of Trent to counteract the Protestant objections permitted also the incorporation into the juridical system of the Church the neophytes of the New World, the Eastern Catholics, and the marriage contracted between Catholics and other people. The categories worked out during the centuries of ideological debates, before and after the Council of Trent, to oppose to the “heretical” objections of the medieval and modern years were used by Benedict XIV in mid-18th century in a way that emphasized the juridical aspect of the sacraments. The pope from Bologna indeed dealt with the subject of the sacraments not just quantitatively more than his predecessors, but also in a qualitatively different manner. He created a system of the sacraments starting from the confusing casuistry of the decision by the Roman Congregations and Tribunals along the lines of the interpretation and implementation of the Council of Trent.

The concrete situation of the Catholic Church in the early 18th century, characterized by a pastoral care that was quasi-stagnant due to an excessive number of privileges, customs, conflicts of rights and duties, had become a confused complex, beset by endless disputes. The legislative decisions of Benedict XIV were meant to unravel such confusion, little by little, by way of a rational objective that was almost utopian. For this reason the recourse to papal authority and to the Roman Congregations was not simply a controversial method, but pointed essentially to an alternative way in the conflicts between powers within the ecclesial realities of his time. In this manner, he

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<sup>56</sup>Ibid., p. 455.



defended the institutions of the Church of his day, confirming it as an edifice that was both sacramental, territorial, and according to the Council of Trent, where the necessity to introduce any reform derived more from the infidelity of the clergy or his cultural insufficiency rather than from a lack of a model.<sup>57</sup> In this manner the pope resolved the contrast between historical truth and theological truth by “looking” at the sources of the Church.

Papal and conciliar decisions were, as it were, taken and interpreted by the curial offices in a process of consolidation of two and a half centuries that did not eliminate contradictions and overlapping between decisions and regulations. The jurist pope, in the light of this curial jurisprudence, carried out a synthesis and harmonization of previous regulations, in order to offer the bishops clear indications, based on a “tradition,” on the rationality of the deciding organs and on the rationality of the decisions themselves, in order, as it were, to favor the sharing of choices.<sup>58</sup> Such reading of the Council of Trent in light of the curial interpretation indicates an interpretative journey that Pope Lambertini attempted to bring to its extreme consequences, in order to bring about a legal reason and a

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<sup>57</sup>This was as sign of a greater difficult to conciliate theology and history vis-à-vis the clash between faith and natural sciences, mentioned by E. Troeltsch, *Fede e storia* [=Faith and history], by R. Garaventa, Brescia 1977, p. 97.

<sup>58</sup>An overall analysis of the cataloguing of the Council of Trent would be highly fundamental according to the manuscript materials collected in BUB, Manuscripts 508-509-510, *Ad S. Concilium Tridentinum, nempe a Sessione IV ad XXV Ad notations* [=Notes about the sacred Council of Trent, namely from Session IV to Session XXV], where the decision of the popes that followed are organized on the basis of Sessions V-XXV of the Council; Manuscripts 270, Chapters I-XVIII *Varia* [=Miscellaneous]. Manuscript 270, Chapter II, No. 12, *Concilia Ecclesiarum Orientalium* [=Councils of the Eastern Churches] contains the files of 96 synods and councils from 314 to 1736, “*Concilia, Canones et Epistolae Synodicae Ecclesiarum Orientalium, ex Mss Codicibus Syriacis et Arabicis. Nunc primum in lucem prodeunt, Auspiciis SS. D.N. Benedicti XIV Pont. Max.*” [=Councils, Canons and Synodal Letters of the Eastern Churches from the Syrian and Arabic manuscript and codices. They now come into light for the first time under the auspices of His Holiness Benedict XIV, supreme pontiff].

qualityative harmony.<sup>59</sup> He attributed a guiding role to the “minimalist” interpretation of the Council of Trent used by the Roman Curia within the confines indicated by the decisions of the Roman Curia, sifted through the rich casuistry of the Congregation of the Council. In this manner, the sacramental Church was for Benedict XIV the structure capable of maintaining a juridical system. In the Archbishop of Bologna and in the Roman Pontiff, the direct experience was constantly filtered by his years spent in the curia as consulter, member and secretary of various congregations.

The outcome of this process of synthesis was less advanced than the will to carry out such synthesis. Moreover, the attempt to establish a monolithic and incontrovertible dictate of the rule was not always capable of breaking away from the “pastoral paralysis.” The limitations represented by the cultural, normative and liturgical baggage that had accumulated after the Council of Trent, prevented him from accepting some adaptations of the sacraments, such as the Malabar Rite, but also to bring to its ultimate consequences faith in the sacraments, for instance in the ordination of the American and Asian neophytes, which thus was kept in check in the Church of the sacraments.

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<sup>59</sup> BUB Manuscript 270, Chapter III 16 *Ad Concilium Tridentinum “Extra vagantes Juris novissimi ad concilium Tridentinum pertinentes”* [=About the Council of Trent “Miscellaneous questions of the latest law concerning the Council of Trent”]: therein, 128 files are collected, organized according to the conciliar sessions and according to topics, followed by papal regulations that clarified, interpreted or modified the text of the Council of Trent. BUB manuscripts 531-542 collect the files of the resolutions of the congregation of the council, with the notes of Popes Pius IV, Pius V, Gregory XIII, Sixtus V, organized according to the individual sessions and chapters of the same council; Manuscript 535, chapters I-IV collects the decisions of the cases from 1652 to 1669; Manuscript 536, chapters I-IV the cases from 1681 to 1689; Manuscript 537, chapters I-III until 1717; Manuscript 539 collects the declarations of the congregation of the council from 1591 to 1604; Manuscript 542 contains *Opus in sacrum Concilium Tridentinum a sessione I usque ad finem* [=The work on the Council of Trent from the first session to the end] by Prospero Fagnani.