

Interchurch Marriages and Pastoral Care in Sickness: A Canonical Consideration

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This study concerns interchurch marriages and pastoral care in sickness.¹ Two reasons prompted this topic. First, forty years ago Pope Paul VI published the apostolic letter *Matrimonia mixta* which was to take effect on October 1, 1970.² The apostolic letter was the result of many new insights that Vatican II had brought to light. New insights with regard to ecclesiology, freedom of religion, ecumenism, and marriage itself asked for a rethinking of what in the world of canon law is known as “mixed marriages” and in much theological literature now as “interchurch marriages.” Interchurch marriages are marriages in which both partners continue to be actively involved in their own church or ecclesial community, while at the same time participating in the faith journey of their partner.³

Looking back over the past fifty years, it may be noticed that within the Catholic Church the discussion topics related to mixed marriages changed as time went on: initially the focus was very much on the promises that the partners had to make with regard to the baptism and Catholic education of their children.⁴ Questions concerning the liturgy were discussed: What kind of liturgical celebration could be proposed for the wedding? What could be the role of the ministers of the respective church or denomination in the liturgy?⁵ From a canonical perspective, the questions focused on the observance of the form: could a dispensation be requested and granted and could the celebration in the Orthodox Church also be recognized as fulfilling the form for the Catholic Church?⁶ Another issue was the question of reception of the Eucharist by the baptized non-Catholic partner initially during the wedding itself and later also during the married life of

¹ This paper was originally presented at the annual convention of the Canon Law Society of America in Buffalo, NY, 2009 and was published in its *Canon Law Society of America (=CLSA) Proceedings* 72 (2010) 249-266. It is with gratitude to the Executive Coordinator of the CLSA, Dr. Sharon A. Euart that this paper could be used as a basis for this publication. The current study has a few changes and adaptations in comparison to the CLSA study of 2010.

² Pope Paul VI, apostolic letter *Matrimonia mixta*, AAS 62 (1970) 257-263, English translation in Austin Flannery (ed.), *Vatican Council II: the Conciliar and Post Conciliar Documents*, New Revised edition, vol. 1 (Northport, NY: Costello, 1984) 508-514.

³ In several countries these couples gather in associations of interchurch marriages. In particular in France and England this association has been very strong. They organize meetings to discuss and reflect about their situation and invite theologians and bishops to reflect with them. In France, for example, René Beupère has been strongly involved with them. They publish newsletters. Pope John Paul II used the term “interchurch marriage” several times in *Familiaris Consortio* e.g. Nr. 21, 38, 48-54. For further literature see also Ecumenical Office Anglican Church of Canada, Ecumenical Commission, CCCB (eds.), *Pastoral Guidelines for Interchurch Marriages between Anglicans and Roman Catholics in Canada* (Ottawa: CCCB, 1987), George Kilcourse: *Double Belonging: Interchurch Families and Christian Unity* (Mahwah, NJ: Paulist Press, 1992) and John C. Bush, Patrick R. Cooney, *Interchurch Families: Resources for Ecumenical Hope. Catholic Reformed Dialogue in the United States* (Louisville, KY: Westminster John Knox, 2002).

⁴ See for example the articles in René Beupère e.a. (eds.), *Die Mischehe in ökumenischer Sicht: Beiträge zu einem Gespräch mit dem Weltkirchenrat* (Freiburg i.Br.: Herder, 1968).

⁵ The Holy See provided for celebrations in its Liturgical Books.

⁶ Already 1966 it was decided that the form for marriage a Catholic, whether oriental or Latins, with non-Catholic oriental faithful is only be for the liceity; for the validity the presence of a sacred minister suffices, as long as the other requirements of law are observed. Cf. Sacred Congregation for the Eastern Churches, *Crescens Matrimoniorum*, AAS 59 (1967) 165-166; English translation in Austin Flannery (ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, vol. 1 (Northport, NY, 1984) 481-482. This was later taken up as c. 1127 §1 *CIC*; c. 835 *CCEO*.

the couple.⁷ In these latter discussions the doctrine that a sacramental marriage could be seen as a kind of domestic church, as *Lumen gentium* 11 had said, played increasingly a role.⁸ Theologians asked how the domestic church and the Eucharist, how marriage as a sign of the bond between Christ and the church on the one hand, and the Eucharist as a symbol of this unity on the other hand could be understood together and what this implied for both partners to be entitled to receive the Eucharist.⁹ This was and is particularly urgent for those who live in a mixed marriage that could be qualified as a so called “interchurch marriage”, because within their marriage these couples experience the communion among themselves *as well as* the brokenness of the unity of the Church of Christ simultaneously.

The suggestion in the 1993 Ecumenical Directory that bishops and episcopal conferences provide particular law or guidelines for the application of sharing the sacraments¹⁰ in combination with the increased awareness that people in interchurch marriages are asking for assistance on what to do with regard to sacramental sharing, prompted a number of episcopal conferences from around the world to address in particular the issue of sharing the Eucharist. Possibly the most impressive reaction came with the document “One Bread, One Body” issued by the three Episcopal conferences of England and Wales, Ireland and Scotland in 1998.¹¹

Looking at the subjects discussed in relation to interchurch marriages one might get the impression that these couples have families with young children to look after and that there is no life beyond being a raising parent. However, forty years after the publication of *Matrimonia mixta* which implied a decrease in joining the denomination of the partner¹² and an increase in interchurch marriages, the number of couples that are now being confronted with serious sickness and death in their partnership is increasing. This then is the second reason for addressing this topic here: ministers will be confronted with this issue increasingly. The specific question of this study concerns, therefore, the topic of canonical aspects of ministry to couples (and their families) who live in an interchurch marriage and are confronted with sickness. In the reflections presented here, the focus is exclusively on the Latin rite of the Roman Catholic Church.

The urgency of the pastoral and therefore canonical aspects of this issue became clear to me when about three years ago I received a phone call from a chancery describing the following situation:

A forty-seven year old woman belonging to a protestant church had died. More than twenty years earlier she had married a Catholic man and their wedding had taken place in the

⁷ During the synod on the family the then president of the Pontifical Council for Christian Unity Cardinal Johannes Willebrands emphasized that with regard to sharing the Eucharist the unity and indissolubility of a marriage might be more important than some other criteria that are mentioned for admission to the Eucharist by baptized non-Catholic. Cf. Johannes Willebrands, “Mixed Marriages and their Family Life: Cardinal Willebrands’s Address to the Synod of Bishops, October 1980,” *One in Christ* 23 (1987) 78-81.

⁸ *LG* 11 reads: “This is, as it were (veluti), the domestic church in which the parents must be for their children, by word and by example, the first preachers of the faith, encouraging each in her or his vocation and paying special attention to a sacred vocation.” For an overview of the literature on the subject up till 2001 see Florence Caffrey Bourg, “Domestic Church: A Survey of the Literature,” *Intams Review* 7 (2001) 182-191.

⁹ One of the most insightful articles is written by the German systematic theologian Peter Neuner, “Ein katholischer Vorschlag zur Eucharistiegemeinschaft,” *Stimmen der Zeit* 211 (1993) 443-450 and Georg Hintzen, Peter Neuner, “Eucharistiegemeinschaft für konfessionsverschiedene Ehen?” *Stimmen der Zeit* 211 (1993) 831-840. In the Spring of 2010 an international conference entitled “The Household of God and Local Households: Revisiting the Domestic Church” was held at the University of Leuven.

¹⁰ Pontificium Consilium ad Christianorum Unitatem Fovendam, *Directory for the Application of Principles and Norms on Ecumenism* (London: Catholic Truth Society, 1993) nr. 130.

¹¹ Catholic Bishops’ Conferences of England and Wales, Ireland and Scotland, *One Bread, One Body: A Teaching Document on the Eucharist in the life of the Church, and the Establishment of General Norms on Sacramental Sharing* (London: Catholic Truth Society, Dublin: Veritas, 1998).

¹² Common parlance still uses the term “convert to catholicism”, which is incorrect with regard to persons who are already baptized and then enter into full communion with the Catholic Church. Indeed once a person is baptized, that person is already in communion with the Catholic Church, albeit not in full communion. The Code of Canon Law rightly speaks about full communion.

Catholic Church. Hence, there had not been a dispensation from the form. A minister of the protestant church had been present and had given the homily. The couple had three children who were all baptized in the Catholic Church and had made their first Communion and received confirmation. They had been attending Catholic schools. The family often went to Sunday Eucharist together. The couple lived in a rather Catholic area and thus the woman who had had cancer had been in a Catholic hospital. The hospital chaplain, a Catholic lay minister, had accompanied her in her sickness. The woman had asked the hospital chaplain whether it would be possible that a Catholic minister would preside over her funeral. The chaplain responded in the affirmative. Upon the death of his wife, the husband called his parish priest and asked to arrange the funeral. The response of the parish priest was that this was not his “job”! She did not appear on any of his lists as a member and thus he would not do this. The husband was of course upset and mentioned the remark made by the chaplain. The priest remained with his position. The husband contacted the bishops’ office which asked me for advice. I spoke with the priest who affirmed that he knew the woman and that she had regularly attended the eucharistic celebrations in his church. When I asked him how he envisioned pastoral care for the husband and children who after all “were on his list” he said that he had never given this a thought. The funeral was held in the Catholic parish with another priest.

While reflecting on this case it occurred to me that Catholic hospitals of course provide physical and yes also pastoral care to non-Catholics be they baptized or not; I thought about the seven works of mercy which includes visiting the sick and burying the dead. There is no mention that these works should be exercised vis-à-vis Catholics only. It also occurred to me that at an ecclesiastical funeral of a person who lived in an interchurch marriage, the people present would from the perspective of confessional belonging most likely display the same composition that had been present at the wedding. And finally I also asked myself the question what it means to celebrate funeral rites. Is it only for the one who died or is it also to minister to the sorrowing and console them with the comforting word of God and maybe—with the sacrament of the Eucharist? If the focus is also on the latter group how do you do that when the family members of the deceased person belong to different churches or ecclesial communities? What, so I asked myself, can the Church offer in sickness and death to people living in an interchurch marriage? What does the law say about this and above all how can the existing norms be applied with special consideration for the fact that the context is an interchurch marriage?¹³

While selecting this topic for this study I thought it would not be too difficult and expected that a focus on canon 844 which regulates the sharing of some sacraments would be the main focus of my presentation. However, as soon as the work had started it turned out to be more challenging than expected, because there are many theological and non-theological issues that changed over the years and that need to be taken into consideration. Because of the complexity of the issue I have decided to limit this study to the anointing of the sick in interchurch marriages and leave further reflections on funerals to a future study. Furthermore, due to the complexity I have also decided to limit this presentation to listing topics that need to be taken into consideration when addressing this issue. The listing of different aspects is like making a list of ingredients for a dish to be cooked: there is no priority among the different ingredients because only together will they lead to a fine dish even though some might (also in a specific situation) be more important than others. This study is thus indeed a work in progress and an invitation to enter into a dialogue with each other.

¹³ Canonical articles often reflect about the norms only, not about the application of the norms in specific cases. The latter is a skill in itself, because it requires that the situation in which the norms are applied need to be described carefully.

The Ministry to the Sick as Such Has Changed

Over the years the ministry to the sick has tremendously changed in character. Over the past fifty years it changed from a predominantly sacramental ministry in which the focus was on the administration of sacraments—yes one could say on the *valid* administration of the sacraments—to a much more diaconal ministry. What is meant by this? Irrespective of the change from the sacrament of extreme unction to the sacrament of anointing of the sick—a topic to be addressed below—the focus in ministry to the sick was very much on administering the sacrament not only of anointing of the sick, but also penance and Holy Communion. This focus did not only occur in hospitals it also took place in the ministry exercised in family homes. Over the years the understanding of this ministry has received a new accent in that the focus is now predominantly on accompanying, listening and speaking to the sick person about the anxieties, fears and questions that arise. Within such a ministry there might be occasion to pray, but celebrating other rituals and in particular sacraments have diminished. The latter, so liturgists say,¹⁴ has also to do with the fact that many sick persons are increasingly unaware of or unfamiliar with the existing rituals—in particular the sacraments—that the Church may and can offer in case of sickness and death. This implies that people simply do not ask for them.¹⁵

This change in the focus of the ministry implies a change in the addressees: while focusing on celebrating sacraments the ministry was primarily, yes almost exclusively geared towards Roman Catholics, but with a wider understanding of a ministry that is in particular conversational, all persons with (serious) sickness irrespective of their religious belonging come into the picture. Furthermore, this change implied that ministry to the sick was professionalized and led to courses and certificates. It also implied that lay ecclesial ministers¹⁶ entered into this ministry which despite the change in character of the ministry itself led nevertheless to questions with regard to the minister of anointing of the sick.¹⁷ Finally, due to a different organization of the ministry in many hospitals the ministry itself has become more ecumenical.¹⁸

The change in accent to a more diaconal ministry does raise some questions such as a deeply theological one: what is the identity and function of liturgy in ministry to the sick if this ministry is not to end as a kind of “additional decoration” that could also be done with without. The pastoral conversation has been so much professionalized that the liturgical celebrations do not evoke as much interest. In an ecumenical context the question must be raised: if ministry not only towards Catholics but even more so towards baptized non-Catholics is limited to pastoral conversation and no liturgical celebrations are offered and celebrated, what understanding of liturgy is then displayed? If liturgy is understood as source and summit of ecclesial actions and is a presence and witness of the paschal mystery, or to say it differently as a dimension of divine

¹⁴ See here the very thoughtful article by the German liturgist Stefan Böntert, “Heilssorge in Krankheit als Paradigma liturgisches Handelns: Überlegungen zur Gottesdienstkultur im Schnittfeld von Theologie, Medizin und Ritual,” *Heiliger Dienst* 62 (2008) 224-244. Böntert refers to other liturgists.

¹⁵ One may only recall that also today there is hardly any catechesis with regard to the ministry of the Church in sickness and death, something that is quite remarkable considering that each and every person will be confronted with this.

¹⁶ The term “lay ecclesial ministers” is to be understood as in the statement by the United States Conference of Catholic Bishops, *Co-Workers in the Vineyard of the Lord: A Resource for Guiding the Development of Lay Ecclesial Ministry* (Washington; DC: USCCB, 2006). They are members of the laity who are authorized by competent authority to exercise a function or a task to serve publicly in the local church (cf. p. 5).

¹⁷ This ultimately led to questions about lay ministers to be able to celebrate sacraments, a topic that was addressed at previous conventions of the Canon Law Society of America, cf. Susan K. Wood, “Anointing of the Sick: Theological Issues,” *CLSA Proceedings* 63 (2001) 233-254.

¹⁸ In many hospitals in Germany and The Netherlands the chaplain works much closer with the whole team that is responsible for all patients irrespective of their religious belonging in a specific unit. One minister is responsible for some units, the other for other ones. If a patient wishes to see a minister of his or her own denomination, this request is of course respected.

salvation and consolation, then liturgy must have a place in ministry to the sick. What does that then mean for ministry to those who are baptized, but do not belong fully to the Catholic Church?

With this in mind the question about the right to receive the sacraments as expressed in canon 213 obtains an additional meaning because it relates the question concerning the right to receive the sacraments not only to the baptism of the individual, but also addresses the self understanding of the Catholic Church with regard to the liturgical celebrations in ministry to the sick.¹⁹ The right of the baptized to receive the sacraments—a right that is of divine law and thus applies to all baptized²⁰—brings with it a duty of the Church to administer the sacraments. This does not mean that the latter is unconditional, but the criteria that are set up must have a theological foundation. Of course the ecclesiological issue of belonging to the Church, the notion of *communio perfecta* and *non perfecta* and the implications for a full participation in the liturgy as celebrations of the Church are the main points here to be considered.

Interestingly, the connection between belonging to the Church and the Church as dispenser of grace through liturgical celebrations has always played a role in the celebration and administration of anointing of the sick even in its previous form when it was known as extreme unction. It is necessary to attend to this point because it will shed light ultimately also on the background of canon 844 which deals with sacramental sharing. Before entering the ecclesiological issue it is necessary to first understand how the sacrament used to be understood itself.

The Development of Extreme Unction

The sacrament of anointing of the sick “replaced” the sacrament of extreme unction at Vatican II. The change was not just a matter of new labeling, but of a renewed understanding of the sacrament itself. The sacrament of extreme unction has a long development. It finds its origin in the scriptural text of James 5:14-16:

“Are anyone among you suffering? They should pray. Are they cheerful? They should sing songs of praise. Are any among you sick? They should call for the elders of the church and have them pray over them, anointing them with oil in the name of the Lord. The prayer of faith will save the sick, and the Lord will raise them up, and anyone who has committed sins will be forgiven. Therefore confess your sins to one another, and pray to one another, so that you may be healed.”

Whereas early Christianity focused on the anointing with oil accompanied by a prayer and thus with a primary focus on the healing of sickness and only subsidiary—and that again in connection with sickness—on the forgiveness of sins. This changed over the centuries in particular in the Latin Church, because the phrase “and anyone who has committed sins will be forgiven” was increasingly accentuated, relating the sacrament closely to penance. Important in this development was as well the text in Mark 6:13: “They cast out many demons, and anointed with oil many who were sick and cured them.” Although this text does not speak about forgiveness of sin, it associates illness and demonic possession, illness of the body and illness of the soul.

¹⁹ Canon 213 reads: “The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments.”

²⁰ See the foundational study by Eugenio Corecco, who was on the commission that worked with Pope John Paul II on the final draft of the 1983 code, “Der Katalog der Pflichten und Rechte der Gläubigen im CIC,” André Gabriels, Heinrich J.F. Reinhardt (eds.), *Ministerium iustitiae: Festschrift für Heribert Heinemann zur Vollendung des 60. Lebensjahres* (Essen: Ludgerus, 1985) 179-202, 188.

The anointing became connected to penance and Viaticum. Since doing penance was rather difficult, it was often delayed till the end of life.²¹ Due to the close connection with penance anointing was thus transferred—yes one may say postponed—till the end of life as well. Furthermore, the liturgical texts for anointing with oil were put together with the ones for penance and last rites into *one* liturgical book. Moreover, there was an increased emphasis on the effect of the sacrament being the forgiveness of sins and a decreasing awareness of a bodily healing. Scholastic theology reflected on a sacrament which by the end of the twelfth century was referred to as “extreme unction” (last anointing) to be administered to dying people. The scholastic reflections implied that the anointing would wash away the final sins of the dying person and prepare this person for eternal life. At the end of the Middle Ages the sequence of “penance—anoointing—Viaticum” had changed to “penance—Viaticum—anoointing.”²² The Council of Trent saw anointing as “the culmination not only of penance but of the whole Christian life which itself ought to be a continual penance.”²³ In the ritual anointing of the sick became part of the liturgy of the dying and was referred to as “extreme unction.” As a consequence the dying became the recipients of the sacrament and the effect of the sacrament was the forgiveness of sin and the preparation for the final judgment. The idea of healing of illness lost its importance. Extreme unction and penance—or more precisely: the final forgiveness of sin—was considered to be of great importance; yes it was closely connected to what was considered to be necessary for salvation. With such an understanding it was only a matter of time, before questions would arise whether baptized non-Catholics can receive these sacraments or—and this was the question the Catholic Church struggled with—what was the obligation of the Church to administer the sacrament to the baptized if they were in danger of death even if they were not Catholic? Ultimately the issue was an ecclesiological one, as already pointed out.

Ecclesiological Aspects in the Administration of the Sacrament

Up until the eve of Vatican II Catholic doctrine taught that there is an exclusive identification of the Church of Christ with the Catholic Church: *Ecclesia Christi est ecclesia catholica*. Due to their baptism by which they were incorporated in Christ all baptized fell under the jurisdiction of the Catholic Church and had to follow all laws including the ecclesiastical ones.²⁴ Canon 87 *CIC/1917* stood in line with this as it stated that baptism would constitute a person in the Church of Christ and from this would flow the right to receive the sacraments (c.

²¹ As of the eighth century the liturgical documents for the celebration of the anointing of the sick connect the anointing with confession by the dying person and with the related penance in case someone survives. It was not permitted for the anointed to dance for the rest of his life, eat meat, have sexual relations (for which reason in some places the spouse was asked permission for the anointing). It was indeed easier not to recover upon the anointing. High scholastics did not change this, but reflects upon it and tries to find a theological reasoning for this. For a historical overview see e.g. Theodor Schneider, *Zeichen der Nähe Gottes: Grundriss der Sakramententheologie* (Mainz: Grünewald, 1992) 220-229; see also Herbert Vorgrimmler, *Sakramententheologie* (Düsseldorf: Patmos, 1992) 252-260.

²² While addressing the CLSA in 2001 Susan Wood writes that “the connection between the sacrament of the sick and penance, as well as the association of the sick with a ‘last anointing’ of the dying was also strengthened through the practice of public penance in the patristic period. ... The rigors of public penance led to the practice of postponing penance until death. Anointing was likewise postponed and was, in fact, named ‘extreme unction’, that is last anointing. The history of how the practice of anointing of the sick became associated with the deathbed has strong associations with this history of penance.” Susan Wood, “Anointing of the Sick,” 233-234.

²³ *DS* 1694.

²⁴ The Council of Trent discusses the observance of the law in its seventh session, in connection with baptism. Canon 7 (= *DS* 1620): “Si quis dixerit, baptizatos per baptismum ipsum solius tantum fidei debitores fieri, non autem universae legis Christi servandae: anathema sit” and canon 8 (= *DS* 1621): “Si quis dixerit, baptizatos liberos esse ab omnibus sanctae Ecclesiae praeceptis, quae vel scripta vel tradita sunt, ita ut ea observare non teneantur, nisi se sua sponte illis summittere voluerint: anathema sit” and canon 14 (= *DS* 1627): “Si quis dixerit, huiusmodi parvulos baptizatos, cum adoleverint, interrogandos esse, an ratum habere velint, quod patris eorum nomine, dum baptizarentur, polliciti sunt, et ubi se nolle responderint, suo esse arbitrio relinquendos nec alia interim poena ad christianam vitam cogendos, nisi ut ab eucharistiae aliorumque sacramentorum perceptione arceantur, donec respiciant: anathema sit.”

682/CIC 1917). Correspondingly, the canonical norms that existed applied to all baptized unless an exception would have been made such as the one related to the observance of the form for marriage.²⁵ Baptized non-Catholics were considered to be heretics or schismatics who, therefore, could neither be given nor receive sacraments, as the 1917 code affirmed in canon 731 §2 when it said that it is forbidden (*vetitum est*) to administer the sacraments of the Church to heretics or schismatics, even when they err in good faith and ask for it, unless after having renouncing their errors, they have been reconciled with the Church.²⁶

Yet, the *Fontes* of the 1917 code and major pre-Vatican II canonical and moral theological handbooks reveal that there were approved exceptions to the rule caused by the following problem that had been submitted to the Holy See: a heretic or a schismatic person was dying and asked a Catholic priest for the sacraments of penance and extreme unction. What could be done? The *Fontes* indicate that the Holy Office received four such replies in the nineteenth and early twentieth centuries and a reflection started: What should be done considering that these sacraments are means of salvation? Would the administration of the sacrament always stipulate a renunciation of errors? The Holy Office responded that in danger of death, it would be permitted to administer these sacraments because they as well as baptism are considered to be necessary for eternal salvation. The baptized non-Catholic had to have given some sign on which the minister could base a reasonable presumption that they adhere to the Holy Catholic Church and profess the true faith. Hence, some indication of a visible unity must have been manifested. If the recipients were already unconscious the sacraments were to be administered conditionally. The minister, furthermore, had the task to see that no scandal occurred.²⁷

Interesting is certainly the discussion in the literature about the kind of intention the dying person had to have. The common response was that there is no need to have an intention with regard to a particular sacrament, but the intention to be saved in general was to be considered sufficient. The theologians, furthermore, agreed that persons cannot have intentions with regard to things they do not know. Hence, it was sufficient that they intended to do what Christ would have wanted them to do had they known what God would have wanted from them. If a protestant was unconscious and he had lived a good life it could be presumed that he had such an intention.²⁸

Reading the literature of the time, one gets the feeling that the authors bend over backwards to allow for the administration of the sacraments of extreme unction and penance when heretics and schismatics were dying. The authors did so for a very good reason: they argued that if the Catholic Church believes that it has all the means of salvation—yes that it even *is* the means of salvation (*extra ecclesiam nulla salus*)²⁹ and that it is the only one that has this—and if these people need those means of salvation and are thus dependent on the one and true Church, how can the Church deny those means to people who through no fault of their own, do not know better? The Church could not bear the responsibility to refuse them the sacrament.

²⁵ An example of an exception were the decree from the Council of Trent *Tametsi* (DS 1813-1816) imposing the form for marriage on all baptized and the 1907 decree *Ne temere* modifying this requirement for marriages where one party was a Catholic.

²⁶ C. 731 §2 CIC/1917: “*Vetitum est sacramenta Ecclesiae ministrare haereticis aut schismaticis, etiam bona fide errantibus eaque petentibus, nisi prius, erroribus reiectis, Ecclesiae reconciliati fuerint.*”

²⁷ The first request dates from January 13, 1864 (*Fontes* IV, no. 975); the second from July 20, 1898 (*Fontes* IV, no. 1203); the third was an answer to the bishop of Linz (Austria) dated May 17, 1916 (*TPQ* 79 [1926] 41-42); the fourth one is dated November 15, 1941 (*ME* 67 [1942] 114-115). The last two are of a private nature.

²⁸ For detailed report and analysis see Myriam Wijlens, *Sharing the Eucharist: A Theological Evaluation of the Post Conciliar Legislation* (Lanham, MD: University Press, 2000) 54-64.

²⁹ At the time these discussions were held, the doctrine *extra ecclesiam nulla salus* was understood to mean that indeed outside the Catholic Church there is no salvation, but this understanding was later modified. For an excellent overview of the history of the change in doctrinal understanding see Francis A. Sullivan, *Salvation outside the Church? Tracing the History of the Catholic Response* (Mahwah, NJ: Paulist Press, 1992).

The reflections so far show the following: over the course of history the Church increasingly saw the sacrament of extreme unction in relation to penance and since penance was rather difficult, the sacrament became part of the last rites through which the final sins would be washed away and the dying person would prepare him or herself for the encounter with the Lord. The need for forgiveness was seen as necessary for all baptized. Only the Catholic Church being the true Church of Christ had been entrusted with all the means necessary for salvation, but this also implied a responsibility not to withhold them from those who needed them. Hence, when there was imminent danger of death even baptized non-Catholics could be given the sacrament provided they would be in good faith and would have wanted to do what the Lord asked from them had they known. The focus is totally on the need for salvation. The current norms on sharing the sacraments (c. 844) originate from this perspective.³⁰

With Vatican II, however, a lot of the points addressed so far, changed, above all the understanding of the sacrament itself and the ecclesiology.

Rediscovering the Sacrament of Anointing of the Sick

Based on research in the field of liturgy Vatican II restored the praxis on oiling. A preference for the term “anointing of the sick” was expressed and it was said it “is not a sacrament for those only who are at the point of death. If a person would begin to be in danger of death from sickness or old age, the fitting time for receiving the sacrament had certainly arrived” (*SC 73*).

It is noteworthy that the description in the Code of Canon Law about the sacrament does not even mention the forgiveness of sin when it reads: “The anointing of the sick, by which the Church commends the faithful who are dangerously ill to the suffering and glorified Lord in order that he relieve and save them, is conferred by anointing them with oil and pronouncing the words prescribed in the liturgical books” (c. 998).³¹ Vatican II also returned to the original sequence of the sacrament as being penance—*anointing*—*Viaticum*. This clarified that as in the Orthodox Church anointing was not the final sacrament, but *Viaticum*.

Moreover, in recent times theologians have pointed out that the sacrament should not really be connected so much with penance, but with in particular with baptism and the Eucharist.³² Both are also sacraments of reconciliation and of communion with the Church. “They are sacraments of the body, both the body of Christ and the body of the church.”³³ The

³⁰ The exceptions to the then existing canon 731 §2 *CIC/1917* which determined a general prohibition of the administration of sacraments by non-Catholics, formed the basis for the text that was going to be the section on *communicatio in sacris* in the Decree on the Oriental Churches, Nn. 26-29. Remarkable about this latter text is that it did not draw extensive consequences from the new ecclesiological and ecumenical insights as expressed in the dogmatic constitution *Lumen gentium* and in the decree *Unitatis redintegratio* or from the new insights with regard to the sacrament of anointing of the sick as expressed in the constitution on the liturgy *Sacrosantum concilium*. A comparison of the draft text and the final text of *OE 26-29* reveals that the words “*fraters seiuncti*” replaces “heretics and schismatics” and “anointing of the sick” replaces “extreme unction”; there is, however, not a change of the text based on the new insights as such. The norms were governed by the need for salvation in case of danger of death. This was very clear when during the revision of the text of *OE 26-29* the question was raised to provide for some norms with regard to *all* sacraments. This was rejected with the following argument: “De baptismo lege generali iam provisum; de matrimoniis tractat nostrum schema (n. 18); Ordo excluditur ab ipsis proponentibus; quod spectat confirmationem, non agitur de necessitate salutis.” *AS III/VIII*, 604. It must be noted that the norms thus only attend to what is necessary for salvation, not to the ecumenical and ecclesiological new insights of the council. See further Myriam Wijlens, *Sharing the Eucharist*, 209-229.

³¹ Of course this canon is not a definition of the sacrament, because the Code Commission did not want to provide definitions; it presents in a nutshell the theological understanding of the Legislator with regard to this sacrament. Of course theologically much more could be said. Indeed, the literary form of the canon must be respected when interpreting it.

³² E.g. Susan K. Wood, “Anointing of the Sick,” 233-254.

³³ Susan K. Wood, “Anointing of the Sick,” 235. Wood refers in her article to other theologians who see the sacrament in light of baptism and Eucharist. See also the excellent study by Susan K. Wood, *One Baptism: Ecumenical Dimensions of the Doctrine of Baptism* (Grand Rapids, MI: Baker Academic, 2009) and her presentation at the 2009 CLSA Convention “Baptism: A Common Call to Service,” *CLSA Proceedings 71*(2009) 1-11.

connection between the anointing and the paschal mystery celebrated in baptism and the Eucharist, thus is more evident, because “the minister should encourage the sick person to offer his sufferings in union with Christ and to join in prayer for the Church and world.”³⁴ If understood in this way, the anointing can give expression to a holistic view of the human person. The healing is both from physical illness and spiritual sin. “The effects of anointing touch the religious situation of the sick person: the threat to his salvation posed by religious powerlessness and weakness of soul, as well as the temptation and burden to his faith and trust. The sick person shall be ‘raised up’ from his weakness and saved from the threat that sickness constitutes to his salvation.”³⁵

Sickness not only affects the individual, but the whole ecclesial body, as scripture tells us: “If one member suffers in the Body of Christ, which is the Church, all members suffer with that member” (1 Corinthians 12:26). Indeed, all “who are united in the bond of a common baptism and a common faith are joined together in the body of Christ since what happens to one member affects all. The sacrament of anointing effectively expresses the share that each one has in the sufferings of others.”³⁶ As the sickness affects the community, so does the celebration of the sacraments, because with Vatican II the understanding that liturgical celebrations are ecclesial celebrations was sharpened in that the whole community participates. Pope Paul VI relates this to the sacrament of anointing when he writes: “By the sacred anointing of the sick and the prayer of the presbyters, the whole church commends the sick to the suffering and glorified Lord so that He may raise them up and save them (see James 5: 14-16). The Church exhorts them, moreover, to contribute to the welfare of the whole people of God by associating themselves willingly with the passion and death of Christ (see Romans 8:17; Colossians 1:24; 2 Timothy 2: 11-12; 1 Peter 4:13)” (LG 15).³⁷

To give expression to these insights, the 1972 Rite provides for common celebrations in parishes or in particular in homes for elderly persons. In the latter case the sacrament is celebrated as a strengthening and encouragement for elderly people. At times the sacrament is celebrated during a eucharistic celebration in a parish where the whole community is present. In such a situation the sick more easily experience the support of the whole community. A good example of such celebrations are the ones held in Lourdes.

It is here that the married couple, in particular those who live in a sacramental marriage and the immediate family come on the scene. Here the understanding of the family as being a kind of domestic church (LG 11) comes into play, as the sickness most deeply affects the intimate members of the family who suffer with the person and who might be longing for hope themselves. The need to be raised and lifted is most acutely experienced in this small, but domestic church.

The sacrament of anointing is now to be seen in an ecumenical setting once more, but as can be imagined quite different from what it used to be.

To understand the complexity it is necessary to recall the ecclesiological understanding of the position of baptized non-Catholics as set forth in Vatican II.

The Ecclesiology of Vatican II with Regard to Belonging to the Church

Vatican II changed the doctrinal expression “*Ecclesia Christi est ecclesia catholica*” into “*Ecclesia Christi subsistit in ecclesia catholica*” to give expression to its awareness that Christians

³⁴ The Rites of the Catholic Church, Study Edition, Pastoral Care of the Sick, 56.

³⁵ Charles Gusmer, “Liturgical Traditions of Christian Illness: Rites of the Sick,” *Worship* 46 (1972) 531 (quoted by S. Wood, “Anointing of the Sick,” 238).

³⁶ Pastoral Care of the Sick, 1998.

³⁷ Pope Paul VI emphasized this point in his apostolic constitution *Sacram Unctionem infirmorum* of November 30, 1972; English translation in *The Rites*, 603-606.

baptized outside the Catholic Church receive faith and grace in and through the community they belong to and that these communities can and must indeed be considered as churches or ecclesial communities. The terms *communio plena et non plena* or *perfecta et imperfecta, subsistit in, ecclesiae et communitates ecclesiales, fraters seiuncti* were introduced by the council and reveal ultimately their meaning only in mutual and common consideration, and while keeping in mind that they replaced words like *sectae*, heretics, schismatics, members. Indeed the council made the church aware that all the baptized first and foremost are baptized in Christ and that this brings about a *communio* among all which might lead to certain *plena cummunio*. The council also created awareness that persons belong to a community and they are not just individuals in relation to the Catholic Church. In and through their community they receive, live and nurture their faith. The Catholic Church became aware of the fact that it would be necessary not only to attend so much to the relationship of the individual to the Catholic Church, but to see the individual in relation to the ecclesial community or church he or she belongs to and subsequently focus more on the relationship between the Catholic Church and these other churches and ecclesial communities. It is because of this awareness that a different thinking about a marriage between a Catholic and a baptized non-Catholic developed. This ultimately led to the decree *Matrimonia mixta* and all the subsequent questions mentioned in the beginning.

This reasoning is also of relevance for the understanding of an interchurch marriage as a kind of domestic church: *Lumen gentium* asserts that the family that originates from a *sacramental* marriage builds the domestic church.³⁸ When the doctrine is accepted that every valid marriage between two baptized is by that fact a sacramental marriage, then this applies to a mixed marriage as well.³⁹ When over years Christians in an interchurch marriage have together been praying, reading the bible, listening to God's word, engaging in justice, peace, and the preservation of creation, carrying each other's concerns, anxieties, hopes and joy, forgiving each other for the pain caused upon the other, does this have ecclesial quality?⁴⁰ Indeed no other image renders so well the experience of the love of God for us as that of the wedding and marriage as it found expression in the doctrine of Vatican II when marriage is described with the help of terms such as "rendering mutual help and service to each other", "mutual giving and acceptance of each other", and "a partnership of the whole of life" (*GS* 48).

Considering all of this in the context of an interchurch marriage, it is possible to see that the baptized non-Catholic partner stands due to the sacramental marriage in a deep and intense relationship with the Catholic Church. It also implies that the immediate church suffering with the seriously sick person is the domestic church. Not only scripture but life itself testifies to the suffering that people experience when their most beloved one suffers. Indeed the domestic church as such suffers when one of its members suffers. Understanding this situation in the theological perspective as just described requires one to see the request for Communion and anointing of the

³⁸ *LG* 11 reads: "Finally, Christian spouses, in virtue of the sacrament of Matrimony, whereby they signify and partake of the mystery of that unity and fruitful love which exists between Christ and His Church, help each other to attain to holiness in their married life and in the rearing and education of their children. By reason of their state and rank in life they have their own special gift among the people of God. From the wedlock of Christians there comes the family, in which new citizens of human society are born, who by the grace of the Holy Spirit received in baptism are made children of God, thus perpetuating the people of God through the centuries. The family is, so to speak, the domestic church. In it parents should, by their word and example, be the first preachers of the faith to their children; they should encourage them in the vocation which is proper to each of them, fostering with special care vocation to a sacred state."

³⁹ For a thought provoking reflection on this doctrine see the study by John Alesandro, "The Canon Law of Marriage: Ever Old, Ever New," *CLSA Proceedings* 72 (2010) 50-82.

⁴⁰ Cf. Peter Neuner, "Ein katholischer Vorschlag zur Eucharistiegemeinschaft." Professor Ratzinger wrote: "Sakrament ist nicht etwas über, neben oder an der Ehe, sondern gerade die Ehe selbst, und als solche ist sie für den, der im Glauben lebt, das Sakrament. Je mehr es ihm gelingt, die Ehe aus dem Glauben zu leben und zu gestalten, destomehr ist sie 'Sakrament'. Joseph Ratzinger, "Zur Theologie der Ehe," Gerhard Krems e.a. (ed.), *Theologie der Ehe* (Regensburg: Pustet, Göttingen: Vandenhoeck & Ruprecht: 1972) 92.

sick by a person living in a mixed marriage from a different perspective as when this was not the case. Indeed the context must be taken into consideration. This touches on hermeneutics in the application of the law.

The Application of the Law

Canonical literature tends to focus on the interpretation of canon law unless jurisprudence itself is discussed. In the application of the law not only the law must be interpreted, but the case itself must be phrased correctly. The way a legal question is phrased will have a great impact on the answer given. On other occasions I reflected extensively on the application of the law⁴¹ leading to the conclusion that application of the law is not a mere technique of subsumption by which the case is—so to speak—squeezed under the law, but a more recent approach is that the case and the law stand in a hermeneutical relation: one only gets meaning in light of the other. Secondly, because of the intended close connection between Vatican II and the postconciliar legislation not only with regard to the legislation but also to the application of the law it is necessary that the situation in which the law is to be applied is described in correspondence with Vatican II. In real life this means that very often the description of the situation must be rephrased. In this study the differentiation between a mixed marriage and an interchurch marriage is of such importance.

Hence the question to be addressed here is: can a seriously ill baptized non-Catholic person who through baptism stands in *communio*—albeit not in *communio plena*—with the Catholic Church and shares with his or her partner in the communion that a sacramental marriage signifies, and who by living the sacrament of marriage participates in signifying already the love of God for his people, be commended by the Church “to the suffering and glorified Lord in order that He relieve and save him or her” which is done through the sacrament of anointing of the sick (cf. c. 998)? Can this be offered to the person when indeed pastoral care should not be just diaconal in nature, but is to reveal as well that the liturgy is the source and summit of ecclesial actions and a presence and witness of the paschal mystery? Or to put it again in another way while turning around the perspective as was done before the council: How can the Church give expression to the obligation that stems from its own ecclesiology and from its belief that liturgy is the source and summit of ecclesial actions, when a person who belongs to her through baptism albeit not fully, who lives in a sacramental marriage which in itself constitutes the domestic church, and who is seriously sick and is thus in need to be commended to the suffering and glorified Lord in order that He relieve and save this person?

Once the question is formulated in such a way, the law can be applied.

Before doing so, it may not be forgotten that the Catholic Church owes a lot to the Orthodox and the Eastern Churches for the rediscovery of the sacrament of anointing of the sick and that this in turn inspired many churches from the Reformation to rediscover the ritual of anointing of the sick as well. Many have introduced official rituals even though they do not refer to them as “sacraments”. This awareness is important, because it also implies that asking for the sacrament might not be as foreign as it might have used to be.

Canon 844 §4

⁴¹ See for example Myriam Wijlens, “The Newness of the Council Constitutes the Newness of the Code (John Paul II): The Role of Vatican II in the Application of the Law,” *CLSA Proceedings* 70 (2008) 285-302.

The legislator provided a new norm in the Code of Canon Law dealing with sharing the sacraments. The three sacraments concerned are penance, anointing of the sick, and Eucharist.

Unlike the norm in the 1917 code which in agreement with the ecclesiology at the time provided a norm that basically prohibited the *communication in sacris*. There were some exceptions to this, as pointed out above. The norm in the 1983 code allows for a *communicatio in sacris*, albeit under certain conditions. There is thus a change in perspective, which originates in the new ecclesiology and is also the result of the many ecumenical dialogues. It must be kept in mind, that the general perspective is that of a permission, not a prohibition!!!

The interpretation of the canon on a more general level must account for the fact that baptized non-Catholics are incorporated in the Church of Christ which *subsistit in* the Catholic Church (cf. *LG* 8, cc. 96 and 204 §2). They live their Christian existence not only in their own ecclesial communion or church but those who live in an interchurch marriage also live it in their sacramental and thus domestic church. Due to baptism each person enjoys duties and rights in the church. In this regard canon 96 reads as follows: to the extent (*quatenus*) that they are in full communion with the Catholic Church (that is in faith, worship, and ecclesial life) their ontologically based belonging to the *plena communio* is activated such, that they can exercise their rights originating from baptism *subsidiary* also in the Catholic Church.⁴² *Subsidiary*, writes the German canon lawyer Heinrich J. Reinhardt, in as far as they cannot exercise their right in their own church or community. If, however, other conditions are mentioned in a certain matter, these must be fulfilled.

Reinhardt points out that baptism leads to the right to receive assistance of the pastors of the Church with regard to the spiritual goods in particular the sacraments, as mentioned in canon 213 and which thus implies an obligation on the side of the Church vis-à-vis all baptized.⁴³ Indeed ministers may not refuse sacraments to the baptized when they seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them (c. 843 §1).⁴⁴ This is rooted in divine law, not in ecclesiastical law and thus it applies to baptized non-Catholics as well. The task to minister was entrusted to the Church and is to be executed by ordained ministers in particular. Whereas the handbooks before the council struggled with the question, what this implied for the obligation to administer sacraments, this does not seem to be the focus today. At times one might get the impression that the pendulum has moved to the other side and that there is a tendency to “make sure that all requirements on the side of the person asking for the sacrament are fulfilled.” Often the requirements are of merely ecclesiastical law.

At this point it is necessary to recall that canon 844 does indeed not prohibit the reception of the sacraments of penance, of anointing of the sick and of the Eucharist, but only mentions two occasions and three conditions to receive them. The occasions are danger of death and “other grave necessity”. The 1993 Ecumenical Directory speaks of “grave and pressing need”. The three conditions are faith in the sacrament, possessing the right disposition, and non-accessibility to one’s own minister. It must be pointed out that the latter does not have the clause “for a certain time” as was in the 1967 Directory and that the requirement of accessibility to one’s own minister was totally eliminated in the 1994 published Catechism of the Catholic Church,⁴⁵ the 1195 issued

⁴² Canon 96: “By baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition, insofar as they are in ecclesiastical communion and unless a legitimately issued sanction stands in the way.”

⁴³ Canon 213 reads: “The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments.”

⁴⁴ Canon 843 §1: “Sacred ministers cannot deny the sacraments to those who seek them at appropriate times, are properly disposed, and are not prohibited by law from receiving them.”

⁴⁵ The Catechism of the Catholic Church reads in 1401: “When, in the Ordinary’s judgment, a grave necessity arises, Catholic ministers may give the sacraments of Eucharist, Penance, and Anointing of the Sick to

ecyclical letter *Ut unum sint*,⁴⁶ and the 2003 post synodal writing *Ecclesia de Eucharistia* even though all these documents refer to c. 844 § 4. Cardinal Castillo Lara mentioned already during the revision of the code that such non-availability could also be due to unworthiness or another reason.

It is necessary to be aware that the conditions mentioned are of a different nature and should not be seen as all standing on an equal level. In particular the “grave and pressing need” has been a difficult subject over the past years.⁴⁷ Many episcopal conferences and diocesan bishops have indeed not been able to define what this is, simply because the “grave and pressing need” is to be seen contextually as well. Even though a mixed marriage as such cannot be seen as causing a “grave and pressing need” in itself, the interchurch marriage—and all it entails also theologically—might ask for a differentiated consideration. Actually as early as 1980 at the synod for the family Cardinal Johannes Willebrands pointed out that for mixed marriages the preservation of the unity and indissolubility of the marriage would be of a greater good than some of the requirements mentioned as a condition to receive the different sacraments and that this would need to be taken into consideration when admitting them to the sacraments.⁴⁸ Determining what “grave and pressing need” would constitute would not only take away the exercise of a discretionary power that is inherent in the application of the law, it would also imply risking that justice cannot be rendered.

Finally, there is the requirement of the shared faith. Of course it is important to recall that many ecclesial communities have rediscovered the anointing of the sick and thus those who belong to these communities might not only ask for it, the faith of their community might be such that presumptions on the faith of the individual belonging to that community might or could be made. At this point it seems good to recall the discussion in the moral and canonical handbooks at the beginning of the twentieth century: they pointed out that not more should be asked than a general belief (not knowledge) in the sacrament and an intention to do what Christ would ask them to do.

May the church refuse the sacrament to someone who asks? The response to the question will reveal how the church sees the sacrament and how it understands its own ecclesiology: Indeed, by your action you will be judged about your own faith.

An Outlook

As mentioned in the beginning the subject turned out to be more complicated than anticipated simply because so many things are to be taken into consideration. While writing this study Ravel’s *Boléro* came to mind: many rounds had to be made, but every round implied adding new aspects to what had to be taken into consideration and thus the intensity increased as the study progressed.

The subject of this study is in many ways new: there is virtually no literature and thus this study is a work in progress that must be seen as an incentive to commence a dialogue - a dialogue in which theologians and canon lawyers not only from the Catholic Church, but also from the other ecclesial communities and churches must be involved. Anyone who had the privilege to work on ecumenical issues and who has met many couples who live in an interchurch marriage

other Christians not in full communion with the Catholic Church, who ask for them of their own will, provided they give evidence of holding the Catholic faith regarding these sacraments and possess the required dispositions.”

⁴⁶ Johannes Paul II., Enzyklika *Ut unum sint* (25. Mai 1995), Nr. 46: AAS 87 (1995), 948. Johannes Paul II., Enzyklika *Ecclesia de Eucharistia* (17. April 2003), Nr. 46: AAS 95 (2003), 463.

⁴⁷ Reinhardt argues that the “grave and pressing need” diminishes when there is an increasing agreement on the doctrinal level with the church or ecclesial community to which the other person belongs. The two correlate as in a scale. 228.

⁴⁸ Willebrands, “Mixed Marriages and their Family Life,” 78-81.

and shared their faith journey, knows that they deserve serious study of these questions leading to pastoral guidelines for ministers who then may act responsibly and with skill so that the risen Lord can lift up all who are in need.