

The concept of marriage in the definition of Canon 10 of the 24th Session of the Council of Trent: adherence to tradition and seeds of innovation

Roberto Garetto¹ 

¹ Instituto Jurídico Internacional de Turín - Italia



for citations: Garetto, R. (2024). The concept of marriage in the definition of Canon 10 of the 24th Session of the Council of Trent: adherence to tradition and seeds of innovation. *Revista internacional de investigación Jurídica Recta Ratio*, 1(1), 7-16.
<https://doi.org/10.32997/riijrr-2024-5054>

Received: 10 de agosto de 2024

Accepted: 02 de septiembre de 2024

Editor: Riccardo Perona. Universidad de Cartagena-Colombia.

ABSTRACT

The legal notion of marriage has been strongly influenced in the past by theological reflection on the issue. A pivotal point in this regard is represented by the Council of Trent. The complex definition of Canon 10 of the 24th Session relates marriage to chastity. The anathema imposed on those who affirm the superiority of marriage over virginity does not necessarily imply the affirmation of the reverse by the Council Fathers. This consideration allows us to discern, already in the second half of the 16th century, the seed of a reevaluation of the sexual dimension of marital life. Despite the rigorist zeal post-Tridentine, this seed has been preserved over the centuries and has come to fruition in the last decades of the past century. The new perspectives that have opened up on the issue, not only in theological but also in social spheres, are part of the complex scenario that has seen, at the beginning of the 21st century, the legal evolution of marriage, now intended in a multiplicity of forms of union.

Keywords: Marriage; virginity; chastity; Council of Trent; Canon law.

El concepto de matrimonio en la definición del Canon 10 de la 24ª Sesión del Concilio de Trento: adhesión a la tradición y semillas de innovación

RESUMEN

La noción jurídica del matrimonio ha sido fuertemente condicionada en el pasado por la reflexión teológica sobre el tema. Un punto nodal en este sentido es representado por el Concilio de Trento. La compleja definición del Canon 10 de la XXIV Sesión relaciona el matrimonio con la castidad. El anatema que pesa sobre aquellos que afirman la superioridad del matrimonio sobre la virginidad no implica necesariamente la afirmación de lo contrario por parte de los Padres Conciliares. Esta consideración permite discernir, ya en la segunda parte del siglo XVI, el germen de una reevaluación de la dimensión sexual de la vida matrimonial. A pesar del celo rigorista post-tridentino, este germen ha sido preservado a lo largo de los siglos y ha llegado a madurar en las últimas décadas del siglo pasado. Las nuevas perspectivas que se han abierto sobre el tema, no solo en el ámbito teológico sino también en el social, forman parte de ese complejo escenario que ha presenciado, a principios del siglo XXI, la evolución jurídica del matrimonio, ahora manifestada en una multiplicidad de formas de unión.

Palabras clave: Matrimonio; virginidad; castidad; Concilio de Trento; Derecho canónico.

Copyright: © 2024. Garetto, R. Este es un artículo de acceso abierto bajo la licencia CC BY-NC-ND 4.0
<https://creativecommons.org/licenses/by-nc-nd/4.0/>



¹ Vicedirector del Instituto Jurídico Internacional de Turín y profesor honorario del Instituto de Ciencias e Investigación en Legislación y Jurisprudencia de Tlaxcala. roberto.garetto@igito.it

1. INTRODUCCIÓN

Marriage, understood as a stable and recognized union between two individuals, is an institution constantly evolving in terms of law, but even more so in the social context. Proof of this can be found in the opportunity offered in many legal systems in recent decades for same-sex couples to enter into marriage (Garetto, 2021, p. 12).

The concept of “traditional” marriage, which until the beginning of this century represented the only possible model of marriage, namely the union of a man and a woman for the purpose of procreating “legitimate” children, is the result of centuries of cultural stratification. From this perspective, the religious dimension has played a crucial role. In the Mediterranean area, Catholicism strongly influenced the model of marriage, with undeniable repercussions on the positive law of individual States. It is worth noting that until the second half of the last century, in most Catholic tradition countries, marriage was mostly considered indissoluble even from a civil law perspective. This highlights the deep connection that existed in the past between the regulation of marriage in law and theological reflection on it. Facilitating this interaction, the Catholic Church established its own legal system: canon law, and through it, had significant interactions with the legal systems of individual States.

However, it would be incorrect to assume that the “traditional” notion of marriage, mentioned above, found a stable and unchanging reference in the religious context. Even in theological circles, reflection on marriage has been complex and varied. In the early Christian era, there was not even a precise regulation of marriage, to the extent that baptism alone was sufficient to make a previous marriage Christian, as long as it had been celebrated according to the rules of Roman law (Ritzer, 1970, p. 63). Throughout the Middle Ages, marriage, even from a religious perspective, was considered from various facets. The sexual implication of the marital act, in fact, relegated marriage to a liturgical “gray area”, often leading to the matrimonial ritual taking place *ante vulvas ecclesiae* (before the doors of the church) in order to avoid contaminating the religious space with social dynamics directly related to the exercise of sexuality (Ritzer, 1970, p. 385). Moreover, in some geographical contexts with a Gallican rite, the celebration of marriage also involved the blessing of the nuptial bed (*benedictio in thalamo*) (Radle, 2018, p. 219). It was only with the Council of Trent that marriage was firmly established as one of the seven sacraments and received a precise theological definition (Hill B. R., 1991, p. 43). The theological notion developed by the Council of Trent forms the basis for the evolution of the “traditional” marriage as it has practically reached us today. Therefore, this pivotal historical phase also deserves special attention from legal experts: the declarations of the Council of Trent had significant repercussions on canon law and, indirectly, on the civil law of Catholic states.

Specifically, the Council of Trent raises a question that is not easily resolved. It juxtaposes marriage with the chastity of monastic life and arrives at a result that

is not innovative but allows for a partial reevaluation of sexuality, which had been viewed with considerable suspicion in previous centuries. During the Middle Ages – as highlighted above – marriage was indeed relegated to the margins of liturgy. The Council Fathers, in affirming the impossibility of asserting the superiority of the marital condition over the celibate one, do not disavow the value of marriage itself, despite the sexual dimension associated with it.

2. The complexity of the relationship between marital choice and celibate option in the debate of the Tridentine fathers

The issue addressed by the Council Fathers regarding marriage and chastity led to the formulation of Canon 10 of the 24th Session, first presented for discussion on 20 July 1563. This particular canon prescribes that “[i]f anyone saith that the marriage state is to be placed above the state of virginity or of celibacy, and that it is not better and more blessed to remain in virginity or in celibacy than to be united in matrimony; let him be anathema”.

This position needs to be understood in a historical context. It represents a transitional point in traditional doctrine and is heavily influenced negatively by the culture of the time (Pfurtner, 1975, p. 66). Although since the patristic age emerged a moral blaming against “πάθη”, namely the perturbing passion lead back to sexuality (Pfurtner, 1975, p. 61), the value of marriage has never been misrecognized (Sicari, 1977, p. 229) and the prevailing Catholic theological orientation today tends to highly value married life, and at a superficial examination, one may not grasp the significance of the issue faced by the Council Fathers at the time (Ferasin, 1970, p. 71). Therefore, in the analysis of the matter, it is preferable to separate the assertion of Christian virginity as a value (Sicari, 1977, p. 228), from the assertion of its (presumed) superiority over marriage.

This is the approach followed by Moioli (Moioli, 1970, p. 196), who argues that while it may be obvious from a historical-critical perspective to make such a separation, it might not seem possible from a dogmatic point of view. The absolute definitiveness of Canon 10 is further confirmed by Pius XII in his encyclical “*Sacra virginitas*” (Gomez-Rossi & Reyes, 2020, p. 337).

However, the Second Vatican Council of 1965 completely omits any reference to this Tridentine Canon, giving the impression that the aim was to retain a formal framework while updating the content (Komonchak, 2006, p. 75). In this regard, an insightful opinion expressed by G. Philips in a commentary on the Dogmatic Constitution of the Second Vatican Council “*Lumen Gentium*” suggests that there is no abstract criterion to determine which of the two states, celibacy or marriage, is preferable (Philips, 1968, p. 106). The choice, one way or the other, depends on a specific personal vocation.

3. The intricate development of Canon 10 of the 24th Session

The complexity of the issue and its significance for the evolution of the notion of marriage in the centuries that followed makes it essential to conduct an exegesis of Canon 10 in order to grasp the significant implications involved. The complexity of such exegesis requires, moreover, analyzing the texts in the original Latin version.

The development of Canon 10 was rather lengthy: it had an initial formulation followed by two subsequent versions of the text, with the final draft being the definitive one.

On 4 February 1563 the first wording was drafted. The following text, enshrined in Article 5, was submitted to the theologians of the Council for examination:

“Matrimonium non postponendum, sed anteponendum castitati, et Deum dare coniugibus maiorem gratiam quam aliis.”

The discussion, within a panel of seventeen theologians, began a month later, resulting in the following draft, enshrined in provisional Canon 9, presented to the Fathers on 20 July (as mentioned above):

“Si quis dixerit matrimonium anteponendum esse virginitati vel coelibatui, et non esse melius et beatius manere in virginitate et coelibatu, quam iungi matrimonio: anathema sit.”

Discussions at the Council led to a new outline which was examined between 7 and 23 August, with the Canon in question appearing as Canon 10:

“Si quis dixerit, statum coniugalem anteponendum esse statui virginitatis vel coelibatus, et non esse melius ac beatius manere in virginitate aut coelibatu, quam iungi matrimonio: anathema sit.”

From then on, the text remained unchanged until its solemn promulgation on 11 November 1563 (Martínez Peque, 1991, p. 60).

Comparative analysis of the text in these three versions is highly useful because it allows us to understand the direction of the Council Fathers' discussion and can provide us with significant interpretative avenues for the Canon in question.

Article 5	Canon 9 (first draft)	Canon 10 (final draft)
Matrimonium non postponendum sed anteponendum castitati et Deum	Si quis dixerit matrimonium anteponendum esse virginitati vel coelibatui	Si quis dixerit statum coniugalem anteponendum esse

dare coniugibus maiorem gratiam quam aliis.	et non esse melius et beatius manere in virginitate et coelibatu, quam iungi matrimonio anathema sit.	statui virginitatis vel caelibatus et non esse melius ac beatius manere in virginitate vel coelibatu, quam iungi matrimonio anathema sit.
---	--	---

It can be observed that in the transition from Article 5 to the first draft (provisional Canon 9), the term “chastity” was replaced with the expression “virginity or celibacy,” and the reference to the greater grace granted to the spouses was eliminated, instead incorporating a Pauline formula taken from the First Letter to the Corinthians (1 Cor. 7). The shift from the first draft of provisional Canon 9 to the definitive text of Canon 10 is characterized by the substitution of “conjugal state” for “marriage” and the adoption of the expression “state of virginity or celibacy.”

In more detail, concerning the first of these two transitions, the replacement of “chastity” with “virginity or celibacy” seems to have a specific purpose: it serves to highlight that the Canon refers to total abstinence and the renunciation of marriage as experienced in the Roman Church through monastic vows and the celibacy obligation of the clergy, which had already been established in (the definitive version of) Canon 9 of the same Session, and which was also a result of heated debate (Daly, 2009, p. 24).

This textual correction originated from the need to oppose the beliefs of the Reformists (Areen, 2014, p. 39), who considered the monastic and celibate choice favored by Catholicism to be pharisaical and argued for a universal priesthood of all believers (Minnich, 2007, p. 341). The second amendment, on the other hand, is less easily justifiable, and several hypotheses can be considered: it is possible that they chose to avoid a direct comparison between the two states, marriage and celibacy, in terms of grace. Alternatively, the reference to St. Paul may have been chosen to emphasize the scriptural basis of the norm. Or, by attaching particular importance to the verb “*manere*,” it could be that the discourse is directed specifically at those who have already made a monastic choice, encouraging them to remain faithful to their state in the face of the arguments of the Reformists.

In the second transition, the choice to refer to the conjugal state or the state of virginity indicates a concern to avoid any reference to the sacrament of marriage, which was already a contentious issue among the Fathers. This narrows the scope of the discussion to a comparison between two concrete life choices: monastic virginity practiced in the Church and the married state. This orientation of the discussion, which is limited to the concrete, underlies a conception of sexuality that is still strongly negative, to some extent conditioning the judgment on marriage as an experience that is immediately

less radical in its adherence to the supernatural world and, therefore, less perfect than virginity or celibacy (Moioli, 1970, p. 201).

What is most surprising is that the Reformers, despite arriving at diametrically opposed statements, share with the Tridentine Fathers the same negative sensibility towards sexuality. They claim that man burns with concupiscence (Moioli, 1970, p. 202), and for this reason, his normal state is marriage. They consider the monastic choice to be useless, hypocritical, and deplorable because it is not deeds but faith that saves. In light of such a stark contrast (even though, as mentioned, it is more in the outcomes than in the premises), the use of anathema is justified. In the doctrinal field more than the pastoral one, it stigmatizes and condemns choices contrary to Tradition and Scripture and therefore incompatible with the Catholic “communion” (Moioli, 1970, p. 204).

4. Reinterpretation of Canon 10

To interpret Canon 10 in the most accurate and comprehensive way, it is necessary to consider the general context in which it is situated. The analysis of the preamble of the 24th Session is particularly helpful (Martínez Peque, 1991, p. 60). Two essential elements can be derived from it: that all twelve canons comprising the session are aimed at defending the Christian sense of marriage, and their function is not to specify Catholic doctrine for its own sake but as required by the Protestant denial (Moioli, 1970, p. 206).

From this perspective, it is possible to reinterpret Canon 10, and it is interesting to compare it synoptically with the literal version. The uppercase additions are explanatory additions to Canon 10 proposed by Moioli (Moioli, 1970, p. 207) and consistent with the text of the preamble of the 24th Session.

Literal version of Canon 10	Rephrased and clarified version of Canon 10
If anyone saith that the marriage state is to be placed above the state of virginity, or of celibacy, and that it is not better and more blessed to remain in virginity, or in celibacy, than to be united in matrimony; let him be anathema	If anyone claims, IN ACCORDANCE WITH THE UNGODLY MEN OF THIS AGE, that the married state should be considered superior to the state of virginity or celibacy AS IT IS PROPOSED, APPROVED, AND LIVED WITHIN THE CATHOLIC CHURCH, would not be an expression of GOSPEL SPIRITUALITY but of PHARISAIC PRESUMPTION; and anyone who, IN LINE WITH THE CONTEMPORARY REFORMISTS, ASSERTS that it is not better and happier to remain in the state of virginity, IN WHICH THEY HAVE COMMITTED THEMSELVES BEFORE GOD, rather than enter into marriage BECAUSE OF THE DIFFICULTIES ARISING FROM CONCUPISCENCE, let them be anathema.

It becomes immediately clear how the integrations (in capital letters) made in the synoptic text reduce the doctrinal scope of Canon 10 to the refutation of

the Reformists' assertions. Furthermore, it restricts the reference to virginity to only the institutional forms of the Catholic Church, asserting its superiority only for those who have already embraced monastic life but wish, driven by concupiscence, to leave it and enter into marriage (thus aligning with the spirit of Protestant doctrines).

5. Conclusions

The Tridentine definition contained in Canon 10 lends itself to an "open" interpretation: it does have a prescriptive value but is not preclusive. It indirectly points to hermeneutical work on tradition, particularly the biblical and patristic ones, regarding the comparative presentation of virginity and marriage (Moioli, 1968, p. 411; Sicari, 1977, p. 229).

The position of the Council Fathers on marriage in Canon 10 can be summarized in terms of an implicit assertion of the value of marriage.

Significantly, during the discussion conducted by the Council Fathers, a Dominican theologian of Spanish origin, Ioannes Gallo, highlighted Augustine's comparison between Abraham's marriage and the celibate chastity of John the Baptist. Gallo emphasised that there could potentially be a higher level of charity present in married couples compared to virgins ("*[p]osset enim esse, ut maior caritas esset in coniugatis quam in virginibus*").

We can therefore assume that, while those who claimed the superiority of marriage over chastity were anathematized, the conciliar pronouncement enshrined in Canon 10 did not explicitly postulate the reverse, namely the supremacy of chastity over marriage (Salvi, 2018, p. 86).

The delicate balance between what is said and what is left unsaid highlights a significant operation carried out by the Council Fathers in the 16th century: a (only partially expressed) reevaluation of marriage, despite the sexual implication associated with it, in comparison to chastity (understood as the virgin state or celibacy inherent to the monastic or clerical condition), whose full value is explicitly recognized.

This particular attention to marriage in the conciliar texts will lead in subsequent years to a meticulous and stringent regulation of marriage, in line with the assertive (sometimes even aggressive) rigor of post-conciliar implementation (Alberigo, 2006, p. 22). For example, based on the "Tametsi" decree (issued during Session 24, in which Canon 10 is included), marriage registers will be mandatory in every parish. This aligns with the primary practical purpose of the Council Fathers: to prevent secret marriages (Areen, 2014, p. 42; Fastiggi, 2020, p. 14). Care will be taken to make the marriage known to the community through publications, to ascertain the existence of matrimonial impediments, and to record the marriage in the appropriate registers to prevent

cases of bigamy (Hill D.J., 2022, p. 140). This will lead to a progressive jurisdictionalization of marriage. Canon law will also inform the civil regulation of the marriage institution for a long time. While there was a clear divergence between canon law and civil law during the French Revolution and the Napoleonic era, the close relationship between these two legal systems in marital matters will persist throughout the 19th century and at least the first half of the 20th century.

As mentioned above, in Catholic countries, the prohibition of divorce will endure for a long time, even in the case of civil marriage. It is significant that in Malta, a country with a deep-rooted and strong Catholic tradition (Radford Ruether, 2011, p. 16), the divorce ban was lifted only about a decade ago through a referendum: a paradoxical situation when considering that Malta allowed access to marriage for same-sex couples just six years later (Piscopo, Vella & Abela, 2020, p. 125). Even more noteworthy is the fact that in countries with concordat agreements (such as Italy and Spain), decisions by ecclesiastical courts on the nullity of canonical marriages or pontifical decisions on unconsummated marriages still have legal effect.

Reevaluating the stages of doctrine development on marriage during the Council of Trent is not just a sterile exercise in revisiting a long-lost past but rather a reconstruction of a pivotal phase in the evolution of the institution of marriage, namely the shift from medieval to modern conception. This evolution has extended into the contemporary era, and even today, when analyzing the regulation of marriage in different Western states, we can discern historical influences consistent with either the Catholic or Protestant traditions.

The most notable novelty in Canon 10, which we have examined at length, is the implicit positive evaluation given to the implications of marriage, particularly its functionality concerning the exercise of sexuality. Even though marriage, as a human institution, is presented as an alternative to the more spiritually consistent and rigorous form of Christian life, such as the monastic (or celibate) choice (Lozano, 1983, p. 69), the Council Fathers only suggest remaining in the monastic state as the correct option. However, likely aware of the risks involved in comparing two diametrically opposed dimensions, they refrain from making any reference to the human dimension of marriage that could compromise its value. This absence of explicit reference to sexuality inherent in the marital condition can be seen as the seed of a reevaluation of sexuality itself. This interpretation of Canon 10 identifies a modern element in the thinking of the Tridentine Fathers, which is often overlooked, partly due to the excesses in the zeal for implementing conciliar provisions in the post-Tridentine period. Nevertheless, only in the 20th century will this positive interpretation of sexuality be taken up in the theological sphere, coinciding with a general liberalization of sexual attitudes initiated in the 1960s through a broad cultural movement.

REFERENCES

- Alberigo G. (2006). From the Council of Trent to "Tridentinism". In R. F. Bulman & F. J. Parrella (eds.), *From Trent to Vatican II: Historical and Theological Investigations* (pp. 19-38). Oxford University Press. <https://doi.org/10.1093/0195178068.003.0002>
- Areen J.C. (2014). Uncovering the Reformation Roots of American Marriage and Divorce Law. *Yale Journal of Law & Feminism*, 26(1), 29-89.
- Daly B. (2009). Priestly Celibacy. The Obligations of Continence and Celibacy for Priests, *Compass*, 43(4), 20-33.
- Fastiggi R. (2020). The Contributions of the Council of Trent to the Catholic Reformation. *Perichoresis*, 18(6), 3-20. <https://doi.org/10.2478/perc-2020-0032>
- Ferasin E. (1970). *Matrimonio e celibato al Concilio di Trento*. Lateran University Press.
- Garetto R. (2021). ¿Una nuova tassonomia per i nuclei familiari? Prospettive e problemi nella nuova regolamentazione UE in Italia e in Europa. In I. Riva (ed.), *Famiglie transfrontaliere: regimi patrimoniali e successori. Casi di studio. Atti del Convegno di Torino, 8 novembre 2019* (pp. 11-35). Università degli Studi di Torino.
- Gomez-Rossi A. & Reyes H. (2020). The Construction of Catholic Male Chastity: A Modern Understanding of Catholicism's Views on Sex through the Life of the Saints (1859-1954). *International Journal of Science and Research*, 9(9), 336-345. <https://doi.org/10.21275/SR20902025139>
- Hill B.R. (1991). Marriage as Sacrament: a Theology in Transition. *Melita Theologica*, 42(1), 42-60.
- Hill D.J. (2022). Could the State do Without Marriage Law?. *Ecclesiastical Law Journal*, 24(2), 123-147. <https://doi.org/10.1017/S0956618X220000>
- Komonchak J. (2006). The Council of Trent at the Second Vatican Council. In R.F. Bulman & F.J. Parrella (eds.), *From Trent to Vatican II: historical and theological investigations* (pp. 61-80). Oxford University Press. <https://doi.org/10.1093/0195178068.003.0004>
- Lozano J.M. (1983). *Discipleship: Towards an Understanding of Religious Life*, Claret Center for Resources in Spirituality.
- Martínez Peque M. (1991). Matrimonio y virginidad: desarrollo histórico-teológico. *Revista Española de Teología*, 51, 57-98.
- Minnich N.M. (2007). The Priesthood of all Believers at the Council of Trent. *The Jurist*, 67(2), 341-364. <https://doi.org/10.1353/jur.2007.0011>

- Moioli G. (1968). Matrimonio e verginità. In T. Goffi (ed.), *Enciclopedia del Matrimonio* (pp. 387-413). Queriniana.
- Moioli G. (1970). Matrimonio e verginità nella dottrina del Tridentino. In *Magistero e morale: Atti del 3° Congresso Nazionale dei Moralisti. Padova, 31 marzo-3 aprile 1970* (pp. 193-209). EDB.
- Pfurner S. H. (1975). *La Chiesa e la sessualità*. Bompiani.
- Philips G. (1968). *L'Église et son mystère au deuxième Concile du Vatican*, Vol. II, Desclée et Cie.
- Piscopo S., Vella S. & Abela A. (2020). Couple Relationships in Mediterranean Malta. In S. Piscopo, S. Vella S. & A. Abela (eds), *Couple Relationships in a Global Context* (pp. 125–142), Springer. https://doi.org/10.1007/978-3-030-37712-0_8
- Radford Ruether R. (2011). The Alliance that Fizzled. The Vatican and Islamic fundamentalists at Cairo. *Conscience. Rosemary Radford Ruether: a Commemorative Issue*, 15-17.
- Radle G. (2018). Bishops Blessing the Bridal Bedchamber in the Early Middle Ages. *Medium Ævum*, 87(2), 219-238.
- Ritzer A. (1970). *Le mariage dans les Églises chrétiennes, du I^{er} au XI^e siècle*, Éditions du Cerf.
- Salvi S.T. (2018). “*Diabolo suadente*”. *Celibato, matrimonio e concubinato dei chierici tra riforma e controriforma*. Giuffrè.
- Sicari P.A.M. (1977). Matrimonio e verginità. *Ephemerides Carmeliticae*, 28(2), 226-277.