

# Does the Priest Have to Be There? Contested Marriages before Roman Tribunals

Italy, Sixteenth to Eighteenth Centuries<sup>1</sup>

*Abstract:* The Council of Trent established the requirements that a marriage be celebrated by the parish priest and two or more witnesses be present at the marriage (1563), but neglected to specify who the parish priest was. The decrees provoked confusion among both laymen and churchmen. Traces thereof can be found in the hitherto essentially unexplored documentation of *The Congregation of the Council*. This institution was founded in 1564 specifically to resolve the questions that arose all over the catholic world by the application of the decrees promulgated at Trent. The related records are held in the *Vatican Secret Archive*. Through an examination of this documentation, complemented by files of the *Holy Office* the author analyzes how the new rules were understood, experienced, used, circumvented, and manipulated both by laymen and churchmen in order to end an unwanted marriage, to facilitate a union that was socially transgressive, opposed by family, or even heterodox, and to respond to pastoral concerns.

*Key Words:* marriage, Council of Trent, Congregation of the Council, Holy Office, Italy

## Introduction

Historians of the family, crime, and everyday life agree that in the early modern period, the rules promulgated by the authorities remained largely unenforced. The administration of justice required taking into account the specific facts of each individual situation, and so authorities exercised their power with some flexibility.<sup>2</sup>

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Social historical research has for the most part used judicial sources in order to study deviance and repression.<sup>3</sup> Recently, however, a “new social history” has emphasized the importance of examining the interactions between tribunals and those who appealed to them, recognizing that both parties contributed to the creation of the judicial system.<sup>4</sup> The ultimate success of the rules was the result of negotiation<sup>5</sup> – a negotiation that itself influenced the very definitions of these rules. Beginning from these premises, in this article I analyze the shifts in Italian marital norms and practices that resulted from the rules put into force by the Council of Trent in the decree Tametsi (1563). These revolutionary legal changes assigned control of marriage to the Church, thus removing it from families, clans, and the bride and groom themselves. Although the subject was hotly debated, the Council of Trent ultimately established a set of requirements: a marriage had to be contracted by the parish priest, the bans were to be proclaimed for the three Sundays preceding the wedding, two or more witnesses were to be present at the marriage, and the event had to be recorded in the parish register.<sup>6</sup> Prior to the Council, the consent of the bride and groom had been sufficient to create a valid marriage regardless of whether it was celebrated publicly, privately, or secretly. Following Tametsi, the absence of parish priest and witnesses rendered the couple unable to wed and the bond invalid.<sup>7</sup>

Of course, even prior to Trent the Church had tried to encourage the making public of marriages, primarily by means of the bans and the blessing of the union. The *Fourth Lateran Council* (1215) in particular established the couple’s obligation to publicly announce their intention to wed in church, so that parishioners had the chance to inform the priest of any impediment to the union. In contrast to Northern Europe,<sup>8</sup> however, in Italy – and here particularly in the north-central regions – this obligation was largely ignored and the Church seems to have refrained from requiring its observance.<sup>9</sup> Marriage contracted simply by the consent of the couple did not provoke any censure: even the ecclesiastical judges charged with deciding the question of their existence regarded them as contracts made „publicly, canonically, and before the church.”<sup>10</sup> Secular authorities were alone in their strife to ensure the publicity of marriage. In the Kingdom of Naples, for instance, Ruggero II, King of Sicily, required as early as in the twelfth century that marriage celebrations take place before the church in the presence of a priest.<sup>11</sup> Only with the Council of Trent did the Church launch a concentrated attack on „clandestine“ marriage – which now referred to marriages contracted without observation of the Tridentine requirements. Thanks to the united efforts of parish priests, confessors, bishops, and inquisitors, marriage became an eminently public and ecclesiastical event celebrated at a precise moment, with respect to which previously accepted or tolerated practices such as concubinage or the free association and sexual relations of betrothed couples were defined as transgressive.<sup>12</sup>

The revolutionary importance of the Tridentine decrees becomes evident when the new rules are compared with actual preconciliar nuptial practices. Such comparison is possible by looking at marriage trials, which, as source material, seem exceptionally close to these practices. Historians have often affirmed that these sources document marginal and deviant marital experiences, but I intend to use them here to understand the socially accepted marriage practices of people at all social levels, from slaves to the nobility.<sup>13</sup>

The confusion that the Tridentine decrees provoked among both laymen and clergy also left traces in the documentation of the *Congregation of the Council* which was founded in 1564 to resolve questions arising with the application of the reforming decrees of Trent. The congregation's records are held in the Vatican Secret Archive and are to date essentially unexplored.<sup>14</sup> In relation to marriage, the congregation mostly considered issues submitted by bishops across the Catholic world – either in their role as judges on ecclesiastical diocesan tribunals or when faced with queries from parish priests or confessors. The most interesting aspect of these sources is that they delineate and emerging jurisprudence. The *Congregation of the Council's* decrees regarding a particular case became part of a corpus to which the successive decisions of this Congregation and other congregations (such as the Holy Office) tended to conform. However, the fact that the decrees of the *Congregation of the Council* were not published until 1718<sup>15</sup> favored a flexible treatment of individual cases. It can be assumed that this constituted a conscious policy of the Congregation.<sup>16</sup>

The acts of the *Congregation of the Council* reveal the difficulty of subjecting a fluid phenomenon like marriage to the rigid rules that came out of Trent – a difficulty that was of concern, though to differing degrees, to both laity and churchmen, at times even to the cardinals of the Congregation and the pope, who did not always agree on the resolution of a particular case.<sup>17</sup> The issues considered varied widely, from the definition of a parish priest's jurisdiction and a parishioner's residence, to freedom of consent and parental authority, to the problem of marriage contracted by a false priest (or one who was in opposition to the bishop). The issues the Congregation faced also attest to the persistence of a pre-Tridentine idea of marriage. Is a marriage really invalid if it is performed without a parish priest, even when celebrated in the presence of witnesses, recorded by a notary, and consummated by the betrothed?<sup>18</sup> Such questions show that part of the ecclesiastical hierarchy shared lay values, and did not apply the Tridentine decrees in enthusiastic consent.

Examining the records of the *Congregation of the Council* (as well as some records of the Holy Office, which the Congregation sometimes consulted), I analyze how both lay- and churchmen understood, experienced, used, circumvented and manipulated the Tridentine rules requiring a parish priest to be present at wed-

dings, to end an unwanted marriage, to facilitate a union that was socially transgressive, opposed by family, or even heterodox, and to respond to pastoral concerns. Through this analysis I demonstrate that the rules established by the decree *Tametsi* did not definitively resolve the problem of uncertainty surrounding the formation of the marriage bond, but that instead the interpretation of the new rules gave rise to a new series of questions about both the existence and the validity of marriage. It thus appears that the Tridentine rules on marriage did not in fact succeed in ending the fluidity in matrimonial matters identified and analyzed in recent historical studies, which tend to treat this fluidity as an exclusively pre-Tridentine phenomenon.<sup>19</sup>

## I.

The first case addressed by the *Congregation of the Council* that we will consider here came from only a short distance. In 1568 the vicegerent of the cardinal vicar of the diocese of Rome turned to the cardinals with an unusual case that had come before him in his capacity as ecclesiastical judge of the diocese.<sup>20</sup> Two young Romans, Claudia and Prospero, had married at the home of Claudia's uncle, Camillo Bevilacqua. His residence faced Via dei Calderai and adjoined the rented apartment facing Via del Monte Santo where Claudia lived with her mother, Belisandra. The two residences were in fact linked by an internal doorway that Belisandra had established in the shared wall to allow the two women direct access to Belisandra's brother's home, where they stayed „alla domestica“, and which they found more suitable for social entertainment, as it was more comfortable and more imposing than their own residence (“commodior et nobilior”). Thus, when going out in public Claudia and her mother preferred to exit by the door of the Bevilacqua home.

The preparations for the wedding took place in Claudia's uncle's residence, where Claudia took dancing lessons for three months and received Prospero's visits and gifts. The uncle's home was also the site of the conclusion of the dowry contract and, following the publication of the banns in the church of Santa Maria sopra Minerva, of the marriage celebration itself, officiated by the parish priest of this church before witnesses and recorded by a notary. Following some conflict between the couple, another ceremony to reaffirm the union was celebrated in the same house, this time in a more private form without the presence of the priest but again recorded by a notary. On this occasion, Prospero again placed a ring on the bride's finger. Later, the couple then consummated the marriage.

Shortly thereafter, Claudia, with the support of her mother, requested the dissolution of the marriage on the grounds that it had not been celebrated before her

own parish priest. Despite the fact that she and her mother passed a great deal of time at her uncle's residence, even sometimes sleeping there, and notwithstanding that they had on various occasions participated in the parish life of Santa Maria sopra Minerva, the two women nonetheless lived in the adjoining apartment, which belonged to the parish of Santa Maria della Rotonda (the Pantheon). For this apartment they paid rent, and under its windows, Prospero had serenaded the bride with a *mattinata* during their courtship. The *Congregation of the Council* informed the vicar's vice regent that since not even Prospero belonged to the parish of Santa Maria sopra Minerva, the marriage was invalid. This conclusion, however, was reached only after a heated internal debate. While six of the cardinals opposed the marriage, another three supported it.<sup>21</sup>

The case of Claudia and Prospero is particularly interesting because it allows us to examine the reactions to the Tridentine decrees of the various parties involved: the bride and her mother, the groom, the parish priest, the notary, and the witnesses. It is clear that the Council of Trent furnished Claudia and Belisandra, likely advised by a legal expert, with an expedient for ending a union that had quickly revealed itself undesirable, and which just a few years earlier would have been impossible to dissolve.

The two young Romans had sought to incorporate the new nuptial rituals imposed by Trent into the existing body of domestic marital rituals. Their wedding took place at home, which before Trent had been a frequent site of weddings of all types, whether an almost imperceptible moment of passage within an already established relationship, a secret contract (or even one made on impulse), or a highly ritualized celebration accompanied by feasting and dancing.<sup>22</sup> It was not unusual for a marriage of the last type to be held at the house of the bride's kin if it was bigger than her own. The same was probably the case with Claudia and Prospero's marriage. We remember, for instance, that she took dancing lessons for three months in preparation for the event. The presence of the priest attests to the couple's attempts to ensure that their ceremony conformed to the Tridentine requirements. Prior to Trent, no priest was necessary and the officiant at a wedding was often a family member – generally the bride's father, brother, or uncle, but sometimes even her mother<sup>23</sup> or employer – or, if she had no family, her guardian or someone with responsibility for protecting her honor.<sup>24</sup> Women were not excluded from this role,<sup>25</sup> although a male officiant was held to be more reassuring, as becomes evident in the case of a woman who asked her male neighbor to officiate at her marriage since „she [had] no man in the house“ (1519).<sup>26</sup> An officiant did not even need to be Catholic. In Venice in 1525 the marriage of the nobles Alvise Caravello and Diana Minio was officiated by the bride's physician, who was Jewish.<sup>27</sup>

Certainly the role of officiant could be filled by a priest – as happened ever more frequently over the course of the sixteenth century – but his presence was not necessary to link the wedding to the sacred sphere. An image of the Virgin,<sup>28</sup> an open tabernacle,<sup>29</sup> a crucifix,<sup>30</sup> an oath<sup>31</sup> – especially if taken while touching the Bible – the sign of the cross made in front of the bride,<sup>32</sup> the invocation of the Father, Son, and Holy Ghost, the simple expression “as God and the Holy Mother Church command”<sup>33</sup> are all elements that the laity commonly held capable of locating a marriage in the realm of the holy. Whether the role of officiant was filled by a layman or a churchman mattered so little to onlookers that in one case a witness, when asked who had contracted the marriage, could not remember if it had been the rector or “one of the household’s girls” who were present.<sup>34</sup> For all that prior to Trent anyone could officiate at a wedding, the role of celebrant was often filled by a notary, a figure who was indeed present at Claudia and Prospero’s wedding. The family had also made sure to have a parish priest present, but no one had paid attention to the fact that he was not the priest of the bride’s parish, as the new rules required and as the *Congregation of the Council* reiterated. Still there were enough clues to the defect of jurisdiction that they must have made at least the priest suspicious. During the earlier ceremony blessing the uncle’s house the priest had asked Claudia and Belisandra to explain their failure to take the required Easter communion. When the women assured him they had received the sacraments in the parish of Santa Maria della Rotonda, he was satisfied. “It is enough that you have taken communion”,<sup>35</sup> he affirmed, overlooking that after the Council of Trent it was no longer optional where one took communion. The majority of the Congregation reconfirmed this, and uttered their suspicion that the priest had declared the two women his parishioners in order to avoid the penalty for contracting the wedding of a couple who were not residents of his parish.<sup>36</sup> The notary, too, was shown to be at fault, since he had apparently not held it important to establish the parish of the bride and groom orally, thus neglecting a fact pertinent „to the essence itself of the contract“ (“ad essentiam ipsiusmet contractus”).<sup>37</sup> He, like the parish priest and the wedding guests, had probably considered the presence of a priest (and thus the embodiment of the Church), and not that of a representative of the jurisdiction, the more important factor uniting the couple. Judging by the many questions brought before the Congregation that addressed the validity of marriages contracted before priests other than the couple’s own parish priest, this belief was not uncommon.<sup>38</sup>

Prospero’s trial strategy in particular harks back to pre-Tridentine notions of marriage – and to corresponding suits that sought to prove the validity of a marriage. It is notable that, without losing sight of the goal of proving that his bride did indeed belong to the parish of the priest who had celebrated their wedding, Prospero also did mention a series of facts that should, in his opinion, prove the

couple's intimacy and therefore the existence of the marital bond. The bride and her mother visited him at his house where they ate lunch with him; he returned with them to their house in Santa Maria sopra Minerva and stayed with them there; Claudia often went out dressed as a bride ("tanquam sponsa"); Prospero had kissed Claudia in the presence of her relatives. Especially the last fact had great symbolic, and therefore legal, weight, since prior to the Council of Trent in many regions of Italy, the nuptial kiss (along with touching hands and the ring) was one of the principle signs of consent.<sup>39</sup> The couple's intimacy, permitted and controlled by the bride's family, was further attested by the fact that Claudia would publicly sit in Prospero's lap, and that her family allowed Claudia and Prospero to stay in a room alone and unmonitored.<sup>40</sup>

In the marriage disputes tried in the dioceses of the Italian peninsula just a few years earlier, such actions would have created a strong presumption of marriage, even rendering superfluous proof of the oral expression of consent. As noted above, the pre-Tridentine doctrine of marriage did not require any specific formalities for the formation of a valid marriage, which depended exclusively on the consent of the bride and groom. And although Thomas Aquinas stated that the „form“ of the sacrament of marriages consisted in the words with which the bride and groom expressed their consent, the canon law literature as a whole did not distinguish between the words of consent and customary rituals as sharply as Aquinas did. Canonists tended to introduce the “signs” of consent – that is, rituals and customary practices – into the legal discourse, and to attribute probative value to them. While the preeminence of the words of consent was repeatedly affirmed,<sup>41</sup> Peter Lombard states that consent could be expressed “with words,” but also “with other unmistakable signs,”<sup>42</sup> which was extended by the authority of the *Decretum* to encompass the entire symbolic system of medieval marriage. The list of rituals that canon law literature recognized as relevant to ecclesiastical courts with jurisdiction over marriage was open. The numerous references in the *Gloss*, *Hostiensis*, and elsewhere to “the custom of the place,” and “the practices of the land”<sup>43</sup> encouraged pre-Tridentine judges to investigate local nuptial rituals.<sup>44</sup> Thus Prospero confronted the vicegerent and later the cardinals with a series of practices customarily linked to marriage.

Another aspect of Claudia and Prospero's nuptial celebration that was markedly preconiliar was its repetition. We have seen that the couple repeated the wedding ceremony, and again recorded it with a notary, after a period of conflict. Such events are frequently documented prior to the Council of Trent, when the repetition of a wedding ceremony was intended to guarantee the existence of a marriage, which as a contract was strengthened by repetition, and as a sacrament could be administered many times.<sup>45</sup> The presence of the notary, but not the parish priest, at this

repeated ceremony attests to the weight of the pre-conciliar nuptial tradition.<sup>46</sup> In the eyes of the post-Tridentine ecclesiastical judges, the absence of the parish priest completely deprived the second ceremony of any effect. It did, however, reassure the groom, who submitted it as proof in court, and probably also the bride, who only after this second ceremony consented to the consummation of the marriage – an act that in itself, in the opinion of the Congregation, resulted in punishment to Claudia that was appropriate to „her wickedness, because she was known by a man and will remain defamed“.<sup>47</sup>

## II.

The first section has shown how the new rules that emanated from Trent could provide a legally valid way to end an unwanted marriage. This section will examine how these rules could be used to contract a marriage that was opposed by family, socially transgressive, or even heterodox.

While it is true that the decree *Tametsi* confirmed that only the consent of the couple, and not of their families, was required for a valid marriage, the imposition of the new obligations that the impending event be publicized with the banns and that the parish priest be present increased familial and social control of marriage enormously. Prior to the Council of Trent a couple could contract a marriage at any hour of the day or night and do it anywhere: in a house, in the street, in the fields, or at a tavern as easily as in a church. Mere inattention of family members could be enough to give a couple the opportunity to wed. It was possible for a young man balancing on a ladder to slip a ring onto the finger of a thirteen-year-old girl through the grating of her window, or for two lovers to exchange consent while touching hands through a hole in the wall.<sup>48</sup> Although contracted in secret, the church still considered these marriages as valid and therefore indissoluble.

Of course, the persistence of the bride and groom was necessary to give such a marriage effect in the face of familial opposition. Many pre-Tridentine trials regarding presumed marriages had their origin in a family's discovery that a son or daughter had contracted a socially unequal marriage and the determination to revoke the union. While the ecclesiastical tribunal offered a concrete opportunity to escape parental control (the party in danger of intimidation was removed from his or her family and submitted to stringent questioning by the judge with the goal of discovering the interviewee's true wishes), few took it. For every young woman who took the opportunity offered by the ecclesiastical judge to be reunited with her husband, a host of young women (and young men) were ready to submit to the will of their families and deny their marriages, declaring they wanted only „what my



kin want<sup>49</sup>. Before Trent, if part of a couple denied that a wedding ceremony had taken place, the community could still claim the existence of the marriage by citing a combination of signs and behaviors. The ecclesiastical judge could interpret the evidence and decide in favor of the marriage. After Trent, the only valid marriages were those contracted in accordance with the rules imposed by the council. Performing this ceremony without familial approval was difficult. It required not only determination, but also the support (or at least the presence) of the bishop and/or the parish priest.

Recognizing that the requirement that marital intentions be made public with the banns could set in motion schemes to impede weddings, the council fathers provided that publication could be omitted at the bishop's discretion when there was reason to suspect that a marriage might be „maliciously obstructed“. In this situation, they recommended (but did not require), that the banns be said before the consummation of the marriage. In practice, however, this only served to unleash the family's opposition, despite the fact that the marriage ceremony had already taken place.

During the late 1560s, the bishop of Amelia, without veiling his indignation, asked the opinion of the *Congregation of the Council* on a marriage he regarded as „firmly“ indissoluble.<sup>50</sup> He recounted how based on the request of the master of ceremonies and the employers of the bride and groom he had allowed two servants to marry in church while postponing the banns until after the ceremony. After the marriage was duly contracted and the first of the banns read, the groom and his older brother appeared before the bishop to have the marriage declared invalid. While the young man confirmed that he had married indeed, and done it gladly,<sup>51</sup> he said that he now wanted to give up his spouse whom his brother did not like. Informed by the bishop that the bond was indissoluble, the brother „calmed down to a certain degree“, but returned a few days later claiming that the marriage was not valid because it had not been contracted by their own parish priest. The bishop had to confirm. He had delegated the priest of the groom's father's parish, unaware of the fact that the sons had moved away after their father's death. He hastened to add, however, that he had done so in error, not out of malice.<sup>52</sup> The bishop further provided a list of reasons to support his belief that the marriage was valid: prior to the wedding ceremony the young man had solemnly confirmed by oath to marry the serving girl; he had then married her by words of the present tense (“per verba de presenti”) as described above; he had admitted in the bishop's presence that he had married her and had at the end declared that if his brother agreed he would have gladly kept her as his wife. Had the master of ceremonies and other intermediaries informed him of the correct parish priest, the bishop said, he would have appoin-

ted him to perform the ceremony; however, he affirmed that this was not „a clandestine marriage, nor one contracted in contradiction of the form of the sacred Tridentine council“.<sup>53</sup> The Congregation unanimously supported the marriage, but not because the young man had confirmed he had married the serving girl and wanted her as his wife, nor because of the bishop’s intentions regarding the appointment of the priest, but because of the simple fact explicitly affirmed in *Tametsi* that a bishop had the authority to delegate the contraction of a marriage to a priest who was not the parish priest.<sup>54</sup>

In the above case, the humble origins of both parties involved allowed the bishop to recognize the efforts of the groom’s family to impede the union as clearly improper. In the case of *mesalliance*, however, the bishop or priest did not always apply the doctrine of consent. Bishops and priests could be influenced by class bias, either because of their own membership in the nobility (as was often the case with bishops), by the desire to avoid the social tensions generated by socially unequal marriage, or even by threats.

If a priest impeded a wedding, the bishop could compel him to contract the marriage under threat of punishment, or could simply delegate the role of officiant to another priest. But if both bishop and priest obstructed the celebration, the couple could achieve their objective with a „surprise“ or „unruly“ wedding, which, though it carried serious sanctions (to which, however, I have found no reference in the records of the *Congregation of the Council*) was nonetheless valid.<sup>55</sup> While the Council of Trent established that the parish priest had to be present at the celebration of a wedding, the *Congregation of the Council* affirmed that he need not be there willingly. The jurisprudence regarding surprise marriage originated with a Toledan suit over the validity of a marriage celebrated without the priest present uttering a single word. The Congregation declared the marriage valid because the sacrament – and bond – merely required that the priest *hear* the words of consent (1580).<sup>56</sup> It did not matter if he pretended not to have heard, or fled just as the groom expressed his consent – as long as the bride managed to say, „I, too,“ while nodding her head. Similarly, weddings were valid when the priest was lured to the house of one of the parties by deceit (for example, on the pretext of hearing the confession of someone who was ill),<sup>57</sup> or if the marriage was contracted before the proper parish priest, but in a church other than the parish church.<sup>58</sup>

A surprise wedding could enable a bride to extract herself from another existing marriage, if this marriage had been contracted against her will. This was the case in Rieti when Berta and Stefano, having circumvented familial opposition to get engaged, celebrated a surprise marriage before the parish priest and the local congregation at the end of mass. Earlier, Berta had been forced by her family to marry a man named Antonio in the proper Tridentine form.<sup>59</sup> Her surprise marriage to Stefano,

however, counted as striking proof of absence of consent to her marriage to Antonio, and set into motion the trial that ultimately confirmed the invalidity of that first marriage. In this way, the desires of the directly interested parties found a means of expression in opposition to familial desires.

Surprise marriage is amply documented across Europe during the entire period under consideration here and involved people at every level of society.<sup>60</sup> In Italy it was even used to contract marriages of mixed confessions in order to get around the 1596 bull of Clement VIII, which prohibited Italian Catholics from marrying those belonging to other confessions, and authorized heresy proceedings against transgressors.<sup>61</sup> Because of this, the two cases that follow are held in the Archive of the Congregation for the Doctrine of the Faith (the Holy Office).<sup>62</sup>

In 1725 the bishop of Pisa informed the Holy Office that after a long period of “scandalous” cohabitation, „a heretic and a Catholic widow“ in Livorno had during mass, as the priest turned to the faithful requesting them to pray, declared that they took each other as husband and wife. Afterwards, they withdrew „to a village“, where they lived „as a married couple“.

In the eyes of the Church, a marriage between members of different confessions could only be legitimately contracted with a papal dispensation. Such dispensation was granted only very rarely, usually under the following conditions: the Catholic spouse did not run the risk of conversion, and any children born of the union would be brought up in the Catholic faith; the marriage was in the public interest; or the Catholic could not hope to find a spouse of his or her own confession of equal social status.<sup>63</sup> Whether because they knew they could not satisfy the requirements for a dispensation, did not know how to appeal for one, or whether they just preferred a surprise marriage as a quick and reliable way of obtaining a valid bond, this couple chose a path that made them immediately suspect of heresy in the eyes of the bishop of Pisa and on the basis of the bulla of Clement VIII.

While the Holy Office was not known for its openness toward mixed marriages, the officials did not deem it appropriate to proceed against the couple. In accord with the bull of Clement VIII, they remanded the case to the bishop – to whom they recommended, however, that the couple be not permitted to cohabit, because such cohabitation constituted „a pernicious example“ fraught with „the most serious consequences“. Unable to nullify the marriage of two people of different confessions – which was illicit, but valid nevertheless – the bishop imposed a separation.

In contrast to the above case, the marriage contracted between a Genoese Catholic and an English Protestant resident in Livorno was declared null. The couple traveled to the diocese of Carrara to marry by surprise, believing that the groom’s nationality exempted him from observance of the decrees of the Council of Trent. Since the Trent decrees had not been published in England, the couple deemed it suffi-

ent to contract marriage before a public official, „which, in the case of marriage, is the parish priest“; and witnesses. The bishop of Pisa, however, declared the marriage null with the approval of the Holy Office, probably on the basis of the widely established rule that a couple planning to wed was not subject to the jurisdiction of their parish of origin but to that of residence. In addition to confirming the bishop's decision, the Holy Office instructed the archbishop of Genoa, the bride's city of origin, to forbid the couple to cohabit should they move into his diocese. While assuring the Holy Office of his complete cooperation, the bishop of Genoa used an expression that bespeaks a certain ambivalence in the distinction between nullity and illegality of marriage: he said that he would do anything to possibly keep the woman from living with her „husband“.

About thirty years earlier, in Torino, a Catholic man and a Protestant woman (“heretica”) similarly contracted a surprise marriage before a parish priest which was not their own. The couple was shrewd enough to have their union ratified by proxy before the vicar general, while he celebrated mass. During the ceremony, agents replacing the bride and groom left letters of proxy on the altar, thus assuring the validity of the bond. Nevertheless the bride was punished with a „healthful penance decided by the bishop“.<sup>64</sup>

Those who wished to wed a spouse above or below their social status also had to recourse to marry in a diocese, city, or parish other than their own in an attempt to elude familial opposition and social disapproval. Such marriages met with success only when the couple could prove that the move was not temporary. While one exceptionally transgressive marriage of a noblewoman with a servant was declared null because the couple had only moved for the wedding,<sup>65</sup> other unions were declared valid. The couples had obviously believably demonstrated that they had lived in the parish of their marriage for nine, or three, or at least one month, or that they moved with the intent of permanent residence.<sup>66</sup>

### III.

We have seen that many of the questions posed to the members of the *Congregation of the Council* involved sacramental jurisdiction and the definition of who was the couple's parish priest. Another frequent issue was the orders of the officiant. In the decades following Trent a rule crystallized holding that an officiant delegated to celebrate a marriage by the parish priest or bishop must have held major orders (save for exceptions as we shall see), but that this was not required of the parish priest himself. In *De Sancto Matrimonii Sacramento*, Thomas Sanchez formulates this rule clearly. Sanchez begins with the basic conciliar specification that a wed-

ding takes place “in the presence of the parish priest (‘parrocho’) or other priest (‘alio sacerdote’) by license of the parish priest or bishop”. He explains that if the interpretation of the word „other“ assumes in the *parochus* the quality of the *sacerdos* ( in other words, priesthood), the Council did not explicitly mention it. Priesthood, therefore, was no necessary condition to make the *parochus* the witness required by the Council. It would rather suffice to hold a parochial benefice.<sup>67</sup> On March 11, 1593, the *Congregation of the Council* decided accordingly and nearly unanimously (with only Cardinal Landi disagreeing) in the case of a marriage celebrated by a parish priest who had received his first tonsure, but had not yet been promoted to holy orders.<sup>68</sup>

Since marriage is a *favorabilis* matter – which means that ambiguous cases should be decided in favor of the nuptial bond – Sanchez held that a delegate may legitimately celebrate a wedding ceremony even if he is merely a deacon or sub-deacon.<sup>69</sup> Only the minor orders were decisively excluded from this role, and even this was debated. The records of the *Congregation of the Council* contain the case of a man from the Veneto who doubted the existence of his marriage. The marriage was contracted with the Archbishop’s license during a period of plague (most likely between 1575 and 1577) before a cleric who had received only minor orders and acted as sacristan of the parish church. The *Congregation of the Council* unanimously held the marriage to be null. However, when presented with the Congregation’s report, the pope declared himself in favor of the marriage. After hearing the detailed opinions of the cardinals, he changed his mind, but was still not ready to make a final decision. He instructed the patriarch of Venice to reconcile the couple “in the manner of a pastor” (“pastorali caractere”), and to encourage them to contract their marriage once more in the proper form. Should he not succeed, the patriarch should inform the pope of the age and condition of the bride and groom, of any disparity of status, and whether the marriage was contracted out of necessity – that is, for the health of their souls, the legitimation of children, or another similar reason. The pontiff further demanded to know the cause of the couple’s differences – only then would he communicate his decision to the Congregation. After the investigations, the patriarch informed the Congregation and the pope that the two young people were of the same age and status. The groom was a barber and the bride lived as the concubine of a man whom she would marry if she were declared free of the first marriage. Having assessed the situation, the pope declared the marriage null.<sup>70</sup>

#### IV.

The last case we will examine involves the problem of weddings performed by false priests. On July 11, 1736 the bishop of Treviso wrote to Rome for help. The bishop recounted how in 1723 Andrea Filippo Pin, a laymen from Belluno, appeared at the diocese of Treviso pretending to be Nicolò de Prandis, a priest from Pescantina in the diocese of Verona. Pin presented letters of recommendation from the bishop of Verona, on behalf of which bishop Morosini, the current bishop's predecessor, granted Pin a license to hear confession and to assist the parish priest of Croce di Piave in the administration of the sacraments and the cure of souls. Shortly thereafter Pin left the diocese to return in 1726 under the name Antonio Liviero. This time, he carried letters from the curia of Padua, which, based on letters of recommendation Pin had obtained in the diocese of Ceneda (now Vittorio Veneto), attested to his belonging to that diocese. Thanks to these letters, he was appointed confessor and assistant to the parish priest in the cure of souls in the parish church of Salzano in the diocese of Treviso. He served in the same capacities in two other villages in the same diocese, Piombino and Carpendo, appointed by the bishop he had already fooled with his earlier credentials. Suspended from hearing confession at the end of 1727 "for certain crimes" and thrown out of the diocese, Pin returned shortly thereafter under a new name and a forged confessor's licence, which he updated from time to time. This time, Pin did not present himself to the bishop. For four years, he served as chaplain and pastoral assistant in the diocese of Treviso, partly in the village of Covolo, partly in the village of Corte. Accused before the bishop of "other crimes" and asked to account for his right to hear confession, he tried to flee but was caught by the Inquisition of Padua which, after unmasking him, condemned him to death and consigned him to the secular arm for execution on 18 March 1736. The inquisitor of Padua informed the bishop of Treviso that Andrea Pin was not a priest, and instructed the bishop to inform the laity that they must repeat their confessions, which were rendered invalid by the false priest's imposture.<sup>71</sup>

While the inquisitor seemed concerned only with the validity of confession (the sacrament that had particular relevance to his office),<sup>72</sup> the bishop of Treviso was tormented by doubts pertaining to his own pastoral role: Were the marriages that the false priest performed by license of the bishop valid? Theologians meeting in Venice on the subject, came to no agreement. Appealing to the authority of Martin Bonacina and Claude Lacroix, some argued that a marriage celebrated by episcopal license by someone commonly held to be a parish priest was valid, but others disagreed. And if these marriages were indeed valid, what of the ones Andrea Pin contracted using his false license? The bishop of Treviso therefore appealed to the Venetian nuncio who, although inclined himself to favor the validity of the marri-

ages given the dramatic consequences that would follow their nullification, decided to send the matter on to Rome. “Tormented by the horror that for many years so many souls entrusted to his pastoral care” had been “betrayed by a villain’s deceptions,” the bishop explained, he now asked the Holy Office to declare valid the marriages officiated by Pin, since along with the fate of some 170 couples, social peace was at stake. The bishop rejected the proposal that the weddings be re-celebrated as unsuitable. He was convinced that many would not fulfill their obligation to their spouses, and would instead consider themselves free of the marital bond, bringing about serious consequences for the children, who would suffer the disgrace of illegitimacy, and in matters of inheritance. The result would be vendetta, feud, and disorder of every sort.<sup>73</sup>

The resolution of the matter was entrusted to Tommaso Sergio and Ludovico Valenti, who were both members of the Holy Office, while Valenti was also a *promotor fidei*. Both agreed that the marriages performed by the false priest were valid. Their opinion rested not only on the authority of Bonacina and Lacroix cited by the bishop of Treviso, according to whom the fact that the officiant was commonly held to be the couple’s parish priest was enough to make the marriage valid; but also on the authority of many other theologians, and particularly Thomas Sanchez, who was capable of single-handedly dispelling every doubt on the matter of validity – and who had in fact encountered a similar problem.<sup>74</sup>

According to Sanchez, the validity of a marriage required priesthood not according to divine or natural law, but to positive law. Positive law held that while the Church forbids a priest or bishop from giving license to contract marriage to a non-priest, common error and the putative title sufficiently enabled the Church to confer that capability on a non-priest. However, the error of just the bride and groom, or just the bishop, or an obvious error would not have been a sufficient condition: the error had to be likely.<sup>75</sup> Otherwise, the declaration of invalidity of the marriage would not cause scandal – an element evidently necessary for the Church to be able to intervene to repair the defect of the celebrant.

Sanchez, however, also argued that common error could not justify the validity of a marriage if the celebrant had not been delegated by a legitimate superior<sup>76</sup> – and we recall that Pin had also celebrated marriages with a counterfeit license in the villages of Covolo and Corte. However, since a chaplain did not celebrate marriage as chaplain but as delegate of the priest, once again common error gave the Church the condition it needed to repair the defect. Based on the consensus of the two advisors, the Holy Office instructed the bishop of Treviso not to intervene in any way in the existing situation, and if anyone should question one of these marriages, to admonish them to respect the bond („ut in matrimonio contracto quiescat“).<sup>77</sup>

## Conclusions

One of the declared aims of the decree *Tametsi* was to resolve the problem of clandestine marriage. The imposition of the presence of the parish priest and witnesses at weddings, however, did not mean an end to all questions regarding marital validity. Indeed, questions often arose from the new rules themselves, which proved liable to manipulation and varying interpretation, as attested by the vast documentation of the *Congregation of the Council*.

By and large in the decades immediately following *Tametsi* the decisions of the Congregation either censured some still persistent preconiliar practice, or else reconfirmed the validity of practices that had already been explicitly confirmed by the Tridentine decrees. Both situations reveal an incomplete interiorization of the new marital rules, even within the ecclesiastical hierarchy.

Most of the Congregation's work took place in the legal gap opened by *Tametsi*. As Benedict XIV himself pointed out, the council fathers required the presence of the couple's parish priest at the wedding without specifying who exactly counted as this priest. A good part of the Congregation's activity in marital matters was an attempt to respond to this deficiency.<sup>78</sup>

The fact that the decrees of the *Congregation of the Council* originated in resolutions of actual cases proves that the rule is the crystallization of practical experience, and should caution historians against assuming that rules can be an isolated object of study. Products of practice, the decrees of the *Congregation of the Council* went on in turn to influence the practice of marriage, and made a substantial contribution to the development of bureaucratic management of nuptial matters. But the fact that the decrees were the product of at times passionate debate between widely divergent opinions allows us to glimpse at marital practices resistant to the discipline imposed by the Council, and an alternate, if ultimately unsuccessful, conception of the control of marriage.

## Notes

- 1 This article was translated by Emlyn Eisenach, whom I would like to thank for her helpful comments. I would also like to thank Ermanno Orlando and Silvana Seidel Menchi.
- 2 Stefan Brakensiek, *Generationsgerechtigkeit? Normen und Praxis im Erb- und Ehegüterrecht 1500–1850. Eine Einführung*, in: Stefan Brakensiek/Michael Stolleis/Heide Wunder, *Generationengerechtigkeit? Normen und Praxis in Erb- und Ehegutrecht 1500–1850*, Berlin 2006, 1–21, esp. 15–16.
- 3 Andreas Blauert/Gerd Schwerhoff, eds., *Kriminalitätsgeschichte. Beiträge zur Sozial- und Kulturgeschichte der Vormoderne*, Konstanz 2000.
- 4 Simona Cerruti, *Giustizia sommaria: pratiche e ideali di giustizia nella Torino del XVIII secolo*, Torino 2003.



- 5 See the stimulating observations in Stefan Brakensiek, *Herrschaftsvermittlung im alten Europa. Praktiken lokaler Justiz, Politik und Verwaltung im internationalen Vergleich*, in: Stefan Brakensiek/Heide Wunder, eds., *Ergebene Diener ihrer Herren? Herrschaftsvermittlung im alten Europa*, Köln/Weimar/Wien 2005, 1–21.
- 6 Council of Trent, *Sessio 24*, 'De Matrimonio': *Canones super reformatione circa matrimonium*, in: Giovanni Alberigo u. a., *Conciliorum Oecumenicorum Decreta*, Bologna 1972, 755–7. On the debate about marriage at the Council of Trent see Hubert Jedin, *Geschichte des Konzils von Trient*, vol. III–IV, Brescia 1973 and 1981, 141–161, 96–121 and 140–163; Gaetano Cozzi, *Il dibattito sui matrimoni clandestini. Vicende giuridiche, sociali religiose dell'istituzione matrimoniale tra medio Evo ed Età moderna*, Università di Venezia, Dipartimento di studi storici, 1985–1986; Hubert Jedin and Klaus Reinhardt, *Ehesakrament in der Kirche des Herrn*, Berlin 1971; Reinhard Lettmann, *Die Diskussion über die klandestinen Ehen und die Einführung einer zur Gültigkeit verpflichtenden Eheschließungsform auf dem Konzil von Trient. Eine kanonistische Untersuchung*, Münster 1967; Gabriella Zarri, *Recinti. Donne clausura e matrimonio nella prima età moderna*, Bologna 2000, 210–226.
- 7 For a synthesis of the construction of Christian marriage, see Christina Deutsch, *Ehegerichtsbarkeit im Bistum Regensburg (1480–1538)*, Cologne 2005, 29–38.
- 8 Daniela Lombardi, *Storia del matrimonio dal Medioevo ad oggi*, Bologna 2008, 35; Ludwig Schmugge, *Ehen vor Gericht. Paare der Renaissance vor dem Papst*, Berlin 2008.
- 9 Christiane Klapisch-Zuber, *Women, Family and Ritual in Renaissance Italy*, Cambridge 1984; David L. D'Avray, *Marriage Ceremonies and the Church in Italy after 1215*, in: Trevor Dean/Kate P. Lowe, eds., *Marriage in Italy. 1300–1650*, Cambridge 1998, 107–115; Daniela Lombardi, *Matrimoni di Antico Regime*, Bologna 2001; Cecilia Cristellon, *Marriage and Consent in Pretridentine Venice. Between Lay Conception and Ecclesiastical Conception*, in: *The Sixteenth Century Journal*, 39, 2008, 389–418.
- 10 Cecilia Cristellon, *Il tribunale di Venezia*, in: Silvana Seidel Menchi/Diego Quaglioni, eds., *I tribunali del matrimonio (secoli XV–XVIII)*, Bologna 2006, 101–122. As David D'Avray has observed, this did not necessarily imply disrespect for the Church, nor diminish the religious character of the contracted marriages in the eyes of the Church: See D'Avray, *Marriage Ceremonies*.
- 11 Antonio Marongiu, *La forma del matrimonio nel diritto bizantino, normanno e svevo*, in *Raccolta di scritti in onore di Arturo Carlo Jemolo*, 2 vols, Milan 1963, vol. 1, 851–877.
- 12 Cecilia Cristellon, *Public Display of Affection: The Making of Marriage in the Venetian Courts before the Council of Trent (1420–1545)*, in: Sara Matthews Grieco, ed., *Erotic Cultures of Renaissance Italy*, in print (Cambridge 2009).
- 13 The hypothesis that marriage trials document exclusively marginal and deviant marital experiences has been repropoed by Frederik Pedersen, *Marriage Disputes in Medieval England*, London/Rio Grande 2000. The suitability of matrimonial trials as a source of matrimonial history is discussed and affirmed by Thomas M. Safley, *Let No Man Put Asunder. The Control of Marriage in the German South West: A Comparative Study, 1550–1600*, Kirksville 1984, 6–8; Silvana Seidel Menchi, *I processi matrimoniali come fonte storica*, in: Silvana Seidel Menchi/Diego Quaglioni, eds., *Coniugi nemici. La separazione in Italia dal XII al XVIII secolo*, Bologna 2000, 15–94, 21; and Charles Donahue, *Law, Marriage and Society in the Later Middle Ages. Arguments about Marriage in Five Courts*, Cambridge 2007, 8–12, 51. Richard Helmholz, *Marriage Litigation in Medieval England*, Cambridge 1974, is a pioneer in the use of matrimonial trials as sources for the study of matrimonial practices. For bibliography, see the contributions by Silvana Seidel Menchi and Charles Donahue cited above in this note. For Italy, see esp. Lombardi, *Matrimoni*; Silvana Seidel Menchi/Diego Quaglioni, eds., *Matrimoni in dubbio. Unioni controverse e nozze clandestine in Italia dal XIV al XVIII secolo*, Bologna 2001; idem, *Trasgressioni Seduzione, concubinato, adulterio, bigamia (XIV–XVIII secolo)*, Bologna 2004; idem, *Tribunali del matrimonio*; Joanne M. Ferraro, *Marriage Wars in Late Renaissance Venice*, Oxford 2001; Daniela Hacke, *Women, Sex and Marriage in Early Modern Venice*, Aldershot/Burlington 2004; Emlyn Eisenach, *Husbands, Wives, and Concubines. Marriage, Family, and Social Order in Sixteenth Century Verona*, Kirksville 2004; Chiara La Rocca, *Tra moglie e marito. Matrimonio e separazione a Livorno nel Settecento*, Bologna 2009. I presented an overview of the matrimonial trials I discuss in this article in Cecilia Cristellon, *I processi matrimoniali veneziani (1420–1545)*, in: Seidel Menchi/Quaglioni, *I tribunali del matrimonio*, 101–122.

- 14 Fiorenzo Romita, *Le origini della S. C. del Concilio*, in: *La Sacra Congregazione del Concilio. Quarto Centenario dalla Fondazione (1564–1964)*, Vatican City 1964, 13–50; on the archive of this Congregation see Pietro Caiazza, *L'archivio storico della Sacra Congregazione del Concilio (primi appunti per un problema di riordinamento)*, in: *Ricerca di storia sociale e religiosa*, 42 (1992), 7–24; Francis X. Blouin et al., *Vatican Archives: An Inventory and Guide to the Historical Documents of the Holy See*, New York 1998, 21–27; John T. Noonan, *Power to Dissolve. Lawyers and Marriages in the Courts of the Roman Curia*, Cambridge, MA 1972; and above all, for an invaluable introduction to the relevant Congregation of the Council's series: Anne Jacobson Schutte, *La Congregazione del Concilio e lo scioglimento dei voti religiosi. Rapporti tra fratelli e sorelle*, in: *Rivista Storica Italiana* 118 (2006), 51–79; Gabriella Zarri has pointed out that the archive of the Congregation of the Council has not been used by historians of post-Tridentine marriage: Gabriella Zarri, *Recinti. Donne clausura e matrimonio nella prima età moderna*, Bologna 2000, 232–234, esp. 232, note 84. But see now David L. D'Avray/Werner Menski, *Authenticating Marriages: A Comparative Approach to the Catholic West (c.1200–c.1600)*, forthcoming; and Benedetta Albani, *In universo christiano orbe: la Sacra Congregazione del Concilio e l'amministrazione dei sacramenti nel Nuovo Mondo (secoli XVI–XVII)*, in print.
- 15 Jacobson Schutte, *La Congregazione del Concilio*, 59–62.
- 16 In 1565, for instance, the nuncio to Spain asked the Congregation for precise and definite information concerning the interpretation of the reforms introduced by the Council, so as to be able to “answer those who asked him”, and to avoid the inconvenience resulting from the provision of different solutions to similar cases. The Congregation instructed him that he should “express his specific doubts from time to time, and he would be answered.” Cfr. Antonio Parisella, „Liber Litterarum“ Sacrae Congregationis Concilii, in: *La Sacra Congregazione del Concilio. Quarto Centenario dalla Fondazione*, Vatican City 1964, 447–476, 448–449. The document quoted is held in the Archivio Segreto Vaticano (ASV), Congregazione del Concilio (CC), ASV, Congreg. Concilio, Libri Litterarum et Decretorum (LLD), vol. 1 (1564–1572), c. 33.
- 17 See parts 1 and 3, and also ASV, CC, *Synopsis variarum resolutionum ex selectioribus decretis Sacrae Congregationis Concilii collecta per materias ordine alphabetico disposita ...*, vol. 2 (Synopsis), c. 88: „Validum fuit declaratum matrimonium contractum coram paroco, et testibus premissis denunciationibus, et capta informatione super statu libero, sed petita, et denegata ab episcopo licentia contrahendi sub pretextu, quod vir excommunicatione ligatus erat, imminente mortis periculo d. viri si matrimonium sollicitè non contraxisset, et hoc post acerrima discussione“.
- 18 ASV, CC, *Libri Decretorum (LD)*, vol. 2 (1575–1581), cc. 11–12, n. XIII.
- 19 See esp. the bibliography by Seidel Menchi/Quaglioni, *Coniugi*.
- 20 ASV, CC, *Positiones (P)*, vol. 2, cc. 198–224.
- 21 ASV, CC, *Miscellanea (M)*, *Codices Externi (CE)*, vol. 1, c. 705.
- 22 Silvana Seidel Menchi, *Percorsi variegati, percorsi obbligati. Elogio del matrimonio pretridentino*, in: Seidel Menchi and Quaglioni, *Matrimoni in dubbio*, 17–60; eadem, *Cause matrimoniali e iconografia nuziale. Annotazioni in margine a una ricerca d'archivio*, in: Seidel Menchi/Quaglioni, *Tribunali*, 663–703
- 23 *Archivio Storico del Patriarcato di Venezia (ASPV)*, *Actorum, Mandatorum Praeceptorum (AMP)*, reg. 26, *Petrus a Lacu vs Cataracia filia Bone*, 1465.
- 24 ASPV, *Causarum Matrimoniorum (CM)*, vol. 13, *Giovanni Mammoli vs Lucia d'Este*, 1513.
- 25 ASPV, AMP, regg. 26 e 27, *Caterina Tommasina vs Alfonso di Sicilia*, 13 febbraio–18 febbraio 1465; AMP, reg. 26, *Pasqualina vs Guidone (Vito) Trevisano*, 13 maggio 1465.
- 26 ASPV, CM, vol. 19, *Franceschina Lando vs Joanne Baptiste Ferro*, 1519.
- 27 ASPV, CM, vol. 25, *Diana Minio vs Aloysium Caravello*, 1526–1527.
- 28 ASPV, CM, vol. 11, *Zinevra filia Nicolai barbitonsoris vs Hieronimo Baldigara*, 1509–1510.
- 29 ASPV, CM, vol. 2, fasc. 5, *Petri de Amatis vs Laura de Triultiis*, 1461.
- 30 ASPV, CM, vol. 18, *Lucietam filia q. Hieronymi Nigro vs Hieronimum filium ser Antonii centurarii*, 1520–1521.
- 31 ASPV, CM, vol. 15, *Hieronima Compostella vs Francescum de Mosto*, 1514.
- 32 ASPV, CM, vol. 18, *Paule filie q. Boni vs Victore barbitonsore*, 1516. *Giovanna Paolin, Monache e donne nel Friuli del Cinquecento*, in: Andrea Del Col, ed., *Società e cultura del Cinquecento nel Friuli Occidentale. Studi*, Pordenone 1984, 201–228, 204, mentions the sign of the cross made in a tree.

- 33 ASPV, *Filiciae Causarum* (FC), vol. 2, Valeria figlia di Marco Rio vs Francesco aurefice, 1501.
- 34 ASPV, FC, vol. 2, pro dona Lucieta de contrata Sanctae Trinitatis et ser Rocho, 26 giugno 1517.
- 35 ASV, CC, P, vol. 2, c. 209.
- 36 *Ibid.*, c. 240.
- 37 *Ibid.*, c. 212.
- 38 See for examples ASV, CC, M, CE, 1, c. 425 (sine data) and c. 426 (1589).
- 39 Niccolò Tamassia, *Osculum interveniens*. Contributo alla storia dei riti nuziali, in: *Rivista Storica Italiana*, vol. 1885, issue 2, 241–264; Pietro Rasi, La conclusione del matrimonio prima del Concilio di Trento, in: *Rivista di storia del diritto italiano*, vol. 16 (1943), 233–321; John Bossy, *L'Occidente cristiano, 1400–1700*, Turin 1990, 27; Jean-Baptiste Molin, *Protails Mutembé, Le rituel du mariage en France du XIIe au XVe siècle*, Paris 1974; Jean-Louis Flandrine, *Le sexe et l'Occident. Evolution des attitudes et de comportements*, Paris 1981, 61–82; André Burguière, *Le rituel du mariage en France: pratique ecclésiastiques et pratiques populaires (XVe–XVIIIe siècle)*, in: *Annales Esc*, vol. 33 (1978), 637–649; Lyndal Roper, *Going to Church and Street: Weddings in Reformation Augsburg*, in: *Past and Present*, vol. 106 (1985), 62–101; Susan Karant-Nunn, *The Reformation of Ritual. An Interpretation of Early Modern Germany*, London/New York 1997; Laura Gowing, *Domestic Dangers. Women, Words, and Sex in Early Modern London*, Oxford 1996, 190, 249–251; Martin Ingram, *Church Courts, Sex and Marriage in England, 1570–1640*, Cambridge 1987, 240–242; Bernard Capp, *When Gossips Meet. Women, Family, and Neighbourhood in Early Modern England*, Oxford 2003, 245; *idem*, *Live, Love and Litigation: Sileby in the 1630s*, in: *Past and Present*, vol. 182 (2004), 55–83, 81.
- 40 ASV, CC, P, vol. 2, c. 199.
- 41 Innocent IV, for example, declared that “[t]here is no marriage without words”: see Innocentii IV, in: *Quinque Decretalium Libros Commentaria, Venetiis 1570*, c. 276v.
- 42 *Petri Lombardi, Sententiarum libri quatuor, Parisii 1543*, IV, 27, 3.
- 43 Emile Chénon, *Recherches historique sur quelque rites nuptiaux*, in: *Nouvelle revue historique de droit français et étranger*, 36 (1912), 573–660, 608, n. 4.
- 44 Cecilia Cristellon and Silvana Seidel Menchi, *Rituals before Tribunals in Renaissance Italy: Continuity and Change, 1400–1600*, in: Mia Korpiola, ed., *Regional Variation of Matrimonial Law and Customs in Europe 1150–1600*, in print (Leiden 2009). See also Diego Quagliani, *Segni, rituali e simboli nuziali nel diritto*, in: Seidel Menchi and Quagliani, *Tribunali del matrimonio*, 43–63, esp. 43–54.
- 45 Cecilia Cristellon, *La sposa in convento*, in: Seidel Menchi/Quagliani, eds., *Matrimoni in dubbio*, 123–148, 130–131.
- 46 On the importance of the notary in pre-Tridentine wedding ceremonies see Klapisch-Zuber, *Women, Family and Ritual*; Owen Huges, *Il matrimonio nell'Italia Medievale*, in: Michela De Giorgio and Christiane Klapisch-Zuber, eds., *Storia del matrimonio*, Rome and Bari 1996, 5–61; Anna Esposito, *L'iter matrimoniale a Roma e nella regione romana tra atti notarili e atti cerimoniali (secoli XV–XVI)*, in: Seidel Menchi/Quagliani, *Tribunali del matrimonio*, 411–430.
- 47 ASV, CC, P, vol. 2, c. 210.
- 48 ASPV, CM, vol. 9, Marco Antonio de Stefani vs. Lucretia q. Simonis Vacha, 1506–1507.
- 49 *Ibid.*
- 50 ASV, CC, LD, vol. 2, (1575–81), n. 38, cc. 25–27, esp. 26 for the quotation.
- 51 „Confirmò che non voleva la serva, poiché l'haveva sposata, ma che il fratello ch'era di più tempo di lui non voleva che la pigliasse che s'esso [suo fratello] se ne contentasse lui la pigliarebbe.“ *Ibid.*, c. 25.
- 52 *Ibid.*, c. 26.
- 53 *Ibid.*, cc. 26–27.
- 54 ASV, CC, M, CE 1, c. 378.
- 55 Daniela Lombardi, *Matrimoni di Antico Regime*, Bologna 2001, 117; Silvana Seidel Menchi, *Il matrimonio finto. Clero e fedeli post-tridentini tra sperimentazione liturgica e registrazione di stato civile*, in: Seidel Menchi/Quagliani, eds., *Trasgressioni*, 535–571.
- 56 *Synopsis*, c. 86 (1580).
- 57 *Ibid.* (1696).
- 58 *Ibid.*, c. 87 (1697).

- 59 Ibid. (1700).
- 60 See, for example, Gaetano Cozzi, Padri, figli e matrimoni clandestini (metà sec. XVI–metà sec. XVIII), in: *La cultura* 14 (1976), 169–213, 187–189, 169–213, 207–212; Luca De Biase, Amore di Stato. Venezia. Settecento, Palermo 1992, 33; Renata Ago, Giovani nobili nell'età dell'assolutismo: autoritarismo paterno e libertà, in: Giovanni Levi/ Jean-Claude Schmitt, *Storia dei giovani*, I, Dall'antichità all'età moderna, Rome/Bari 1994, 375–426; Dea Moscarda, Il cardinale Giovan Battista de Luca giudice rotale e la causa matrimoniale tra Michele de Vaez e Giovanna Maria de Sciart (Napoli 1650), in: Seidel Menchi/Quaglioni, *Matrimoni in dubbio*, 415–429. On another case discussed by the Congregation of the Council, see also D'Avray/Menski, *Authenticating Marriages*.
- 61 *Bollarium Romanum*, Augustae Taurinorum 1865, Tomus X, XXXVI, 280, § 2.
- 62 Archivio della Congregazione per la Dottrina della Fede (ACDF), *Matrimonia mixta* (MM) 3, Positio XIX, 1725 et 1726 Pisa e Genova.
- 63 See ACDF, MM 1–3.
- 64 ASV, Synopsis, c. 85: „Matrimonium vero inter catholicum et hereticam coram parochio non proprio alicuius ex contrahentibus celebratum, deinde ratificatum per procuratorem utriusque, coram testibus et vicario generali missa celebrante dum vertit se ad populum pro dicendo orate fratres, relictis procurationibus super altare fuit validum declaratum, etiamsi vicarius testeretur non bene intellexisse, quid procuratores nomine sponsorum dixerint in illo actu, imposita tamen mulieri penitentia salutari arbitrio episcopi. Taurinen. matrimonii 28 septembris 1697.“
- 65 ASV, Synopsis, c. 89 (1684).
- 66 ASV, Synopsis, c. 88 (1715, 1716, 1606). A marriage conducted by the parish priest of a person's second residence was not valid. See D'Avray and Menski, *Authenticating Marriages*. See also Thomas Sanchez, *De Sancto matrimonii sacramento*, Lugduni, 1654, liber 3, disput. 23, quest. 2, 266–267.
- 67 Sanchez, *De Sancto matrimonii*, liber 3, disputatio 20, questio 1, n. 1, 248: „[...] Nam dictio *alium* est relativa et repetit precedentem qualitatem, cuius est persona expressa: et ita significant similem qualitatem in relato [...] Sententia multo probabilior ait, non desiderari, ut parochus sacerdos sit. Prob. quia Tridentinum non restrinxit, ut parochos sacerdos sit prout fecit in alio de licentia parochi assistenti matrimonio: idque convenientissima ratione, nam cum exigat testimonium fide dignum, dignitas parochialis beneficii efficit, ut iure optimo sit parochus fides adhibenda, que dignitas cum non parochus deficiat, eam suppleri sacerdotali dignitate concilium voluit: ergo dicendum est sufficere parochum non sacerdotem. Et confirm. quia cum haec res gravissima sit, ad matrimonii que valorem necessaria, verisimile est si concilium voluisset eam in parochus qualitatem, fore ut eam exprimere argumento“. and ibid at n. 2: „Trident. eod. c. I undecies parochi mentionem fecit, numquamque sacerdoti meminit, nisi cum assistere matrimonio permittitur alii, quam proprio parochus: ergo signum manifestum est, non exigere hanc qualitatem in parochus.“
- 68 ASV, M, CE, 1, c. 421 (1593).
- 69 Sanchez, *De Sancto matrimonii*, liber 3, disputatio 20, questio 3, n. 9, 250: „An parochus possit concedere licentiam clerico qui sacerdos non est, assistendi matrimonio. Videtur id fieri posse: quia quamvis decreto [...] solum de sacerdote mentio fiat, [...] in materia tamen favorabili, nomine sacerdotis comprehenditur etiam diaconus et subdiaconus, secus in stricta, odiosa et penalis: [...] matrimonium autem causa favorabilis est [...]. Et confirmatur, quia multa in matrimonio conceduntur pro illius valore, que in aliis contractibus negatur.“
- 70 ASV, CC, M, CE 1, cc. 396–397.
- 71 ACDF, *Dubia circa matrimonium* (DM), vol. 2, fasc. 14 (1736 Treviso). This volume contains a copy of a letter to the Congregation of the Council (cc. 716–717). At the current stage of research I have found no documentation regarding this case in the ASV, CC.
- 72 There were certain sins that confessors could not absolve because they were under the jurisdiction of the Inquisition or bishop, from which the penitent had to receive absolution. The relationship between confession and inquisition, documented since the Middle Ages, became more evident following the Council of Trent thanks to the obligation of annual confession. See Elena Brambilla, *Alle origini del Sant'Uffizio. Penitenza, confessione e giustizia spirituale dal medioevo al XVI secolo*, Bologna 2000, 495–513; Adriano Prosperi, *Tribunali della coscienza. Inquisitori, confessori, missionari*, Torino 1996.
- 73 ACDF, DM, vol. 2, fasc. 14, c. 715.

- 74 For the opinion by Sergio see ACDF, DM, vol. 2, fasc. 14, cc. 700–702, and by Valenti c. 723. In the case mentioned by Sanchez, however, the false parish priest was indeed a priest: See Sanchez, *De Sancto matrimonio* liber 3, disputatio 22, questio 7, n. 63, 261: „Infertur decisio cuiusdam questionis conscientiae, de qua consultus sum. In oppido quodam adfuit parochus, concilium oppidanum simplicem sacerdotem loco parochi substituit“.
- 75 Sanchez, *De matrimonio*, lib. 3, disputatio 22, questio 1, n. 13, 253: „Omnia gesta per prelatum, vel parochum communi errore talem extimatum, habentem titulum putativum a legitimo superiore, valent etiam si ad forum conscientiae spectent“. Ibid. n. 8: „Nec sufficit error communis, si crassus, vel supinus sit, sed oportet esse probabile“.
- 76 Ibid., questio 5, n. 49, 261: „[...] Ut gesta valeant non satis est communis error, sed necessarius est titulus collatus a superiori quamvis invalidus sit ob aliquod vitium latens: quare dum aliquis sine titulo et autoritate superioris in officium iudicis, parochi, aut confessoris se intrusit, licet communis error facti accedat, gesta per illum ad utroque forum pertinentia, sunt prorsus invalida: nec oppositum reputo probabile [...]“.
- 77 ACDF, DM, vol. 2, fasc. 14, c. 743.
- 78 Benedicti XIV, *Institutionum ecclesiarum, Romae MDCCL*. Excudebant Nicolaus et Marcus Palarini Academiae Liturgicae Conimbricensis Typographi, Institutio 33, n. 3, 215: „Sacra synodus eo Decreto praecipit, ut ille solum parochus intersit, cui matrimonium ineuntes subiiciuntur; quis porro intelligendus sit, concilii patres minime delararunt. Hinc super hac re innumerae prope disceptationes, quarum pleni sunt libri, excitatae fuerunt. In hac etiam civitate, ac dioecesi plurima dissidia non semel ob hanc causam contingerunt. Itaque muneris nostri partes duximus normam aliquam tradere ex actis Sacrae Concilii Congregationis desumptam, cui soli Tridentinam Synodum explicandi facultas conceditur“.