

INTRODUCTORY PAPER FOR

THE FIRST MEETING

OF

ANGLICAN/ROMAN CATHOLIC SUB-COMMISSION

ON MIXED MARRIAGES

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APRIL 16th - 18th, 1968

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INTRODUCTION

It has long been recognized that marriages between Roman Catholics and members of other Christian Churches celebrated according to the discipline of the Roman Catholic Church have been viewed with considerable disfavor by those other Churches. Before the Roman Catholic Church officially entered into the modern ecumenical movement, this caused no great concern in the Church. It was cognizant of its obligations towards its own Faithful and the children of the Faithful. It recognized no particular obligation towards separated Christians in their deprecation of Roman Catholic practice, except to explain that practice in all patience and charity.

When, however, the Church developed so many new attitudes in the great self-examination of the Second Vatican Council, what had been largely a one way concern became a mutually recognized tension that demanded some new policies on the part of the Roman Catholic Church. This was pointed out on the floor of St. Peter's during the Council debate, and the Council Fathers decided to refer the question to the Pope in the expectation of speedier action.

When the Decree on Mixed Marriages was published, it did not meet the expectations of many. As a consequence, the question has remained to this day as a major obstacle in ecumenical convergence and it has been consistently raised in multi-lateral and bi-lateral dialogue.

It is not the purpose of this paper to offer a solution, but rather to set the stage. In it I shall endeavor to present the Catholic position with some indications of how it evolved and is evolving. Before doing so, it must be noted firstly that the Roman Catholic Church has a rather complete and detailed canonical legislation in relation to marriage in general and mixed marriage in particular. Of course church legislation has its roots in theological and doctrinal teachings. Likewise, what is formulated is always partially determined by the historical situation and pastoral concerns which the Church is facing. This however, does not necessarily imply any change in the truths itself. Therefore, church legislation must be seen against the background from which it originated. The treatment of the question of marriage is usually considered in relation to the Code of Canon Law, which came into force on May 19, 1918, and the Second Vatican Council and the related decree Matrimonii Sacramentum of March 18, 1966. Thus, an indication of the evolution of Church legislation can suitably related to the above-mentioned as pre-code, code, and the decree Matrimonii Sacramentum. For the purpose of presentation, the deliberations of the Synod of Bishops held in 1967, may be kept separate. For the sake of clarity, the following subjects will be treated:

1. Impediments to marriage in general
2. Impediments of Mixed Religion and Disparity of Cult
3. Dispensations from Impediments of Mixed Religion and Disparity of Cult - and Promises (cautiones)
4. The Form
5. The Episcopal Synod.

## I. IMPEDIMENTS TO MARRIAGE IN GENERAL

The Code of Canon Law reiterates an ancient principle that "all can contract marriage who are not forbidden by law" (Canon 1035). Canon Law has always maintained that all men have from nature the right to marry, and are free to exercise it until the contrary be proven. It indicates that this right, however, is not absolute, nor absolutely free in its exercise. For marriages since established for the good of the race as well as for the good of the individual, must be under the control of the social authority. Since regarded as a contract, it, like any other contract, should be subject to certain regulations which may render it unlawful or invalid. Obstacles to a valid or lawful marriage are called impediments.

In relation to impediments, the Code of Canon Law determines in part as follows:

- "Canon 1036
- §1 A prohibitive impediment contains a grave prohibition to contract marriage; but, if contracted, the marriage is not invalid.
  - §2 A diriment impediment both gravely forbids a marriage and prevents it from being contracted validly.
  - §3 Even when the impediment exists only on one side it renders marriage illicit or invalid."

A prohibitive (or impedient) impediment makes marriage gravely unlawful but not invalid; a diriment impediment makes the contract not only unlawful but null and void.

Impediments and defects in consent arise

i) from the divine law whether natural or positive such as: impotence, substantial error, previous bond of marriage;

ii) from the ecclesiastical law come most of the impediments, for example, affinity, Sacred Orders, solemn vow, etc.;

iii) the civil law in the case of infidels may hinder a marriage.

Impediments and defects in consent springing from the natural law or divine positive law cannot be dispensed from e. g. consanguinity in the direct line (father and daughter), substantial error, entire lack of matrimonial consent. (cf. Ayrinhac, Marriage Legislation in the New Code of Canon Law, Benziger Brothers, Third Revised Edition, (pp. 53-54)

A. Under the pre-Code legislation impediments were divided into 1) that regarding form, ii) those affecting consent, and iii) impediments by reason of person, such as consanguinity, age, etc..

B. In the Code an impediment in the strict sense is always used to designate lack of capability in the person - *inhabilitas personae*, e. g. affinity, disparity of worship, etc.. Error, force and fear are not impediments, but defects of consent; if Catholics fail to marry before the competent priest, the marriage is null for the lack of form. In the Code of Canon Law, there are three prohibitive impediments namely, vow, legal relationship where it is an impediment by civil law; and mixed religion.

The diriment impediments of the Code are thirteen in number: age, impotence, previous and existing marriage, disparity of worship, sacred orders, solemn vows, abduction, crime, consanguinity, affinity, public decency, spiritual relationship, legal relationship.

C. The Decree, Matrimonii Sacramentum did not deal with the establishment or reduction of impediments. This is quite logical since such is the work of the Commission for the Revision of the Code of Canon Law.

## II. IMPEDIMENTS OF MIXED RELIGION AND DISPARITY OF CULT

### A) MIXED RELIGION

a) The pre-Code history concerning the impediment of mixed religion can be summarized in the following manner:

"From the days of St. John and St. Paul, who forbade association with heretics (2 John 10, 11; 1 Cor. v. 11; Tit. iii 10), the Church has always forbidden mixed marriages. The first Council of which we possess the disciplinary decrees (Elvira, 300) forbids marriage with heretics unless they are willing to enter the Church. Similar enactments are found in the Councils of Laodicea (343-381, c. 10, 31); Hippo (393, c. 16), and others. In the Council in Trullo (692), marriages with heretics are pronounced null, but that law was never universally received in the West. In the Middle Ages there were few heretics, and they were dealt with so severely that the question of mixed marriages was seldom raised (Boniface VIII, cap. 14, De Hæret, v. 2, in Sext.; Council of Fosen, 1309, c. 8; Synod of Fressburg). With the Reformation it became more practical. In the sixteenth century many Councils and synods in various parts of Europe renew the ancient prohibitions. Popes condemn marriages with heretics in the strongest terms, particularly Urban VIII, Clement XI, Benedict XIV, Pius IX, and Leo XIII". (Ayrinhac, opus cit. p. 99)

Mixed marriages were considered as forbidden also by the divine law as long as danger to faith and morals of the Catholic or offspring remained proximate or grave. The chief reasons against mixed marriage were given as: There is always some danger to the faith and morals of the Catholic party; they lead to religious indifferentism; mixed marriages do not promote perfect harmony when the couple do not see eye to eye on questions of belief, education, ways of living; problems arise in relation to children, their religious education and practice of religion; since the parties confer a sacrament, there is possibility of lack of proper preparation for it, etc..

b) The Code states as follows in Canon 1060 in relation to the impediment of mixed religion:

"The Church most severely forbids everywhere marriages between two baptized persons one of whom is a Catholic, the other a member of a heretical or schismatic sect; if there is danger of loss of faith for the Catholic spouse and the offspring, the marriage is forbidden also by divine law"

As noted this is a prohibitive, not a diriment impediment.

## B) DISPARITY OF CULT

a) The pre-Code history of this impediment may be stated briefly as follows:

"In the first centuries of the Church, marriages of the faithful with infidels were forbidden in very much the same terms as marriages with heretics. They were unlawful, but generally valid. Some early Spanish or Gallic Councils seem to declare them null, but these were particular laws and did not receive universal recognition. There was a tendency, however, to make a difference between marriages with heretics and marriages with infidels; and the custom of treating the latter as invalid spread gradually, particularly from the seventh century onward. It had become universal and obtained force of common law towards the twelfth century, if not much earlier (Dictionnaire de Théologie Catholique, "Disparité de culte". When in the sixteenth century the question was asked whether the impediment was in force, even in those missions, like China and Japan, where the custom had never been received, the Holy See answered in the affirmative.

The law of the Church or custom since the twelfth century made null a marriage contracted by a baptized person with one not baptized unless a dispensation had been obtained. It made no difference whether the Baptism had been received in the Catholic Church or in a Protestant

sect, it was "inter personam baptizatam et alteram non baptizatam". Many marriages were null because of this impediment, and Chancery officials spent much time on determining whether it existed in the many cases coming to their attention. The basic reason for the impediment is the fact that the parties are incapable of receiving the sacrament of marriage. Moreover, the lack of Christian faith with consequent danger to the faith and morals of the Christian consort would constitute a serious objection to such unions". (Ayrinhac, opus cit. p. 137)

b) In relation to Disparity of Worship, the law of the Code reads:

"1070 #1" "A marriage is null when contracted by a non-baptized person with one baptized in the Catholic Church or converted to it from heresy or schism"

C) MATRIMONII SACRAMENTUM AND THE IMPEDIMENTS OF MIXED RELIGION AND DISPARITY OF CULT

The following excerpts from the explanatory part of the decree are pertinent:

"The Church considers it a most grave duty to safeguard and preserve the gift of faith both for the spouses and the offsprings. Precisely for this reason it tries in every way to see that Catholics be joined in marriage only with Catholics."

"All sacred pastors have the task of instructing the faithful on the religious importance and excellence of this sacrament. They must warn them of the difficulties and dangers inherent in marriage between a Catholic and a non-Catholic Christian and for even greater reasons of marriage with a non-Christian. With every opportune means let them study how to insure that young people contract marriage with Catholics. "

"Nevertheless one cannot deny that the characteristic conditions of our time have rapidly brought about radical transformations in social and family life, making it more difficult than in the past to observe the canonical discipline regarding mixed marriages. "

"In truth, as circumstances now are contracts between Catholics and non-Catholics are much more frequent, the ways of life and the similarity of habits are closer, thus there is more easily born a friendship between them for which, as experience teaches, there come more frequent occasions of mixed marriages."

"Accordingly the pastoral concern of the Church, today more than ever, is that the sanctity of marriage, in conformity with Catholic teaching, and that the faith of the Catholic spouse, even in mixed marriages, be safeguarded and that the Catholic education of the children be assured with the greatest possible diligence and efficaciousness."

"This pastoral duty is all the more necessary because, as it is known, there are current among non-Catholics opinions differing from Catholic teaching both concerning the essence of marriage and its qualities, especially regarding that of its indissolubility, and as a consequence, the matter of divorce and new marriages after civil divorce."

"Therefore the Church considers it her duty to forewarn her faithful, so that they may not run dangers regarding the faith and suffer harm both of a spiritual and material nature. Let, therefore, great care be taken in instructing those who intend to contract marriage on the nature, the qualities and obligations implicit in marriage itself, and of the dangers to be avoided."

"Moreover the line of conduct cannot be disregarded in this respect which Catholics must follow with the brethren who are separated from the Catholic Church, such as was laid down in the Second Vatican Ecumenical Council in the Decree on Ecumenism."

"This new discipline suggests that the rigor of the present legislation be mitigated regarding mixed marriages, certainly not as regards divine law, but in regard to certain norms of ecclesiastical law by which the separated brethren often feel offended."

### III. DISPENSATIONS FROM IMPEDIMENTS OF MIXED RELIGION AND DISPARITY OF CULT - AND PROMISES (CAUTIONES)

#### A) PRE-CODE

While the early councils did establish laws forbidding mixed marriages, they made no provision for dispensations. The only measure accepted as sufficient to ward off danger of perversion of faith was conversion of the non-Catholic. Later, the promise of future conversion was sometimes accepted as a sufficient surety. There are even isolated instances when the Church permitted mixed marriages in the Middle Ages without a definite promise of conversion. Thus in the early seventh century when the pagan King Edwin wished to marry the Christian princess Ethelburga, Pope Boniface V at first protested. But later he permitted the marriage on the King's promise that he would allow the princess and

her retinue to practice their religion and that he would become a Catholic himself if upon examination he deemed the Catholic religion to be holy and worthy of God. This is the first appearance of anything that resembles our cautions. Until the eighteenth century, however, such permissions were so isolated that no real practice evolved concerning cautions.

For the missions, the Church began to grant faculties to dispense from the impediment of disparity of cult in the second half of the sixteenth century. Papal dispensations from the impediment of mixed religion were first given in the seventeenth century and then only in favor of marriages which involved a public good of interest to the Church, that is, in the case of the marriages of nobility and heads of state. Cautions were required even in these rare cases; sometimes as many as thirty-eight different points had to be agreed on. Then, in the eighteenth century, the Church began to dispense, after receiving cautions, even for the mixed marriages of common people. During the nineteenth century and the early part of this century, the Holy See (especially through the Holy Office) has issued many decrees about dispensations and cautions so as gradually to bring about a uniform discipline.

Even in this short historical summary it should be noted that during the sixteenth and seventeenth centuries canonists taught that the impediments of mixed religion could be lifted not only by papal dispensation but also by contrary custom. A custom whereby Catholics contracted marriage with Protestants without dispensation was a fact in Germany, Poland, and parts of France. Sometimes priests officiated with episcopal approval even when there were agreements to raise the boys in the father's religion and the girls in the mother's religion. At the time, canonists disagreed about the precise legal implication of the silence of the Holy See about this custom. But all agreed that it was a matter of tolerating the lesser of two evils. (cf. "The Mixed Marriage Promises" - The Jurist, 1965, pp. 92-105)

## B) CODE

The following regulations are given:

- CANON 1061. N. 1 The Church does not dispense from the impediment of mixed religion, unless:
1. There be just and weighty reasons;
  2. The non-Catholic party guarantees to remove the danger of perversion from the Catholic party, and both promise to baptize and educate all their children in the Catholic faith;
  3. There be a moral certainty that the promises will be kept.
- N. 2 The promises must, as a rule, be demanded in writing.



- CANON 1062. The Catholic consort is bound prudently to procure the conversion of the non-Catholic party.
- CANON 1063. N. 1. Even when a dispensation from the impediment of mixed religion has been given by the Church, the parties can not, either before or after their marriage before the Church, go, whether in person or by proxy, to a non-Catholic minister in the exercise of his office, for the purpose of giving or renewing the matrimonial consent.
- N. 2. If the pastor knows for certain that the parties are about to violate this law, or have violated it, he shall not assist at their marriage, except for very weighty reasons, all danger of scandal being removed and the Ordinary having been consulted.
- N. 3. It is not, however, forbidden for the parties to present themselves before a non-Catholic minister acting as a civil magistrate, when the civil law requires it, solely to comply with a civil formality and for the sake of civil effects.

CANON 1064. Ordinaries and other pastors of souls shall:

1. Deter the faithful from contracting mixed marriages as much as they can;
2. If they cannot prevent them, they shall take the greatest possible care that such marriages are celebrated according to the laws of God and the Church;
3. After such a marriage has been contracted, either in their own territory or outside of it, they shall watch over the faithful fulfillment of the promises made;
4. In assisting at such marriages they shall follow the regulations of Can. 1102. (re form, etc.)

Canon 1071 - declares that what is prescribed in these Canons for mixed marriages must be applied also when there is an impediment of disparity of cult.

In 1932 the Holy Office declared that dispensations without cautions are invalid even in danger of death.

The Holy Office in the 1938 declaration for Japan, has admitted that there can be a danger of demanding more than the divine law requires. "What has been said may and should be stated as a general principle as follows: if the parties, whether they be Catholics or catechumens, on their part seriously do what they can to secure the baptism and Catholic education of all the children; if they are in no way the cause (neither positive nor negative, mediate or immediate) that Catholic education is in spite of them doubtful or impossible; if moreover they have no choice of another marriage which would be free from this uncertainty or impossibility, so that, to avoid this harm to their children they would have to remain unmarried (which not infrequently would entail notable danger to their eternal salvation) -- in these circumstances the parties are not to be restrained from a particular marriage, nor are they to be denied the sacraments or the necessary dispensations from matrimonial impediments. For the law of God by which parents are bound to the Catholic education of all their children, does not intend to bind them to what is impossible. And if they sincerely do what they can they are not the cause of their children's privation of baptism and Catholic education. . . . And even though by begetting children they are said to cooperate in some way to their non-Catholic education, if this be cooperation at all, it is no more than material cooperation, for the placing of which they have in this case a very grave justifying reason, namely the natural right of man to marriage and to its natural use. (Bouscaren, Canon Law Digest, Vol. 2, pp. 284-285). "

So too the 1949 provisions for Catholics in Communist China show a similar consideration regarding the cautions (cf. Bouscaren, Canon Law Digest, Vol. 3, pp. 408-410).

### C) MATRIMONII SACRAMENTUM

"Let there be always borne in mind that it is always necessary to keep away from the Catholic spouse the danger to his faith and that one must diligently provide for the Catholic education of offspring. (cf. Can. 1060)

Let the local Ordinary or the pastor of the Catholic party take care to inculcate in grave terms the obligation to provide for the Catholic Baptism and Catholic education of the offspring. For the fulfilment of this obligation a guarantee will be asked for by means of an explicit promise on the part of the Catholic spouse, that is to say, by means of the cautions.

The non-Catholic party, with due delicacy, but in clear terms must be informed of the Catholic teaching regarding the dignity of Matrimony

and especially regarding its principal qualities, which are unity and indissolubility. He or she must be informed of the Catholic party's grave obligations to safeguard, preserve, and profess his faith and to have the offspring which will be born, baptized and educated in the faith.

And so that this obligation may be guaranteed, the non-Catholic spouse should also be invited to promise openly and sincerely that he will not create any obstacle in the fulfilment of that duty. If then the non-Catholic party thinks he may not formulate this promise without violating his conscience the Ordinary must refer the case with all its particulars to the Holy See.

Although under ordinary conditions these promises must be made in writing, it is, however, within the power of the Ordinary - either by means of rules of a general character or in each individual case - to establish that these promises of the Catholic party and of the non-Catholic party or of both be given in writing or not, as well as to determine how mention of it is to be inserted into the matrimonial documents .

Local Ordinaries and pastors should be attentively vigilant that families resulting from mixed marriages lead a holy life in conformity with the promises made, especially as regards the Catholic instruction and education of the offspring."

#### IV. THE FORM OF MARRIAGE

##### A) PRE-CODE

The primitive tradition of the Christian Church regarding the celebration of marriage is made clear by Ignatius of Antioch: "It is fitting that those who enter in marriage should form that union with the approval of the bishop, that the marriage should be according to the Lord and not according to the desires of the flesh." (Ep. ad Polycarpum n. 3; cfr. Father Cahill, "Change the marriage Law?", the Homiletic and Pastoral Review, November, 1963, p. 115). Likewise Tertullian wrote: "From the beginning of Christian society the marriage of its members was looked upon as a public religious act, subject to ecclesiastical control" (Tertullian, De Monog. c. 11, De. Pudi., c. 4, cfr. Marriage Legislation in the New Code of Canon Law by H. A. Ayrinhac (1949) p. 23e).

Father Cahill (loc. cit. p. 116) indicates that Tertullian also states that those who marry without approval of the Church are separated as fornicators or adulterers (De Pudicitia, c. 4), and adds that Tertullian thereby implies that the approval requirement had two principal objectives: to determine that the parties were not bound by a previous marriage (so that the marriage they contemplated would not be adulterous), and to determine that they suffered from no impediment or defect of consent which would make their marriage a mere fornication.

Although his wording is strong, there is no other proof that the denunciations of Tertullian against clandestine marriages indicated that in his time these marriages were invalid. However, it cannot be doubted that they were strictly forbidden (cfr. Ayrinhac, opus cit. p. 235) "That prohibition was frequently renewed by provincial Councils particularly after the eight century" (Ayrinhac opus cit. p. 235).

An additional measure, first made in local councils and enacted for the whole Latin Church in 1215 at the Fourth Lateran Council, commanded that all prospective marriages be publicly announced. This bans requirement was put in the care of the local bishops and pastors, a recognition that it was they who were already charged with approving the marriages of their diocesans and parishioners. The Fourth Lateran Council, by the sanction of suspension against any priest who celebrated a marriage not properly proclaimed, sought not only to coerce pastors and prelates to attend to the banns, but also to prevent the people from having their marriages celebrated without due publication and approval (cfr. Cahill loc. cit. p. 116).

The law of the Fourth Lateran Council was also disobeyed, and marriages continued to be contracted secretly. The difficulty was that many clandestine unions could not be proved by accepted methods. In the internal forum they constituted valid marriages because consent had in fact been exchanged. In the external forum the presumption was that they were null and void if proof could not be had in their favour. Thus, legitimately married partners could separate and enter another contract which, although null, was to be held valid in the external forum. Others lived in concubinage under the cover of a supposed occult marriage. To remedy those evils some Councils decided to prescribe a certain form of marriage demanding among other things that it be celebrated in the presence of the pastor and of several witnesses. But that legislation was local in character and, moreover, it could be disregarded also and remain without effect unless some sanction were added to it. (Ayrinhac, opus cit. p. 235). None of these Councils, including the Fourth Lateran, made marriage in facie ecclesiae, the presence of witnesses, or the declaration of banns obligation obligatory under the pain of nullity. (cfr. Rev. John C. Barry, The Tridentine Form of Marriage, The Jurist, April 1960, p. 162).

The Tametsi decree of the Council of Trent is a landmark in the history of marriage; "For the first time the Church rendered null and void any marriage contracted without the presence of the parish priest and two or three witnesses." (cf. Barry loc. cit., p. 163). "The Tridentine Fathers legislated the basis of our present canonical form, as in their opinion, the best way to offset a number of evils arising out of past and contemporary civil law situations, all of which, it seems, can be reduced to a basic cause: clandestinity. All baptized persons, whether Catholic or non-Catholic, came within in the scope of the Tametsi law. (cf. J.D. O'Connor, S. J., "Should the Present Canonical Form be Retained for the Validity of Marriage", The Jurist, January 1965, p. 67).

The measure of Tametsi was a radical one and was met at first by strong opposition. Some considered it as dangerous novelty, calculated to multiply illegitimate unions by curtailing the liberty of marriage. Others objected on doctrinal grounds, as this seemed to be changing the substance of the sacrament. The great majority of the Fathers of the Council, however, were in favour of the reform, and the decree Tametsi was published. (cf. Ayrinhac, opus cit. pp. 235-236).

The decree Tametsi was not of obligation unless it was promulgated in the parish of the parties. Lack of promulgation was especially found in countries predominantly non-Catholic; such as large sections of Europe as well as of America. Moreover it was not always promulgated even in parishes or areas totally or predominantly Catholic (cf. O'Connor, loc. cit. p. 67).

Furthermore, notwithstanding promulgation where it had taken place, the declaration of Pope Benedict XIV, Matrimoniâ quae in locis of, 4 November, 1741, relaxed the Tridentine law by exempting heretics from the canonical form when they married among themselves or with Catholics. This provision was first made for Belgium and Holland, and later extended to other countries by a number of subsequent decrees, the best known being the constitution of Provida of 18 January, 1906, (cf. Barry, loc. cit., p. 163).

The Ne Temere Decree issued on 2 August 1907, and effective 19 April 1908, applied the Tridentine law on canonical form universally to marriages involving Catholics and also did away with all exceptions provided by earlier grants, including that of 1859.

Even the universality of the Ne Temere gave way in Germany and Holland, when its provisions, in virtue of apostolic dispensation, did not apply in the case of mixed marriages. (Germany: S. C. of Council, 1 Feb. 1908; *Fontes C. L. C.* n. 4344 ad IV., Holland: S. C. of Sacraments, 27 Feb. 1909; cf. *De Forma Canonica in Matrimoniis Mixtae Religionis*", *Periodica de Re Morali, Canonica, Liturgica*, 1963 p. 328, cf. O'Connor, loc. cit. p. 68)

## B) CODE

- CANON 1094. Only those marriages are valid which are contracted before the parish priest or the local Ordinary or a priest delegated by either of them and at least two witnesses, in accordance with the rules laid down in the canons that follow and excepting the cases mentioned in Can. 1098, 1099.
- CANON 1098. gives special cases where a priest is not available in danger of death or in urgent cases.

CANON 1099. §1. The above law regarding form is binding:

1.<sup>o</sup> On all persons baptized in the Catholic Church, and on those who have been converted to it from heresy or schism, even if either the latter or the former have fallen away afterwards, whenever they contract marriage among themselves;

2.<sup>o</sup> Those laws are binding also on the above-mentioned persons, if they contract marriage with non-Catholics, baptized or unbaptized, even when a dispensation has been obtained from the impediment of mixed religion or disparity of worship;

3.<sup>o</sup> Orientals are bound to the prescribed form when they contract with Latins who are subject to this form.

§2. Without prejudice to the rule laid down in §1, n. 1, non-Catholics, whether baptized or unbaptized, who contract among themselves are nowhere bound to observe the Catholic form of marriage; likewise those born of non-Catholics, who although baptized in the Catholic Church, grew up from infancy in heresy, or schism, or infidelity, or without any religion, if they contract marriage with non-Catholics.

It is to be noted of course, that laws regarding form could bind for liceity or lawfulness only rather than for validity. However, the latter applies regarding the form in all circumstances. In relation to the liturgical celebration of mixed marriages, Canon 1102 §2 reads: "All sacred rites are forbidden; if however, from this prohibition greater evils were likely to result, the ordinary might permit some of the usual ecclesiastical ceremonies, always to the exclusion of Mass" Canon 1109 §3 also indicates: "Marriages between Catholic and non-Catholic parties are to be celebrated outside of the Church (building); if, however, the ordinary judged prudently that greater evils would follow from the observance of this rule, it is left to his discretion to dispense from it, without, however, the prescription of Canon 1102, §2, ceasing to bind.

### C) MATRIMONII SACRAMENTUM

In relation to the canonical form and the liturgical rite the following are prescribed:

"In the celebration of mixed marriages, the canonical form must be observed according to the norm of Canon 1094. This is required for the very validity of the marriage. If however difficulties arise, the Ordinary must refer the case with all its particulars to the Holy See.



(b) that the non-Catholic party is aware of the obligation in conscience of the other spouse and at least does not exclude the catholic baptism and education of the offspring?

Placet: 92      Non Placet: 13      Placet j. m. : 72      Null(abst.): 10

4. Whether the canonical impediment should be suppressed?

Placet: 28      Non Placet: 128      Placet j. m. :29      Null(abst.): 2

5. Whether the canonical form can be eliminated in such a way as to have the following norm: catholics, who for the validity of their marriages are obliged to the form when they contract among themselves, are held to it only for lawfulness if they marry non-Catholics?

Placet: 33      Non Placet: 125      Placet j. m. :28      Null(abst.):1

6. Whether, retaining the canonical form for the validity of marriage, local Ordinaries should be empowered to dispense from it in particular cases, according to their own conscience and prudence, in such a way that the use of this right would no longer be reserved to the Holy See?

Placet: 105      Non Placet: 13      Placet j. m. :68      Null(abst.):1

\* National Episcopal Conference

7. Since mixed marriage, like any other marriage, can be celebrated at Mass, or with a special ceremony outside Mass, should not pastors of souls, with all due regard for the freedom of the contracting parties, be concerned with recommending one or other of these liturgical forms according to the spiritual background of the parties?

Placet: 153      Non Placet: 5      Placet j. m. : 27      Null(abst.): 2

8. Whether we should not increase our pastoral care in connection with mixed marriages, not only in previous catechetical instruction of the contracting parties, but likewise through special assistance on the part of pastors, for families which have arisen from mixed marriages?

Placet: 171      Non Placet: -      Placet j. m. : 16      Null(abst.): -

#### B) TRENDS AND POSSIBILITIES

Naturally, it is not known what action may be taken on the recommendations of the Synod. Thus, to give an opinion, one may quote from the official report of a Canadian Bishop who participated in the Synod as an indication of future trends and possibilities: Mixed Marriages.

"Judging from the voting that took place at the end of the discussion, one may prophesy as follows:



The Canonical form will be retained for the validity of a marriage. However, Ordinaries will have the power to dispense from this law in individual cases. The conditions for granting such dispensations will be determined by the National Conferences in order to assure uniformity within a country.

The Catholic party to a mixed marriage will be required to state that he will do his best to raise the children as Catholics. This statement will be made after he has discussed with the non-Catholic party this obligation".

Some discussion arose over question four which did not distinguish between the impediments of Mixed Religion and Disparity of Cult in relation to the question of suppression. Although the form of marriage and the promises concerning children have been foremost in the minds of many, the matter of impediments has also been given attention. For example among those who voted Placet Juxta Modum to this proposition were the Canadian Bishops, who had submitted proposals calling for the reduction of the impediment of disparity of cult from diriment to prohibitive and asking for the impediment of mixed religion to be dropped altogether.

#### C) SOME ASPECTS OF THE QUESTION CONSIDERED BY THE SYNOD

It is clear from the "RELATIO" introducing the discussions, the discussions which took place at the Synod, and the press conferences that the subject of mixed marriages was not considered as a purely juridical one. On the contrary, it had profound, biblical, ecumenical, theological, and pastoral connotations, as well as the canonical aspects and respect for the teaching on religious liberty. This is seen in the following quotation from the "RELATIO":

"At the present time, Catholics almost everywhere live in the midst of non-Catholics, and in not a few areas they are in a decided minority with respect to the entire population. This puts them at times in the practical necessity of contracting marriage with non-Catholics, baptized or not, since the right to contract marriage is one of man's most primordial natural rights.

Besides, the recent declaration of the Second Vatican Council has confirmed the Church's insistence on the dignity of the human person, and his consequent right to worship God according to the dictates of his own conscience. Likewise, the laudable movement towards the "restoration of unity" among Christians has sought to place greater emphasis on the things which unite Christians, than on those which divide them. Hence the pastoral problem can be formulated as follows: How can we reconcile on the one hand the absolutely binding

obligation to safeguard the Faith of the Catholic party and to assure the Catholic upbringing of the children, and at the same time respect the right to contract marriage in specific social, psychological and ecumenical circumstances".

Therefore, it is fitting to make some brief references to arguments based on these various aspects.

From the scriptural viewpoint, Old Testament texts were mentioned to indicate that the Christian Church like Israel always had a concern for the integrity of its belief. Similarly, in New Testament texts, such as 1 Cor. 7, 12-16, the same principle is indicated, as well as indissolubility (Matth. 19. 3-8, Mark, 10, 2-12, and the doctrine of sacramentality and ecclesiological aspect of marriage, (Ephesians 5, 22-23). The Christian Churches agree that marriage is a vital matter for humanity and the Church, and not a private affair. No Church can be indifferent to the problem of marriage.

From the theological view point, in Catholic doctrine marriage is a sacrament, a gift of God's grace. It is necessary that there be present a valid baptism, reciprocal love and intention of perpetual fidelity. Thus a religious ceremony helps emphasize these, and should be insisted upon. The Church and every Christian has the mission from Christ to bring the light of the Gospel to men. The proximity of the relationship of the parent makes this mission a clearer and stronger duty, which can not be dispensed with. There may be added a detailed explanation of this aspect given by an author:

"This is the core of the difficulty: the objective right and duty of the Catholic parent appear to be in full conflict with the right and duty in conscience of the non-Catholic parent. The child stands alone in the center of the conflict, exposed to the danger of suffering serious harm from the conflicting positions of the parents.

We should exclude all solutions that do not serve the child's welfare. If the child is not given any Christian education, for instance, both parents fail in their duty. The child should not be deprived of all the benefits of Christian religion. Again, if the child gets a general "Christian education" without reference to any denomination, he is deprived of an essential element of Christianity, which is to join and worship in a community. No such privation should be imposed on the child.

A tempting solution, if there are several children in the family, might be to divide them into two religious groups -- e. g., the boys following the religion of the father, and the girls that of the mother.

But the solution is a deceptive one: it has all the appearances of justice, but in reality perpetuates the division of Christians. It reflects a cold, calculating spirit; it is the least ecumenical of all solutions.

There remains only one solution: all children should be educated in the same religion. But in which one?" (AMERICA, Sept 9, 1967)

From the canonical viewpoint, the primacy must be given to theological rather than legal considerations. Juridical formalities can obscure theological realities. Yet, her laws are to be the mark of the maternal solicitude of the Church for her children. Man needs help of specific legal directives to counterbalance the basic weakness of human nature. The Church has the duty and obligation to legislate in matters pertaining to the sacraments. There is the great necessity to express the sacredness of marriage in the face of the growing trend towards secularization and de-Christianization by retaining Church celebration of marriage.

From the pastoral aspect, it was asserted that the canonical regulations insure the freedom of the parties, the opportunity to instruct the couple, prevents hasty marriages, but it occasions scandal also when civilly married and divorced persons marry in the Church. It causes hardships for other Christians undoubtedly. It is very difficult to obtain a new discipline which will be satisfactory everywhere, since the interventions of the Bishops indicate the great differences in circumstances and pastoral needs in different countries. It is noted that many marry outside the Church and are lost to Church and often to any religious affiliation.

From the ecumenical viewpoint, there was a concern that the non-Catholic party should not be asked anything which might run counter to his conscience. It was acknowledged that Christians do not like to be treated as the same as non-Christians in the Church's laws. Other Christians look for a reciprocity in marriage matters and often make reservations that the pre-nuptial promises should be asked equally of all non-Catholic persons both Christians and non-Christians. It is interesting to note that the English language press release of the Press Conference of Cardinal Jaeger reads in part as follows:

"It is often said that the whole question of mixed marriages has run into a dead end. But no one can repeat this after the meetings of this Synod. Determined efforts are being made to solve the problems involved. It is an over-simplification to state that the question of mixed marriages is the acid test of ecumenism.

Any solution of this thorny problem calls for an open and sincere dialogue, in which the interested parties give all they have, cost what it may. It is absurd to expect to have the reply ready-made from the Church without doing everything we can do ourselves.

It would be false to think that mixed marriage contributes to the advance of ecumenism. Nevertheless it still remains true that both parties are bound, notwithstanding the difference in religion, to live together in a witness of love to one and the same Christ.

Someone may object that only 'little steps' are being made, but these are indispensable in preparation for the bigger steps. The new situation will call for closer collaboration between the Catholic priest and the Catholic party on the one hand, and the non-Catholic party and his or her minister of religion on the other hand, namely in verifying the baptism of both parties etc. It is safe to say that the pastoral concern, the passion for ecumenism, and respect for the freedom of conscience of both parties will have noteworthy repercussions in the future. Any attempt to reach a definitive solution of the problem of mixed marriages would be like trying to draw a square circle. It is hoped that all Christian churches will take this grave problem into serious consideration so as to provide grounds for hoping that eventually we may reciprocally reach an acceptable solution."

#### OBSERVATION:

It seems that the Synod of Bishops, like the Vatican Council, was pastorally and ecumenically oriented and deliberated on the subject of mixed marriages with understanding and good will in the light of scriptural doctrinal, pastoral, ecumenical and canonical aspects, and with a regard for difficulties in relation to universal legislation in some aspects, and for the consideration that the commission for the revision of the Code will be considering many of these matters.

#### CONCLUSION

The necessity for change in the Church's legislation which was voiced in the Council was also recognized in the Decree on Marriage despite what many consider serious shortcomings. It stated explicitly that new attitudes towards those not in union with Rome "suggests that the rigor of present legislation be mitigated regarding mixed marriages, certainly not as regards divine law, but in regard to certain norms of ecclesiastical law by which the separated brethren often feel offended."

It is safe to say that this sentiment has not changed and that a desire to enlarge the mitigations which it inspires is constantly growing among those who are ecumenically aware. The formation of joint committees for mixed marriage study, such as this committee, the prominent place the question had in the first Synod of Bishops, the volume of writing that is appearing on the subject and the

tone of it, all these are manifestations of a willingness on the part of the Church to do what it can in conscience and prudence to meet the legitimate desires of other Christians.

It must be understood, however, that this is no simple problem which can be settled by a simple abandonment on the part of Rome of all in its practice which in any way offends others. There are questions of what in conscience can and cannot be conceded. These have not all been a subject of consensus within the Church. There is also the question of universal opportuneness. What effect would radical changes in legislation have in areas where Christians are few in number? Much must be settled by patient dialogue not only between Churches but within the Roman Catholic Church itself.

May I conclude with a quotation taken from the "JOINT DECLARATION ON THE PROBLEM OF MIXED MARRIAGES" by the Council of the Swiss Federation of Protestant Churches, the Swiss Roman Catholic Episcopal Conference, and the Bishop of the Swiss Catholic-Christian Church, made prior to the Synod on July 19th, 1967, which I consider gives an excellent expression of the nature of this question:

"Certainly there can be no true progress without further change of the present canonical regulations, whose effects are very heavily felt. For Roman Catholics, the instruction, 'Matrimonii Sacramentum' of March 18th 1966, has for the moment the force of law, in spite of its provisional character. The document makes explicit reference to the new relations between the Churches and to the Decree on Ecumenism. This reinforces our conviction that further progress should be prepared for by a joint discussion. Efforts to improve the situation should not be confined to examining purely juridical questions. Deeper matters should also be taken account of. It is clear that the views of our Churches differ on a number of points, e. g. the Christian basis of marriage, the significance given to a marriage celebrated in church, indissolubility, the interpretation of certain moral principles concerning marriage and the family, the limits of obedience due to the Church and the competence of the ecclesiastical authority. Hence no discussion can be of value which does not take into account the differences deriving from the characteristic faith of each Church.

All the same, there are other things besides our disagreements..... Christians have here a joint responsibility since they recognize through faith the deep meaning of the communion of man and woman, and the will of our Creator and Saviour with regard to marriage and the family. The growing number of mixed marriages does not merely confront us with a new problem, it obliges us to share the same concern. Moreover, ecumenical progress and the dialogue between the churches have created a new situation which allows us to take our stand together".

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