

CONFIDENTIAL

A. I. R. C. J. P. C. / R. O. 3

FIRST INTERIM REPORT OF THE JOINT ANGLICAN/ROMAN CATHOLIC SUB-COMMISSION ON THE THEOLOGY OF MARRIAGE AND ITS APPLICATION TO MIXED MARRIAGES

First meeting - St. George's House, Windsor, 16th - 18th April 1968

The Joint Anglican/Roman Catholic Sub-Commission on Mixed Marriages met at St. George's House, Windsor Castle, on the afternoon of Tuesday, 16th April 1968.

Members of the Sub-Commission

Roman Catholic Members

The Most Revd. Ernest L. Unterkoefler, Bishop of Charleston, South Carolina, U.S.A.

The Most Revd. Langton D. Fox, Auxiliary Bishop of Menevia, Llanelly, Carmarthenshire, South Wales

The Most Revd. Francis J. Spence, Auxiliary Bishop to the Military Vicar, Canadian Forces Headquarters, Ottawa, Canada

The Revd. Professor P.F. Cremin, D.D., I.U.D., St. Patrick's College, Maynooth, Ireland

Anglican Members

The Most Revd. Edwin Morris, formerly Archbishop of Wales

The Most Revd. George O. Simms, Archbishop of Dublin

The Right Revd. Donald H.V. Hallock, Bishop of Milwaukee
(Episcopal Church in the U.S.A.)

The Revd. Professor Gordon R. Dunstan, Frederick Denison Maurice
Professor of Moral and Social Theology at King's College, London

Secretaries

The Very Revd. Canon W.A. Purdy (Vatican Secretariat for Promoting Christian Unity)

The Revd. Canon J.R. Satterthwaite (Church of England Council on Foreign Relations)

An apology for absence was received from the Most Revd. Dr. Edwin Morris, D.D., formerly Archbishop of Wales. It was resolved that a message of sympathy and good wishes be sent to him.

1. His Grace the Archbishop of Dublin and His Excellency the Bishop of Charleston were unanimously elected chairmen. It was agreed that they should preside alternately.

The first session opened under the chairmanship of the Bishop of Charleston.

2. Canon Dunstan gave a short paper, tracing the course of events

that led to this Sub-Commission having before it a document entitled "Mixed Marriages", which had been prepared by a group of Roman Catholic theologians and canonists at the instance of the Vatican Secretariat for Promoting Christian Unity, for discussion with members of non-Roman Churches (including Orthodox) brought together by the Faith and Order Department of the World Council of Churches. The discussions took place at Nemi from 26th February to the 4th March, 1967.

This document was accepted as a basis for discussion by this Sub-Commission. (Section references will be to this document.)

3. Bishop Spence presented a paper he had prepared setting out the Canon Law on marriage insofar as it concerns mixed marriages, indicating the history of the legislation up to and including the discussion of the subject in the Synod of Bishops in October, 1967.

4. The Second Session, on the morning of Wednesday 17th April, was presided over by the Archbishop of Dublin. Discussion began on the Nemi document paragraph by paragraph. We used this document as revised in the light of discussions at Nemi and issued by the Vatican Secretariat for Christian Unity. This report records only the main points of discussion.

OLD TESTAMENT

5. We did not pursue the document's allusion to the Old Testament because we felt that there are two fundamental differences between the Old Testament situation and our own. First, the Old Testament legislation was concerned with the marriage of God's chosen people with pagans. We are considering marriages between Christians, one of whom is of the Roman Communion and the other is not. Second, the situation envisaged then required a totally prohibitive law. Our situation, by contrast, requires a regulative law having a primary pastoral intent.

INDISSOLUBILITY

6. The mention of indissolubility in I.3. led Roman Catholic members to ask for a statement of the Anglican doctrine on this

point. The admission to Holy Communion of persons living with a second partner during the lifetime, but after civil divorce from, the first, suggests that their doctrine of indissolubility is not so absolute as to regard such a person as living in adultery.

In reply, a first distinction was drawn between Provinces in the Anglican Communion where the Church was established and Provinces where it was not. Within the non-Established Provinces there would no doubt be variety of practice in detail, but the general practice would be (assuming that no decree of nullity had been granted) for an application to be made to the Bishop through the parish priest for admission to the Holy Communion; for the case in all its circumstances to be examined either by the Bishop alone, or with help from assessors, and for the permission to be either refused or granted after a set term, it may be of months or more.

In Provinces where the Church is established - e.g. in the Church of England - the situation is more complicated. Under Statute Law the incumbent of a parish is left with a discretion whether or not to allow the re-marriage of a divorced person in his church (Matrimonial Causes Act, 1937). In fact he is advised by the Convocations of Canterbury and York always to use this discretion negatively. (A Resolution of Convocation, as distinct from a Canon, has strong moral force, but is not legally binding.) Other Resolutions of Convocation authorize diocesan bishops to permit the clergy in suitable cases, first to say prayers with a couple remarried after civil divorce, and then, after suitable preparation, to admit such to the Holy Communion.

This permission going alongside of a general refusal to allow use of the marriage service for such weddings is justified only in terms of pastoral necessity. The marriage service is refused because the Church of England insists on preserving its doctrine of marriage from erosion; it insists that it must always remain evident that a couple taking the marriage vows take them with the full knowledge that an intention of lifelong and exclusive fidelity is required of them. The use of the marriage service for the wedding of a person whose

former partner was still living would compromise this possibility.*

On the other side, the Church accepts a pastoral obligation to provide "for the hardness of men's hearts" and so, accepting the fact of a second marriage after divorce and the evident need for and desire for grace, seen in these new partnerships, it attempts to provide for this by the expedient just described.

One R.C. delegate welcomed the assurance that an Anglican priest would always require of people entering marriage that they should do so with a full and unconditional intention of lifelong and exclusive fidelity.

ANGLICAN PROCEDURE IN NULLITY CASES

7. A further question was asked: what machinery, and therefore what quality of evidence, is used by the Anglican authorities in deciding a claim of nullity?

In reply it was said that practice varied, as was noted in the reply to the question on the readmission of divorced persons to Communion.

In English practice a decree of nullity in the Queen's Court would be accepted by a bishop. At the same time, defective intention would be very difficult to establish as a ground for nullification in the Queen's Court because English law presumes that a man intends the consequence of his own words and acts and this presumption in the case of marriage would be hard to rebut. When, however, the civil court had granted a decree of divorce, a bishop might in some (rare) cases be able to establish that a case for nullification might have been made out had it been presented. If so, he would feel free to authorize a marriage in church for the party concerned. He would normally receive assistance from his diocesan Chancellor (a lawyer of the standing of a Recorder in the civil courts) in assessing such cases, as well as from the parish priest. Fuller consideration of the

* Mention was made of a recent Canon of the Anglican Church in Canada which would appear to admit re-marriage in church after civil divorce in certain circumstances. Since no precise details of the Canon mentioned were available to those present, consideration was deferred until they were.

problem was given by a Commission on Nullity set up in 1949 under the chairmanship of the then Bishop of London, the right Revd. J.W.C. Wand, D.D. Its report "The Church and the Law of Nullity of Marriage" was published by S.P.C.K. in 1955.

SACRAMENTAL CHARACTER OF MARRIAGE

8. The mention of the sacramental nature of marriage in I.4.(b) prompted the assertion from a Roman Catholic delegate that he believed marriage to be a sacrament in the same category as Baptism and the Eucharist, and prompted him to ask whether Anglicans would agree.

In reply, it was stated that in terms of the Reformation Formularies, the answer must be no: they distinguished Baptism and the Eucharist which were "generally necessary to salvation" and which were "ordained by Christ Himself" both as to word and as to sign, from Holy Matrimony which is a means of salvation for some but not for all, and which was ordained by God Himself in the creation of man.

To crystallize the situation, the Roman Catholic asked whether Anglicans would regard the sign of consent to the contract of marriage by baptised persons as one of the signs which Christ Himself covenanted to use as an instrument to confer His grace: in this case attaching to the status of marriage a right to all the grace that would be needed by the parties in order that they might lead their married life in full accord with His will.

In reply the Anglicans said they would agree entirely. In their liturgy the marriage covenant is interpreted, as St. Paul interpreted it, in the nuptial symbolism of the marriage of Christ to His Church. This, together with the form of the vows, lays upon the baptized spouses the mutual obligation of helping one another towards sanctification in Christ: it assures to them also that the grace of God in Christ is covenanted to them in this endeavour.

DIFFERENT SITUATIONS: DIFFERENT DUTIES

9. On II.3. it was remarked that a distinction should be drawn between (a) general teaching which the Church should give concerning

the difficulties and therefore the undesirability of mixed marriages; (b) the pastoral advice to Christians who are contemplating, but have not yet committed themselves to, a mixed marriage; and (c) the provision to be made when they have either determined upon, or entered into a mixed marriage. It is in situation (c) that the duty to educate children in the Roman Catholic faith is circumscribed by other duties such as that of preserving the unity of the family. It leaves open the question whether morally a Roman Catholic may voluntarily enter into a situation in which he foresees he will be so circumscribed.

On the Anglican side, it was alleged that this danger is less than it was formerly, partly because of the new ecumenical relationship between the Churches and partly because of changes in the life of civil society which tend both to increase mutual understanding and tolerance and to lessen hostilities which were bred sometimes of ignorance and sometimes of cultural antipathies.

CANONICAL FORM

10. At the third session on the evening of 17th April, the Bishop of Charleston presided. In II.2 it is said that there is no theological objection to the abolition of the canonical form for validity provided that:

- (a) our Christian people should be made aware by other than legal means of the deeply religious character of marriage;
- (b) the Church should be able to ascertain that the intention of permanent fidelity is present in the marriage covenant;
- (c) there be information and agreements among the Christian Churches about impediments.

One Roman Catholic delegate expressed scepticism about the possibility of achieving the pastoral purposes of this law, if the law were abolished.

Another Roman Catholic delegate later suggested a possible modification of the requirement of canonical form to include the acceptability of Anglican priests as the official ministerial witnesses the Church's law of Canonical Form requires.

This suggestion interested the whole Sub-Commission and was set down for discussion at the next meeting. It was also agreed that before our next meeting, information be collected on both sides concerning impediments and adherence to the principle of permanent fidelity.

APPLICATIONS FOR DISPENSATIONS FROM THE CAUTIONES

11. III.B.(b) provoked a question: assuming that the Instruction "Matrimonii Sacramentum" made it mandatory for Ordinaries to refer to the Holy See applications for a dispensation from the cautiones, was information available as to the number of requests so made in different regions and the number of acceptances or refusals returned? Did we know on what ground some applications were granted and others refused?

One Roman Catholic said that not all applications were sent up because they were similar to others that had been refused and so the application seemed pointless.

An Anglican delegate recalled information given him from three countries on the continent of Europe that there was a probability that the non-Roman Catholic partner would not be required to give the cautiones when it could be established that he was a mature and convinced Christian, faithful in his allegiance to his own Communion, and where it would be a violation of his conscience and religious liberty to require him to make the promises.

A Roman Catholic delegate added that it was his impression that the Roman Catholic Bishops of England and Wales would feel that they could not in conscience recommend the granting of dispensations from the cautiones.

Another Roman Catholic delegate observed that one could not read into the Instruction Matrimonii Sacramentum a promise that a dispensation would be given where there was only a guarantee that any children would have a Christian upbringing rather than a specifically Roman Catholic upbringing.

An Anglican replied that the fact of provision being made for requests for a dispensation carried the implication that some at least would be granted.

To this it was replied that the Instruction demanded that cases of difficulty be referred to the Holy See, not that dispensation be requested. So much so that when the document first appeared there were those who thought that the Holy See was simply seeking to be informed about the number and character of the difficulties arising.

Several members of the Sub-Commission confessed that they had had great difficulty in obtaining information (a) as to the number of requests being forwarded to the Holy See for dispensations from the cautions, and (b) as to the jurisprudence of the Sacred Congregation for the Teaching of the Faith in dealing with them. All the members united in a request that this information and an account of the theology of the cautions which inspires it be granted them for their next meeting.

DISPENSATION FROM THE IMPEDIMENT OF MIXED RELIGION

12. Thinking of applications for dispensation from the impediment of mixed religion a Roman Catholic member observed that in nearly all cases the dispensation was very easily granted because the impediment scarcely existed for the simple reason that the religion of at least one of the parties was rudimentary to say the least.

To this it was replied that if a dispensation was easier to obtain for marriage to an indifferent non-Catholic, a heavy premium was put on religious indifference. We had to recognise that lay people of mature and formed Christian allegiance were attempting this difficult but not impossible style of Christian living and that they looked to their respective churches for pastoral support and guidance in it; prohibition was no longer possible. Neither was isolation, for Roman Catholics and non-Roman Catholics now lived together in a society in which they could not be shielded from mutual interaction. Legislation and pastoral care had to reckon with these new facts.

A Roman Catholic agreed at least to the extent that, as he saw it, the whole question of the permissibility of a mixed marriage without cautions depended upon the practical possibility of each parent being able to fulfil his duty in conscience in regard to the religious education of the children.

The reply to this was that there are those who are determined to try.

THE REASON FOR THE CAUTION CONCERNING THE ROMAN CATHOLIC UPBRINGING OF THE CHILDREN

13. An Anglican then asked why it is that, granted a moral certainty that a particular couple would give their children a Christian upbringing, rich in the sacramental life of the Christian church, Roman Catholics insisted that it must be a Roman Catholic upbringing?

To this a Roman Catholic replied that it is because they see the Christian Church as subsisting in the Roman Catholic Communion.

The Anglican asked: "Therefore, though we admit the unity of all baptised persons in Christ, there is yet such a distinction between communion in the Church of Rome and all other parts of the Church as to make it essential for the salvation of children that they should be brought up in the Roman Catholic Church?" The reply was "not essential, but vitally important". The discussion was here terminated by the ending of the session.

JOINT PASTORAL CONCERN

14. The Archbishop of Dublin was chairman for the fourth session which was held on the morning of 18th April.

At this session the Sub-Commission considered IV: Pastoral Aspects.

On 3, the principle was accepted of joint pastoral concern (a) for persons contemplating a mixed marriage (b) for the marriage itself and its ensuing family and (c) for such marriages when they have run into particular difficulty.

It was recognised that the competence of the clergy to give apt pastoral help in these three circumstances would require them to have adequate knowledge of the religious and other norms of life in the confession other than their own. To this end closer consultation between the clergy of both churches should be encouraged. The Sub-Commission welcomed the fact that journals such as Lumière et Vie, Theology and The Clergy Review were already publishing articles designed to help this mutual information.

Special note was taken of the editorial of the forthcoming number of One in Christ which suggested a possible programme for the joint action of the parents in a mixed marriage in the religious upbringing of their children. It involved difficulties, particularly that of Inter-communion but it was agreed that proposals of this kind deserved careful study because upon the possibility of achievement in this field hangs the possibility in the Roman Catholic view, of approval of mixed marriages without cautions on this point.

It was pointed out that in some regions (Canada is an example) the educational provision of the country set up a framework within which early and binding decisions about the schooling of children had to be made.

15. At the conclusion of this session provisional plans were made for a second meeting at the end of November and probably in the neighbourhood of Rome.

THREE FUNDAMENTAL THEOLOGICAL PRINCIPLES

16. The fifth and final session was presided over by the Bishop of Charleston. This Report was approved and after discussion the following three fundamental theological principles were agreed as a basis upon which future progress might be made:

i. That Holy Baptism itself confers Christian status and is the indestructible bond of union between all Christians and Christ, and so of Christians with one another. This baptismal unity remains firm despite all ecclesiastical division.

ii. That in Christian marriage the man and the woman themselves make the covenant whereby they enter into marriage as instituted and ordained by God, this new unity, the unity of marriage, is sacramental in virtue of their Christian baptism and is the work of God in Christ.

iii. That this marriage once made possesses a unity given by God to respect which is a primary duty; this duty creates secondary obligations for the Church in both its pastoral and its legislative capacity. One is the obligation to discourage marriages in which

the unity would be so strained or so lacking in vitality as to be both a source of danger to the parties themselves and to be a disfigured sign of or defective witness to the unity of Christ with his Church. Another is the obligation to concert its pastoral care and legislative provisions to support the unity of the marriage once it is made and to ensure as best it can that these provisions be not even unwittingly divisive.

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