

MIXED MARRIAGES : THE "CAUTIONES"

A Discussion Paper

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It is not the aim of the present paper to make recommendations, but instead to give a plain, unvarnished reply to the question formulated at the 1973 meeting of the Anglican - Roman Catholic Commission on Mixed Marriages: "How important is it for Anglicans and Roman Catholics that the children of mixed marriages be brought up as members of their own communion and why?". Accordingly, in this paper I deal with the question from the Roman Catholic point of view, and make very few references to the non-Catholic point of view. This lack of reference, however, must not be taken as indicative of a total lack of appreciation that such a non-Catholic point of view exists.

When I speak of the non-Catholic partner in a mixed marriage, I do not have in mind particularly an Anglican. It seems to me that the question must be treated from the wider point of view, as affecting the marriages of all non-Catholics with Roman Catholics. Therefore, by the term "mixed marriage" I have in mind the marriages of Roman Catholics with Christians of all denominations. My use of the term is as indiscriminate as that of official documents, in taking no apparent account of differences in ecclesial status as between Churches, and in not distinguishing, until the very end, between the degrees of commitment one finds in Christians, whether Roman Catholic or not, and the difference that might be supposed to make when they marry. That being said, it may be presumed, throughout the argument, that I am not speaking of mixed marriages between Roman Catholics and the unbaptized unless I say so explicitly.

The paper is divided into two parts, of approximately equal length. The second, theological, part I consider to be the more important, and the more directly related to my brief, but not knowing whether the history had been discussed, (and not knowing the history myself in any case!), I have devoted considerable space to it.

 Part One

The dearth of theological or even historical writing on the question of mixed marriages and the Cautiones or Promises required by the Catholic Church when one of its members marries a member of another Church might lead one to conclude that there was no theological writing because the issue was regarded as unimportant and insignificant, and no historical writing because the problem was at least relatively new. Such a conclusion would be false. While the contemporary problem of mixed marriages springs largely from divisions which began in the 16th century, it has its origins farther back. Historically, the problem of mixed marriages between members

of two different Christian Churches emerged early in the development of the Church, but theologically the problem goes back to the origins of the Church in the Old Testament. When St. Cyprian, in his "Scripture Testimonies against the Jews" searched the Old Testament for texts prohibiting mixed marriages, he had many to choose from, even among the undisputed books. He cited, e.g., Tob. 4:12 (not Vulgate). Gen. 24, 1Esdras 8 and 9 (not V.).

Many of these texts speak merely in terms of social factors springing particularly from the position of women, and their unprotected status when they married a "stranger". But religion played an even more important part: the tribe and its "own god" were intimately connected. A stranger did not simply come from a different nation - he came also from a different god, and to marry such a stranger was in some way to become attached to his god. Equally, to return, upon being widowed, to one's own people was to return to the service of one's own god (Ruth 1:15; 1Sam. 26:19; 1Kings 18:24; 2Kings 17:26; Judges 11: 23-4). Israel was a "holy people", "set apart" from other nations for a special way of life which was not to be found among the neighbouring tribes.

Since Jahweh was a jealous God, it is not surprising that His utterances on the matter of mixed marriages were many and varied. Among the reasons for the prohibition, two in particular stand out: the matter of service of God, already alluded to, and one which in the modern discussion is the more prominent of the two: "You must not intermarry with them neither giving your daughters to their sons nor taking their daughters for your sons; if you do, they will draw your sons away from the Lord and make them worship other gods" (Deut. 7: 3-4). "And what does the one God require but godly children?" (Mal. 2: 15). The basic objection, then as now, was the danger that mixed marriages constituted to the children of the marriages, who might not be educated in the true faith. So fidelity to God was a primary consideration; there was hardly any problem about it, since sensitivity to the rights of conscience of other men did not exist in any developed form.

The situation had not changed very significantly for St. Paul, in whose mind there was a very clear distinction between classes of men: "Do not unite yourselves with unbelievers; they are no fit mates for you. What has righteousness to do with unrighteousness? Can light consort with darkness? Can Christ agree with Belial, or a believer join hands with an unbeliever? Can there be a compact between the temple of God and the idols of the heathen? And the temple of the living God is what we are" (2 Cor. 6: 14-6). This line, concerning the marriage of those already baptized, with non-Christians, is in significant contrast with Paul's attitude to the marriages of converts who became Christians after marriage. Provided the ^{un}believing partner was content to live with the Christian, the marriage remained. Indeed, it was a good thing: "For the heathen husband now belongs to God through his Christian wife, and the heathen wife through her Christian husband" (1 Cor. 7: 1). The basic unity of family life is stressed by Paul in the same passage: "But God's call is a call to live in peace" (v.15). And there is the assumption that even where only one parent is a Christian, the children belong to God:

"Eh, wise your children would not belong to God, whereas in fact they do" (v. 14) (this presumes that this is so even before baptism — otherwise the argument loses its whole point.) And if the children are holy, belong to God, then their education in the faith cannot be a matter of indifference to anyone who belongs to the faith.

The denunciation of marriages between Christians and non-Christians ended with St. Paul no more than did the practice itself. The fulminations typical of Tertullian are in his "Ad Uxorem" directed against these marriages: "... it is evident that Christians who enter into marriage with pagans commit a sin of fornication and are to be completely cut off from communion with the Brethren.... Will we make bold to present our marriage certificates "on that day" before the tribunal of our Lord and claim that a union which He Himself forbade is a union properly contracted?"(II, 3). Tertullian also alludes to the practical difficulties likely to arise in a mixed marriage, when a conflict arises between duties to husband and religious obligations: "Her duties to the Lord she certainly cannot fulfil since she has by her side a servant of Satan who will act as an agent of his master in obstructing the performance of Christian duties and devotions. Thus, for example, if a station is to be kept, her husband will make an early appointment with her to go to the baths; if a fast is to be observed, her husband will, that very day, prepare a feast Who, indeed, would permit his wife to go about the streets to the houses of strangers, calling at every hovel in town in order to visit the Brethren? Who would permit his wife to be taken from his side, when she is obliged to be present at evening devotions? Or, to take another example, who would not be concerned when she spends the whole night away from the house during the Paschal solemnities? Who, without feeling some suspicion, would let her go to assist at the Lord's Supper, when such vile rumours are spread about it? Who would suffer her to slip into prison to kiss the fetters of a martyr? Or, for that matter, to salute any one of the Brethren with a kiss? Who would allow her to wash the feet of the saints? To ply them with food and drink? Who would permit her to desire such things - or even to think of them?"(II, 4). St. Cyprian is much more restrained in his comments, less graphic and concrete, but equally emphatic and censorious: "Marriages contracted with pagans, members of Christ given in prostitution to heathens" (De Lapsis, c. 6).

It is obvious that mixed marriages took place, and in greater numbers than we might like to think. In the early years of the Christian era this must have happened because of undue restrictions on the choice of marriage partners within the Christian community. The same could not be said by the end of the 3rd century: indeed, the Council of Elvira (c. 305) alluded to this point: "Propter copiam puellarum, Gentilibus minime in matrimonium dandae sunt virgines Christianae, ne aetas in flore tumens, in adulterio animae resolvatur" (Canon 15).

By this time, it has become clear that a development has occurred since the time of St. Paul: no longer, as in Paul's time, and even up to the age of Tertullian and Cyprian, does a mixed marriage signify the marriage of a Christian and a non-Christian. From the beginning, the Church

had strong views on the question of marriage with non-Christians, but only later had to take into account the marriage of separated Christians. But unexpectedly a certain time-lag occurs between the rise of division within the Christian communion, and legislation on marriage which takes this situation into account.

At Elvira, for the first time, marriages between Catholics and heretics are explicitly prohibited, and a sanction added: Canon 16: "Haeretici, si se transferre noluerint ad ecclesiam catholicam, nec ipsis catholicas dandas puellas: sed neque Judaeis, neque hereticis Abbe here adds the note: "forte legendum ethnicis, non hereticis", dare placuit; eo quod nulla possit esse societas fidei cum infideli. Si contra interdictum fecerint parentes, abstineri abstinere per quinquennium placet". Canon 17 introduces a variation on the older problem of marriages with pagans: "Si qui forte sacerdotibus idolorum filias suas iunxerint, placuit nec in fine eis dandam esse communionem".

The 1st Council of Arles, taking place less than a decade later (c. 314) decrees a similar sanction: "De puellis fidelibus quae gentilibus iunguntur, placuit ut aliquanto tempore a communione separentur" (C 11).

Although the reason is not given, both these councils address themselves to the case of Catholic girls marrying heretical men. Perhaps it is because of the subordinate status of women, which would have ensured that the wife and, more important perhaps, the children, adhered to the religion of the husband and father. In that case there would be no need to legislate against the marriage of Catholic men with heretical women, since that would be tantamount to conversion to the true faith. The words of the canons, which condemn the parents more than the girls themselves, reflect the predominance of the arranged marriage, which affected the woman more than the man - though it is possible that sons sometimes were bespoken.

Soon, however, the law takes account of this situation as well. The Council of Laodicea (343 - 381) deals briefly with the problem in its 10th canon but indicates, by its choice of the word "indiscriminatum" its concern, not that Catholics "should be given in marriage to some heretics and not to others; but that it should not be a matter of indifference whether they were married to heretics or orthodox" (1). The canon is as follows: "Non oportet eis quae sunt ecclesiae, indiscriminatum suos filios hereticis matrimoniis conjugere". Canon 31 of the same synod also deals with the matter: "et non oportet cum omni heretico matrimonium contrahere, vel dare filios aut filias: sed magis accipere si se Christianos futuros profiteantur". In other words, the picture changes if there is some prospect of the conversion of the heretic - what later was summed up as the "spes conversionis".

(1) Fuchs: Bib. de Kirchenvers., pt. ii, p. 324, quoted by Percival, "The seven Ecumenical Councils", p. 129.

Around this time we find in the writings of St. Augustine a manifest concern about the question of mixed marriages, accompanied by an awareness of the concrete realities involved. His letters on the subject are addressed not only to schismatic bishops, but also to the partners of a mixed marriage.

To Proculeianus, Donatist Bishop of Hippo, he puts the case: "You see how great and miserable is the calamity by which the peace of Christian homes and families is broken. Husbands and wives, agreeing together about the family bed, are divided at the altar of Christ. By him they pledge themselves to be at peace between themselves, yet in Him they cannot be at peace. Children have the same home, but not the same house of God with their parents" (Ep. 33,5).

To Maximin, another schismatical bishop, he makes this appeal: "... let not our honours - a dangerous burden, of which an account must yet be given - be a hindrance, making it unhappily impossible for our people who believe in Christ, and who share with one another in daily bread at home, to sit down at the same table of Christ. Do we not grievously lament that husband and wife do in most cases, when marriage makes them one flesh, vow mutual fidelity in the name of Christ, and yet rend Christ's own body asunder by receiving Communion apart" (Ep. 23, 5).

Finally, he indicates his concern in an instruction addressed directly to the partners in a mixed marriage: "I desire and pray ... that the one true faith and worship, which alone is catholic, may prosper and increase in your house ... This especially would I recommend to your pious discretion, that by reading the word of God, and by serious conversation with your partner, you should either plant the seed or foster the growth in her heart of an intelligent fear of God. For it is scarcely possible that one who is at all concerned for the soul's welfare, and is therefore without prejudice resolved to know the will of the Lord, should fail, when enjoying the guidance of a good instructor, to discern the difference which exists between every form of schism and the one Catholic Church" (Ep. 20, 3).

The burden of St Augustine's appeal, therefore, in these letters, is for the unity of family life around the one altar of Christ. The division he speaks of is the division, in microcosm, already rending the Church split by heresy. Such division is bound to have a harmful effect on the family, and on the children. Perhaps Augustine is recalling his own childhood, in a somewhat similar situation, and the fact that, if he was not brought up in a schismatical sect, neither did he have the benefit of Catholic baptism and education until he was grown up.

This is a situation not reflected in any of the conciliar or synodal documents so far encountered. The development thus far has been quite straightforward, being simply a sequence of disciplinary decrees dealing in a relatively uncomplicated fashion with the matter in hand. The reasoning behind the canons is very shadowy, giving the impression that it is all a simple matter of the undesirability of any intimate association between Catholics and heretics. The first council to refer to the consequences for the children of

a mixed marriage is Chalcedon (451), in canon 14. Besides attending to the question of the children, this canon introduces another element: by this date, it is apparent that certain officials of the Church (readers and cantors) have been marrying heretical women, and the children of these unions have been baptized among heretics. The council obviously considers that the marriage of its officials with heretics is to be viewed with more than ordinary seriousness. The provisions concerning the children, however, can hardly be considered to apply only to the children of ecclesiastics. The canon is as follows: "Since in certain provinces it is permitted to the readers and singers to marry, the holy synod has decreed that it shall not be lawful for any of them to take a wife that is heterodox. But those who have already begotten children of such a marriage, if they have already had their children baptized among the heretics, must bring them into the communion of the Catholic Church; but if they have not had them baptized, they may not hereafter baptize them among heretics, nor give them in marriage to a heretic, or a Jew, or a heathen, unless the person marrying the orthodox child shall promise to come over to the orthodox faith. And if any one shall transgress this decree of the holy synod, let him be subjected to canonical censure."

Here again we have the "spes conversionis", while the rather sweeping way in which "heretic, Jew and heathen" are all named together suggests that perhaps they were all viewed as one. This certainly is suggested by canon 31 of Laodicaea, in which the heretic is required to promise that he is going to be a Christian. Terminological distinctions do not appear to have been very clearly drawn.

The final conciliar decree from the early period which we possess is rather startling. Canon 72 of the Quinisext Council (682), in forbidding marriage with heretics, states that such a marriage is to be considered void: "Non licere virum orthodoxorum cum muliere haeretica conjungi, neque vero orthodoxam cum viro haeretico copulari. Sed et si quid eiusmodi ab ullo ex omnibus factum apparuerit, irritas (Gk. ἀκυρωσ) nuptias existimare, et nefarium conjugium dissolvi". Being one of the so-called Arabic Canons of this council, it has never been accepted by the Pope, although mandatory for Byzantine (and Greek Orthodox) Church. It has for long been the tradition in the Roman Church that marriages of baptized Christians with unbaptized persons are null, but such has never been the law concerning marriage with heretics. This would elevate heresy into a diriment impediment, which it has never been.

By now it must be admitted that a very firm attitude has been established within the Church on the matter of mixed marriages, even between baptized Christians. What is not so clear is the reason why the Church takes such a serious view of the matter. Although certain reasons are very likely, scarcely any are given, least of all in conciliar and synodal decrees. The principles behind the attitudes of the time probably were: 1) as regards the marrying partners, on an analogy with the Old Testament attitude to marrying strangers, and adhering to their gods, to marry a heretic probably possessed the appearance of a denial of one's own previously-held faith; and 2) the problem of the salvation of those outside the Church would naturally make

parents fearful for the eternal safety of their own children.

The relative poverty of our evidence so far takes on the appearance of relative abundance, when the period just surveyed is compared with the next 1,000 years or so. This silence on the part of authority is probably due, at least in part, to a decline in the problem itself. Territorial and religious divisions tended to become more and more identified, and such contacts as there were would probably have been either in border regions or in conquered areas. The emotions aroused in the latter case would probably have tended towards an increase in intolerance rather than an increase in intermarriage. Another reason for the paucity of evidence of mixed marriages is the growth in clandestine marriages. Where such marriages were already common, social and ecclesiastical disapproval provided an added incentive for a mixed marriage to be clandestine.

This silence is confirmed by Gratian who, apart from some canons which we have already seen, has nothing to quote save a passage from Ambrose's de Patriarchis (Lib. 1, de Abraham, c. 9). By the inclusion of heretics among the infidels and those "alieni a fide", the conclusion is drawn that marriage with heretics is invalid: "Illa itaque auctoritate jubentur separari ab invicem, qui contra Dei, vel ecclesiae decretum copulati sunt: utpote infideles cum fidelibus, vel consanguinei cum consanguineis, vel affines cum affinibus. Hi omnes, si sibi copulati fuerint, separandi sunt" (Cause XXVIII, q. 1, c. 15, dict. ant.) This was also the opinion, at this time, of Peter Lombard in his Sentences: "Ex his aliisque pluribus testimoniis (the councils we have already seen, plus Ambrose, de Patriarchis referred to above) apparet non posse contrahi coniugium ab his quae sunt diversae religionis et fidei" (IV, Dist. XXXIX).

These, however, were exceptions. The opinion which was confirmed by canonical authority was that of St. Thomas (S.T. Supp. q. 59, art 1, ad 5), that what was required for validity of marriage was parity of the sacrament of faith, Baptism, rather than parity of interior faith. Thus the marriage of a member of the faithful with a heretic, though unlawful, would be valid, whereas the marriage of a catechumen who, although unbaptized, possessed correct faith - with a member of the faithful, would be invalid. This position is canonically proven by the decretals of Boniface VIII ("Decrevit" of Innocent IV) and Gregory IX, and by the teaching of Trent: "S. q. d., propter haeresim, posse dissolvi matrimonii vinculum, a.s." (Sess. XXIV, c. 5; D-6 1805).

It is only in relatively recent times that the problem has really come to the fore. The religious divisions springing from the Reformation are an obvious seed-ground for the problem. The problem, however, did not arise with uniform promptness in all countries, since in some religious differences were either so hard that intermarriage between Churches was unthinkable, or were decided on the territorial principle "cuius regio, eius religio", thus ensuring that the various Churches virtually did not meet. Hence the problem did not arise in some countries.

But it did in others, where by the middle of the 17th century mixed marriages were quite frequent, and caused many problems. Fr. A.J. Connick, in a two-part article in The Jurist (vol. 33, 1963) has written the history of the problem from the point of view of canonical doctrine. Sacerdus, a 16th century professor at Salamanca, in allowing a territorial exemption from the law concerning mixed marriages, to Catholics living in countries where there were also large numbers of heretics, reveals the fact that a custom contrary to the law had grown up. (Connick, loc. cit., p. 313) The Neapolitan lawyer Giusseppe Giusseppe, a French Jesuit of the 17th century, considered that such a custom was lawful only if approval had been given by the Pope, and no view of no such approval. (Connick, loc. cit., p. 317-8). He did admit, however, that Catholic bishops of Constance had "simulated" such permission in the past - had granted dispensations on ~~and~~ their own authority.

Such episcopal dispensations were first introduced by Giusseppe's older contemporary and fellow-Jesuit, Paul Cyprian, at least in Germany. But bishops, like the Pope himself, needed some greater spiritual power to outweigh the evils involved. (Connick, loc. cit., p. 403) In any case, the Catholic upbringing of the children was always insisted upon. This was in view of agreements to bring the children up in the religion of the parent of the same sex, which were entered by most of the German states (Connick, loc. cit., p. 321).

Fr. Connick has revealed the interesting fact that the theories which admitted custom contrary to Church law, or which made mixed marriages easier, sprung up in countries like Spain, where non-Catholics were very thin on the ground. But in countries where they lived in large numbers, theologians tended to rebut such arguments. This suggests a link between legislation, intolerance, and feelings of insecurity.

For the official, general legislation of the Church, as distinct from the opinions of canonists, we need to go to the documents which form the sources of the present Code of Canon Law, published by Cardinal Gasparri, architect of the Code, in the Fontes Iuris Canonici (Rome, 1923 - 39; 9 vols.). Other sources for the Church's practice are to be found in the archives of the Congregation for the Propagation of the Faith. In the review "Periodica" (vol. 53, No. 2, 1964) Fr. Ladislaw Örey, S.J., has done a great service in publishing, or summarizing, all the documents relevant to the Cautiones required for a mixed marriage. Most of those to which I will refer are contained in this selection.

It is significant, in view of what I have said about the relative rarity of evidence of mixed marriages, or of concern about them, that Fr. Örey's earliest selection is an extract from an encyclical of Benedict XIV, dated 1748, and addressed to the hierarchy of Poland. The extract published by Fr. Örey is a simple statement that if the Popes have ever granted dispensations for mixed marriages, they have never been granted without the promise that the offspring of both sexes to be born of this marriage would be wholly educated in the Catholic religion. In fact, the document

goes further: quoting his predecessors Innocent X and Clement XI - i.e., going back a century, he claims that Rome never gave such dispensations until the heretic had publicly abjured his heresy. (At that point, one cannot help remarking, a dispensation would seem superfluous.) Even earlier than Innocent X, a promise to abjure was deemed sufficient, but later actual abjuration was required.

In the case of Royal marriages, "for the common good" a dispensation was sometimes given without abjuration being required, but never without the promise that all the children of the marriage would be brought up in the Catholic faith. That in general Rome did not dispense from its requirement of abjuration (and, a fortiori, that Rome would not countenance, at least until a late date, the practice of bishops dispensing the common people) is borne out by Corradus Pyrrhus' (died 1686) testimony that the Holy See preferred, in its dealings with the nobility of Holland and Germany, to dispense from the diriment impediments of consanguinity and affinity, rather than permit a mixed marriage. (Connick, loc. cit., p. 406).

A rescript of 1782, addressed by Pius VI to the Archbishop of Palines limits the presence of the parish priest at a mixed marriage to a material presence, for the purpose of receiving the promises from the heretical party, in writing - under oath - in the presence of two witnesses, who themselves must witness in writing! If the non-Catholic has not been so discouraged by all this as to give up the attempt to marry in the Roman Catholic Church, he promises not only to bring up the children in the Catholic faith, but also to safeguard the faith of the Roman Catholic partner. Three years later, a document of the Congregation for the Propagation of the Faith makes the first mention of the additional promise required from the Catholic party, to do all in his or her power to bring about the conversion of the non-Catholic partner.

It is in this same letter that we find the first mention of what was later to become a standard part of the argument contained in such documents as these: that a marriage which constituted a proximate danger to the Catholic partner's own faith, and in which children might be born, and one (nay educated outside the Catholic Church, is forbidden by both divine and natural law. The law in question is, presumably, a law or obligation to preserve one's faith, not a law concerning marriage as such. Although it is implicit in the Church's whole attitude, divine law has surprisingly not been quoted explicitly hitherto. Perhaps it was the rise of Rationalism which led to a certain rationalising and theologising in the Catholic approach. Divine law is not actually invoked in a document appearing under the name of a Pope (Gregory XVI), as distinct from the Congregation for the Propagation of the Faith, until 1841 - but it was soon to become the standard argument, particularly where the Catholic's own responsibility to preserve his own faith is concerned.

1830, in the reign of Pius VIII, is the very late date at which another reason for the promises is aired: the doctrine that outside the true Catholic faith no one can be saved. Such a doctrine provides a very

strong motive to ensure the Catholic baptism of any child born of a Catholic parent - yet it is surprising that it is not mentioned explicitly in any of these official documents pertaining to the Cautiones until 1830.

Although the documents published by Fr. Ürsy cover another century, the most recent being Pius XI's encyclical "Casti Connubii" of 1930, there is very little development within them. There is but one last point, I think, to be made concerning development prior to the Code of Canon Law, and this is not found in Fr. Ürsy's documents, although it is a conclusion which could be drawn from those he has published. This is that, because the promises are based on natural and divine law, it is for that very reason beyond the powers of the Holy See to change them. This is the argument used by Pope Leo XIII in 1877, in the second of two private letters to the Emperor Franz Josef of Austria, about mixed marriages in Hungary, and published in 1964, together with other documents in the Vienna archives. (F. Engel - Janosi : Politische Korrespondenz der Päpste mit den Österreichischen Kaisern, 1804 - 1918, p. 349) Apart from a tantalising remark by Ida Görres ("Theology Digest", Spring 1967, p. 84) that Pope Pius X wished to abolish the Cautiones, this is the last significant development prior to the publication of the Code of Canon Law.

The Code, in a few brief canons, epitomises the attitude and teaching of the Church on mixed marriages. It begins by stating the Church's opposition to marriages between Catholics and members of heretical or schismatic sects, and asserting that if there is a danger of perversion for the Catholic party and the children, such marriages are prohibited by divine law also (c. 1060). Dispensations are given only under certain named conditions (c. 1061): there must be just and grave reasons for the dispensation; the requisite promises must have been given, and there must be moral certainty that they will be fulfilled. The Catholic partner's obligation to strive prudently for the conversion of the other party is enshrined in canon 1062. Active discouragement of such marriages is regulated by canon 1064.

In regulating the matter by means of positive law, the Roman Catholic Church is not unique. In an article in "Concilium" (vol. 4, no. 1), the German Evangelical lawyer Hans Dombois informs us that "the pastoral ordinances of the Evangelical - Lutheran State Churches of Bavaria and Mecklenburg, among others, oppose marriage if there is no written promise of Evangelical education. This corresponds to the cautiones mentioned in Canon Law... The Jutland marriage ordinances of 1957, §4, exact a common declaration concerning education, but do not make it a condition of marriage". I am told that the late Bishop Bell of Chichester made it a rule that no Anglican was to marry a non-Anglican without first informing him.

Many Churches direct their objection specifically to marriages with Roman Catholics, as indicated by John A. Hardon in Église et Théologie, vol. 1, 1970, p. 238: The Lutheran Missouri Synod (1953) stated that for one of their members to sign the Cautiones is a sin, while according to the American Baptist Convention (1950) it is an "invasion of the principles of religious and social freedom". The International Convention of the Disciples of Christ urged (1950) their young people to resist these pressures, and the United Church of Canada (1946) similarly instructed its young people to refuse

to sign any such document. In 1970 all these statements were still in effect.

So much for legislation. How does this affect the marriages of Christians - more particularly, in this case, of Roman Catholics? The law concerning the promises exists, in the mind of the Church, as a discouragement to those contemplating mixed marriages, or at least as a brake on those who might contract such marriages without considering the implications of so doing. Observance or non-observance of a law is not necessarily a good criterion of its value, but it is not therefore without significance.

Fr. Ürsy, in an article in "Concilium" (vol. 8, no. 4), points out that in Holland, Germany and Switzerland, even before the Council, the great majority of mixed marriages were contracted in an invalid manner, disregarding altogether the Church's legislation. In the 5 years 1961-5 the proportion of mixed marriages to all existing marriages in the civil register in the German Federal Republic and West Berlin rose from 16.6% to 29.1%. While most of our information refers to in-Church marriages alone, and these German figures to all the marriages registered (as all must be) in the civil register, the latter figures do indicate a sharp increase in proportion. Figures from Australia from the beginning of the century, and apart from the years 1941-61 when there was either a decline or a very slight increase, show that all over the country the proportion of mixed marriages to "in-faith" marriages (all being Church marriages) is very high, being by 1966 nearly half of all Church marriages, the highest diocese being 62.8%. In New Zealand in 1968 the national average of mixed marriages in Church was 61.1%. The picture is much the same in England. In 1963, mixed marriages were only marginally in excess of "in-faith" marriages; in 1972 two out of three "in-Church" marriages were mixed. In the diocese of Menevia, in 1963 slightly under 60% of marriages were mixed; by 1972 marriages had increased by one-third, but the proportion of mixed marriages had increased to more than 80%. Unfortunately, I have neglected to get figures for Baptisms - but it is interesting to note some figures from Japan, where since 1938 permission has been given for Catholics to marry even non-Christians, without promises being required, and even in situations where it may be foreseen that the children, or some of them, will certainly be brought up as non-Christians. In Tokyo, in 1960, of 754 "in Church" marriages, 552 were mixed; but there 2684 baptisms. In Nagasaki, in the same year there were only 11 mixed, as against 559 "in-faith" marriages - but only 230 baptisms.

No doubt one could go on quoting figures such as these. At any rate, the effect of the publicising of the real situation has led certain Catholic authorities to voice concern about the fact that the law appeared to have fallen into disrepute, and to ask that it be revised. Obviously disregarding the law encouraged a disregard for what was required for validity. Such comments were complemented by those made by members of other Churches, for other reasons. The whole question of mixed marriage legislation was brought up at the 2nd Vatican Council but, because the Fathers were divided, was deferred for the Holy Father's consideration.

The Instruction "Matrimonii Sacramentum" of March 1966,

which superseded the Canon Law which treats of the same subject matter, was the first product of these representations and consideration. Concerning the promises, the principal change in the law was that they no longer needed to be made in writing, if the bishop so permitted, and that if the non-Catholic partner considered that he could not make them without violation of his conscience, the case was to be referred to Rome.

To many commentators at the time this seemed a very slight and grudging step. It did, however, represent some respect for the rights of conscience of the members of other Churches. It is obvious that a lot would depend on the manner in which it was interpreted, not by other Churches, but by the Roman Curia, and Roman Catholic bishops. Unfortunately, I am not aware if full figures are available on this matter, but have managed to collect a few relevant facts.

The excellent documentation section of "One in Christ" (1968, no. 2), reports that in the diocese of Lyon alone, by the middle of 1967, there had been ten examples of a dispensation being granted from the promises as far as the Catholic baptism and education of the children were concerned, while the President of the Commission of the Protestant Federation of France for Relations with Roman Catholicism is reported as saying that he knows of thirty such cases in the whole of France. The same documentation section reports that in Holland objections in conscience on this point were so numerous that the Dutch bishops could not forward each request, with all its documentation, to Rome, and therefore granted the dispensations in cases where the priest in question informed the bishop of the good disposition of the couple marrying.

A writer in the "Journal of Ecumenical Studies" (Fall 1970) reports that such dispensations were regularly given by Rome. On the other hand, "Archway" in the "New Christian" (Sept. 1967) reported that he had contacted some dioceses in England about the question; few had forwarded such requests, of which none had been granted. A recent (1974) inquiry of the Chancellor of the diocese of Westminster elicited the information that the chances in England were that such a request would be refused.

It would seem then that in practice, in places, the non-Catholic party had only to voice a serious conscientious objection to the promises, for a dispensation to be granted. But elsewhere the promises were still required of other non-Catholics, in seeming violation of their rights, and in apparent disregard for what the 2nd Vatican Council had said concerning Religious Liberty. The matter was then raised at the meeting of the first Synod of Bishops in October 1967.

The Synod's deliberations on the question of mixed marriage have been excellently presented in summary by Fr. René Beaupère, O.P., in "One in Christ" (1968, no. 2). The language of the Fathers was much more nuanced and less juridical. Greater flexibility and diversity was envisaged. The very word "Cautiones" has come to mean a variety of things: it can refer, as hitherto, to the "explicit promise by the Catholic partner", or it can mean one a number of other ways: a dialogue with the fiancée, an exchange of cor-

responsibility, the report of the priest who had prepared them for marriage; a close examination of the relevant circumstances, etc. Or it can mean what it meant for Cardinal Marella, who introduced the discussion in the Synod: an attitude of mind on the part of the person who grants the dispensation, which attitude is simply moral certainty that the requirements of "divine law" are safeguarded. The final point to be made concerning the vocabulary of the Synod is that the actual word "Cautiones" does not appear in its text, an omission surely not sheer accident, but rather a confirmation of the Synod's reluctance to impose any one particular way by which the authority should arrive at moral certainty. While there was overwhelming support for the retention of some criterion by which the competent authority could have moral certainty about there being no danger to the faith of the Catholic partner, and of his readiness to do all in his power to ensure the Catholic upbringing of his children, a much smaller majority voted in favour of the competent authority's having moral certainty about the dispositions of the non-Catholic partner. To this part there were many amendments, some aimed at a reinforcement of the Catholic claims. It remains true, however, that the less precise and less juridical means was voted for by a large majority.

This kind of language bespeaks a very great development. If in our very earliest references to the problem there is no explicit indication of any formal juridical process by which the required guarantees were exacted, the emphasis nevertheless is such that the later firmness expressed in the requirement of a juridical act seems to be in direct continuity with the attitudes of earlier generations. The language of the Synod, on the contrary, reveals a distinct change.

The change embodied in the next authoritative document determining norms for mixed marriages, the Apostolic Letter "Matrimonia Mixta", dated March 31, 1970, was not so great as might have been expected in the light of the synodal discussions. It is, however, in some ways a greater exercise in collegiality than even the Synod: the Synod contained only a small proportion of the Church's bishops, whereas the document "Matrimonia Mixta" was drawn up by the Curia, after "Matrimonii Sacramentum" of 1966 had been in operation for a few years, and when the officials of the Curia could assess the attitudes and intentions of the Bishops of the world, as indicated individually and personally by the way in which they implemented "Matrimonii Sacramentum". This survey, and the synodal discussions alike are reflected in "Matrimonia Mixta", with perhaps a greater balance having been reached than might have been achieved in the light of the synodal discussions alone.

In "Matrimonia Mixta", the guarantee sought by the Church has still to be given by the Catholic partner by means of a juridical act similar to that required by the Code from both partners. Whether it is to be made in writing, or before witnesses, or by word of mouth alone, is not determined by the Letter; but some form of promise is still required, the non-Catholic partner simply having to be informed of the promises made by the Catholic. There seems to be no requirement that he should have agreed with the Catholic partner, (not indeed the happiest of solutions), but neither does the wording

of the Catholic's promise "to do all in his power" appear to require moral certainty that the children will in fact be brought up as Catholics. It seems, therefore, that on the question of the Catholic upbringing of the children, there has been some development, and that any moral certainty contained in, or implied or required by, the Cautiones concerns the question of the danger to the faith of the Catholic partner.

This is where things stand at the moment. "Matrimonia Mixta" has been variously interpreted by the many national hierarchies. Though it may seem necessary, as far as the Cautiones are concerned, to refer to some of these interpretations in the second part of this paper, one point that is not a matter of simple interpretation is the simple fact that some juridical act, of whatever form, is still required. This has seemed to some other Churches a less generous solution than they had hoped for, with the result that the discussion has not come to an end. It is argued that, by putting the whole onus for responsibility on the Catholic party, without any guarantee being required from the non-Catholic about co-operation, or non-obstruction, a wedge is driven between husband and wife before the marriage which may have dire consequences for the future. The Church is still being urged to leave this decision to the parents. The question remains, to be dealt with in the second part of this paper, whether and to what extent the Church can go any further.

Part Two

So far in our investigation we have seen that, although there was some development in the manner in which the Cautiones were expressed, there was very little development in their content. Their principal concern always has been with the securing of the faith of the Catholic party to a mixed marriage, and guaranteeing the Catholic education of the children of such a marriage. The promise to work for the conversion of the non-Catholic party took its place with the other two relatively recently, and has now been dropped. But the original concerns remain.

Why should the Church consider it a matter of such importance that for centuries she has legislated in an effort to control the matter? Is it simply that she has seen an opportunity of increasing her own numbers at the expense of another Church? Or could it rather be that it is a matter in which the Church feels she has no choice, it appearing as a divinely imposed obligation imposed upon her by her concept of the nature of the Church, and her understanding of her own role in the divine plan of salvation?

It is my belief that the latter is the case, and in order to establish this I must treat of the nature of the Church. This I propose to do as far as possible by using the Church's own teaching about herself, as formulated by the Second Vatican Council which, expressing a consensus of the highest teaching authority of the Church, possesses also a richness of insight and interpretation which derives from the fact that it is the work of men of many diverse cultural and theological backgrounds.

At the heart of the Church's belief is the conviction that "it has pleased God to make men holy and save them not merely as individuals without any mutual bonds, but by making them into a single people" (LG 9): This people is composed of the baptized who, "by regeneration and the anointing of the Holy Spirit are consecrated into a spiritual house and a holy priesthood" (LG 10). While many biblical images are used to explain the nature of the Church - a sheepfold needing God for its shepherd, a tract of land still to be cultivated, a people journeying in a foreign land away from her Lord - one overriding truth is constantly reiterated: despite her poverty and her imperfect state, despite her sinfulness and her creaturehood which she shared with the whole of humanity, the Church has her own identity, a position which renders her unique, and one which is entirely the gift of God: that of being "'a people made one with the unity of the Father, the Son, and the Holy Spirit'" (LG 4).

The Church's particular oneness is a oneness in Christ: "In the human nature which he united to Himself, the Son of God redeemed man and transformed him into a new creation by overcoming death through His own death

** Abbreviations: Documents of Vatican II:

LG: Lumen Gentium - Dogmatic Constitution on the Church.

GS: Gaudium et Spes - Pastoral Constitution on the Church in the Modern World.

UR: Unitatis Redintegratio - Decree on Ecumenism.

SC: Sacrosanctum Concilium - Decree on the Liturgy.

and resurrection. By communicating His Spirit to His brothers, called together from all peoples, Christ made them mystically into His own body" (LG 7). This body is a sacrament in the same way as His human nature was the sacrament of God: "Just as the assumed nature inseparably united to the divine Word serves Him as a living instrument of salvation, so, in a similar way, does the communal structure of the Church serve Christ's Spirit, who vivifies it by way of building up the body" (LG 8).

This sacrament, like any sacrament, is both sign and instrument: "a sign of intimate union with God, and of the unity of all mankind. She is also an instrument for the achievement of such union and unity" (LG 1). But a sign, to operate as a sign, must be visible, for which reason Christ, "the one Mediator, established and ceaselessly sustains here on earth His holy Church, the community of faith, hope, and charity, as a visible structure" (LG 8). The following paragraph sums up this argument: "God has gathered together as one all those who in faith look upon Jesus as the author of salvation and the source of all unity and peace, and has established them as the Church, that for each and all she may be the visible sacrament of this saving unity" (LG 9).

At the same time, and while the Church regards herself as a particular community founded and willed to be such by God, she has nevertheless a universal aspect. For one thing, "she is bound to no particular form of human culture, nor to any political, economic or social system" (GS 42). This is a necessary consequence of the fact that "all men are called to belong to the new People of God" (LG 13), and that Christ, "having been lifted up from the earth, is drawing all men to Himself" (LG 48). Not merely should the Church not align herself with parties, but she ought rather to see that she is associated, through her part in God's plan of salvation, with all men of goodwill. This "Lumen Gentium" proceeds to do, indicating the links between the Catholic faithful - "fully incorporated into the society of the Church who, possessing the Spirit of Christ, accept her entire system and all the means of salvation given to her, and through union with her visible structure are joined to Christ, who rules her through the Supreme Pontiff and the bishops" (LG 14) - and various other groups, beginning with those with whom she is linked through baptism (LG 15), and then all "those who have not yet received the gospel" (LG 16), including not only those to whom the promises were first given, but also all who acknowledge the Creator and those who "through no fault of their own do not know the gospel of Christ or His Church, yet sincerely seek God", and even all who "without blame on their part, have not yet arrived at an explicit knowledge of God, but who strive to live a good life, thanks to His grace" (LG 16).

There is here an apparent antinomy, between the universality and particularity of God's plan, in which "by His incarnation the Son of God has united Himself in some fashion with every man" and at the same time the Christian, "linked with the paschal mystery and patterned on the dying Christ will haste forward to resurrection in the strength which comes from hope" (GS 22). It finds its solution in the fact that both parts spring alike from God's love, and are known to Christians through God's gift of revelation (GS 22). If it is true that "only in the mystery of the incarnate Word does the mystery of man take on light" (GS 22), then it is also true to say that only "through the gift of the Holy

Spirit man comes by faith to the contemplation and appreciation of the divine plan" (GS 15).

The means chosen by God for the achievement of His plan is the sacramental system: "it is through the sacraments and the exercise of the virtues that the sacred nature and organic structure of the priestly community is brought into operation" (LG 11). "To accomplish so great a work, Christ is always present in His Church, especially in her liturgical celebrations. He is present in the sacrifice of the Mass, not only in the person of His minister, ... but especially under the Eucharistic species. By His power He is present in the sacraments He is present in His word He is present, finally, when the Church prays and sings, for He promised: "Where two or three are gathered together for my sake, there am I in the midst of them" (SC 7).

This being so, the important conclusion follows that "for well-disposed members of the faithful, the liturgy of the sacraments and sacramentals sanctifies almost every event in their lives There is hardly any proper use of material things which cannot thus be directed toward the sanctification of men and the praise of God" (SC 61).

A Church which, rightly or wrongly, views itself in the way indicated, not only by the documents of Vatican II, but consistently by its teaching and its action throughout the centuries as a sacramental sign of God's plan of salvation and at the same time as the instrument used by God to bring that salvation to men will inevitably consider it a matter of some importance to be able to identify herself before men, and to know who is a member of that Church community and who is not. To be or not to be a member of the Church cannot be a matter of complete indifference to her. Nor can she be less than faithful to the trust which she believes has been entrusted to her in gauging the authenticity of sacraments, structures, or other institutions, whether in herself or in other religious communities. Even her own sacramental institutions are realities received in faith, not arrogantly self-appointed. The same criteria, therefore, must be applied in assessing the elements of institutional reality in other communions.

So it is that she approaches the question of the ecclesial status of other Christian bodies. She lists (LG 15) all the various elements which, in differing degrees, are to be found in common among all the Christian Churches and ecclesial communities: 1) Sacred Scripture, taken as a norm of belief and action; 2) true religious zeal; 3) Belief in God the Father and in Christ, Son of God and Saviour; 4) union with Christ through their consecration in Baptism; 5) acceptance of other sacraments; 6) Episcopal government; 7) celebration of the Eucharist; 8) devotion towards the Virgin Mother of God; 9) sharing prayer and other spiritual benefits; 10) gifts of the Spirit; 11) to some the gift of martyrdom has been given; 12) search for the unity Christ wills.

Space does not permit us to go into the discussion which preceded the promulgation of this document, and of the Decree on Ecumenism which also treats of the question. It is sufficient to say that the first drafts were considered not to give sufficient acknowledgement to the ecclesial reality of other bodies. Previous documents of the magisterium, while clearly affirming the links which individual members of other Churches had with the Roman Catholic Church,

recognised no ecclesial reality in the Communities to which these people belonged. As outlined by Father Congar in "Dialogue between Christians" (p. 201-2), an exception was made where the Orthodox (and Old Catholic) Churches were concerned.

These latter Churches are no longer the exception which they were. Modifications made as a result of the representations of many Council Fathers have borne fruit in the present clear affirmation of ecclesial reality, although where the communities deriving from the Reformation are concerned it cannot be called an unambiguous statement, since it is not made clear to whom the title "Church" is to be applied. This ambiguity, if deliberate, may be due rather to a respect for those communities which refuse to apply the term "Church" to themselves than to a reluctance to apply it to those which do claim it. (H. McDonnell, O.S.B., in "Worship", 1970, p. 334).

All this has aroused some comment. In an interesting article in "Concilium" (April 1965), Fr. Gregory Baum expresses dissatisfaction with the approach just outlined. It is too institutional, too quantitative. "We thus get the picture of the Catholic Church at the centre, the perfect Church with the Pope at its head, and then at varying distances from it other Churches classified according to their structural similarity" (p. 40). He finds what he considers to be a counterbalancing approach in what the Council has to say about the Local Church and its liturgical life. From the teaching of the constitution on the Sacred Liturgy, that "the liturgy is the summit toward which the activity of the Church is directed; at the same time it is the fountain from which all her power flows" (SC 10), Baum concludes that "the Church is understood here dynamically as a community in motion" (loc. cit. p. 43) and that "the local congregation gathered to hear the Word of God and to share in the eucharistic sacrifice becomes more truly Church" (ibid. p. 43). By means of this analogy Fr. Baum tries to apply to the Protestant denominations what the Council says of the local community. It is an analogy, however, as Fr. Avery Dulles says, "which is not particularly helpful when we are asking about the ecclesial status of bodies such as the Orthodox, the Lutheran, or the Anglican Church" ("Theological Studies", 1972, p. 213).

Without using the same line of argument as Fr. Baum, the Council does affirm some ecclesial reality in other Christian bodies. Baum, however, does it by means of a distinction between the institutionally perfect Church (i.e. the Roman Catholic Church) and the authentic Church "which uses institutional elements but is never dependent on or limited by them" but "is more truly Church when it is transformed into God's people, into his family, into a spiritual brotherhood of faith and charity" (ibid. p. 44). His conclusion, he says, "is inescapable on the basis of the understanding of Church that emerges from the teaching of Vatican II" (ibid. p. 44). It is on this point precisely that I would take issue with Fr. Baum. The attribution of ecclesial reality to any Christian community, even when countenanced by the Second Vatican Council, cannot be on the basis of a distinction, fathered on Vatican II, between the institutional and the authentically Christian Church.

Vatican II can in no sense be interpreted as separating

institution and means of grace. While obviously, as we have seen, not denying the existence of holiness and the means of holiness in other Christian bodies, and even outside the visible communion of the followers of Christ, it repeatedly asserts that Christ founded a particular body, with a visible structure and hierarchical government, and that the invisible life of grace is essentially linked with the hierarchical structure and other visible elements. LG 26 speaks of the community around the altar, symbol of charity and unity, "under the sacred ministry of the bishop". It adds that "every legitimate celebration of the Eucharist is regulated by the bishop, to whom is committed the office of offering the worship of Christian religion" and goes on: "bishops channel the fullness of Christ's holiness in many ways and abundantly".

We have, then, in Vatican II a firm assertion of the link between grace and the visible elements in the Church. Indeed, far from there being any separation, the recognition accorded to other Christian communions as means of grace is worked out in terms of their possession of some, if not all, of these visible means of grace.

It is well-known that when the Roman Church speaks of the Church, she thinks that what she says of "the Church" applies to herself. In earlier, and even quite recent, documents of the Magisterium this was understood in terms of a simple identification between the two. This is no longer the case: Vatican II deliberately and consciously chose to say, not that "this Church is the Catholic Church" but that "this Church ... subsists in the Catholic Church". The notion of subsistence, which in this context means "to be present", "to be there", "to exist really and concretely", still contains a degree of identification, but is not an identification in any exclusive sense, and it was chosen with this in mind, that it gave due recognition to the possibility of real ecclesial elements existing outside the visible Catholic Church.

But the relationship, I would suggest, between the Roman and the other Churches is not, according to Vatican II, to be found in an analogy between the Local Church and the non-Roman Churches, nor in any separation between the institutional and the authentic Churches, but in the notion of participation put forward by Professor Heinrich Fries even before the Council ("Journal of Ecumenical Studies", Spring 1964, pp. 199-200). The Roman and Protestant Churches have in common not only a common creed, common prayer and liturgy, and common insights into the faith deriving from the Fathers and great theologians, but they have a common origin in Christ's revelation, and a common history which the non-Roman Churches claim as genuinely theirs. Fries' conclusion is that "the ecclesiological status of the Protestant Churches in Catholic perspective is participation in a common possession" (p. 1).

This notion of participation as an explanation of the status of the non-Roman Churches seems to accord best with the mind of Vatican II: "these separated Churches and Communities ... have by no means been deprived of significance and importance in the mystery of salvation. For the Spirit of Christ has not refrained from using them as means of salvation which derive their efficacy from the very fullness of grace and truth entrusted to the

Catholic Church" (UR 3). The insertion, in that last sentence, by command of Pope Paul, of the word "Catholic" indicates that the Roman Church has not changed her view of her own position in the plan of salvation; but in the light of that fact her recognition, in the same paragraph, of the salvific significance of other Churches is of more than ordinary importance, and represents a development all the more surprising by its closeness in time to the statements contained in "Mystici Corporis" and "Humani Generis".

I realize that all this would be a digression if it were to lead the Commission into too deep a discussion of the question of ecclesiological status - but it has appeared to me to be necessary to go into the matter, not as an end in itself, but to establish another important point, viz., if the Roman Church has come to a clearer understanding of the question of the salvation of those who are outside her visible bounds, and of the significance of other Churches for the salvation of their members, this has not been reached by any separation of grace and visible institutions (rather, recognition is based, at least in part, on the presence of certain visible elements) or by a denial of the importance of her own visible elements.

It is because of the importance of her institutions as means of grace willed by Christ that the problem of the Cautiones arises. A Church which values her own institutions, and considers them not inadequate instruments of salvation will view with equanimity any acts on the part of her own members amounting to a rejection of these means of grace and salvation, or a refusal of them to their own offspring. We have seen in part I that this is true of many Churches. Nor, if a Church cannot be indifferent to the fate of the non-Evangelized within her reach, or in any way linked with her, can she be indifferent to the fate of the offspring of her own members. That this is the attitude of Vatican II is clear: "... from the wedlock of Christians there comes the family, ... The family is, so to speak, the domestic Church. In it parents should, by their word and example, be the first preachers of the faith to their children" (LG 11). This, surely, must be the attitude of any Church. Whether children are born of two members of the same Church, or of a mixed marriage, any Church involved inevitably expresses her concern. But in the latter case, of a mixed marriage, there is at present the added complication (which we perhaps don't look upon often enough as a happy complication) that very often both Churches will be concerned.

It is this approach to ecclesiology, this consciousness of her place in the Divine plan of salvation, which lies behind the stand which the Church takes on the Cautiones, and in particular behind the allegation that they are based on divine law. The claim that the promises are based upon divine law does not mean that appeal can be made to any scriptural statement of a relevant law, in the form of propositions, but rather to the revelation of the divine plan of salvation and of the place of the Church of Christ in that plan, which Church "subsists" in the Roman Catholic Church. In whatever way the Cautiones are justified, they must be rooted in the Church's ecclesiology, in her self-understanding while her policy may at times have owed much to a historically conditioned understanding of the question of the salvation of those outside the

the Church, the real basis of her approach to the problem of the Cautions and her requiring them is not consequent upon the doctrine of "Extra ecclesiam nulla salus" but anterior to it - viz., her fundamental awareness of her own central role in the plan of salvation, and of her possession (albeit she may not always make the best possible use) of the fullness of the means chosen by Christ for bringing that salvation to men.

There is, even in St. Paul (1Cor. 7: 12-16), an assumption that children, simply through their birth and their association with the Christian Mystery through being born of Christian parents, or a Christian parent, and even prior to their baptism, are in some sense "holy" and belong to God. This alone would be sufficient incentive to ensure that, by their Christian baptism and education in the faith, they were made to belong to God in a fuller and more real sense. If there is an obligation in general to preach the gospel to the unevangelized, there must be a greater obligation to bring it to those already on the threshold of the family of the faith.

The express concern of other Churches where marriages with Roman Catholics are concerned suggests that there would be some measure of agreement that where the marriage in question is one between any Christian and a non-Christian the obligation, insofar as any exists, is much more one-sided. In the kind of marriage we are discussing it is aggravated by the fact that both parties may be impelled by an obligation to bring the Gospel to their child - but a "Gospel" which is not the same in both cases. It is here, for the Roman Catholic Church, that her ecclesiology inhibits her from being indifferent to the outcome of the matter, since, although she recognises the salvific significance of other Churches, they are "other", and remain so, to a greater or lesser extent, because of ecclesiological differences having to do with differences in understanding of the nature and necessity of visible elements of Church life such as sacraments, episcopacy, papacy, etc., which the Roman Church believes to be Iuris Divini. That this argument has some logic is indicated by the fact that no other Church is entirely indifferent to the problem where marriages with Catholics are concerned, presumably due, to some extent, to these same ecclesiological differences.

Where differences between Churches are not about essential matters, this consequence of mixed marriages does not matter; but where essential matters are at stake, indifference may well take on the appearance of infidelity to the Church's mission.

But it is not yet clear what exactly is of Divine Law. The invocation of Divine Law, when it came, appeared to be in the context of the Church's juridical provisions and demands. In fact, however, no juridical form whatever is incumbent on the Church. As we have seen, the development of the formal written Promises was gradual, and even in recent years has undergone substantial modification. What, then, is of Divine Law?

It is first of all the obligation on the parents. The parents, in accepting children, undertake an obligation to care for their well-being. This includes both their physical and moral well-being. The primary obligation is to physical education and health, on which everything else rests. But human development requires also spiritual education, which implies moral instruction.

and that moral education must be dictated by the parents' own vision of morality.

For the Catholic parent, this involves a whole complex of elements: for his child there is the simple matter of education in faith and morals; there is the whole sacramental life of the community, and the fact that for this, and especially for the sharing in the Eucharist, there is the need for Baptism which contains a verum Eucharistian. And for the Catholic parent there is the over-riding awareness that the Church of which he is a member views all this as of supreme importance - and that he, as a Roman Catholic, believes that his Church has a right to tell him, not only what is of his faith, but also what act does or does not constitute a turning away from the faith. For him infant Baptism is a matter of faith; I hope I am not going too far when I suggest that for some non-Roman Catholic Christians it may be rather a matter of pastoral or prudential reasons.

The Catholic parent, then, must communicate to the child his most precious possession: the Gospel of the Kingdom in its fullest form. This arises from his own participation in the Mystery of Christ, both from his baptism and confirmation, but also from his sharing in marriage which is a sacrament, and in which sacramental situation his children are born. An already-existing obligation to share his faith with other men receives greater particularity and greater force from the special relationship which distinguishes his own children from the generality of "other men". This would apply where anything of moral value is to be communicated, and in the case of Christian education arises in every marriage, whether mixed or not.

The Church has an obligation in consequence of the obligation on her member. This is to make certain that the Catholic party is aware of his obligation to preserve his own faith and to pass it on to his children. Equally the Church needs to do all that she can to ensure that the Catholic party possesses the fundamental requirements of the faith. Perhaps in the course of time too much stress has been laid on the former obligation, and not enough on the latter.

The former obligation, nevertheless, is based on the Church's understanding of the divine plan of salvation, and the stress she has placed upon it is a reflection of the importance she has attached to it. But the recent history of the Cautiones must indicate that the particular form in which they were earlier known was not itself of divine law, but was rather the Church's way, at a particular time, of fulfilling her own responsibility to ensure that the Catholic party was aware of his divinely-imposed obligation. And for her to do this in some very explicit way was necessary, since our knowledge of moral principles is not intuitive. The Church cannot abdicate her responsibility in the matter, and leave her members entirely to their own devices, without some moral guidance.

This moral guidance is of the essence of the Church's obligation in this matter: the minimum required of the Church is that she assure that the Catholic contemplating marriage, whether a mixed marriage or not, knows his obligations towards his children, and that she exert all her pastoral competence to help him to fulfil these obligations. This she can do by an act

that is more pastoral and less juridical than hitherto. The recent changes in the law seem to indicate a move in that direction, although some juridical act is still required. Since the Cautiones as we know them are of relatively recent origin, it seems clear that even such promises as are required from the Catholic partner need not necessarily be demanded. But that is not to say that the obligation on the Catholic party is removed. The formal juridical requirement imposed on new obligation; its removal does not reduce the intrinsic obligation.

What, then, of the Church's alleged practice of dispensing from this obligation in the past - in particular, by its allowing the practice of educating the children in the religion of the parent of the same sex? It is a situation of which the Church must of necessity have been aware, since in some cases the civil power went so far as to impose such an arrangement on the partners of a mixed marriage: an Austrian law of 1862 established such an arrangement, and Hungary from 1868 to 1895 denied the parties the legal right to make contracts to the contrary. It is against this background that the correspondence between Pope Leo XIII and the Emperor Franz Josef of Austria, noted in part I, must be read. Cardinal Gasparri who, as principal author of the present Code, must have known all the facts, says: "all dispensations of this kind, said to have been granted, are apocryphal" ("De Matrimonio"; quoted by Mgr. McReavy, "Clergy Review", July, 1964, p. 442). Even in marriages between Heads of State, according to Benedict XIV (encycl. "Magnae Nobis", 1748 - Fontes C.I.C., vol. 2, no. 387), permission for a mixed marriage, if granted for the public good, was granted only under the usual conditions. Gasparri (loc. cit.) quotes one such example, in the marriage between Charles I of England and Henrietta Maria, sister of Louis XIII of France where the Holy See accepted a condition agreed between the two kings, that all children of the marriage would be brought up in the mother's religion up to the age of 13.

I hope I may be forgiven for not attempting to prove an historical negative: to sift through the documents of 2,000 years would be a daunting task. The line adopted in the case of Princes, as indicated above, lends weight to the statements of such as Gasparri, Orsy, and McReavy that the Church never positively permitted the children of mixed marriages to be brought up as non-Catholics. At best she tolerated the practice.

There were, however, certain situations where Catholics were permitted to marry non-Catholics, even though it was foreseen that through national custom or civil law one or more children would have to be handed over to pagan or Mahometan grandparents or guardians who would prevent their Catholic education. Such permission was given to Japanese Catholics in 1938 (Gouscaren, Canon Law Digest, vol 2, p. 281 ff.). The question whether or not such custom or law ever prevailed in any country is secondary: the permission in question was granted always "provided the parties are prepared to do what in them lies to secure the Catholic education of all their children". Since the Instruction of 1966 similar dispensations, as shown in part I, have been granted even where no local custom or civil law prevented the im-

plementation of the Cautiones. We have in such cases the Church no longer requiring the particular juridical form which it has been her custom to require from the partners in a mixed marriage: in other words, a dispensation from the Cautiones, not a dispensation from the obligation. The Church yields to the fundamental right of the human person to marry the person of their choice, but the Catholic party would still be obliged to do what he could to ensure the Catholic upbringing of his children, although what he could do would be severely curtailed.

By now it may appear to be a display of the most extreme insensitivity to have discoursed at some length upon the question of mixed marriages, dwelling frequently upon the demands of faith and the requirements of conscience, without any apparent awareness of the fact that non-Catholics have consciences too. It has been achieved with greater difficulty than may appear, since at every turn of the argument I have been aware that what was said of the Catholic's awareness of the demands made by his conscience (though the demands themselves might differ) could also be said of the non-Catholic. The non-Catholic has had to be kept out with a dexterity which will not, I hope, be construed as dishonesty.

I hope this brief confession will be sufficient admission of my awareness of the existence of the non-Catholic conscience. If the conscience of the non-Catholic is not perturbed about the upbringing of his children in a faith which he does not share, then the problem which arises is not the one we have been dealing with, but rather the deeper problem, for any Church, of a Christian who is not living up to his faith. That Christian may be her own visible member or not. But that problem though more fundamental, is not our present concern.

The problem we are dealing with arises only when what we have been saying of the conscience of the Catholic partner can also be said of the non-Catholic (or, even, in the case of a Catholic who is not practising, can be said of the non-Catholic alone). It is where a clash occurs that some solution is called for - just as a solution is called for where there is a clash between fundamental rights and fundamental duties, or between two fundamental duties, as if a conflict were to arise between a parent's duty to ensure the physical life of his child, and the duty to educate the child in the Catholic faith. There is obviously an order among these rights, some taking priority over others. In such a case the right which yields, while it may not be said actually to cease, must be exercised with prudence. The person involved would still be obliged to do what he realistically could do.

The obligation with which we are dealing is an obligation to do a good act, not a duty to abstain from an intrinsically evil act. Therefore, although the obligation always stands, the subject is bound to actual performance insofar as the conditions for performance are there. It is an obligation which is surrounded by other values and duties, a context which must be taken into account where the question of performance arises. In any case, as the law stands at present, the obligation is reducible in form of expression to an obligation "to do what he can". So worded, it may be seen that the duty always remains, to be further refined by recourse to the actual circumstances.

A solution is further complicated by the fact that the term "mixed marriage" may be used indiscriminately, without distinguishing between non-Catholic and non-Christian, or between the committed and the non-committed non-Catholic, and without taking into account whether the commitment of the Catholic party to Catholicism is total or not.

Any solution adopted must be realistic, and to be realistic must take into account many things. It must acknowledge the fact that it is the responsibility of both parents jointly to bring up their children. The Canonists until recently took this into account, in being required of both parents. It is remarked of the present arrangement that it drives a wedge between the parents by throwing all the responsibility on the Catholic party, thus apparently suggesting that there is not a joint responsibility.

A realistic solution must also take into account the real ecclesial allegiance of the parties. Already the law, while making no explicit allusion to this need, does make some allowance in its actual implementation, in that where there is a real conflict of consciences, the Church has begun to permit a marriage to take place without requiring the promises of either party. This is a real deferring to the conscience of the non-Catholic. It is difficult to see (which is not to say that it is impossible) how the law could be formulated in such a way as to avoid any of the tensions now experienced when both parties are committed Christians of different denominations, without such a change that the "merely mixed" marriage, where one party or both are uncommitted, could take place without being the subject of the Church's pastoral care, not only for the parties themselves, but for their children; or without that expression of the Church's self-understanding which should accompany Sacraments administered in her name and in her presence.

That self-expression is not required in the mixed marriage alone, but in every marriage. While the mixed marriage as such may contain some dangers for the faith of the parents as for that of the children, so also does the marriage of two indifferent members of the same Church. And even those who are committed, and who marry committed members of their own Church, cannot be said to be unlikely to benefit from any opportunity which the Church may grasp to express her understanding of her nature and her role in the history of salvation. And so, perhaps, the Churches might consider the desirability of some process by which all of their members marrying in her presence might be reminded of the implications of what they do.

But in making a recommendation such as this I am, perhaps, exceeding my brief which I have conceived all along to be: "How important is it for Roman Catholics that the children of mixed marriages be brought up as members of their own communion and why?" It is not my place to include recommendations, but in what I have said certain recommendations may appear to be almost explicit. One line of thought which I have not raised is the possibility of the children of mixed marriages, as is sometimes mooted, being in some way educated jointly in two Churches. While having no preconceived ideas as to how that might be achieved, and while such a question might well be within the terms of reference of the Commission, it appears to be outside my brief.

I am by no means uninterested in the future of the C. Union, but in this paper I have confined myself to the past history, and to the principles which, in my view, govern past and future development. We cannot see what the future will bring, but perhaps the past will offer us some grounds for optimism.

It must be borne in mind always that the present situation is the legacy of previous ages, and that even current legislation owes much to an earlier situation, when Churches were in the process of dividing, and when heresy and schism were fresh, and intolerance and intransigence rife. Today's ecclesiology, however, reflects a situation when Churches are seeking to unite. The basis of any dialogue for re-union will have to be some mutual recognition of ecclesial reality and saving significance. In the past the Roman Church has refused this to most other communions; we have seen, however, that in the documents of Vatican II this lack has been made good.

This change, when it came, came quickly and easily and wholeheartedly. But it was preceded by much hesitation and heart-searching on the part of men who are aware that the Church owes allegiance not to their emotions, but to the authority of God's revelation. It may be a fact that now our legislation takes insufficient account of developments in theology. But if our legislation now lags behind our ecclesiology, it may be because it is limping, rather than because it is standing still or sitting tight. Insofar as any delay is the responsibility of men, and not the will of God, we must pray that God will enlighten and encourage us to see and to do His will, and that the deliberations of this Commission may be His means for presenting us with a solution which will be in accordance with His will.