(1st Draft)

Confidential ARCCM 33

COMMISSION ON MIXED MARRIAGES
DRAFT FINAL REPORT
to go to
MEMBERS OF THE COMMISSION

CONTENTS

Members of the Commission

Roman Catholic Members

The Most Revd Ernest L. Unterkoefler, Bishop of Charleston, S. Carolina, USA. (Co-Chairman);

The Most Revd Langton D. Fox, Bishop[1] of Menevia, Llanelly, S. Wales;

The Most Revd Francis J. Spence, Bishop of Charlottetown, Prince Edward Island, Canada[2];

The Rt Revd Mgr Professor P.F. Cremin, DD, IUD, St. Patrick's College, Maynooth, Ireland.

Secretary: The Rt Revd Mgr W.A. Purdy, Vatican Secretariat for Promoting Christian Unity.

Anglican Members

The Most Revd George O. Simms, DD, Archbishop of Armagh, and Primate of All Ireland[3]. (Co-Chairman);

The Rt Revd Donald H.V. Hallock, Bishop of Milwaukee, USA. (resigned, on resigning his see, 1974);

The Rt Revd Ralph S. Dean, Bishop of Cariboo, Canada. (resigned, on resigning his see, 1974)[4];

Professor The Revd Canon G.R. Dunstan, DD, FSA, King's College, London;

The Revd L. Mason Knox, JCD, Sacred Heart School of Theology, Hales Corner, USA (since 1974);

The Revd Barnabas Lindars, SSF, DD, Faculty of Divinity, University of Cambridge (since 1974).

Secretaries: The Revd Canon J.R.Satterthwaite, Church of England Council on Foreign Relations (until 1971)[5]

The Revd Prebendary Henry Cooper, Adviser to the Archbishop of Canterbury on Roman Catholic Pastoral Matters (since 1971).

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1. Auxiliary Bishop at the time of his appointment.
2. Auxiliary Bishop to the Military Vicar, Canadian Forces, at the time of his appointment.
3. Archbishop of Dublin at the time of his appointment.
4. Replacing, (as Anglican Executive Officer) The Most Revd Edwin Morris, formerly Archbishop of Wales, who was overtaken by illness between appointment and the First Meeting of the Commission.
5. Subsequently consecrated Bishop of Fulham.

Consultants

At the Fourth Meeting: Dom Henry Wansbrough, OSB and The Revd Fr Michael Sharratt; Lady Oppenheimer and the Revd Dr Barnabas Lindars, SSF.

At the Fifth Meeting: The Revd Dr Brian O'Higgins; The Worshipful Chancellor The Revd E. Garth Moore.

The following other persons, to whom the Commission is indebted, contributed papers at the request of members of the Commission:

The Revd Fr A.M. Ambrozic, "Indissolubility of Marriage in the New Testament: Law or Ideal?" (1973);

The Rt Revd Mgr H.G.J. Beck, "Proposed Pastoral Guidelines for Inter-Christian Marriages" (1968);

The Rt Revd Bishop B.C. Butler, OSB, "Vatican II's Ecclesiology" (1974);

The Revd John Coventry, SJ, "Theological Trends: Inter-Church Marriage" (1974);

The Revd William J. La Due, "Marriage: Sacramentality, Validity, Indissolubility" (1974);

John Lucas, Esq., "The Doctrine of a Metaphysical Vinculum" (1973);

Professor The Revd Canon John Macquarrie, "The Nature of the Marriage Bond (Vinculum Conjugale)" (1973).

T H E R E P O R T

SECTION A

PROCEEDINGS OF THE COMMISSION

1. The Commission was established jointly in 1967, on the one part by the Roman Catholic Secretariat for Promoting Christian Unity with the approval of His Holiness Pope Paul VI, and on the other part by the Most Revd and Rt Honble A.M. Ramsey Lord Archbishop of Canterbury on behalf of the Anglican Communion.

2. The problems arising from mixed marriages had been recognized as one of the chief of those "practical questions" referred to in the Joint Declaration made by the Pope and the Archbishop in Rome in March 1966; and when the Anglican/Roman Catholic Joint Preparatory Commission met at Gazzada in January 1967, one of its first acts was to recommend the setting up of a special commission to consider the Theology of Marriage with special reference to Mixed Marriages. The recommendation was immediately accepted on both sides.

3. These events fitted in with other oecumenical developments. Early in 1967, from 26 February to 4 March, a group designated by the same Vatican Secretariat had met at Nemi with a group convened by the Faith and Order Department of the World Council of Churches to discuss prepared papers on the pastoral and oecumenical difficulties inherent in marriages between Roman Catholics and other Christians. The Vatican Secretariat accepted the need to pursue "bilateral" discussions of the problem with major groups or communions of Churches,

with the possibility of continuing relevant exchanges with the WCC as occasion arose.

4. The members of the Commission are named on p. 2. Membership on the Roman Catholic side remained unchanged, though illness regrettably prevented the Bishop of Menevia from attending the Fifth Meeting. On the Anglican side, an early illness and two episcopal retirements occasioned the changes which we have recorded. At all our meetings Archbishop Simms and Bishop Unterkoefler presided in alternate sessions.

5. The Commission has met six times: at St George's House, Windsor Castle, from 16 to 18 April, 1968; at Pineta Sacchetti, Rome, from 27 to 30 November, 1968; in London, from 22 to 25 November, 1971; at Haywards Heath, at the Priory of Our Lady of Good Counsel, from 9 to 13 April, 1973; at the Divinity Hostel, Dublin, from 1 to 5 April, 1974; and at
from 23 to 27 June, 1975, when the Report was given final and unanimous approval.

6. At the First Meeting (1968), among the documents used to initiate discussion was one on "Mixed Marriages", prepared by the Vatican Secretariat for the colloquy at Nemi, in which one member of the Commission had participated. This occasioned a preliminary survey of our problem in its entirety: the nature of marriage, its sacramentality and indissolubility, and the procedures of our Churches in relation thereto; the mixed marriage, requiring, in both

its difficulties and its opportunities, pastoral action from the Church, in some respects juridical in form; hence the law and practice of the Roman Catholic Church relating to "canonical form", to the cautiones (as they were then called) concerning the upbringing of children, and to dispensation from the impediment of "mixed religion"; and the necessity of pastoral care, exercised within both Churches and, where possible, jointly between them, in preparation for the mixed marriage and in its continued support in the life of the Church. At the end of this Meeting agreement was recorded on "The Fundamental Theological Principles", which, because they have governed our deliberations, in some sense, ever since, are here quoted in full:

THREE FUNDAMENTAL THEOLOGICAL PRINCIPLES

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.

7. Our Second Meeting (1968) was held at a time when it was known that new legislation was in prospect to replace the Instruction, Matrimonii Sacramentum, of 1966, and some hope was entertained that our unanimous Report might influence its content. In fact, upon advice, our second Report was drafted and presented with this in view; and although in accordance with the advice which we had sought the Report was brought to the notice of the relevant Vatican authorities, we have no reason to suppose that it had any influence upon the drafting of Matrimonia Mixta. In particular, while aware on the one side of the ineluctable theological principles underlying the guarantees for the Roman Catholic upbringing of the children of mixed marriages, and on the other of the disturbing pastoral and oecumenical consequences of those requirements, we could recommend that "no more be asked of the Anglican party than was proposed by the Synod of Bishops in Rome on 24 October 1967, namely that he knows of the obligation in conscience of the Roman Catholic party and at least does not rule out the Roman Catholic baptism and education of the children." This modification was, in effect, allowed in the new legislation, the Apostolic Letter Matrimonia Mixta issued motu proprio by Pope Paul VI on 31 March 1970[1]. The other legislative proposal in our Second Report was not embodied in the new regulation. Adhering closely to the intention of the Decree of the Sacred Congregation for the Oriental Churches, Crescens Matrimoniorum, dated 22 February 1967[2], we suggested a

1. A.A.S. 62, 1970, p.261
2. A.A.S. 59, 1967, p.166

similar provision for marriages between Roman Catholics and Anglicans in the following terms (expressly leaving the details to be worked out if the principle were accepted):

> The contracting parties are the ministers of Holy Matrimony. When one party is Anglican it seems to us entirely reasonable that the parties should decide between themselves whether they shall contract marriage before a Roman Catholic minister or before an Anglican minister, and whether in a Roman Catholic or an Anglican church. Therefore we would recommend that, on condition that joint pastoral preparation has been given, and freedom to marry established to the satisfaction of the bishop of the Roman Catholic party and of the competent Anglican authority, the marriage may validly and lawfully take place before the duly authorized minister of the Church of either party. Should a minister of the Church of the other party assist in the solemnization, as he might, on the invitation of the parties and with the concurrence of the local minister, we would hope that he would be assigned an appropriate part of the rite used in that Church and not any addition to it.

Again we urged the importance of good pastoral care to enable the spouses (in the words of the Pastoral Constitution of Vatican II) to "experience the real meaning of their union and achieve it more every day." (Gaudium et Spes, 48)

8. Before our Third Meeting (1971) there was a long interval, occasioned, first, by our waiting for the new legislation, and secondly (its contents having been perceived) for some general picture to be obtained of the diverse interpretations given to it by Episcopal Conferences in the liberty and discretion which it extended to them. We had to recognize that no new legislation could be looked for for a considerable time; it was important, therefore, to take the measure of what we had. During this time also the Anglican/Roman Catholic International Commission (ARCIC) was developing its theological study which would, in time, strengthen the

oecumenical foundation of our own work - as it did considerably when it published its agreements on the Eucharist (1971) and the Sacred Ministry (1973). The Archbishop of Canterbury, meanwhile, had appointed a small commission to examine the doctrine of marriage and its application to some questions of discipline in the Church of England, and the Report of this commission, Marriage, Divorce and the Church (1971) was also before us. Here, therefore, with Matrimonia Mixta and the reports of local episcopal direction and local pastoral activity, were ingredients for the agenda of our third meeting. From it emerged the pattern of our future work, and, indeed, of this Final Report.

9. We were soon made aware that behind the problem of discussable - and disputable - practice, both pastoral and juridical, lay deeper problems of theology. Behind the requirement of a promise concerning the baptism and upbringing of children as Roman Catholics, not simply as Christians, lay a theology of the Church, an ecclesiology, which Roman Catholics cannot abandon and which Anglicans cannot accept. Behind the various means developed in our respective traditions for dealing, juridically and pastorally, with defective marital situations - of which more will be written explicitly later- there lay the possibility of deep dogmatic differences concerning the strict indissolubility of marriage, whether "natural" or "sacramental"; and this possibility called to be explored. Behind the Roman Catholic requirement of "canonical form" for the valid celebration of a mixed marriage, although we understood historically the disciplinary and regulative intent of the legislation, there

lurked the possibility that its retention in the new motu proprio implied some ecclesiological defensiveness also, some notion that the Anglican priest could not, for theological reasons, be empowered to perform for a Roman Catholic partner that office in marriage which a priest in communion with the see of Rome could perform. In short, by the time of our Third Meeting our commission had, on the one hand, achieved a sufficient degree of mutual trust, and, on the other, experienced a sufficient degree of mutual provocation, to seek out and face the material which occasions suspicion and mistrust between our Churches concerning marriage and mixed marriages. Our task henceforth was to examine this, piece by piece, and in this way to work towards a resolution of our difficulties. We hoped, and we formally requested, that the ecclesiological questions would be undertaken for us by ARCIC, which had within itself greater theological competence than we could command. This request could not be met: ARCIC had already an agenda too heavy and a time-table to strict for any such diversion to be entertained. Accordingly, we had to attend to these questions ourselves; and, accordingly again, we recognize how much there is still more thoroughly to be done.

10. For our Fourth M ting (1973), therefore, we made more extensive provision. We published our Third Report, with the permission of our respective authorities,[3] in order that others in our Churches might know and, if willing, comment

3. Theology LXXVI, April 1973, p. 195; The Tablet, 227/6926, March 1973, p. 316; One in Christ, IX.2, 1973, pp. 198-203.

upon the questions which we had raised. We invited scholars from both Churches to contribute papers on the philosophical and theological aspects of indissolubility, particularly as these had found expression in the terminology of the vinculum matrimonii. We invited four consultants to assist us at our meeting, two exegetes and two philosophical theologians, in a concerted effort to encompass at least the major theoretical dimensions of the indissolubility of marriage. We benefited greatly from this assistance, and we record our thanks to the authors of it. As a result we were able to state agreements and disagreements on the methods and results of exegesis of the relevant texts of Holy Scripture. We were able to re-affirm our earlier agreement in our understanding of marriage as being of its nature a lifelong and exclusive union, and in our requirement of an intention to enter into such a union in everyone contracting a true marriage. At the same time we were able to distinguish more sharply the lines of disagreement - lines not co-terminous with those demarcating our Churches - over the propriety of the various responses made to marriages which have broken down or otherwise been found defective. Both the theology of marriage and responses to defective marital situations receive fuller treatment in later sections of this Report. The Fourth Meeting left for the Fifth a further discussion of the question, posed by each Church to the other in relation to its theory and practice, "If this is what you do to enable your Church to recognize (if not actually to solemnize) a new marital union after a particular termination, otherwise than by death, of a first, how can you still maintain that you hold marriage, of its nature, to be exclusive and indissoluble?"

11. For our Fifth Meeting (1974) we were prepared by the replies received to a Questionary sent to all Roman Catholic Episcopal Conferences, and to all Anglican Primates and Metropolitans, in areas where our two Churches co-exist, and by more papers prepared by consultants as well as by some from among our number. Two consultants gave valued help at the meeting. The yield of the Questionary was not weighty, grateful as we were to our respondents; a wide diversity in the manner and quality of answers given to questions, not always (in hind-sight) explicitly framed, yielded little information from which valid generalizations or conclusions could be drawn; though encouraging pictures of determined pastoral development emerged here and there. Of our discussions the main thrust was into the grounding of marriage in the "natural" order, the order of creation, or into the "sacramental order", the order of redemption and of sanctifying grace. Thus posed, the contrast is seen at once to be forced. Nevertheless the Roman Catholic members found it necessary to try to understand the Anglican doctrine, grounded in its liturgy, of marriage as God's ordinance in the order of creation, taken by Christ and the Church into the sacramental realm as an effective signification of the covenanted unity of Christ and the Church, and so of a sanctification of the marriage and its partners within the communion of Christ and the Church. The Anglican members, too had to seek understanding of the distinction between the two "orders" which enables the Roman Catholic Church, in accordance with what are known as the Pauline privilege and the privilege in favorem fidei, to pronounce the dissolution of marriage in the "natural" order when for lack

of, e.g. assured valid baptism, the marriage does not enjoy the absolute security of a "sacramental" marriage. The Fifth Meeting was completed with provision made for the drafting of this final Report, and for the determining of its content and tendency.

12. At our Sixth Meeting (1975) the Report, which had been sent to members late in 1974, criticized by them and revised, was further scrutinized, amended, accepted by us all and signed. Thus we present this our unanimous Report.

SECTION B.

THE RELEVANT THEOLOGY

Of Baptism

13. Though it was accepted from the beginning as a fundamental principle of our discussions "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", and that "this baptismal unity remains firm despite all ecclesiastical division", none the less it was quickly evident that the central theological difficulty that underlay Anglican/Roman Catholic tensions about the discipline governing mixed marriages was ecclesiological - it stemmed from divergent conceptions of the Church.

14. The discipline embodied in the 1917 Codex Iuris Canonici, and the language in which it was expressed, reflected a conception of the Church which was hardly questioned among Roman Catholics down to the Second Vatican Council. This received its latest classical expression in such encyclicals as Mystici Corporis and Humani Generis; it simply identified the Church, the mystical body of Christ, with that juridical societas perfecta, the Roman Catholic communion. It survived to dominate the preparatory scheme of Vatican II's treatment of the Church, but the Council's constitution Lumen Gentium and the decree Unitatis Redintegratio on Ecumenism each showed significant movement away from it, both in their fresh presentation of the Church as sacrament of salvation, as Communion and as pilgrim on earth, and in their assessment

of the status and salvific efficacy of non-Roman Catholic Churches and communities.

15. It is predictably a slow and difficult business for a renewed ecclesiology to be brought to bear on legislation with its long-established juridical categories and language, but none the less many saw the relaxations of the 1966 Instruction Matrimonii Sacramentum and of the 1970 motu proprio Matrimonia Mixta not simply as theologically unrelated oecumenical gestures but as logically linked with developments in ecclesiology. The many included Anglicans, some of whom however were disappointed at the halting way in which discipline followed theological advance.

16. A significant and much-discussed change in the ecclesiological language of Vatican II was the account of the Church as "subsisting in" the Roman Catholic communion. The relator at the Council made it clear that the scholastic phrase was deliberately chosen to replace mere identification, in order to harmonize with the very much more positive language used of non-Roman Catholic communions.

17. It would be wrong to minimize the significance of these changes. In historical perspective they loom large. They could hardly have co-existed with the old, static, juridical, "societary" conception of the Church, and because they reflect a new, dynamic way of thinking of the Church, they are capable of further development. While they do not provide ground for supposing that a Roman Catholic may no longer have an obligation in conscience concerning the

Catholic upbringing of his children, they do mean that insistence on this obligation is not to be seen merely as institutional defensiveness, nor as dismissive of other traditions, nor as over-riding all other possible obligations, such as those which arise from the nature of marriage itself.

18. So far we have spoken only of Roman Catholic ecclesiology and its implications; but though Anglican ecclesiology is less precisely formulated, makes less exclusive claims and consequently of its nature leaves more room for choice to the conscience of the believer, we were reminded at our Fifth Meeting that there are Anglican marriages with other Christians in which the community concerned will be ecclesiologically so "seriously deficient that the Anglican will be compelled to insist that the children be baptized and reared as Anglicans." Some Anglicans indeed would be sufficiently unhappy about certain Roman Catholic doctrines and practices to feel bound to insist on an Anglican upbringing for the children of an Anglican/Roman Catholic marriage, even though they would not impugn Roman Catholic baptism. Members of the Commission, in reporting these views, are not to be understood as identifying themselves with them.

Of Marriage

19. On marriage itself the Commission finds no fundamental difference of doctrine between the two Churches, in terms either of what marriage of its nature is or of the ends which it is ordained to serve. The language of Vatican II

in Gaudium et Spes (47 - 52) grounding marriage in the natural order, in the mutual pact or covenant (pactum, foedus) of the spouses, is entirely at one with the covenantal nature of the Anglican marriage liturgies. The sacramental nature of marriage is also affirmed, partly in the moral sense of enduring obligation (sacramentum) expressed ir the marriage vow, partly in the sense of sign (signum): a sign to the world of what marriage in the natural order by God's ordinance is and ought to be; a sign to the world and to the Church of Christ's irrevocable covenant with the Church and of the mutual love which ought to find expression between Him and the Church, and between the Church's members; and a sign to married people, to the world and the Church, that continuance within the covenant is dependent upon the continued forgiving and renewing grace of God. Christian marriage therefore takes its specific character from its being undertaken by the baptized within the covenanted and sacramental life of the Church, and of being continued therein. Artificially to set "marriage in the natural order" against "marriage in the sacramental order" leads only to the creation of unnecessary difficulty and tension. Natural marriage had, from the beginning, the full potential of sacramental marriage: its sacramental significance was declared as part of the "mystery" (sacramentum) dispensed and revealed in the fulness of time by God through his Son and recognized as such by the Apostle; so the language of Ephesians 5, interpreting conjugal love in terms of Christ's love for the Church and vice versa, aptly expresses our common theology of marriage, and is as aptly entrenched in our respective marriage liturgies. On our respective responses

to marriages in which the moral unity and the integrity of the sign are together marred more will be written below. The differences in these responses are not such as to dery or impair our full agreement on what marriage in its created and sacramental nature is.

Of Reliance on Law

20. In a mixed marriage there is a meeting, not only of the two Churches represented by the parties, and not only of the doctrines and traditions of those Churches, but also of two jurisdictions, two societies whose lives are regulated, to different extents, by law. The Roman Catholic Church legislates for marriage in the Codex Iuris Canonici, comprehensively, devising laws for every aspect of marriage as though no other legal provision existed. This comprehensiveness derives logically from the Catholic Church's awareness of itself as a societas perfecta, having a jurisdiction of its own to regulate the internal life of a community which transcends all national and regional jurisdictions throughout the world. For Roman Catholic Christians in so far as their life in the Church is concerned, the canon law operates as a juridical expression of the theological self-consciousness of the Church, and of its pastoral responsibility for bringing the faithful to the complete awareness of and response to the redemption once wrought for them by God in Christ: in short, for their renewal in the image of God, for the enjoyment of his presence and his glory eternally. The canonical regulation of marriage is seen to be part of this whole.

21. In the Churches of the Anglican Communion law, particularly in respect of marriage, has a much more limited function. The fundamental regulation of marriage - competence to marry, impediments to marriage, prohibited degrees of kindred and affinity, the public acceptance of forms for the contracting or solemnizing of marriage etc. - is seen to be the function of the law of the State, not of the Church. For this there is a simple historical reason. At the Reformation in England jurisdiction over matrimonial causes remained with the Church, and the substantive law was carried over from the common canon law of Western Christendom, modified only in some important particulars, chiefly concerning impediments. When the State began to legislate for marriage in its own capacity, at first to guard against clandestinity and its attendant abuse, and then to provide for dissolution of marriage by civil process, it left the solemnization of marriage as the responsibility of the Church virtually unimpaired (providing only alternatives for marriage before the civil registrar or according to the rites and ceremonies of other religious bodies), and it made the canonical grounds for separation a mensa et thoro the basis of its own substantive law for dissolution. Consequently the Church of England feels no need for comprehensive ecclesiastical or canonical legislation to govern the fundamentals of marriage: it accepts its "own" law back again as administered by the State. And since a similar pattern of relationship spread throughout the common law countries in which the Anglican Communion took its early roots, the emergence of comprehensive codes of canon law for marriage is a rare and late phenomenon.

22. Behind these differences lie others, less tangible but real. Co-existence between the canon law of the Church and the common law of England was never easy. Not only did they differ in substance; not only had they different sources of ultimate authority and courts of final appeal, the Papacy in the one, the Crown in the other; they differed radically in procedure and even more in that sensitive area of the relation of authority to consent. The common law tradition was quicker to respond to public opinion, through the interplay of parliamentary legislation, judicial interpretation and the jury system, than was the canonical tradition with its closer involvement with a curial, and predominantly clerical, structure. These facts of history have influenced the unspoken attitude of Christians of the two traditions to authority in their respective Churches. The Anglican canon law does indeed state obligations incumbent on the laity as well as the clergy. Yet these obligations are legally enforceable on laymen only in respect of their holding ecclesiastical office, e.g. as churchwarden, or as judge in an ecclesiastical court. In his ordinary Christian living the Anglican accepts the authority of the Church as a moral obligation; the sense of there being a law to keep is foreign to him. In the last resort, at least in the Established Church in England, the royal courts of justice would, on complaint, protect him in the enjoyment of his ecclesiastical rights and privileges, e.g. to marry, if otherwise competent, in his own parish church, or to have his children baptized there, if he were being deprived of them by a clerical judgment not founded on a fault or defect cognizable and proven at law. Even in non-established

Churches he might conceivably seek protection or redress by civil action if an ecclesiastical exclusion or deprivation were thought to be unjust or by implication defamatory of his reputation. (In fact, such resort to the courts of justice for redress is very rare). This cast of mind is far away from that of the faithful Roman Catholic - if we may risk the generalization - whose disposition tends towards giving assent, in some degree, to the discipline as to the magisterium of his Church unless he would be very severely oppressed in conscience by doing so. It is true, indeed, that the working of authority is much under discussion in the contemporary Roman Catholic Church; but of the inherited attitude of mind this description is not, we hope, unfair.

23. It follows, therefore, that in a mixed marriage an acceptance of ecclesiastical requirements which seems natural to one party might well occasion surprise and even resentment in the other. The Anglican partner would see a wider range of matters which he would think it right that the partners should "work out for themselves" than the Roman Catholic partner who would be more habituated to accepting, prima facie, a decision already made for him by his Church. This difference would inevitably occur, whatever the matters in issue. We shall point below to the two matters where the difference is particularly acute, namely in the requirement of promises about the baptism and education of children and the requirement of marriage according to the "canonical form".

SECTION C

DEFECTIVE MARITAL SITUATIONS

The Problems

24. We use the phrase "defective marital situations" to cover many types of situation which together make up a major problem of contemporary society. In the first instance the problem is personal to those directly involved in such situations - the married partners; this remains true whatever the contributory factors may be - social or psychological tensions, economic stress, spiritual defect or decline, and whatever their ratio. An awareness of the primary personal nature of the problem and of the variety of possible factors at play is necessary for a valid approach to defective marital situations as they are encountered by the pastor. He must be aware of the requirements of Church discipline, but not as something isolated from its theological foundation or from the spiritual needs and anxieties of the persons involved.

25. From this point of view, what our two traditions have in common needs to be stressed at least as much as the divergences in discipline which attract more immediate attention. We have stressed earlier the fertility of the common ground we have on the sacramental nature of marriage. We would see value in developing this further, seeing Christian marriage as contributing to the world's self-understanding, as a sign revealing to the world the real meaning of marriage, and standing in judgment on the world for its acquiescence in attitudes to marriage which are not consistent with the dignity, freedom and moral seriousness of

full and mature personality.

26. If laws which the Church makes about marriage are to fulfil the time-honoured requirements for law so succinctly stated by Thomas Aquinas (Ia, IIae, qq. 90-97) they must mirror this theological conception and also serve the pastoral purpose which is linked with it - to make not marriage in the abstract but marriages a sacramental sign to the world. Discipline must be appropriate to real marital situations and their defects, without obscuring or damaging this witness to the world.

27. We believe that our two traditions are fundamentally at one in recognizing these principles and acknowledging these demands, however difficult they are to reconcile. But divergence appears when we compare practical solutions. For whereas we may properly derive from Scripture the unchangeable theological principles of marriage which must be upheld, the fashioning of marital discipline, and its just adaptation to changing circumstances, remains always the responsibility of the Church - though always under the control of the theological principles.

The Relations of Discipline to Theological Principle

28. We have spoken of principles derived from Scripture. The extent of agreement in this field was outlined at our Fourth Meeting (above para 10) and is set down here exactly as our consultants gave it.

"Exegesis of New Testament texts on divorce and remarriage - areas of agreement and disagreement

i. In general we agreed that our differences on exegetical questions raised were not confessional, but reflected the varieties of critical opinion which are to be found within both communions.

ii. Details We agree

on a text-critical approach

on the priority of Mark's version in this periscope [Mk 10:1-12; Mt 19: 1-12. cf Mt 5:32]

that the exceptive clauses in Matthew are additions to the words of Jesus

that the most probable interpretation of porneia is as marriage within the forbidden Jewish degrees, and that this clause is inserted not as a mitigation but to preserve the full rigour of Jesus' words

that Mk: 10: 10-12 was not originally joined to Mk: 10: 1-9, but that its authenticity as a word of Jesus is not thereby impugned

that Jesus' statements on marriage are uncompromising

that Mk 10:1-9 intends to throw into relief the hardness of heart involved in making use of the legislation of Deut: 24 allowing a bill of divorce, and that its direct concern is with the failure of the married couple to stay together, rather than with remarriage. We disagree, however, in that Henry Wansbrough thinks that Jesus intends to abrogate this permission, Barnabas Lindars that he does not.

that in Mk: 10: 10-12 Jesus stigmatizes remarriage after divorce as adultery and therefore against the ten commandments.

Thus far we both agree that the views expressed would be endorsed by the great majority of critical scholars of all Christian confessions.

iii. Status of the words of Jesus We agree that the words of Jesus are treated by the evangelists as having force of law, for which reason Mark adds the corollary of verse 12 for the sake of his Roman readers, and Matthew adds his exceptive clauses.

We disagree, however, as to whether Jesus intended his words to be taken as having force of law. Henry Wansbrough regards them as a directive to the disciples which would be normative for the future Christian community, Barnabas Lindars as concerned with bringing people face to face with themselves in the reality of the marriage bond when they contemplate divorce and remariage. Barnabas Lindars holds that Jesus sets out neither to correct the existing

law nor to establish a new law; it is a mistaken undertaking to attempt to construct a law on the basis of Jesus' sayings; rather the sayings of Jesus will continue to stand in Judgment on any law.

We consider that Henry Wansbrough's view is consonant with the view of the majority of informed opinion in both communions, while Barnabas Lindar's view represents current tendencies in biblical scholarship which have hardly yet made their full impact on discussion of the questions.

Barnabas Lindars, SSF
Henry Wansbrough, OSB"

Procedures for the Regulation of Defect

30. We must now consider how the Church's discipline is to be related to unchangeable theological principles, particularly in devising procedures for the regulation of marital defect. We are agreed that the "juridical" and the "pastoral" should never be at odds in the discipline of a Church. But, from the Roman Catholic point of view, what are here called "procedures for the regulation of defect" are not examples of pastoral solicitude in the sense that they are primarily devices for easing difficult situations. Whatever may be the motives for advancing a plea of nullity or petition for dissolution (and obviously these motives will normally be a "defect" in the marital relationship as it is lived, issuing in a desire, unilateral or shared, to be rid of it) the judges of the case will not only begin from the principle "marriage enjoys the favour of the law" but their enquiry will be directed toward a canonical "defect" or ground for dissolution deriving from the Church's teaching and practice concerning marriage and its properties.

31. Catholic teaching is that all legitimate marriages are <u>intrinsically</u> indissoluble. This means that the marrying

parties effect something that they themselves cannot undo and which cannot of itself perish except by the death of a partner. In this sense the Church makes no distinction between natural and sacramental marriage. Similarly all legitimate marriages are held to be extrinsically indissoluble by any human power.

32. Distinctions come in when we turn to the Church's power (mediating God's power) to dissolve extrinsically. But first the ground must be cleared by emphasizing the distinction between such dissolution and a simple declaration of nullity. This latter is a declaration of fact and to speak of dissolution (still more to use such a tendentious phrase as "divorce under another name") is improper.

33. The Church's claim to a vicarious power to dissolve certain marriages undoubtedly involves a distinction at least in degree of firmness between the natural and the sacramental bond. The only marriage which is absolutely indissoluble intrinsically and extrinsically is the matrimonium validum ratum et consummatum, a marriage duly perfected and physically consummated between two baptized persons. All such marriages are sacraments (because Christ elevated them to that dignity, canon 1012, para 1) and from this their essential properties of unity and indissolubility "acquire a particular firmness" (canon 1013, para 2).

34. The papal practice (documented since the early fifteenth century) of dissolving for an adequate cause, practical and pastoral, a non-consummated marriage and the granting of the so-called Pauline privilege, are both hedged about with

strict procedural rules and seem not to cause great difficulty for most Anglicans.

35. The exercise of the papal prerogative in favorem fidei, by which a marriage involving only one baptized person, even if celebrated with a dispensation disparitatis cultus, can be dissolved, strikes many Anglicans as a progressive extension of a theologically doubtful claim, and they can point to the fact that the moratorium on such favours declared in recent years was in part motivated by doubts about whether the extensions of the privilege had been the result of adequate theological reflection. Above all, the existence of the privilege, however prudently used, seems to them to imply a depreciation of natural marriage which at best is hard to square with the general principles of Catholic marriage doctrine.

36. The Commission has more than once directed its attention to literary evidence of new Roman Catholic thinking, both by theologians and by canon lawyers, about the fundamental notions of consent, of consummation and of sacramentality. The practical tendency of much of this thinking, were it to influence legislation and the practice of the courts, would be to enlarge the grounds on which nullity might be declared, and to restrict the range of the category matrimonium ratum et consummatum within which alone absolute indissolubility applies, thus - obversely - extending the scope both of annulment processes and of dissolution by papal prerogative. Some members of the Commission incline strongly to depreciate this thinking as unlikely to have any

influence on legislation in the foreseeable future: others point to its mounting influence on the practice of the courts in certain regions.

37. The Anglican understanding of the duty of the Church in the regulation of defective marital situations at some points coincides with the Roman Catholic understanding and at some points differs from it. It begins by distinguishing defective situations of two sorts. The one is where the defect is one for which the only appropriate action is a declaration of nullity, whether the parties seek or want it or not, because the "marriage" is no marriage, but a relationship not permitted by the law. The other is where the defect is one within a valid marriage, which is brought into cognizance, whether of the law or of the pastoral discipline of the Church, only ad instantiam, because the parties or one of them seek or seeks relief from a situation judged no longer tolerable. The only relief for these known to the canon law of the Church of England and, until recently, of the other Churches of the Anglican communion, was a separation a mensa et thoro, without liberty to re-marry during the lifetime of the other spouse. In the Anglican theological tradition, however, there have always been those who, accepting as legislative the words of Jesus including the so-called "Matthaean exception", would have allowed re-marriage after a divorce occasioned by adultery, had the canon law permitted. This tradition is still alive today, maintaining the possibility of a discipline, faithful to the words of Jesus, based on the principle of

what might be called a modified exceptive indissolubility; that is, on the principle that while marriage is properly indissoluble, the authority of Jesus would allow of exceptions where sin of some sort had invaded or destroyed the marriage bond. This position is maintained in disregard of the exegesis of the critical passages of Scripture generally maintained among New Testament scholars.

38. The introduction of the possibility of divorce and re-marriage by civil process, in the mid-nineteenth century, enabled these "exceptive indissolubilists" to authorize action in accordance with their conviction.[4] The general tendency in modern Anglicanism, however, until the last two decades, has been towards a fully indissolubilist position, and resolutions of Lambeth Conferences have declared this unequivocally. At the same time, however, Anglicans found themselves increasingly unable to live with the logical consequences of their own affirmed position; they began to develop expedients to mitigate its rigour. The most general of these is, while refusing the re-marriage of divorced persons by the rites of the Church, to accept their re-marriage before the civil registrar and to receive them as man and wife into the full communicant life of the Church (sometimes after a period of voluntary abstention from sacramental communion) exactly as though they had been married in Church; a service of prayer in church, in varying

4. They had already done so, of course, since the late seventeenth century in the rare cases of divorce by private Act of Parliament.

degrees of elaboration, frequently follows the civil ceremony of marriage. There is considerable unease at the logical and theological oddity of such a compromise. It drives some, resolved to remain "indissolubilist" at all costs, to follow with eager sympathy developments in the practice of the Roman Catholic courts and in serious discussion outside them to test the bearing of the principle of indissolubility in cases where its strict application might prima facie result in injustice or frustrate the pastoral function of the Church. It has driven some Churches in the Anglican Communion to abandon the strict principle of indissolubility altogether, and to legislate, by canon in Provincial Synod, for the controlled admission of divorced persons to re-marriage in church during the lifetime of former spouses: Canada, the USA, Australia have already canons of this sort in operation or in process of enactment. There are Anglicans in all these provinces and in others who deeply regret this development. The signatories of the Church of England Report, Marriage, Divorce and the Church (1971) sought, while adopting an exegetical position which ruled out reliance upon "the Matthaean exception", to secure relief by means designed to safeguard more closely the theological control which ought to be exerted over discipline, and to minimize the hurt done to the Church's essential task of maintaining its witness to the first principles of marriage as stated by our Lord; but their proposals, though welcomed in numerous diocesan synods, and by many in the General Synod, narrowly failed to secure a bare majority of votes in the General

Synod and cannot therefore be held to command general consent in the Church itself. The attempt to hold together a first-order principle that a marriage is of its nature indissoluble and a second-order discipline which recognizes or permits re-marriage after divorce rests on two suppositions: the first is a theology of the grace of God which can release, forgive and re-create, even though inevitably the second marriage must be in some sense defective as a "sign" as posited in paragraph 19 above; the second is that the discipline itself, in its private and public processes, must not obscure but rather re-emphasize what marriage, in its nature, characteristically is. The pursuit of these means still occupies concerned minds in the Churches of the Anglican Communion.

39. Roman Catholics take the point that Anglican discipline regarding the indissolubility of marriage was for long among the strictest of all. They are proportionately disconcerted by developments in theory and discipline within the Anglican Communion (of which an extreme case is the recent canon 18 of the General Convention of the Episcopal Church in USA) which appear to them to compromise the Catholic doctrine of indissolubility. Though the Roman Catholic members of the Commission found much of the treatment of marriage in the Report Marriage, Divorce and the Church profoundly sensitive, scholarly and edifying, the carefully-considered recommendations of the Report concerning the re-marriage of divorced persons led the Commission at its Fourth Meeting to consider the question

whether the notion of "irretrievable breakdown" was compatible with any concept of an indissoluble vinculum. This discussion cleared up several misconceptions and pointed to several imprecisions of linguistic usage, yet it left the Catholics and some of the Anglicans in the Commission unconvinced that the proposition "marriage is characteristically indissoluble but some marriages turn out to be dissoluble" allowed any meaning to the notion of life-long commitment.

40. Oecumenical dialogue has led some Catholic theologians to see the analysis of indissolubility and life-long commitment as most fruitfully made in terms of a durable and lasting promise of grace, given by Christ: experienced and continually renewed by the spouses in the reality of the marriage, yet an objective gift for the upbuilding of the Church and the world. When a marriage breaks down "the couple's specific experience no longer corresponds to Christ's gift, but that does not imply that the sign received from Christ has been destroyed; indeed the nature of Christ's involvement with the couple cannot be annulled by the manner in which he is received."

41. It may be questioned however whether the contrast between the "unitary" Catholic position and the threefold Anglican approach on this grave contemporary problem is as clear-cut as it seemed to us at an earlier stage.

42. While the Catholic position remains "unitary" and "solidly indissolubilist" in the sense of maintaining the proposition that matrimonium validum ratum et consummatum can be dissolved by no earthly power, there is, as suggested

earlier (paragraph 36) considerable new thinking about the terms of this description and hence about what marriages truly come within it. Catholics, however, even those who do not subscribe to this thinking, would reject the view that it tends to make the line between nullity and divorce blurred and arbitrary.

43. Is there then a point of reconciliation between these two understandings, the Anglican and the Roman Catholic, of the Church's duty in respect of defective marital situations? First, it is clear that there is no essential difference between their attitudes to what are objectively non-marriages, in which the only proper course is a declaration of nullity by a competent court, leaving the parties as free to marry as though the previous situation had never existed. Anglicans, no less than Roman Catholics, may follow with close attention the academic discussions and complicated tribunal and rotal actions trying to determine what sort of cases properly lie or may be brought within this category for which a declaration of nullity is appropriate; indeed, the same course has been publicly favoured and pursued in some provinces of the Anglican Communion. It is not, however, useful or indeed proper for them to advance unsubstantiated allegations that this process is simply a granting of dissolution under another name; within the given logic, the process is morally defensible in its own right. The argument of this present report is presented on the assumption that it is conducted in entire good faith in both Churches.

44. There is a further common element in the two traditions. It lies in the fact that the initiative in most cases is

taken at the instance of parties seeking relief from a marital situation in which they find severe difficulty, which they may find intolerable, or from which they seek relief, often though not always with a new marriage in view. (Where no new marriage is contemplated an easier solution is available in a formal separation - though it is to be noted that this in itself marks some departure from the stated will of God that they should "cleave" together, and as such mars the "sign" of their marriage.) Here the Roman Catholic would examine the case objectively to find whether it presents features appropriate to a declaration of nullity, or features which excluded it from the category of matrimonium validum ratum et consummatum between baptized persons which alone is humanly indissoluble. The Anglican courses have been described: some Anglicans would adhere as closely as possible to the Roman Catholic line; others would disclaim the possibility of divorce in itself and of re-marriage after it, but nevertheless accept a fait accompli by civil process for all subsequent ecclesiastical purposes; others would frankly accept and even solemnize re-marriage after divorce. Now from the Anglican side it is submitted that these processes, Roman Catholic and Anglican alike, are all means of pursuing a common end, namely the continuance of the Church's pastoral responsibility for its members in a situation which, because of sin, inadequacy or weakness, or for whatever reason, the sign of marriage is already marred and in which no course absolutely consonant with the first order principle of marriage may be available. The Church has a duty to devise such means, and has devised them from the beginning - the

earliest of these means having left us with such "evidences" as the "Matthaean exception" and the "Pauline privilege", whatever their precise interpretation may be. This recognition of the integrity of the other Church's attempts need not carry with it unqualified approval of the means in themselves - Roman Catholics may think Anglican admission of re-marriage after divorce too weak, Anglicans may think the logic of the Roman Catholic processes too strained. But in the view of the Commission neither attitude of disapproval is of such a degree as to hinder oecumenical convergence in the two fields which are our immediate concern, the growing together of the Roman Catholic and Anglican Churches, and a more positive pastoral approach to the contracting and support of mixed marriages. Both Churches can accept that each maintains, and has a settled will to maintain, the full Christian doctrine of marriage, as outlined in paragraph 30 above, and that in each Church an intention to accept marriage as a permanent and exclusive union is and will be required of all who seek marriage according to the Church's rites.

45. The common ground we have established on the nature, properties and purposes of Christian marriage implies clearly common pastoral aims though not necessarily common methods of achieving those aims.

46. The pastor is aware at once of a responsibility to Christ and the Gospel - a responsibility for integrity of witness - and of a responsibility to the people of God, to enable them to bear their burdens and to live the Christian

life in the conditions in which they find themselves. If tension is evident between these two responsibilities, he cannot resolve it by ignoring it, or by paying attention to only one of the responsibilities.

47. Applying these principles to Christian marriage, not as a theological abstraction but as a lived reality, he is aware at once of the tension between the ideal, the sign to the world which is marriage as presented and illuminated by the word of God, and the hard realities of a contemporary situation in which social, economic and other factors, opinion and custom, the trends of legislation, all militate perhaps as never before against the embodiment of the ideal and the witness in institutional forms.

48. Saying this we see at once that in this context we cannot simply equate the term pastor with bishop or parish priest: the theologian, the canon lawyer, the official of the marriage court, is pastoral in his concern and in his operation. To scrutinize the notions of sacramentality, of consent, of consummation is not simply to juggle with or stretch the law - it is to face up to both aspects of pastoral responsibility and the tension between them. To seek to understand the wider dimensions of forgiving and re-creating grace is a complementary pursuit of the same end.

49. In view of what has been said earlier about the difference between Roman Catholic and Anglican attitudes to law and authority it is inevitable that the same double sense of pastoral responsibility, this same facing up to

an inescapable tension, should issue in different solutions. It is indispensible to further understanding and convergence that each side should recognize and respect in the other the integrity of responsibility which produces these divergent solutions, even though recognition and respect may not make possible in all cases an acceptance of the solutions.

50. This leads us to say that, in setting this problem of defective marital situations and their pastoral care in the total perspective of the Roman Catholic/Anglican search for unity, two things stand out as important. One is that all adumbrations of the form that unity might take have envisaged the preservation of what is integral and acceptable in both our traditions in a variety-in-unity; the other is that in the Orthodox Church, whose union with Rome has been described by Pope Paul VI as "almost perfect", long established marriage discipline embraces the possibility of divorce.

SECTION D

MIXED MARRIAGES

The Roman Catholic Legislation

51. It has been said above that the motu proprio Matrimonia Mixta represents the latest stage in Roman Catholic modification both of discipline and of its expression. Though mixed marriages are still discouraged and seen only "in some cases" as an occumenical opportunity and means of unity, yet it is recognized that the rapidly changing conditions of today and the development of thought reflected in such Vatican II documents as Dignitatis Humanae and Unitatis Redintegratio involve substantial changes in the classical attitudes reflected in the Code of Canon Law. Mixed marriages are seen as a fact of life and an object of pastoral solicitude - solicitude which, where both parties are baptized, is proper to both Churches involved and a proper object of "sincere openness and enlightened confidence" between the respective ministers. The Catholic conviction that marriage between the baptized is necessarily sacramental, combined with the more positive ecclesiological assessment of other Churches, seems to open up new prospects, especially for marriage with Anglicans, whose special relationship with the Roman Catholic Church has been emphasized during the Vatican Council and on important occasions since, besides being supported by important advances in doctrinal agreement.

52. These new prospects are however dimmed, first by the retention of the demand of promises by the Catholic party as a condition of dispensation to marry an Anglican (Matrimonia

Mixta 4 - 5) and by the insistence that the "canonical form" (marriage before a Roman Catholic priest and two witnesses) is necessary for the validity of the marriage; secondly by the fact that, in spite of the "special relationship" referred to in the previous paragraph, English-speaking areas of the world seem, with certain exceptions, to be among the less liberal in availing themselves of the considerable latitude granted to episcopal conferences by the motu proprio (nos. 7, 9, 10). Experience shows that on all these points certain confusions need to be forestalled.

53. First, the use of the phrase "divine law" is attached by the motu proprio to the obligations of the Roman Catholic party, which the Church believes herself not empowered to remove; it is not attached to the ecclesiastical discipline of promise concerning the obligation, which has been modified considerably during recent years. The divine sanction attached to the obligation simply reflects the ecclesiological conviction referred to above (paragraphs 14ff).

54. Secondly, interpretation seems to make it increasingly clear that this obligation is not to be thought of as absolute, i.e. unrelated to any other obligations and rights. We would wish to reaffirm here what was said in our Third Report.

> 7. In our Windsor Report we agreed 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." In the Apostolic Letter the promise required of the Roman Catholic partner is to provide pro viribus for the Roman Catholic education of the children of the marriage. This Latin adverbial phrase is usually translated into English "do all in his

> power". This English phrase might be and often is adduced to justify the Roman Catholic party acting in a way which disregards the equal rights in conscience of the non-Roman Catholic party, and even to justify the Roman Catholic adopting an attitude or pursuing his purpose in ways which might endanger the marriage. It is recognised that responsible Roman Catholic commentators on the Letter (including many episcopal conferences) do not put this interpretation on the Latin phrase, but rather confirm our Windsor statement quoted above. The Roman Catholic undertaking pro viribus is given envisaging the marriage situation with all the mutual rights and obligations which the theology of marriage sees as belonging to the married state.
>
> 8. The use of the Latin phrase in the official text also marks recognition that, as our Second Report from Rome in 1968 put it: "...no dispositions which the Churches can make can wholly determine the future of a marriage". "We acknowledge that as the spouses after their marriage 'experience the meaning of their oneness and attain to it with growing perfection day by day' (Gaudium et Spes, 48) they must be encouraged to come to a common mind in deciding questions relative to their conjugal and family life."

We would gladly accept, within the living context of a Christian marriage the working of the principle "great is truth and it shall prevail" but not that of such principles as "great is obstinacy (or social or psychological or ecclesiastical pressure) and it shall prevail". In this respect all of us have ground to examine our consciences.

55. The motu proprio warns us that "no one will be really surprised to find that even the canonical discipline on mixed marriages cannot be uniform", but this hardly prepares us for the contrasts between the applications of the motu proprio made by the various episcopal conferences - all of them seemingly accepted by Rome. At one extreme there is heavy insistence on the "divine" sanction for the Roman Catholic's obligation (even introducing the expression into

written formulae for the promises) evidently aimed at making the sense of the obligation as comprehensively felt as possible; at the other an equally clear insistence on the limiting force of the phrases quantum fieri potest and pro viribus, and on the importance of setting decisions within the context of the marriage and of a mutual respect for conscience. Anglicans are somewhat dismayed to find that, among English-speaking conferences whose dispositions are familiar, the only one that seems to come well into the second category is the Canadian.

56. The contrasts just referred to reflect very various understanding of the importance, within the wide category of mixed marriages, of those between committed members of the two different Churches. It is generally agreed that these latter form a small minority but sometimes (or "in some cases") this seems to lead, illogically, to a tacit assumption that they are of little importance or even that regulations or pastoral practice need take no specific account of them. This assumption seems difficult to reconcile with serious œcumenical intent.

On Canonical Form

57. The requirement of "canonical form" for the validity of a marriage has a long history rooted in the medieval problem of clandestine marriages. It is not therefore a discipline which arises out of the divisions within Christianity or out of the ecclesiological position of the Roman Catholic Church described earlier, nor does it

prejudice the fact that the parties themselves are the ministers of holy matrimony. It may, however, appear to do so. To persons not well versed in ecclesiastical matters (and at weddings the Church encounters these more than perhaps at any other time, persons whose only recollection in the matter is that weddings take place normally at the church of the bride), the requirement suggests Roman Catholic intransigence and exclusivism; it excites memories, irrelevant in this context, of the invalidating of the orders and ministries of other Churches; it provokes or aggravates tensions between the families of persons marrying; and in general it tends to increase irritation at the involvement of the Church with marriage at all. A mood may thus be created in which, instead of being seen as hallowing marriage and bringing spiritual support to the partners in their responsibilities, the Church too easily appears to be a nuisance, a source of discord.

58. Accepting the fact that the Roman Catholic Church judges it better to retain the discipline, yet recognizing that in its present form it arouses this kind of resentment, we repeat here a proposal which we have twice submitted before:

> 10. Upon Canonical Form, we made concrete recommendations in our Second Report, namely that "on condition that joint pastoral preparation has been given, and freedom to marry established to the satisfaction of the bishop of the Roman Catholic party and of the competent Anglican authority, the marriage may validly and lawfully take place before the duly authorised minister of the Church of either part". Though the Apostolic Letter makes different provisions, (Mat. Mixt. 9) further reflection would lead us

> to reiterate our original suggestion, for the following reasons. First, it is preferable for any practice to be brought within the general law rather than be made the object of frequent dispensation. Secondly, to extend the scope of Canonical Form to include Anglican ministers celebrating the Anglican rite would be an oecumenical act of profound significance, giving notable substance to those official utterances which, in various ways, have declared a "special relationship" to exist between our two Churches.

59. We are encouraged to repeat the proposal by noting that the section of the Pontifical Commission for the Revision of the Code of Canon Law which deals with matrimony, in its chapter VI De Forma Canonica (Comm. III, 1, p.78) recognizes the possibility of the Holy See delegating by special indult the faculty of assisting at weddings to others than those who have it by canon law. Though the authors of the chapter are clearly not thinking beyond the various orders of the Roman Catholic ministry, we see no reason why the power of indult of the Holy See should be regarded as so restricted: it might well be exercized to bring Anglican ministers within the requirements of canonical form.

The Promises

60. Anglican objections to the requirement of the promises are simply stated. The first is that they rest on a doctrine of the Church which the Anglican cannot accept. That he is under divine obligation first to make on behalf of his children the response of faith to God's love revealed in Christ - that is, to bring them to Christian baptism - and then to enable them to respond themselves to that love -

that is, to give them a Christian upbringing - he readily admits. But he cannot recognize such a distinction between the words "Christian" and "Roman Catholic" in this context of such a force as to justify the requirement of an explicitly Roman Catholic baptism and upbringing, and not of an explicitly Christian one. (There is here a problem of ecclesiology which, in an earlier Report, the Commission asked that ARCIC should explore on its behalf. When the problem was returned to us, as being too far down on ARCIC's list of commitments for attention in the foreseeable future, we made some attempt to work at it ourselves, with the help of our consultants. But we repeat that it requires further serious attention in its own right and we hope that ARCIC will soon undertake it.)

61. The second objection is related to the first. It is that the requirement is insensitive to the conviction and conscience of the committed Anglican partner. It is no answer to this objection to say that in the majority of mixed marriages the non-Roman Catholic partner is religiously indifferent and unattached; such an answer puts a premium on absence of commitment in the sense that a dispensation for marriage to an uncommitted partner would be more easily obtained. It is the committed Anglican whose convictions are ignored who constitutes the problem - and the whole Anglican Communion with him.

62. The third objection is that the requirement asks of one partner a unilateral decision in a matter so fundamental to the nature and essential properties of

marriage as to require the achievement of a joint decision. Marital unity grows on the discipline and exercise of achieving a common mind on all that most intimately concerns the common life. The requirement of the promise lifts one essential matter out and forecloses it. It requires the Roman Catholic partner either to treat the matter as decided, because of the promise already made, or to be submitted to the extra strain of deciding when concession to the non-Catholic spouse is in breach of the promise, and so of personal integrity. Similarly it puts the other partner to the strain of deciding whether to adhere to his own religious conviction, and so discomfort his spouse, or whether mercifully to abandon it and so disquiet his own conscience. It were better, in the Anglican view, for the obligation concerning children to be stated in terms which treat the partners as equally bound and equally free. Such terms should not be impossible to devise for those who believe, as was stated above (para 54) that truth will prevail.

63. This assertion was there made in the context of an insistence on the limiting force of the qualifiers quantum fieri potest and pro viribus. This of course supposes the persistence of the discipline of the promises, which is, as we have just seen, unwelcome to Anglicans. Before offering any further solution (which not all Catholics on the Commission think is likely to prove possible) we feel that paragraphs 61 and 62 should be clarified still further.

64. Let us suppose a judgment of conscience by the Catholic party which assesses the actual marital situation and decides

that, through no fault of his own, perhaps through nobody's fault, perhaps even because of his conscientiousness in pursuing his duty in the matter, he is brought to a point where it is clear that a conflict between the rights of the marriage and the requirements of the Roman Catholic Church is inevitable. Then the Roman Catholic partner can justifiably say "I have in conscience done quantum fieri potest - because if I do more I shall certainly be prejudicing the prior rights of the marriage."

65. This remains a judgment of fact about the marital situation, and not a judgment on or repudiation of the Church's right to insist on the general obligation. The Church's pastoral practice, sacramental and other, should, consistently, support this interpretation, and support the faithful in continuing the Christian life on this footing.

66. We have referred earlier to the scarceness of pastoral thinking and practice in relation to defective marital situations. A related and hardly less acute shortage seems to exist with regard to pastoral care of mixed marriages, particularly joint pastoral care, as a questionnaire we addressed to the provinces of our respective communions clearly revealed this in most places.

Alternative to the Promises

67. This having been said, the question remains, is there an alternative to the promises, a course by which the Roman Catholic Church can do what its ecclesiology requires of it

in a way which encounters less objection? In the opinion of some members of the Commission there is. It would be for the Church to require of the Roman Catholic parish priest responsible for the marriage a written assurance to his bishop that he had, pro viribus and quantum fieri potest, put the Roman Catholic partner in mind of his obligations concerning the baptism and upbringing of the children, and, according to opportunity, satisfied himself that the other partner knew what these obligations were. He would not be empowered to exact a promise in the matter from either partner. The bishop, if satisfied in other respects, might then issue a dispensation for the marriage on the strength of this assurance. Such a procedure would be more consistent than the present one with the spirit of the Vatican documents on oecumenical relations and religious liberty, and would, it is believed, earn more respect, and so command more attention, from the non-Roman Catholic partner as well as from the Catholic.

68. This procedure is offered in an earnest attempt to make possible a real step forward in charitable relations between the two Churches. It is offered as a deliberate and more desirable alternative to the expedient now all too often adopted, and likely still to be encouraged, namely, in crude terms, to match force with force, that is, to grudge co-operation, to "make difficulties" from the non-Roman side matching in intensity those encountered from the Roman. One example is an instruction from an Anglican bishop to his clergy not to assist at a mixed marriage in

a Roman Catholic church if the promise has been given. Such a spirit of antagonism, is inconsistent with the good which ought to be sought in the solemnizing of a marriage, and with the spirit in which Christians and Churches ought to act together.

Pastoral Care

69. The proposals made above for alterations in the law concerning canonical form and the requirement of a promise presuppose a high degree of mutual understanding and trust between our respective Churches, and particularly between the clergy. The clergy have a duty to lead in this matter; and if they are unconvinced themselves they will be unable to convey conviction to others. There is no room for complacency about the degree of understanding and trust prevailing at present, encouraging as the growth is here and there. We are bound, therefore, to return to the imperatives which we wrote into our Third Report designed to promote better joint pastoral preparation and support for mixed marriages. We began by recalling the words of Pope Paul VI in Matrimonia Mixta (words which, unhappily, have in most places received very much less attention than the more controversial provisions of the motu proprio):

> 14. Local Ordinaries and parish priests shall see to it that the Catholic husband or wife and the children born of a mixed marriage do not lack spiritual assistance in fulfilling their duties of conscience. They shall encourage the Catholic husband or wife to keep ever in mind the divine gift of the Catholic faith and to bear witness to it with gentleness and reverence, and with a clear conscience. (Cf. 1 Peter 3:16) They are to aid the married couple to foster the

> unity of their conjugal and family life, a unity which, in the case of Christians, is based on their baptism too. To these ends it is to be desired that those pastors should establish relationships of sincere openness and enlightened confidence with ministers of other religious communities.

70. This passage, without diluting the pastoral responsibility of the Roman Catholic priest to those of his own flock or the charge which he bears to support them in the obligations arising from their Church allegiance, puts a clear and welcome emphasis on the specific duties imposed by the mixed marriage in which there is well-founded unity as well as possibility of division. Above all it recognizes that the fullest discharge of those duties calls for co-operation with the other minister concerned.

71. Pastoral care in these times has its special difficulties, particularly as it involves visiting homes, whether mixed marriage homes or not. It may well be fortunate that the scope for clerical paternalism has much narrowed; it is thus easier to realize that the solution of delicate personal problems involved in mixed marriages (not one of which is exactly like another) is to be found only in the maturing and sensitive growing-together of the family itself, and that any outside assistance, clerical or other, must be no less delicate and sensitive if it is not to be rejected as insufferable interference. Where joint pastoral care is assumed, as it should be, any hint of competitiveness, suspicion or possessiveness will inhibit the necessary sensitiveness from the start.

72. It is not for this Commission to offer a guide to joint pastoral care, which must remain in the fullest sense an experimental and inexact science: in short, an art. But it is not for that reason an activity which can be put aside. The various experiments that have been made in different parts of the world should be sympathetically studied bearing in mind that what serves one national temperament or social pattern may be of little value to another. What will count in the end will be the dedication and wisdom of the individual pastor, whether working with individual families or with groups of families; this will determine whether mixed marriages are to be an occasion of spiritual growth or decay, an oecumenical opportunity or an oecumenical menace.

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