

Church Congress Syllabus 54

THE MARRIAGE CANONS FROM A BISHOP'S POINT OF VIEW

By WILLIAM APPLETON LAWRENCE

Bishop of Western Massachusetts

This subject was assigned me with the understanding that the canons were also to be considered from the point of view of a Priest, and of a Chancellor. I shall try, therefore, to confine myself to the practical problems involved in the administration of the new canons by a Bishop. In order, however, adequately to understand these canons, it seems to me necessary to have in mind the background out of which they came.

They have sometimes been called "miracle canons," being devised and passed in twenty-four hours. But it is my personal opinion that such a result could never have happened if it had not been for the previous twenty-one years of prayer and thought and study which preceded. It was out of the long labors of the years that these canons were born. They represent the climax of the efforts of a generation to present a canon which more nearly reflected the spirit of our Lord, who was as forthright in His condemnation of legalistic attitudes and actions, as he was deeply concerned for those who somehow had failed in life. For years, men had wrestled to bring forth a canon which would (a) give opportunity for personal and pastoral consideration to each individual case; (b) stress the spiritual rather than the legalistic attitude; and (c) emphasize the positive possibilities of Christian marriage as opposed to the tragedy of failure and divorce. It is only, I feel, in the light of these persistent underlying purposes that the canons can be intelligently interpreted.

As a Bishop, I think I may also claim the privilege of including in my presentation, the accompanying resolutions passed only by the House of Bishops, which implement and more fully explain the canons. There are six of these, and it might be well to describe them briefly as they are not to be found in the book of Canons.

The first set up a special committee of three Bishops, whose duty it is to obtain from Diocesans copies of judgments under Canon 17, to collate them, to publish findings, to give advice when requested, and to report to General Convention their recommendations as to amendments.

The second instructed the Committee on the Pastoral Letter to include a statement of the Church's steadfast purpose in holding to its traditional position on Christian Marriage.

The next two, passed by the House of Bishops but returned by the House of Deputies (not, it is reported, because they disagreed with them, but because they felt they were already covered in Canon 45), instructed all Ministers in charge of congregations to give to both adults and children regular instruction in the doctrine and discipline of Christian marriage. The second instructed the Minister to make the family a basic unit and objective of his efforts in his parochial ministry.

The fifth recommended only that, before solemnizing any marriage, the Minister require the parties to sign a document in which they state their

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understanding of the Church's doctrine regarding marriage, and their intention to be faithful to it.

The sixth and last directed the National Council, through its Departments of Christian Education and Christian Social Relations, in cooperation with other agencies, to prepare suitable guides for the preparation of persons for Holy Matrimony; an office of instruction on the nature of Christian Marriage, the responsibilities and duties of family membership, and the doctrine and discipline of this Church in regard to Holy Matrimony; and to use every effort to obtain the use of such materials in the parishes and missions of this Church.

These additional resolutions seem to me to supply such an important emphasis and background that any consideration of the canons apart from them is incomplete.

With these two enlargements of the definition of my subject—namely, the historical background, and the Bishops' supplementary resolutions—I would set myself the limitation of keeping my subject to three points: (1) The Bishop in his relationship to the Canons; (2) The Bishop in his relationship to his Clergy; and (3) A Bishop's suggestions for the Future.

I. THE BISHOP IN HIS RELATIONSHIP TO THE CANONS

Here, it seems to me, the position of the Bishop is pivotal; indeed, he seems to have more authority in this particular relationship than he has in any other capacity except in the single instance of being able to accept a man as a Postulant for Holy Orders, but even here there is a medical check, and many following checks by the Vestry, the Stand-

ing Committee, and the Examining Chaplains. In the canon prepared and proposed by the Standing Committee of the General Convention, a Council of Advice or an Ecclesiastical Court was made compulsory. In the canon as adopted, such a group is only optional. How much this particular difference weighed in the decision, no one can tell, because there were so many other factors involved. It does seem to me, however, a matter which should have separate and much more deliberate consideration than it had at the time. Checks and balances permeate the pattern and practice of our Church, but here, so far as I can see, the applicant has no Court of Appeal from the decision of his or her Bishop. Dare we resist the infallibility of the Pope in matters of doctrine, and set up a system which seems to assume the infallibility of every Diocesan Bishop in marital relationships?

In even such a simple matter as defining "a member of the Church in good standing," is it just or fair that an individual who would be accepted as such in one diocese, be ruled out in another? Or, in such a basic matter as the interpretation of the canon, is it right and reasonable that petitioners should be penalized or privileged according to the Diocese or District in which they live? This question of the absolute authority of the Bishop, and the disparity of interpretation among Bishops, are highly debatable matters which I am simply presenting for discussion. I have neither the time nor the space to argue the pro's and con's in this paper, but I do think it may be helpful to such a discussion to present the findings of the special committee set up by the House of Bishops to collate the judgments sent to them.

In their first report to the House of Bishops, the committee reported that they had received 75 judgments from 16 dioceses. By January 1, 1949—after two full years, this number has been increased to 150 judgments from 21 dioceses, out of a possible 87—not quite 25%. In addition, they have received information from 54 replies to a questionnaire which they sent out. In their replies, all but three Bishops seemed to find the Canons workable and an improvement on the former discipline. There was an expected diversity of opinion as to the definition of "active member." A good many Bishops turn to advisers. Quite a few have constituted a permanent body. Only two reported marital courts established by canon. Practically all the Bishops insisted upon a personal interview with the petitioner. From the replies gathered, the Committee reports, "It seemed clear that the Bishops were regarding the administration of the canon seriously as a pastoral function, and basing their judgment upon the character of the parties, history of the former marriage, the alleged cause of the divorce, and the prospects of the proposed marriage, rather than upon evidence which would be presented in a civil court."

The majority of the cases reported had to do with an applicant who desired to marry a non-member of this Church whose previous marriage has been dissolved by civil decree. In classifying the first 75 judgments sent to them, they found that 21 could be described as war marriages, in which brief acquaintance and emotional strain were held to be barriers to free and complete consent. There were 20 cases where the Bishops had interpreted the canon to include causes arising *after* marriage as

destructive of the marriage bond. There were 34 cases where the judgments were based on the existence or non-existence *before* the previous marriage of one or more of the factors listed in Canon 17 as impediments.

In the later report to the Lambeth Conference, and more recently in January, 1949, Bishop Davis, the chairman, reports that these percentages are running about the same.

The divergence of decisions in the different dioceses may seem to some to be dangerous to the unity of the Church. As someone has expressed it, "The Church has set up moral and spiritual Renos." In order to find out whether this danger is real or imaginary, I sent a questionnaire to a sampling of Bishops of varied Churchmanship, all over the United States. From the replies received, I am convinced that although the possibility of large difference exists, actually the difference is far less than imagined. Those Bishops who render a favorable judgment when the facts seem to demand it, on the basis of causes arising *after* marriage, sometimes differ only in terms of definition from those who insist upon tracing these same difficulties as hidden factors incipient *before* marriage. I personally feel that as the central committee accumulates its judgments, renders its opinions, and gives its counsel to the Bishops the country over, there will be a gradual growing together in terms of procedure and precedence, and that a reservoir of information and experience will be compiled, which, based on the results of failure and success, will become more and more the accepted practice of *all* the Bishops.

To test the results in this Diocese, I wrote to all the clergymen where permis-

sion for remarriage had been granted, for a report. The one thing that impressed me most was the fact that in three cases the couples had failed to exercise the permission given, because, through the procedure of application and the instructions, they had been brought to a new sense of the seriousness of their undertaking. In one of these cases the rector, in reporting, said, "The marriage canon really worked out well because it gave these two people opportunity to think through and to talk with others about the whole matter." In another, the rector says, "In the conversations with the couple together, and privately with Mrs. F., they came to realize how important this marriage was and the elements it must possess."

In summary, therefore, I would repeat that I believe that the new marriage canons 17 and 18 need to be understood on the basis of the background out of which they came, and interpreted in the light of the resolutions with which they were born; that the canons quite rightly make the Bishop pivotal in his right of interpretation and decision; and although I believe this full right of interpretation should be maintained, I also believe that the spirit of our Church, which stands so strongly for checks and balances, demands some measure of protection for the petitioner, and some more definite requirement in terms of reports compulsory rather than optional—to implement the responsibility of the Bishop to the General Church.

II. THE BISHOP IN HIS RELATIONSHIP TO HIS CLERGY

We have spoken of the Bishop as being pivotal in his relationship to the canon, in the sense that with him rests the full responsibility of rendering judg-

ment. But I believe that the great contribution and strength of the canons is the fact that they emphasize not what happens in the case of failure and divorce—the negative aspect—but go to the heart of the problem by emphasizing the positive aspects: the importance of preparing people for Christian marriage, of seeing that they are adequately instructed as to its meaning and possibilities, acquainting Church members with the privileges and resources which our Church provides in the sacraments and otherwise, and offering objective and Christian counsel when marital unity is imperilled.

The important factor in my mind about the canons is not how the Bishops will render judgment in dealing with persons whose marriage has failed. Much more important is the question as to how fully and seriously clergymen will fulfill those provisions which emphasize the teaching of the Christian conception of marriage and the preparing of people for it; and how largely the laity will use the Christian privileges which are the stay and sustaining strength of Christian marriage and of the Christian family.

The third resolution passed by the Bishops provided that "Every Minister in charge of a congregation shall give, or cause to be given, to both adults and children, regular instruction in the relation of the Church and the family; which instruction shall include the duties and responsibilities of membership in a family, the mutual obligations and privileges of spouses and of parents and children, and the Christian doctrine and discipline of marriage, together with the particular ministration of the Word and Sacraments and the work and worship of the Church of which the family and

its members have need for the fulfillment of the Christian life." This means that there must be a planned program in every parish and mission which will provide definite and sustained teaching, in the Church School, in sermons, in Lenten and Confirmation classes, and in pastoral calling, which is fundamental to the undergirding of Christian character and the Christian family. In this demanding task the Minister is to be assisted by the General Church through its "Departments of Christian Education and Christian Social Relations, which, in cooperation with such other agencies as may be involved, and in consultation with the Committee on Holy Matrimony, are instructed to prepare suitable guides for the preparation of persons for Holy Matrimony, the offices of instruction on the nature of Christian Marriage, the responsibilities and duties of family membership, the doctrine and discipline of this Church in regard to Holy Matrimony, and to use every effort to obtain the use of such material in the parishes and missions of this Church."

The course issued this year is the beginning of this material, and, I believe, gives good promise for the future. The General Church at last is tackling this tremendous problem of Christian marriage and the family, from a constructive and creative point of view. In this connection, we hope that the seminaries will take note of this new emphasis, and will make provision to equip the Minister adequately to discharge these duties, as well as impress upon him their great importance. The Bishop, however, must also be alert and sensitive to his responsibility to encourage and direct the clergy of his diocese, particularly in these early days when it comes as something new and added.

However, not only are all parochial clergymen charged with this long-range program to stress the general principles of Christian marriage, but they are also charged with the more immediate responsibility of definitely instructing the parties, when they present themselves, as to the nature of Holy Matrimony. In this connection, the minimum of the three days' notice provided, seems to me altogether inadequate, especially when provision is made for exceptions. The absurdity of doing anything significant in three days is quite apparent. This fact some clergymen have been quick to recognize, and there is a growing number of those who have returned to the ancient practice of publishing banns. Even the present provision, however, at least gives the Minister a chance to open up areas of personal interest and intimate understanding which can be used as a basis for re-opening the discussion and counsel in the days after marriage. We would urge strongly the importance of such follow-up. In all too many cases, once the marriage has been performed, the couple takes its place as just one of the many families in the parish, receiving perhaps a call once a year. It would seem that every clergyman should recognize that a couple starting off on this great new venture needs for a time extra attentive pastoral care. If the instructions have really touched spiritual areas, as they should have, the pastoral calls following will probably be more profitable than most, because of this earlier opportunity of entering their lives at such a critical and important time. As a minimum, in addition to calling, every Minister ought to make it a regular practice to remember couples on their first anniversary, urging them each year to read over the marriage serv-

ice together on that day, thus renewing their vows, and then to come to Holy Communion on the Sunday nearest that anniversary. I also feel that we might well profit from a letter written the couple at the close of a year, in which we would ask them for suggestions about what we had left out of the preparation, which they wish we had told them, as well as telling us what they felt had been most helpful in the preparation, that we may be sure to continue to include it. Of course, if the couple move to another parish, they should not only be given a Letter of Transfer, but a letter of commendation to the local clergyman should be sent ahead of them, giving him something of their background so that he will be the better prepared to receive and care for them.

At the time of marriage, another safeguard is suggested, but is not compulsory—namely, that the couple sign a statement indicating their understanding of the Church's doctrine regarding marriage, and their intention to be faithful to it. We have always had the admirable statement in the opening exhortation of the marriage service, but here we have something which is presented to a couple not when they are in a high state of excitement, as is almost inevitable at the opening of the service, but at a time when it can be considered and discussed at leisure, and which they are asked actually to sign. In the proper setting, such an act cannot help but be of influence in adding a sense of seriousness and importance to the occasion; and the fact that they have signed such a statement,—in which they declare that they hold marriage to be a lifelong union of husband and wife, and that they do engage themselves, so far as in them lies, to make their utmost effort to

establish this relationship and to seek God's help thereto,—gives them an additional tie and basis for sticking together in case of future tensions or possible dissension. In some dioceses, we believe that the signing of this statement has been made compulsory by canon, and in one diocese the Bishop has requested that it be done in triplicate in order that the couple may keep one copy, one copy being filed in the church where they are married, and one copy sent to the diocesan office for future reference in case of dissension. I believe that the canons certainly should be strengthened to make such signing compulsory, instead of optional, throughout the Church.

Still another obligation is laid upon the Minister by Canon 17, which says, "When marital unity is imperilled by dissension, it shall be the duty of either or both parties, before contemplating legal action, to lay the matter before a Minister of this Church; and it shall be the duty of such Minister to labor that the parties may be reconciled." It is important that the people should be informed of this provision, and that the clergy should keep records of all such cases. It may well be that the Bishop, later on, may need to know not only that such action took place, but the circumstances surrounding and the facts connected with the interview.

There is one more point in which the Bishop should have very close relationship with his clergy—namely, in the filing of the petition by the applicant. The canon seems to imply that the application be made direct to the Bishop, but so far as I know, the general practice, following the advice of the Bishops' Committee, has been to have the parish clergyman the one through whom all such applications are routed. This cer-

tainly would seem to be the correct procedure, because he is the one who is in the best position to provide the facts as to whether the person is an active member. He is the one, too, who will be in the best position to secure the information as to the attempts at reconciliation, as well as being the one who can give the closest objective judgment as to the cause of failure of the previous marriage and the likelihood of the success of the one contemplated. Quite rightly, a letter is usually expected from him, sent separately, giving his judgment as to the whole situation. This "screening" process, we believe, is tremendously important and absolutely essential for the successful working of the canon. It would be simply impossible for the Bishop to investigate all cases, because he would not have been living closely enough to the situation to obtain the necessary facts, to say nothing of the time which would be needed. All of these matters are naturally the responsibility of the parish priest. But, here again, some provision should be made to safeguard the petitioner from a priest with an extreme and narrow view, working in a diocese where the Bishop would perhaps interpret the canons in a more liberal way. I am not prepared to say just what should be done, but it does seem to me that this is a matter which should have fuller consideration, in order that Priest and Bishop may work together with harmony and understanding.

I would repeat, therefore, that whereas in the canons the position of the Bishop may be pivotal, the place and work of the Parish Priest is fundamental. On him has been placed the tremendous responsibility of implementing the creative and constructive aspects

of the canons. His work is basic. Upon the conscientious and full discharge of his responsibilities, the canons stand or fall. It is important that the Bishop not only realize this, but that he also take seriously his responsibility to see that the clergy fulfill the canons as set forth. It is his job to create such an understanding and liaison with his clergy as will provide for the full and harmonious discharge of all these duties and opportunities.

III. A BISHOP'S SUGGESTIONS FOR THE FUTURE

Here, let me say that I think the present canon is a great improvement over the former one. The Rev. Gregory Mabry, D.D.—who, I believe, was chiefly responsible for the compilation of the book, *The Marriage Canon*, issued by Bishop DeWolfe—in an article in *The Living Church* quotes an eminent metropolitan psychiatrist as saying that these canons "may very well mark the turning point for the better in American family life." That seems to me a rather superlative statement in view of the limited influence of our Church, but I do think that the canons mark a definite turning point in the practice of our Church towards a far more Christian approach to the whole question. I definitely cannot follow him, however, when he says, "The fact is that on careful study one is led to wonder if the minds of mere mortals could have achieved canons any closer to the Christian ideal," because I feel that there are a number of changes that may be profitably considered, and, I hope, eventually adopted.

I have already suggested that there be a clarification of what is implied by an "active member." The Committee has rendered a judgment that it should in-

clude "Baptism, attendance at worship with some degree of frequency, regular financial support by weekly or annual pledge, and genuine interest in and loyalty to the Church." If this judgment were passed by General Convention as a resolution, it might be sufficient, but I think it might even be made a part of the actual canon.

I also pointed out that I felt that it was desirable that the Bishop's absolute authority be somewhat modified, on the basis that no man, even a Bishop, is infallible. This might be done either by having a right of appeal to the Standing Committee, with sixty days additional allowed for judgment, or perhaps to a Provincial Committee composed of priests and laymen representing different dioceses within the province, with perhaps an additional ninety days allowance. The time and the inconvenience involved in such appeals would, it seems to me, keep the applications within the bounds of those who are desperately earnest in their loyalty to the Church and desirous of full justice.

I have also mentioned that I believe it is of tremendous importance that the canons continue to allow the two different interpretations. The committee, in its report to the Lambeth Conference, says, "The canons . . . state that Christian marriage is in intention life-long. . . . The canons then face the question, 'Must it be proved that incompetence to give free and complete consent existed at the time of the former marriage, or can it break the marriage bond in the Church's conception if it appears after the former marriage?' It is here, of course, that the interpretations of two great branches of the Catholic Church differ. The Roman holds that invalidating causes must be proved to have ex-

isted at the time of the previous marriage; the Orthodox holds that several causes can dissolve the bond. The Anglican Communion's tradition is more in accord with the Orthodox position, save that in the past the Anglican Communion has recognized physical adultery as the only admissible cause arising after marriage. . . . The canons are so worded as to admit of both Roman and Orthodox points of view, though they change and enlarge the tests from the legalistic and ecclesiastical impediments of the Roman law and broaden the Orthodox tests by emphasizing spiritual motivation." It seems to me vital that both these points of view should be maintained, and I am confident that gradually there will be a growing together, if all the Bishops are compelled to file their judgments with the special committee set up by General Convention to collate these judgments and to counsel and advise in regard to them. This compulsory aspect certainly seems necessary in view of the small percentage of Bishops at present practising the suggestion.

At the last meeting of the House of Bishops, the question was brought up as to what should be done in the situation where the applicant lived in one diocese, and the marriage, because the bride was resident in another diocese, was contemplated in the second diocese. At the meeting, a resolution was passed in which it was stated that "It be a condition of the judgment given by any Bishop that a marriage following judgment shall take place within the jurisdiction of said Bishop; or, if the marriage is to take place within any other jurisdiction, then the judgment shall be submitted for the consideration of the Bishop of that jurisdiction." This

was passed, as I remember it, without much discussion, as a matter of courtesy. Since then, I have come to the conclusion that this courtesy cuts directly and definitely across the principle that a Bishop is a Bishop of the whole Church. It seems to me, also, to impugn and impinge upon the validity of a Bishop's decision. As a matter of fact, when a Bishop, having reviewed the case, finally gives his permission, he gives it on the basis that no marriage bond exists and that therefore the person is in the same state as a single person who has never been married. To say, under such a situation, that a Bishop of another diocese can forbid a marriage from taking place, which in all other respects fulfills the canonical and legal requirements, would seem to me unjust, unreasonable, and improper practice. I believe that this action should certainly be reconsidered, and, I hope, revoked.

On the more positive side, I have suggested that the three days' notice required be increased to at least ten, and that the statement to be signed by those desiring to be married should be compulsory rather than optional.

I have also mentioned the importance of the clergy keeping records of such attempts at reconciliation as are brought to their attention, as well as the importance of all applications being routed through the parish priest—although here, I think, there might also be provision for direct application to the Bishop, if the petitioner feels that an injustice has been done him. In such a case, however, the reasons for the parish priest's refusal should certainly be required and taken into account, and his right of refusal to perform the marriage if permission is given, protected and respected.

It should also be made clear in the canons, as there seems to be some confusion on this subject, that the procedure and conditions shall be the same in the case of an active member who desires to marry a non-member who has been divorced, as in the case of an active member who has been divorced and wishes to marry again.

One omission, which doubtless was due to the haste with which the canons were passed, was the failure to make clear that no Minister of this Church may marry anybody who has been divorced except as provided in the canons, and that it applies to clergymen as well as to laymen. These matters, of course, should be taken care of.

In closing, I would reiterate the fact that I feel that this canon is a great step forward, because it takes the positive point of view and does not even mention divorce, or annulment, or remarriage, but stresses the spiritual aspects of marriage. I am enthusiastic about it, because it tackles the whole problem as a personal and pastoral one; it makes clear and definite and positive the Christian position that marriage is "a physical, spiritual and mystical union of a man and a woman, created by their mutual consent of heart and mind and will thereto, and is an holy estate, instituted of God, and is in intention life-long"; and, as the Prayer Book says, "is not by any to be entered into unadvisedly or lightly; but reverently, discreetly, advisedly, soberly, and in the fear of God."

QUESTIONS FOR DISCUSSION

Introduction.

What is the mind of Christ on marriage?
What was the basic intention of those trying to change the Marriage Canon during the last generation?

Is the new Canon really an outgrowth of these endeavors, or was it a spontaneous emergence and outbreak of an entirely new approach?

I. The Bishop in his relationship to the Canon.

Should the Bishop's authority be complete and his decision final? If not, what limitations or checks should be set up?

Should "an active member" be more fully defined? How—by canon—by resolution? In what terms? Why exclude confirmed persons not in good standing?

Do you think this Canon is an improvement on the old Canon? Why? How?

Take a secret ballot of those present in a discussion group, to see how the percentage of liberal versus strict interpretation compares with the Bishops' judgments.

II. The Bishop in his relationship to the Clergy.

Do you think the Ministers are taking seriously and fulfilling pastorally the provisions of the Canon in regard to preparing people for marriage?

What is being done in Parishes in this regard in the Church School? in Confirmation Classes? in Y. P. F. groups? in Couples' Clubs? in sermons?

How much do the laity know about this Canon? What have the Clergy done to inform them?

How many parish groups (Y.P.F., Woman's Auxiliary, Men's Club, Couples' Club, etc.) have some aspect of marriage preparation in their program among members of the group?

Has your Bishop issued any statement, or given any instructions, along these lines? If not, has the Diocesan Department of Christian Education, or the Department of Christian Social Relations, done so?

What is the practice of the clergymen present in regard to the immediate preparation of a couple for Holy Matrimony? Do you have only one session, or more? How long? What general approach do you take? What general subjects do you cover?

How many clergymen present publish banns regularly?

What is the practice of the clergymen present in following up on marriages they have performed?

Is the signing of the statement of intention compulsory in your parish? Do you think that the signing of the statement should be compulsory by general canon or left to local option in the diocese or in the parish? What do you think of the present procedure as practiced in your diocese?

What constructive suggestions have you to make?

III. A Bishop's Suggestions for the Future.

Do you believe that the Marriage Canon represents "a turning point for the better in family life" in the U. S.? Within our Church?

Do you think there should be a provision for an appeal from the Bishop's judgment to the Standing Committee, to a Provincial Committee, or to whom?

Do you believe that the two interpretations should be allowed to continue?

Do you think three days' notice is sufficient? If not, how many days?

Are ministers keeping records of their attempts at reconciliation? Is this desirable?

Do you think a Bishop's judgment should be limited to his diocese, or reviewed by another Bishop if the marriage is to take place in the latter's jurisdiction?

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