

A STATEMENT ON HOLY MATRIMONY  
IN HARMONY WITH  
THE FORM OF SOLEMNIZATION OF MATRIMONY  
IN THE BOOK OF COMMON PRAYER

By

The Rev. Edward B. Guerry, S.T.M.

## FOREWORD

This Statement by the Rev. Edward B. Guerry has been prepared at my request. In his book, The Historic Principle of the Indissolubility of Marriage (The University Press, University of the South, Sewanee, Tenn., \$1.50), he has relied upon competent sources and authorities to substantiate the position which he briefly sets forth in this paper. His book is thoroughly annotated and documented. According to the late Rev. M. Bowyer Stewart, S.T.D. (School of Theology, Sewanee, Tenn.), it "merits careful study by all who are concerned in shaping and administering our Canons".

This paper is fully in accord with the convictions of the Archbishop of Canterbury, as recently expressed in his booklet Problems of Marriage and Divorce (Morehouse-Gorham Co., 45 cents).

The footnotes in Mr. Guerry's Statement indicate the need for a clear and separate Canon on Nullity, certainly a revised one. In Appendix II, Mr. Guerry proposes two Resolutions for presentation to the next General Convention. These footnotes are not to be considered as a part of this Statement to which reference is made by the first Resolution (Appendix II) but are simply added for the information of the Joint Commission on Holy Matrimony. Mr. Guerry has received a letter, dated September 25th, 1956, from the Bishop of Exeter, England, in which the Bishop states that "the Report of the Commission on the Church and the Law of Nullity was accepted in principle by the Convocations of Canterbury and York". (See Appendix I, post.)

Our primary consideration is to secure from the next General Convention a Statement of principle on Marriage and Nullity. After this is accomplished, the next step would be appropriate changes in the Canons of 1946 with a view to clarification of these Canons so that they will be in harmony with the Statement of principle. A third step would involve a re-examination of ecclesiastical administrative procedures under the Canons as amended.

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B. Allston Moore,  
Author of the Resolution for a  
Statement on Holy Matrimony.  
Journal of the General Convention,  
1955, p. 229.

A valid marriage cannot be dissolved except by death. A relationship which is not a marriage can be nullified.<sup>1</sup>

The attempt by a secular or ecclesiastical court to dissolve the bond of Holy Matrimony is called divorce a vinculo matrimonii (from the bond of matrimony), and is in direct and flagrant violation of our Lord's words, "What therefore God hath joined together, let not man put asunder." (Mk. 10:9) In such cases, the court recognizes the existence of a valid and true marriage, but presumptuously asserts the power to declare that the bond of matrimony which has existed up to the very hour of its decree is henceforth dissolved for causes which have arisen since the inception of the same.

The principle of nullity is an entirely different matter. Occasionally, it happens that two people who have co-habited together have not really entered into a valid marriage, even though they have observed all of the usual formalities, both legal and ecclesiastical. The creation of the bond of matrimony, in such a case, did not occur due to the existence of impediments ab initio which vitiated the mutual consent absolutely essential to the formation of a true and valid marital relationship. Since the bond of matrimony never came into existence, there is not and never was a marriage. A decree of nullity by a court of proper jurisdiction is simply a recognition of this fact. It does not actually nullify a marriage but simply declares that a relationship which is not a marriage is null and void.<sup>2</sup> Such a judgment, however, does remove any doubt as to the right of the persons involved to enter into a marriage or marriages. It is axiomatic that such a decree should be founded upon reliable evidence which has been tested by sound procedures under the supervision of proper authority.<sup>3</sup> Ex parte evidence is not deemed trustworthy and sufficient in a matter of such great import.

Thus, an unhappy marriage can be, and in the vast majority of cases is, a true and valid marriage. A true marriage is not "a peculiar institution of the Christian Church", but when the parties thereto are baptized Christians, their relationship is a Christian one even though it may fall short of the manner in which disciples of our Lord Jesus Christ ought to live together. The husband and wife are the recipients (potentially so at least) of sacramental grace. If they are married by a priest, and are given the blessing

of the Church, they receive the initial sacramental grace of Christian marriage.

The permanency of the bond of matrimony does not depend upon how contented couples may happen to be in "this holy estate", as the days and the years go by and the children are born in this holy wedlock. God has joined the man and the wife through this "honourable estate" which He instituted "from the beginning of the creation" when He made them male and female for the purpose of sharing with Him in the sacred and noble task of creating human beings, and nurturing them in righteousness and holiness. This is the meaning of the famous passage in St. Mark's Gospel (10:2-9), in which our Lord clearly taught that the bond of matrimony, according to God's creative purpose as revealed in natural law from the beginning, is lifelong; it constitutes a relationship which endures until death.<sup>4</sup> Therefore, He adoes the inevitable conclusion that any other or second marriage, while the bond of the first marital relationship exists, is unlawful, and consequently adulterous (*idem* v. 11; cf. Matt. 19:3-9; Luke 16:18; Ro. 7:1-3; 1 Cor. 7:10 ff; Eph. 5:31, 32).

While it is difficult to argue that our Lord, Jesus Christ was announcing, according to Mark 10:11, a positive law for the first time, it is even more difficult to defend the position that He was here merely holding up to mankind an ideal or a counsel of perfection; if this be true, then matrimony is nothing more than a contract; no bond or enduring status really exists in this relationship. Our Lord's teaching is founded upon God's creative purpose as revealed in His natural law; those who are joined together in Holy Matrimony become, as a fact of nature, one flesh (the indissoluble relationship of man and wife).

The impossibility of following in this Church the doctrine of absolute divorce is obvious from a reading of The Form of Solemnization of Matrimony in the Book of Common Prayer. By Article X of the Constitution of the American Episcopal Church, the Prayer Book is a part of the constitutional or supreme law of the Church as to doctrine, discipline, etc. This means that the language of the Marriage Service, which is the Church's declaration of the mind of Christ on the subject, governs the interpretation and application of the Canons of the General Convention. If words signify anything, then the words and phrases of this Service mean that husband and

wife enter into a lifelong and indissoluble status or relationship.  
For example, open the Prayer Book and read the following:

...an honourable estate instituted of God, signifying unto us the mystical union that is betwixt Christ and His Church...

...forsaking all others, keep thee only unto her, so long as ye both shall live?

...to love and to cherish, till death us do part, according to God's holy ordinance...

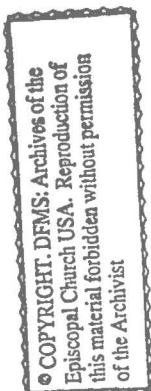
...Send Thy blessing upon these Thy servants, this man and this woman...that they, living faithfully together, may surely perform and keep the vow and covenant betwixt them made...and may ever remain in perfect love and peace together, and live according to Thy law...

O God, who has so consecrated the state of Matrimony that in it is represented the spiritual marriage and unity betwixt Christ and His Church...

Those whom God hath joined together let no man put asunder...

...that ye may so live together in this life, that in the world to come ye may have life everlasting. Amen.

The bond of matrimony, which is a fact in the order of nature, can no more be destroyed, except by death, than the other relationships which arise out of marriage; e.g., father and son, brother and sister, etc. Nothing occurring subsequently to the creation of a valid marital bond can undo the fact that the woman is the mother of her husband's children, and that he is the father of her children. Of course, much else in marital and family relationships, such as love, mutual confidence and respect, etc., is dissoluble; in short, the personal relationship between man and wife can be severely impaired or even completely destroyed. It may be necessary for them to live separately. For an adequate cause, the Church has never raised any insuperable objection to mutual or even legal separation. The fact, or bond of matrimony, however, abides as a lifelong status and carries with it the obligations which arise out of this enduring relationship. The sacred marital vows which were made before God and man demand that they remain loyal to each other, primarily for the sake of the children, and always to be prepared for reconciliation. This is what Christian marriage really means. This is the divine and natural law of God for which we dare not substitute human opinion, especially sentimentalism. This is the principle which gives to the family that sense of security which stabilizes emotions and gives to children the heritage of a home, which, in spite of many defects of personality, is "a haven of blessing and of peace". The lifelong permanency of the marital bond gives to the



husband and wife that which is so necessary for the success of their marriage.

Pre-marital instruction which includes education regarding the sexual and other problems of married people is most beneficial and helpful. The proper preparation for marriage is a solemn obligation resting upon clergymen and other marital counsellors. It is obvious, however, that information about the tensions which often lead to the breakup of marriages has not had the desired effect in modern times on the divorce rates in this country, for approximately one out of every four or five marriages ends in the divorce courts. The increase of broken marriages in the 20th Century has been so alarming that the United States now has the highest divorce rate of any nation in the world.

While there are many factors involved in each case, generally speaking the primary cause of this great social evil and grave danger to Western Civilization is the abandonment of our Lord's teaching concerning the indissolubility of the bond of matrimony, and the general acceptance of the view which prevails in the secular courts; i.e., that marriage constitutes only a contractual relationship.

A contract can be dissolved for cause. The secular law, therefore, provides that for cruelty, incompatibility, and other causes, the marital relationship can be rescinded. Hence is presented the spectacle in our secular courts of divorce case after divorce case disposed of in a matter of minutes, and usually without the children of the family being represented, without any real effort being made to salvage the marriage, even though the future welfare of the State depends upon the children of today.

The Anglican Communion has never accepted the doctrine of divorce. (The American Episcopal Church did accept adultery as a ground for divorce and a dispensation to the innocent party from 1869-1946, but it is the only branch of the Anglican Communion which has ever done so.) Our Lord clearly, definitely, and forever revealed His mind about divorce as an evil which is due to "the hardness" or disobedience of men's hearts to the purpose and will of God.

In view of the Marriage Service in the Book of Common Prayer, it is unlawful, as we have pointed out, for any bishop of this Church to declare a marriage null and void for any cause arising after the creation of a valid bond of matrimony.<sup>5</sup> This can be done

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only for a cause existing before or at the time of an apparent marriage. It is not right to hold that the principle of nullity can be extended to cover defects of personality which were only latent at the time of the marriage and which were brought into actuality by the strains of marital life for THE DOCTRINE OF EXTENDED NULLITY IS BUT ANOTHER NAME FOR DIVORCE. Such latent defects of personality are in every person. Therefore, practically every marriage which is an unhappy one, even for a time, can be declared dissolved, if such a principle is accepted. The Church cannot recognize divorce under the guise of nullity, for this is intellectual dishonesty.

The Marriage Service in the Book of Common Prayer clearly teaches that the impediment must be in existence at the time of the marriage, because adequate care is taken to ascertain whether or not "any man can show just cause, why they may not lawfully be joined together" before the man and woman say their vows. In fact, the minister reads a most solemn charge calling upon them to confess any such impediment: "For be ye well assured, that if any persons are joined together otherwise than as God's Word doth allow, their marriage is not lawful." The lifelong nature of the vows following upon this prima facie evidence that no impediment exists to vitiate the requisite consent emphasizes the truth that in the eyes of God no difficulty or trouble or cause can subsequently arise to destroy the bond of matrimony.

It is in the acceptance of this divine law or plan for marriage wherein lies the happiness and security of all of the members of the family. In fact, such a submission to the purpose of God can transform many an unhappy family into one of "perfect love and peace together". As in many other fields of human life and endeavor, the way of man leads to destruction and sorrow, but the way of God to strength, peace, and everlasting life.



## APPENDIX I

(References are to the footnotes above)

1. "There are cases in which a union disputed or purporting to be a marriage is defective in some essential element. Such a marriage is said to be void or voidable, and the defect may be declared and the marriage annulled by a decree of Nullity. This decree must be clearly distinguished from a decree of Divorce, which affirms that the marriage in question was in all respects a valid one but that it is now being terminated. The wording of a decree of Nullity is as follows: The marriage is pronounced and declared to be and to have been to all intents and purposes null and void in the law whatsoever." The Church and the Law of Nullity of Marriage - The Report of a Commission appointed by the Archbishops of Canterbury and York in 1949 at the request of the Convocations. (S.P.C.K. 1955, Morehouse-Gorham Co., \$2.50.)

2. The distinction between diriment impediments and voidable impediments should be kept clear. The Historic Principle of the Indissolubility of Marriage by Edward B. Guerry, pp. 6 and 7.

"A void marriage is a marriage subject to such a defect as to fail in the primary intention and primary legal effect; that is, it fails to confer on either of the parties the status of married person with a right to consortium. It is in theory unnecessary to have recourse to the courts for the annulment of a void marriage: it fails in its legal effect irrespective of any decree.\* ..... One or the other of the parties, however, does seek a decree of Annulment of the marriage, if only because some defect to which it is subject may be disputed and likely as time passes to become more difficult of proof, or because it is desired to establish the nullity beyond all question in order to permit marriage to another party or at any rate to establish the right of a party to a single status. In the case of a voidable marriage, it is necessary to apply to the court to have it set aside. Until it is set aside,

\* The Report, op. cit., p. 17. For example, such a void marriage would be one of an incestuous or bigamous nature. Cf. Canon 17, Sec. 2, Impediments 1 and 7 (The American Episcopal Church). See also Guerry, op. cit., p. 6. Cf. The Report, op. cit., pp. 20, 21.



it creates all the legal rights and obligations and has all the legal consequences of a valid marriage. ... A voidable marriage is, therefore, a marriage subject to such a defect as to be liable to fail in its primary intentions and legal effect if, but only if, one of the parties takes appropriate action in the courts during their joint lives. Since a voidable marriage is valid until it is set aside, a party can so act in the way of approbating the marriage as to be precluded from subsequently disputing its validity. This is often referred to as the doctrine of 'insincerity'." The Report, op. cit., pp. 19 and 20. Cf. Guerry, op. cit., pp. 6 and 7.

This doctrine of "Insincerity" would seem to apply to cases of annulment under Impediment 8 of Canon 17, Sec. 2 (b) (American Episcopal Church) where the parties have been formally and legally married in an ecclesiastical or civil ceremony. See Guerry, op. cit., pp. 103, 104. Cf. The Report (op. cit., pp. 26-29), which states: "Defective Intention...relates to the internal disposition of one or both parties to a marriage... It is open to question, however, whether the doctrine (i.e., of Defective Intention) can be justified in a society in which marriage must be contracted in set forms and consent expressed in words provided by that society... people who marry must be held bound by what they have voluntarily said and done. To depart from this principle would have disastrous results in the moral sphere and would in effect allow people to take advantage of perjury... In English Ecclesiastical Law, no agreement or private determination is allowed to nullify a marriage... We are opposed to any extension which could leave the validity of a marriage dependent upon the private stipulations or mental reservations of the parties."

In the light of this position, Impediment 8, supra, could only apply to a contract of concubinage, or an illegal trial marriage, or a case in which the question of the validity of a common law marriage is at issue.

3. The Report of the Commission, op. cit., deals with this problem of sound procedures under proper authority. The proposed new revision of Canons, which has been undertaken by the Convocations of York and Canterbury, includes the right of a Bishop to allow divorced persons to re-marry if they can show grounds for annulment, even though their first marriages were dissolved by decrees of Divorce. As to this, the Commission recommended "that in any case where a

person has obtained a decree of Divorce in a secular court, and it is subsequently suggested that a decree of Nullity might have been obtained, the Church should nevertheless accept the decree of the civil court as decisive... The Commission does not, at any rate at the present time, recommend the establishment of Church courts to deal with cases of Nullity, and considers that the use of any less formal machinery would be undesirable". (Op. cit., p. 43.)

In support of these recommendations, the Commission gave these reasons: "If these courts [Ecclesiastical Courts] are to deal satisfactorily with questions of nullity, they must have powers comparable to those possessed by the secular courts when determining similar issues: in particular they would require power to compel the attendance of, and answers by, witnesses... In the absence of these powers a Church court might be denied vital evidence and its procedure stultified. The evidence of a party who has affirmed the validity of a marriage in order to obtain a decree of Dissolution (i.e., Divorce) should be subject to close scrutiny when he or she asserts that the marriage was not in fact valid at all... UNLIKE RE-ADMISSION TO HOLY COMMUNION AFTER DIVORCE, THE QUESTION OF NULLITY [BEFORE A BISHOP] IS NOT A PASTORAL ISSUE. IT IS A WEIGHTY QUESTION OF FACT AND LAW OF A HIGHLY COMPLEX NATURE, WHICH DEMANDS EXPERT AND EXPERIENCED JUDGMENT AND CANNOT BE HANDLED IN ANY AMATEUR FASHION. Canon 106 of 1603/4 lays down the principle that 'no sentence shall be given...for annulling of pretended matrimony, but in open court, and in the seat of justice'. Experience both in Civil and Ecclesiastical Courts has shown that a true judgment, in a case of Nullity, can seldom rest upon the unsupported testimony of the parties themselves." The Report, op. cit., pp. 42, ff. This Commission, therefore, recommended against giving the authority of Nullity to a bishop; the legal profession, they felt, could assist by bringing petitions for Nullity. when it is possible, instead of petitions for Divorce a vinculo matrimonii.

4. The Report, op. cit., pp. 8, 9.

5. The Report, op. cit., pp. 38: "We do not see how a marriage admittedly valid at the time of celebration can properly be treated as void ab initio on the ground of a subsequent event... Once the principle that a subsequent event can be a ground for nullity is accepted, the essential difference between nullity and divorce disappears."

[ ] by Author.

APPENDIX II

Resolutions for Presentation  
to the  
General Convention of 1958

(1) RESOLVED, the House of Bishops concurring, that the foregoing statement on the Doctrine of Holy Matrimony be approved as one which is in harmony with The Form of Solemnization of Matrimony in the Book of Common Prayer. (For the Lambeth Conference of 1958 also. Journal of the General Convention, 1955, p. 229.)

(2) RESOLVED, the House of Bishops concurring, that a Commission be appointed to draw up a revised or new Canon on Nullity, in harmony with the position of this Church and with due consideration for the teaching and practice of the Church of England, having in mind these words in the Preface of the Book of Common Prayer:  
"...that this Church is far from intending to depart from the Church of England in any essential point of doctrine, discipline, or worship."

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