

An Introduction To the Study of Canon 41

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An Introduction to the Study of Canon 41

THESE papers have been prepared at the request of the Commission on Marriage and Divorce with the hope that they may be of use to the members of the General Convention of the Protestant Episcopal Church in their approach to the problem. The factual material which they contain indicates the great complexity of the problem. There is not now, and there has never been unanimity of Christian opinion as to its solution.

For example, the Eastern Orthodox Church teaches that when once consummated, marriage is a life-long partnership and union, and that death only can sunder the relationship, but that the death may be either natural, moral or religious. Under the category of moral or religious death, Justinian set down five grounds for divorce.

The Roman Catholic Church regards sacramental marriage as indissoluble, but makes extraordinarily wide provision for declaration of nullity. Furthermore, in virtue of the *Ne Temere* decree, April 19, 1908, it regards the presence of a priest of recognized Catholic orders as necessary to the validity of the sacrament of marriage* and holds that Christians who contract a civil union without religious marriage, in reality are not married but live in a "veritable concubinage."** In this connection it may be noted that the first appearance of a priest officiating at a marriage (as distinguished from the subsequent blessing) was in 856, when King Ethelwulf married Judith, daughter of Charles the Bald. (Eisenhofer, *Handbuch der Katholischen Liturgik*, ii, p. 414, 1933).

The Churches of the Anglican Communion sanction the remarriage of divorced persons only in the case of the innocent party when the cause of the divorce is adultery. This is the practice

also of the Evangelical Church in the United States of America, the United Presbyterian Church, and the Church of the United Brethren in Christ. To this exception the Presbyterian Church in the U. S. A. adds "such willful desertion as can in no way be remedied by the Church or civil magistrate;" a position in which the Lutheran Church appears to concur. The Methodist Episcopal Church adds "other vicious conditions which through mental or physical cruelty or physical cruelty or physical peril invalidated the marriage vow." In churches of the Congregational order there is no corporate legislation on the question.

The editor acknowledges with thanks the permission of the Federal Council of the Churches of Christ in America to reprint an article on Intermarriage of Members of Different Christian Communions prepared by him in 1932 for its Committee on Marriage and the Home.

HOWARD CHANDLER ROBBINS, *Editor*

• LE SACREMENT DE MARIAGE

Le mariage est contracté au moment même où les futurs donnent leur consentement devant le prêtre et les témoins. L'engagement pris à cet instant lie pour toute la vie.

Le prêtre est le témoin indispensable du mariage; il représente l'Eglise et appelle par ses prières les bénédictions du ciel sur les nouveaux époux. Sa présence est donc nécessaire pour la validité du sacrement. Mais ce sont les époux eux-mêmes qui sont les ministres de leur mariage. p. 27.

From GUIDE DU MARIAGE par l'Abbe C. Van

Agt.
NIHIL OBSTAT: Lille, le 15 août 1935.

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** L'UNION CIVILE

Le contrat civil n'est en aucune manière un mariage. Il a pour simple effet d'assurer les droits légaux des époux et de régler les intérêts territoriaux de la famille; il n'établit nullement le lien conjugal. C'est donc improprement qu'on l'appelle "mariage civil". Formalité simplement administrative, il n'a pour les chrétiens aucune valeur devant Dieu.

Les chrétiens qui contractent une union civile sans mariage religieux, en réalité ne sont pas mariés. Ils vivent dans un véritable concubinage et sont gravement coupables en conscience. Ce sont des pécheurs publics; il ne peuvent plus recevoir les sacramento. Ils doivent au plus tôt régulariser leur situation: recevoir le sacrement de mariage ou bien se séparer. p. 28.

The Teaching of Christ Concerning Marriage

By HOWARD CHANDLER ROBBINS

AT THE next General Convention of the Protestant Episcopal Church the new Canon on Marriage which was adopted in Denver in 1931 will again be under discussion, and proposals for its revision will be considered. It is not too soon to prepare for this discussion and possible revision by examining anew the teaching of our Lord concerning marriage.

The oldest and most authoritative account of this teaching is in St. Mark 10:2-12. "And there came unto him Pharisees, and asked him, Is it lawful for a man to put away his wife? trying him. And he answered and said unto them, What did Moses command you? And they said, Moses suffered to write a bill of divorcement and to put her away. But Jesus said unto them, For your hardness of heart he wrote you this commandment. But from the beginning of the creation, male and female made he them. For this cause shall a man leave his father and mother, and shall cleave to his wife; and the two shall become one flesh: so that they are no more two, but one flesh. What therefore God hath joined together, let not man put asunder. And in the house the disciples asked him again of this matter. And he said unto them, Whosoever shall put away his wife, and marry another, committeth adultery against her: and if she herself shall put away her husband, and marry another, she committeth adultery."

The teaching in St. Luke 16:18 is substantially the same. "Every one that putteth away his wife, and marrieth another, committeth adultery: and he that marrieth one that is put away from a husband committeth adultery."

In St. Matthew 5:31, 32 a qualification appears. "It was said also, Whosoever shall put away his wife, let him give her a writing of divorcement: but I say unto you, that every one that putteth away his wife, saving for the cause

of fornication, maketh her an adulteress: and whosoever shall marry her when she is put away committeth adultery." The exceptive clause appears again in the last verse of St. Matthew 19:1-9, a passage which in other respects closely follows St. Mark's account of the teaching. "And there came unto him Pharisees, trying him, and saying, Is it lawful for a man to put away his wife for every cause? And he answered and said, Have ye not read, that he who made them from the beginning made them male and female, and said, For this cause shall a man leave his father and mother, and shall become one flesh. So that they are no more two, but one flesh. What therefore God hath joined together, let not man put asunder. They said unto him, Why then did Moses command to give a bill of divorcement, and to put her away? He saith unto them, Moses for your hardness of heart suffered you to put away your wives: but from the beginning it hath not been so. And I say unto you, Whosoever shall put away his wife, except for fornication, and shall marry another, committeth adultery: and he that marrieth her when she is put away committeth adultery."

The introduction in St. Matthew's account of the exceptive clause, "saving for the cause of fornication," raises the question whether this qualified statement of the indissolubility of marriage or the unqualified statement in the Second and Third Gospels is to be regarded as Dominical.

New Testament criticism has gone a long way towards settling this question. Even so conservative a Commentary as that edited by Bishop Gore admits that the case against the executive clauses here and in Matthew 5:32 is overwhelming, and that almost all scholars are now agreed that they were never spoken by Christ. "Where Matthew alters the meaning of his chief

cerning Marriage

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cation, maketh her an adulteress: whosoever shall marry her when she is living, she committeth adultery." The same clause appears again in the last verse of St. Matthew 19:1-9, a passage in other respects closely following Mark's account of the teaching. There came unto him Pharisees, and they said unto him, saying, Is it lawful for a man to put away his wife for every cause? And he answered and said, Have ye not read, that he who made them from the beginning made them male and female, and said, For this cause shall a man leave his father and mother, and cleave unto his wife, and they shall be one flesh. So that they are no more two, but one flesh. What therefore hath God joined together, let man not separate. They said unto him, And did Moses command to give a bill of divorcement, and to put her away? He saith unto them, Moses for hardness of heart suffered you to put away your wives: but from the beginning it hath not been so. And I say unto you, Whosoever shall put away his wife, except for fornication, and shall marry another, committeth adultery: and whosoever marryeth her when she is put away, committeth adultery."

The introduction in St. Matthew's Gospel of the exceptive clause, "saving for the cause of fornication," raises the question whether this qualified statement of the indissolubility of marriage or the absolute statement in the Second and Third Gospels is to be regarded as authoritative.

Testament criticism has gone a long way towards settling this question. The conservative Commentary edited by Bishop Gore admits the force of the case against the executive power here and in Matthew 5:32 is plain, and that almost all are now agreed that they were spoken by Christ. "Where Matters the meaning of his chief

authority, Mark, his alteration hardly ever justifies itself, and here his exceptive clauses affect the very substance of the Lord's teaching." (P. P. Levertoff and H. L. Goudge.) The Reverend Frank Gavin says (New Testament Problems, by W. K. L. Clarke, page 65), "Since then, Acts quite definitely, St. Paul in 1 Cor. 5 certainly, and the glossed text represented in the First Gospel probably, have in view specific Rabbinic usage, the interpretation of the alleged Matthaean exception contains no substantial departure on the point of Dominical marriage legislation from the Synoptic tradition as stated in Mark 10:2ff, and Luke 16:18." Professor William H. P. Hatch, writing in the Anglican Theological Review, finds that "Matthew softens Jesus' teaching on the subject of divorce, in order to bring it into conformity with contemporary Jewish thought and practice. Jewish teachers disapproved of divorce and hemmed it about with legal restrictions, but in view of Deuteronomy 2:1 no one could forbid it absolutely. The stricter school of Shammai allowed it only on the ground of unchastity, and according to Matthew this was also our Lord's position. In all probability, however, the latter made no exception to the rule in favor of those who suffered by reason of sexual sin . . . he could treat the question in this way because he was not a scribe or doctor of the law like Shammai, but rather a free teacher without technical training or the authority and responsibility of a professional scribe. This was no small advantage to him, for it gave him greater freedom and enabled him to be an absolutist and idealistic in his teaching."

Confirmation of this view is to be found in 1 Cor. 7:10, 11. "Unto the married I give charge," says St. Paul, and then adds, "Yea, not I but the Lord, That the wife depart not from her husband (but should she depart, let her remain unmarried, or else be reconciled to her husband)—and that the husband leave not his wife."

But if the teaching of our Lord is to be understood in this absolute and idealistic sense, the question arises: Is He speaking as a lawgiver, making ordinances, or as a prophet, enunciating a divine ideal for men?

Professor Burton Scott Easton, in the Commentary on St. Luke, takes the ground that Jesus is not laying down a principle of civil law for ordinary society, but "stating how the righteous should act." If His thought were to be expanded, it might follow some such course as the following. What we moderns find it hardest to understand in Christ's teaching about marriage and divorce is that He was speaking not in terms of religious legalism, but in terms of personal morality. That is, in Palestine at the time—and the same is true of the Ancient World generally—there were no officials who performed marriages or granted divorces. Both acts were entirely in the hands of the parties concerned, or among Jews, in the hands of the husband alone. The essence of Jewish marriage is the fact that a man takes a woman to wife. Consent on her part is not theoretically necessary and even in the present Orthodox marriage service she takes no part except by her presence. The same precisely was true of divorce. It was accomplished when a man dismissed his wife from him. In order to do this no consent of any legal authorities was required; it was exclusively his own act. The one requisite was that he should give her a certificate of divorcement as set forth in Deuteronomy 24. With this bill she was entitled to go where she pleased and to marry whom she pleased without interference from the former husband. Consequently, the directions about divorce in Christ's teaching are as immediately personal as the directions about turning the other cheek. Christ was not discussing what is the best marriage law for a state or even a church: He was telling how conscientious individuals ought to act.

Furthermore, all the detailed directions in the Sermon on the Mount are reducible to the central motive of love: "that ye may be sons of your Father who is in heaven: for He maketh His sun to rise on the evil and the good, and sendeth rain on the just and the unjust." It is this motive, but only this motive, that gives the saying about divorce its validity. A man's duty of love toward his wife is not to be broken by any failure on her part, and a woman's duty toward her husband is not to be broken by any failure on his part.

So far the matter is clear enough. The problem comes in when we ask if the duty of love requires in every case the continuance of a marriage. According to Levertoff and Goudge, the real difficulty does not lie in the ascertaining of our Lord's meaning, but in the practical application of His rule. "The Lord lays upon his people the duty of rising to the divine standard (Matthew 5:8), because by the gift of His Spirit He enables them to rise to it. But it is a standard impracticable for the world's 'hardness of heart', and the world, whether outside the Church or nominally within it, has never taken the Christian law of marriage seriously."

How widely the Church has relaxed the Christian law is evident. "The Eastern Church has long practically abandoned it. The Roman, though nominally adhering to it, has often permitted divorce in practice by declaring marriages from the first invalid, and that on preposterous grounds. The English Church sometimes tends to draw a distinction between the 'innocent party' and the guilty in a divorce, and allow remarriage to the former. But no such distinction will stand. The original marriage either stands or it does not. If it does, no other can be lawfully contracted; if it does not, the guilty party is as free as the innocent." (A New Commentary on the Holy Scripture, edited by Charles Gore, p. 175.)

Granted that the New Testament scholarship is right in maintaining that

our Lord's teaching concerning marriage and divorce lies in the sphere of Christian principles and not in that of ecclesiastical legislation, it follows that ecclesiastical legislation must avoid two extremes, that of a hard legalism inconsistent with His spirit, and that of a laxity which would make His principles ineffective. It seems to the writer that in taking a legalistic view of His teaching and then allowing multitudinous (over one hundred) and sometimes "preposterous" causes for pronouncements of nullity, the Roman Catholic Church has gone to one extreme, and that in accommodating its legislation to the demands of society and allowing numerous causes for divorce, the Eastern Church has gone to the other. But we ourselves cannot be exempted from some measure of blame while we tolerate the inconsistency of recognizing in our Marriage Canon the exceptive clause which New Testament scholarship has discredited as an interpolation. There are other things which quite as much as adultery affect the permanence of the marriage bond: sadistic cruelty, for instance. Let our Church accept the teaching of Christ concerning marriage and divorce as He means it to be accepted, as a divine ideal. Let it maintain the standard of His own absolutist and idealistic teaching in allowing its ministers to officiate only at marriages which conform to that ideal of the monogamous marriage of man and woman till death them do part, but in its discipline, in its recognition or denial of communicant status, let it decide each case upon its individual merits and show mercy and forgiveness as well as justice in dealing with such of its members as have fallen short of the divine ideal. For when it comes to the principles enunciated in the Sermon on the Mount, there are harder sayings to be found than those concerning marriage and divorce, and judgment and grace are united in God's dealings with those who while striving for it fall short of the perfection which He requires.

Eastern Orthodoxy and Marriage

By FRANK GAVIN

THE Eastern Orthodox Church sees three aspects of marriage as defined by Roman law. "The union of a man and woman, their companionship for the whole of life and mutual participation in both human and divine law," namely, physical, the moral, and the religious juristic. It is a life of long partnership and union when once effected, and only death can sunder the relationship. The death may be either natural, moral or religious. The only grounds for divorce then come under the category of moral or religious death. In his *Novella*, 117 of the year 542 Justinian set down five grounds for divorce: 1) Crime, involving capital punishment; 2) circumstances and occurrences which in their relevant relationship were regarded as like natural death; 3) adultery or a relationship leading to adultery; 4) physical incapacity for marriage and 5) the choice of the life of chastity by either partner. Inasmuch as this *Novella* agrees completely with the standards of Oriental Canon Law and since it was also issued in full conformity with the approval of the then patriarch of Constantinople, Mennas, it was incorporated into the first official collection of Eastern Canon Law, namely, the *Nomokanon*. In the tenth century this collection became accepted as official for the whole of Eastern Orthodoxy. Hence the provisions of this *Novella* possess formal authority for the Eastern Church and are normative for all divorce proceedings in that Church. Subsequent legislation is but an expansion of the provisions of the aforesaid *Novella*.

The full practice of Eastern Orthodoxy with regard to divorce may be considered under the three headings: 1) Divorce brought on purely canonical grounds; 2) on grounds specified by the state and accepted by the Church and

finally, 3) those contained in the civil law which have not been formally or materially accepted by the Church. Under 1) would be comprised: a) adultery with any concomitant actions or attitudes such as belong to this category in general, for example, danger to life on the part of one of the partners, the offended one having the right to sue for divorce, also of abortifacients, too intimate social relations with members of the opposite sex, for the woman to spend nights in other houses without just cause and without agreement on the part of her husband, when the man has attempted sodomy, has unjustly accused his wife of adultery or has had too intimate relations with any other woman outside the home; b) apostasy; c) standing as sponsor to one's own child; d) receiving consecration as bishop and e) the entering of either partner into the religious state.

To the second category belong: a) high treason; b) the disappearance of the man—even the act of desertion; c) non-fulfillment over a period of three years of the marriage relationship.

Under the third category belong a group of cases where civil Eastern law will allow divorce but the Church does not; e.g., insanity, leprosy and a long prison sentence and permanent incompatibility of temper. (In December, 1315, the Synod of Constantinople expressed itself as accepting this last as a just ground for divorce.) In all likelihood similar provisions of purely civil law have had practical bearing on local actions of the individual Orthodox churches.

Divorce in Orthodox Canon Law — "Divorce dissolves a bond between man and wife in every relationship and replaces the partners in precisely that situa-

...
2. divorce having been officially proclaimed, the partners can contract another marriage. In the 22nd Novella of Justinian the guilty party could not remarry until five years after the divorce. This was ecclesiastically regarded as a time for the performance of the due penance after which time both Church and state allowed remarriage. However, this principle, while it applies to all other situations, does not apply to the adulterous partner, who is forbidden to marry again. (This has been modified in practice out of deference to the weakness of human nature. Compare the Ukas of the Russian Synod of the 18th March, 1904, No. 1599, and article 240 of the Montenegrin Consistorial Statutes).

Every effort should be made by those in authority to reunite the divorced couple, in which the whole procedure governing marriage must be observed. In Serbia and in Greece there is provision made for a "separation in bed and board" which is apparently considered not as a copy of the western custom but as an interim state between the institution of divorce proceedings and the issue of the decree. The Greek canonist, Theotokas, sharply distinguishes it from the western practice and states that it is for the purpose of trying every possible means to reconcile the parties and reconstitute the marriage. Greek law — both of Constantinople and of the Kingdom of Greece itself — provides for this separation for a specified time of from three, six or nine months up to three years, during which time the man is responsible for sustaining his wife and children.

Teaching with regard to declarations of nullity is very complex. To understand it, it is necessary to review briefly the a) primary and b) secondary conditions and stipulations for a valid marriage. (a) includes: free consent, proper age, normal competence and re-

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The basis for the declaration of nullity is the proof of adequate impediments vitiating the possibility of contracting a valid marriage. These impediments are divided into absolute and relative, the latter precluding marriage with certain specific persons. In the former instance any marriage would be invalid. Of the impediments in general there are two classes, diriment and impedient, the latter making possible a valid but not illicit marriage.

1. Absolute impediments under which may be distinguished two classes: a) those which probably preclude a valid marriage: incompetence and abnormality, inability to consummate the marriage relation, absence of agreement on the part of the guardian of a minor party to a marriage, higher orders in the ministry, vows of continence, fourth marriage contracted after the death of three previous partners; b) second category embraces those impediments which do not invalidate the marriage though it be illicit. Under this category belong: the lack of due age, marriage outside the proper seasons, compulsion and fear, deceit as to the person, previous engagement with another, threat of death on the part of one against the other partner, condemnation as a criminal, marriage contracted by a widow within the twelve months after her partner's death, war service, lack of banns, or failure to have provided the requisite documents.

2. Under relative impediments are listed all the disqualifications associated with consanguinity, forbidden degrees of relationship, spiritual consanguinity and

physical ability to perform of marriage and the consent in the case of a minor. In belong such provisions as the the civil law further lays knowledge of the faith on both parties, the proper time of betrothal and the vice in accordance with both non law and the like.

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relative impediments are disqualifications associated inity, forbidden degrees of piritual consanguinity and

the like. Besides these there are a list of other impediments: rape, adultery, conspiracy to secure another's divorce from his or her partner to the end of marrying the person, relationship of guardian and disparity of religion.

Every marriage contracted under these impediments is regarded as illegitimate. Eastern Canon Law views such under three categories: a) forbidden or illicit (as, for example, those cases of consanguinity); b) illegal and condemned (as, for example, marriage with a criminal). All such must be dissolved by Canon Law. When the marriage in question involves the presence of diriment impediments it is absolutely invalid and null. When there is only an impeding impediment there can be a relative nullity — such precluding circumstances as may be removable, and the marriage will be held in abeyance until this occurs. To the former category of absolute nullity belong marriages contracted while one of the parties is already married, when the bride is pregnant, when higher orders have been received, vows of celibacy taken, when it is a matter of a fourth marriage, various types of consanguinity and spiritual or legal relationship maintained, when adultery has

occurred and when it is a matter of guardian and ward. The declaration of annulment must be made by the competent ecclesiastical authority, and operates with reference to: a) the persons involved; b) the priest who had blessed the marriage and c) any children of such a relationship. Only the highest ecclesiastical authority — an ecumenical council or an ecclesiastical personage representing it — can conceivably dispense from the diriment impediment, and such action could only be deemed extraordinary, unprecedented, and almost unique. Impeding impediments can, however, be dispensed with just cause by the bishop. When such dispensation has occurred a convalidation of the marriage comes to pass. This follows either a) by the operation of a dispensation itself, or b) the removal of the impediment. In the latter instance, for example, arrival at the proper age, subsequent achievement of the capacity for marriage, subsequent agreement on the part of one of the partners who at the time failed in free consent, subsequent recovery of mental competency, the subsequent consent on the part of the guardian to the marriage already consummated and the subsequent conversion of the non Christian partner.

Doctrine and Practice of Protestant Churches

By JOHN M. GIBSON

THE doctrine and practice of Protestant churches in the U.S.A. in the matter of divorce and remarriage is indicated by the following typical examples.

THE EVANGELICAL CHURCH.

"The Church of Christ can consistently regard as valid only such divorces as are granted on the ground of adultery; and ministers of the Gospel of our Lord should not solemnize marriages in cases where there is a divorced husband or wife living. This rule does not apply to the innocent party to a divorce caused by the adultery of husband or wife; nor does it apply to divorced parties seeking to be reunited in marriage."—*Discipline of the Evangelical Church*. Paragraph 48.

METHODIST EPISCOPAL CHURCH. *Divorce*. "1. We hold that true marriage is an institution, both human and divine. It is the function of the State to determine the grounds upon which a valid divorce may be granted. It is the function of the Church to determine the regulations that shall govern Ministers in solemnizing of marriage of divorced persons and in the reception of divorced persons into Church membership.

"2. No minister shall solemnize the marriage of a divorced person whose divorced wife or husband is living and unmarried: but this rule shall not apply (1) to the innocent party when it is clearly established by competent testimony that the true cause for divorce was adultery or other vicious conditions which through mental or physical cruelty or physical peril invalidated the marriage vow, nor (2) to divorced persons seeking to be re-united in marriage.

"3. A divorced person seeking admission into membership in our Church who manifests a proper spirit and satisfac-

torily answers the usual inquiries, may be received."—*Discipline of the Methodist Episcopal Church*.

THE PRESBYTERIAN CHURCH IN THE U.S.A. "Nothing but adultery or such willful desertion as can no way be remedied by the Church or civil magistrate, is cause sufficient of dissolving the bond of marriage."—*Confession of Faith*, Chapter XXIV, Section 6.

"All ministers who are requested to marry divorced persons should exercise great care lest they join together those whose marriage the Church cannot approve. Upon satisfactory evidence of the facts in the case, they may remarry the innocent party to whom a divorce has been granted on scriptural grounds, but not until assured that a period of one year has elapsed from the date of the decision allowing the divorce."—*Directory of Worship*, Chapter XII, Section 10.

UNITED LUTHERAN CHURCH IN AMERICA. *Report of the Committee on Moral and Social Welfare*.

"4. With respect to divorce we hold that marriage according to the will of God is indissoluble and is normally terminated only by the death of either party. When it is otherwise dissolved the will of God is frustrated. In general, therefore, all divorce is to be condemned, and, whenever possible, avoided.

"5. A great body of the leading thinkers of the Lutheran Church in the past have taught that the marriage bond is effectually dissolved by the sins of adultery and malicious desertion, and that, when a divorce has been legally granted for either of these causes, the innocent party is free to marry again. This position we now reaffirm.

Protestant Churches

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THE PRESBYTERIAN CHURCH OF THE U.S.A. "Nothing but adultery, willful desertion as can no way be remedied by the Church or civil authority, is cause sufficient to dissolve the bond of marriages."—*Confession of Faith, Chapter XXIV, Section 6.*

Ministers who are requested to officiate for divorced persons should exercise care lest they join together those marriages the Church cannot approve.

Upon satisfactory evidence of the innocent party to whom a divorce has been granted on scriptural grounds, and until assured that a period of one year has elapsed from the date of decision allowing the divorce."—*Directory of Worship, Chapter XII, Section 10.*

UNITED LUTHERAN CHURCH OF AMERICA. *Report of the Commission on Moral and Social Welfare.*

With respect to divorce we hold marriage according to the will of God is indissoluble and is normally ended only by the death of either party.

When it is otherwise dissolved the will of God is frustrated. In general, therefore, all divorce is to be considered, and, whenever possible, avoided.

A great body of the leading ministers of the Lutheran Church in the United States have taught that the marriage bond is actually dissolved by the sins of adultery and malicious desertion, and when a divorce has been legally granted for either of these causes, the innocent party is free to marry again. In this position we now reaffirm.

With respect to divorced persons, the United Methodist Church recommends to its constituent synods that they insist that their pastors abide by the rule that only the innocent party to a divorce which has been granted on scriptural grounds can be remarried under the auspices of the Lutheran Church during the life-time of the other party, and then not until the expiration of a year after the divorce shall have been granted.

"7. The matter of retaining within, or admitting to, the membership of the Church persons who have been divorced on other than scriptural grounds and who have remarried during the life-time of the former husband or wife falls under the rule of discipline provided for by the constitution of the congregation. In all such instances pastors and church councils are exhorted to proceed with care and true spiritual wisdom, having proper regard for the Church's purity and honor, but also mindful of her mission to minister the means of grace so that sinners may be converted, restored and saved."—*Minutes of the Seventh Biennial Convention.*

UNITED PRESBYTERIAN CHURCH. "Parties in marriage must not be within the degrees of consanguinity or affinity prohibited by the Word of God, nor persons divorced on unscriptural grounds should be married."—*Book of Government.*

In the cases of the Baptist and Unitarian denominations there appears to be no general method of procedure which can be quoted as authoritative.

The **CONGREGATIONAL** and **CHRISTIAN** Churches do not legislate on the question of Marriage and Divorce.

In the **CHURCH OF THE UNITED BRETHREN IN CHRIST** the discipline provides for only one basis of divorce and that is when one party is

...minister who knowingly solemnizes the marriage of two persons either of whom has been divorced for other than above justifiable causes shall be removable to the church's care. Every pastor is required to preach at least once a year on the sanctity of the home and to warn the people against the debasing influences of divorce.

In the **SOCIETY OF FRIENDS** there is no categorical statement about what should be done with regard to the remarriage of divorced persons, but the practice is, in the case of divorce, for the congregational business meeting to appoint a committee to confer with the persons involved — first, to see if the breach can be healed and, second, if it is not possible to be healed, to work out the problem with the least damage to the contracting parties and to children that may be involved. As to the marriage of a divorced person, that also would be dealt with by a special committee and might or might not be sanctioned by the congregation or group.

THE UNITED CHURCH OF CANADA. "In reference to the solemnization of matrimony, in some Provinces ministers of religion are the only persons authorized by the State to act in the matter. This monopoly places the minister in an ambiguous position. If he accepts at the hands of the State a privileged control over a situation, he incurs some measure of obligation to acknowledge the conditions which the State lays down as governing his acts. Many marriages are entered into without any definite regard to the Christian doctrine of marriage, and with no firm intention to accept the life-long obligation inherent in that doctrine. It is highly questionable whether ministers of the Church should participate in acts of this character. In every Province there should be an alternative procedure

Civil marriage should be established for those persons who do not desire Christian sanctions. In very many cases this provision would remove the embarrassment which now comes to ministers when asked to officiate at the marriage of a divorcee. Christian sanctions would then be invoked only by those to whom the religious act represented some reality; and it is desirable that no minister should be placed in a position which requires either that he officiate in an act which violates his conscience, or else refuse to perform an act which the State expects him and no one else to perform.

"Whenever the alienation or separation were originally due to a lawless love which it is now proposed to organize into a new union, the situation seems clear. The Church cannot give her approval to a course of conduct in which satisfaction has been sought in a new attachment promoted regardless of an existing marriage tie; nor should any minister of the Church participate in any such transaction.

"In many cases, however, the divorce or separation was accomplished long be-

fore the present union was entered into, and as there was no lawless love. The refusal of a new union by marriage can do nothing to restore the broken unity, more especially if the same party to that first union has again been married. In some cases the former union ended in complete failure to reach the kind of life sincerely sought; the parties did remain twain and neither in thought nor fact became one flesh. There now appears a reasonable prospect of reorganizing life in new relations, so that a real marriage may be accomplished. The alternative, of course, is the quest for life-long comradeship with all its satisfactions outside of marriage. We recognize that such an alternative in many cases will involve hardship; but the Christian is called to endure hardness. The United Church, therefore, would discourage the solemnization of any of its ministers of the marriage of any person during the lifetime of a partner in a previous union.

THE MEANING AND RESPONSIBILITIES OF CHRISTIAN MARRIAGE, adopted by the General Council of The United Church of Canada in 1932.

tion of the new union and of the new attachment. In the past is past and the sin, so was sin, has been sinned. If a new union in marriage is to restore the broken union, especially if the other party in the union has again been in some cases the former union a complete failure to reach the end sincerely sought; the parties vain and neither in thought nor in one flesh. There now is no reasonable prospect of re-union in new relations, so that the marriage may be accomplished. The end, of course, is the quest of comradeship with all its outside of marriage. We do not see such an alternative in marriage will involve hardship; but it is called to endure hardship. The United Church, therefore, may change the solemnization of the ministers of the marriage of the ring the lifetime of a particular union.

MINING AND RESPONSIBILITY OF CHRISTIANITY, adopted by the General Conference of The United Church in 1932.

The Roman Law of Marriage and Nullity

According to

The New Code of Canon Law

By CHARLES C. MARSHALL

HUMAN society from the beginning has dealt with the institution of marriage in accordance with what the community believed the law of nature or the law of God. The Christian Church has dealt with it in accordance with what it believed to be the law of God as revealed in the Gospel of Jesus Christ and the Apostolic writings. It claimed the right to "interpret" and apply that divinely revealed law; it could in reason neither abrogate it, add to it, nor dispense from it, for it was fixed in the terms of the revelation. But the Church, in addition to the power to interpret and apply the divine law so revealed, claimed the power to enact human or ecclesiastical laws governing marriage. These it was free to amend, repeal and dispense from.

In the Western Church, with the growth of the Papacy and its efforts at its own aggrandizement, both the field of the interpretation of the divine law and the field of the enactment of ecclesiastical laws governing marriage, took on increasing proportions. Especially was this true in respect to the dispensing power. The more obstacles there were to lawful marriage, the more dispensations from such obstacles were necessary, and the larger were the revenues and the greater the power of the Church. The obstacles to marriage were constantly multiplied and the dispensing power increased. (1) The evil greatly contributed to that corruption of the Church which led to the Lutheran Ref-

ormation. It pressed heavily for redress on the Council of Trent, which declared in favor of reducing the number of impediments because, it said, "on account of the multitude of prohibitions people would, through ignorance, form illegitimate unions which cannot be persevered in without sin nor dissolved without scandal." The Council in 1563, by the decree *Tametsi*, reduced the number of impediments and, under anathema, declared matrimony a sacrament. Further reductions were urged in the Vatican Council of 1870, but nothing was done. By the decree *Ne Temere* of Pope Pius X, Aug. 2, 1907, important changes were introduced regarding the form of betrothal and marriage. The most important provision was that marriages of Catholics were thenceforth *null* unless celebrated before a priest and at least two witnesses. Recognizing, it is said, the almost insurmountable difficulties which the Canon Law has entailed, owing to the fact that the various collections contained, indiscriminately, both active and obsolete law, Pope Leo XIII undertook its codification, and the *New Code of Canon Law* was promulgated by his successor, Pope Benedict XV, May 27th, 1917. Since that date, marriage law and its incidents are tersely set forth in some one hundred and thirty-one canons numbered 1012-1143. The Church is now engaged upon their interpretations and application. So far as they relate to the old law they must be interpreted in accordance with it. The parts which differ from the old law must be interpreted according to the words employed. The new Code applied, of course, only to marriages contracted since its date, 1917. To its

(1) Cf. Ayrinhac, *Marriage Legislation and the New Code of Canon Law*. Imprimatur of Cardinal Farley: Benziger Bros., New York, 1918. See p. 80. I use Dr. Ayrinhac's English version of the Canons in this treatise.

provisions and to them only and by their current authoritative exposition this paper is limited.

By Canon 1, the Code states that its provisions are obligatory only for the Catholic Church of the Latin Rite, except in matters which of their very nature affect also the Oriental Church. The Code is explicit that the marriage of baptized persons is regulated (a) by the Divine Law revealed in the Gospel of Jesus Christ and the Apostolic writings, which is not alterable by any earthly power; (b) by the human canonical or ecclesiastical law which is alterable by the Church. It concedes the competency of the civil law—the law of the State—in regard to the civil effects of marriage, *e.g.* devolution of property, legal status of offspring, etc.

The Code expressly bases the marriage law of Rome fundamentally on the proposition that Christ made marriage a sacrament between the baptized—the baptized being those who have received Trinitarian baptism, whether or not professing the Roman Catholic faith.

In Roman theory, between the baptized, the contract cannot exist without the sacrament. "Hence two Christians who would have no intention of receiving the sacrament would not make a valid contract."

Over the marriages of the unbaptized, the Church claims no jurisdiction, except, in virtue of the Pauline Privilege, to pronounce them all voidable contracts at the instance of one of the parties converted and baptized. Given the baptism of an unbeliever, burdened with an unbaptized and contumacious matrimonial partner, their contract of marriage, though solemnly made and with the intent of monogamy and indissolubility, is dissoluble in the forum of the Church at the instance of the baptized party—willy-nilly the unbaptized party; the baptized party could, with the approval of the Church, contract another marriage.

As for the civil contract of marriage between the baptized Catholics, the law of the State of the Church, a state of public concubinage—"a shameful and detestable concubinage" Pope Pius IX called it in his letter to King Victor Emmanuel, Sept. 9, 1852, and in his allocation, Sept. 7, 1852. As non-Roman clergymen solemnizing marriage are, in Roman theology, merely officers of the civil law—State officials—the status of all non-Roman marriages seems to be one of some dubiety.

By the decree *Ne Temere* of Pope Pius X, as pointed out *supra*, the marriages of Roman Catholics were declared null unless celebrated before a priest and at least two witnesses. This provision is now incorporated in Canon 1094. Nevertheless the Canon lawyers teach that the contracting parties are the ministers of the sacrament. "They produce the sacrament whether they are aware of it or not, as long as they mean to do what the Church does or what Christ intended." Consequently, the office of the priest, though his presence is a *conditio sine qua non* of validity, is only that of an authorized witness.

Recent civil legislation, *e.g.* in the State of New York, has abolished the old common law marriage which was valid where the parties had, in the presence of others, recognized each other as husband and wife. The law of New York now makes the solemnization of marriage by a State official a prerequisite to the validity of a marriage. It may be suggested that, under the Canon Law and the law of New York, the parties themselves may be regarded as capable of making a contract of marriage valid in fact, but not validly evidenced, provable or of legal effect, without official cognizance and record. According to Dr. Petrowitz that is the view of the Canon Law.

It is to be observed here that quite generally among mankind the contract of marriage, though made under many different systems of law, often constitutes

ly civil contract of marriage, he baptized constitutes, within of the Church, a state of public—“a shameful and abominable” Pope Pius IX called letter to King Victor Emmanuel, 1852, and in his allocution, 1852. As non-Roman clergy—ministers of marriage are, in Roman merely officers of the civil law officials—the status of all non-marriages seems to be one of illegality.

The decree *Ne Temere* of Pope Pius IX pointed out *supra*, the marriage of non-Roman Catholics were declared invalid if celebrated before a priest and two witnesses. This provision is incorporated in Canon 1094. The Canon lawyers teach that the contracting parties are the ministers of the sacrament. “They produce the sacrament whether they are aware of it or not, as long as they mean to receive the Church does or what Christ has instituted.” Consequently, the office of the priest, though his presence is a *conditio sine qua non* of validity, is only a necessary authorized witness.

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It may be observed here that quite different among mankind the contract of marriage, though made under many different systems of law, often connotes

the ideal of monogamy and indissolubility, and is regarded with respect and honor. Roman theology has been and is pervaded with the disparagement of the binding force of such marriages. It differentiates the marriage contracts of Christians from those of non-Christians to the disparagement of the latter and to the point of their inherent nullity.

The question is presented of the moral justification of a wholesale paralysis or disregard of contractual obligation at the fiat of ecclesiastical law—in the most sacred relation of life. The Canonists have nowhere, it seems, attempted to reconcile the disparagement of non-Roman contracts of marriage, which pervades the Roman Canon Law, with the common precepts of Christian morality in favor of the obligation of contracts. Their answer is that the doctrine of Christ, as expounded by St. Paul, commands it. Canon 1120 reads, “Legitimate marriage between unbaptized persons even if consummated is dissolved in favor of the Faith by virtue of the Pauline Privilege.”

(5) The secular courts of Great Britain and of the United States have considered the question of the binding force in those countries of a marriage contracted by citizens of a polygamous state and under polygamous religion and law. Where the man and woman have intended a monogamous and indissoluble marriage there is eminent legal opinion that would rest the validity of the marriage, in England and the United States, solely on the moral intent and moral action of the parties, regardless of the law and religion under which they were married. The great polygamous religions, it is claimed, hold the monogamous and indissoluble marriage the ideal marriage though polygamy is permitted. See, in England, the *Nachimson* case, P. 277 (CA), the *Hyde* case, I P & D 130, and in the U. S. the case of *Royal v Cudaby Packing Co.*, 195 Iowa, p. 759.

In the Iowa case the court said the marriage between the parties (Mohammedans) “was not in itself polygamous, and we think the marriage status as it existed between them was the same as it exists in this country under our institutions of marriage—the one man took the one woman to wife.”

All civil contracts of marriage are not dissolved by the law. The Divine Law and the ecclesiastical law determine who are forbidden. It belongs to the supreme ecclesiastical authority, the Roman Pontiff, alone, to declare authoritatively when the Divine Law forbids, and to the same supreme authority belongs exclusively the right to establish other impediments. (Canon 1038).

No one except the Roman Pontiff has the power to abolish, entirely or partially, ecclesiastical impediments; neither has any one power to dispense from them unless it has been granted him by special Apostolic Indult.

The impediments of divine origin cannot be abrogated or dispensed from any human authority, but they may be “interpreted” by the Roman Pontiff. To suppress completely or partially an impediment requires the same power as to constitute it. That power is possessed by or reserved to the Roman Pontiff alone.

As to the extent to which the ecclesiastical power may go to find reasons for exemptions and dispensations in marriage cases, even from Divine Law, Dr. Ayrinhac says:

“It is not, however, above God's power to make an exception to a general Divine Law as long as this is not against the absolute, essential order of things. Exceptions were made under the old dispensation to the law of marriage indissolubility.”

Marriage *only ratified* between two baptized persons, or between one baptized and one unbaptized, is dissolved by dispensation of the Holy See granted for a “just cause,” at the request of the two parties or even one of them, against the wish of the other (Canon 1119). A marriage “only ratified” is a marriage “not completed by consummation; it is ratified and consummated when, between the parties, has taken place the physical act which marriage has in view.”

Valid marriage ratified and consummated can be dissolved by no human power and by no other cause than death. "If God had so willed, marriage could have been made dissoluble by adultery, as the Greeks and the Protestants claim it to be".

From the foregoing we may sum up the authority of the Pope and its limitations as to marriage and its incidents as follows: He is subject to the Divine Law and the law of nature. He may not dispense from obstacles imposed by the Divine Law or the law of nature, but he may interpret and apply those laws. He has done so by declaring in favor of the text of Matthew in preference to the text of Mark, and so excluding adultery as working the dissolution of marriage. He may establish impediments of ecclesiastical or human law and conditions affecting the validity of the contract, and dispense from them. He has established those set forth in the code. He may abrogate or suppress the impediments and alter the conditions he so establishes. He may, for "a just cause," on the petition of the parties, or on the petition of one of them and against the other, dissolve all marriages merely ratified and not consummated.

The jurisdiction of the pope over marriage and its incidents is integral in his Divine *Magisterium* and rests on the Papal prerogatives of Supremacy, Infallibility and Universality—dogmatically promulgated by Pope Pius IX and the Vatican Council of 1870 in the Constitution *Pastor Aeternus*, — *The First Dogmatic Constitution of the Church of Christ*. Canons 218 and 219 of the New Code, *Concerning the Roman Pontiff*, define the Papal jurisdiction and are essential to the understanding of our subject: Canon 218 (Woywod's version):

"As the successor to the primacy of St. Peter, the Roman Pontiff has not only the primacy of honor, but also supreme and full power of jurisdiction over the universal Church,

discipline and government of the Church throughout the world. This power is independent of all human authority.

Canon 219 (Woywod's version):

"The Roman Pontiff legitimately elected, obtains, from the moment he accepts the election, the full power of supreme jurisdiction by divine right."

These Canons, 218 and 219, are illuminated by the following well known declarations of the Supreme Pontiffs concerning jurisdiction:

"... We hold upon this earth the place of Almighty God." — Pope Leo XIII, *Encyclical Praeclara Gratulationis Publicae*.

"Union of minds, therefore, requires, together with a perfect accord in the one faith, complete submission and obedience of will to the Church and to the Roman Pontiff as to God himself." Pope Leo XIII, *Encyclical Sapientiae Christianae*.

"As many as are of Christ believe in the Incarnation of Jesus Christ no differently than they believe in the infallible teaching power of the Pope in the sense, be it understood, determined by the Vatican Council." — Pope Pius XI, *Encyclical Mortalium Animos*, Jan. 6, 1928.

Canon 1038, as we have seen (*supra* p. 15), declares the authority of the Supreme Pontiff to establish for persons baptized, impediments in addition to those of Divine Law. These are classified in that Canon as *prohibitive* or *diriment*.

We may proceed to consider these.

A prohibitive impediment is one whose violation may be satisfied by an act of reparation or expiation. A diriment impediment is one whose violation works the nullity of the marriage in the absence of a dispensation.

OF PROHIBITIVE IMPEDIMENTS.

These by the Code are reduced to four. A number of ancient prohibitions have been abolished or, by the Code, are treated as integrated in other subjects. The four retained are:

- The Vow
- Legal Relationship
- Mixed Religion
- Unworthiness

THE VOW: Marriage is rendered illicit by the simple vow not to marry, the vow of virginity and perpetual chastity, the vow to receive Sacred Orders or to embrace the religious life. (Can. 1058).

LEGAL RELATIONSHIP: In those countries in which relationship resulting from legal adoption is a prohibitive impediment by the law of the land, it is an impediment by the Canon Law.

MIXED RELIGION: The Church, by ecclesiastical law, most severely forbids everywhere marriages between two baptized persons, one of whom is a Catholic and the other a member of a heretical or schismatic sect; if there is danger of perversion for the Catholic party or the offspring, the marriage is forbidden also by divine law. (Can. 1060). No dispensation is granted from this impediment unless there be just and grave causes and both parties promise in writing that all children will be baptized and brought up only in the Catholic faith. (Can. 1061).

On this matter Dr. Ayrinhac (p. 116) says:

"The principal reason for that prohibition is the danger of perversion for the Catholic party and for the children. As long as the danger remains somewhat proximate the divine law itself condemns the marriage, and no power on earth can give dispensation.

But even when the danger has become remote and the requirements of the divine law are, strictly speaking, satisfied, there is still the ecclesiastical law which forbids mixed marriages under all circumstances."

UNWORTHINESS: This impediment arises when one of the parties has notoriously renounced the Catholic faith without joining a non-Catholic sect, or has notoriously affiliated with societies condemned by the Church (1065).

Attention has been called to the fact that the penalty for the disregard of these impediments may be merely an act of expiation or reparation; the violation, however, of diriment impediments requires the dissolution of the marriage in the absence of dispensation.

OF DIRIMENT IMPEDIMENTS

In the past, as many as eighteen of these have been recognized by canonists, divided into three classes: (1) Those involving defect of consent, *i.e.* error, condition, insanity, violence and fear; (2) those affecting directly the contracting parties, being in the nature of incapacities—age, impotency, previous marriage, disparity of worship, orders, vow, abduction, crime, consanguinity, public decency, spiritual and legal relationship; (3) one concerning the form of the contract known as clandestinity.

The New Code reduces these eighteen to thirteen.

"Those of the first (class) are impediments to any contract and not so much impediments to the contract as the want of one of its constituted elements. This is the view taken by the legislator, who treats of them not under the heading of impediments but in the chapter on marriage consent."

AGE: Canon 1067 provides for the age of sixteen for males and fourteen for females.

IMPOTENCY: Canon 1068 states that this annuls marriage by the very law of nature—by the divine and not simply by the ecclesiastical law.

Certain diriment impediments seem to involve the divine law or the law of nature, and therefore, to be outside the authority of the Supreme Pontiff to dispense from. Impotency is classified by Canon 1068 as a diriment impediment of the ecclesiastical law, and therefore subject to dispensation. As by the divine law, procreation is the primary end of marriage, an obstacle which defeats it would seem to be an impediment of the divine law and not dispensable. But sterility, which is quite as much an obstacle to procreation, is distinctly not recognized by the Roman law as an impediment either of divine or ecclesiastical law.

PREVIOUS MARRIAGE: (Canon 1069). Marriage is rendered invalid by the bond of a previous marriage, even if only ratified and not consummated.

DISPARITY OF WORSHIP: (Canon 1070). A marriage is null when contracted between a person baptized in the Roman Catholic Church and an unbaptized person.

This impediment of disparity of worship bears a certain relation to the prohibitive impediment of mixed marriage (Canon 1060 *supra*), and Canon 1071 declares that what is prescribed by Canons 1060-1064 for mixed marriages must be applied to marriages where the impediment of disparity of worship is involved.

SACRED ORDERS: Canon 1072 provides that a marriage is invalid when attempted by clerics in sacred orders. This impediment is of ecclesiastical origin and can be dispensed from. It is granted rarely to deacons and subdeacons, very rarely to priests. It has been granted to bishops for reasons of

the necessity of the Holy See in England since the Reformation and the French Revolution.

SOLENN VOWS: Canon 1073 provides that marriage is null when attempted by religious who have taken solemn vows.

ABDUCTION: (Canon 1074). Between the abductor and the woman abducted with a view to marriage, there can be no marriage as long as the abducted person is in the abductor's power.

CRIME: Canon 1075 provides that there can be no valid marriage between those who have committed adultery and promised marriage to one another or attempted it. The impediment is also incurred by the act of conjugicide, with or without adultery.

CONSANGUINITY: Canon 1076 provides that consanguinity invalidates marriage between all ascendants and descendants, and in certain collateral lines.

The New Code has greatly reduced the number of the degrees of consanguinity.

AFFINITY: Canon 1077 provides that an affinity in the direct line annuls marriage in any degree and in the collateral line to the second degree inclusively.

Ayrinhac (p. 176) says: "Affinity arises from valid marriage whether ratified only or ratified and consummated. It exists only between the man and the blood-relations of the woman, and likewise between the woman and the blood-relations of the man." The Code has largely reduced the scope of affinity and entirely cut out any carnal relation outside of marriage, *i.e.* illicit affinity. It was the affinity produced by the illicit relations of Henry VIII with Mary Boleyn that was suggested by the Pope as an impediment to his marrying her sister, Anna, even if his marriage with Queen Katherine was annulled.

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PUBLIC DECENCY: Canon 1078 pro-
vides impediment against those who have
contracted an invalid marriage, whether
consummated or not; also against those
who have lived publicly in concubinage.
This impediment, like that of affinity,
affects the man and the blood-relations
of the woman and *vice versa*, but does
not extend to the relations by marriage
or to the affines. "Henceforth it will
annul marriage only in the direct line,
and even in this it is limited to the first
and second degrees. A man cannot marry
validly the daughter or granddaughter
of the woman with whom he has con-
tracted an invalid marriage or lived in
public concubinage, but he can marry
her sister." (A. p. 182).

SPIRITUAL RELATIONSHIP: Canon
1079 provides that the spiritual relation-
ship from baptism and existing between
the baptized person and the minister or
between the baptized person and the
sponsor, annuls marriage.

LEGAL RELATIONSHIP: Canon 1080
makes those whom the civil law considers
unable to marry, because of the relation-
ship arising from adoption, incapable of
contracting religious marriage validly.

As stated above, a number of matters
heretofore treated in Roman moral
theology before the Code as matrimonial
impediments, are covered by the Code
in sections 1081-1093 under the title,
Of Matrimonial Consent, in sections
1094-1103 under the title *The Form of
Marriage*, in sections 1104-1107 under
the title, *Marriages of Conscience*, sec-
tions 1108-9 under the title, *Time and
Place for the Celebration of Marriage*.

OF MATRIMONIAL CONSENT

Matrimonial consent in the Canon
Law rests primarily on the real and, it
may be, secret state of mind and intent
of the parties at the time of the union.
If there is a secret agreement or even a
secret intent contrary to one of the es-
sential ends or properties of marriage,

e.g., preservation of indissolubility, the
marriage may be null in reality, notwith-
standing the words and acts of the par-
ties.

There are no conclusive presumptions
in the Canon Law analogous to those of
the secular law, deduced from the ex-
press words and acts of the parties by
which they are conclusively estopped
from pleading a reserved or secret state
of mind or intent contrary to their ex-
press words and acts. Parties are thus
free, if so disposed, to take advantage of
their own wrong. The door which sec-
ular law closes so carefully against fraud
is left quite ajar if not wide open in the
law of the Roman Church. (Cf. p. 236,
*The Roman Catholic Church in the
Modern State*, by the writer, Dodd,
Mead & Co., New York).

The conclusion as to the sufficiency of
matrimonial consent may differ in the
internal forum and in the external forum
of the Church. The internal forum is
the forum of conscience; it functions
through the confessional; its inquiry is
subjective. The external forum is the
forum of public law and social order; it
functions through the Church Court; its
inquiry is objective. In the internal
forum the parties themselves are the wit-
nesses; in the external forum all having
knowledge are witnesses.

There may be a conflict between the
internal forum and the external forum;
a marriage may be null in one and valid
in the other. For example—A. the man
marries B. with a secret understanding
for divorce (Cf. *The Marconi Case*.
Ibid. p. 235). This, in time, is revealed
in the confessional and the conclusion by
the confessor is that the marriage is null,
in fact, for defect of consent; no human
power can make it otherwise; it is null
in conscience and before God. Circum-
stances bring the marriage before the
Church Court. For some reason the
secret agreement can not be or is not
proven. The Court decides that the
marriage is valid in law, i.e., has the

status of validity in the external forum—in public life and social order. In the internal forum, in conscience and before God, it is obligatory that A. should not cohabit with B. In the external forum, in public law and before men, it is obligatory that A. should cohabit with B.

It is not without reason that so distinguished a canonist as Dr. Petrovitz should record that the concrete application of these principles "will not be void of insurmountable difficulties."

The obstacles to valid consent are

Ignorance
Error
Simulation
Violence or fear

Canons 1082-1087.

Ignorance that marriage is the permanent union of man and woman for the procreation of children may vitiate consent. It is not presumed after puberty.

ERROR

Error of fact as to person or quality: error about the person vitiates consent; error about the qualities of the person does not, "except when the error about the qualities amounts to an error about the person" and except when one marries a slave believing him or her free. The person is the essential object of the consent, the qualities of a person are regarded as something accidental. Therefore, the reasoning is, if the qualities erroneously attributed are the cause of the consent the error does not vitiate it.

Error of law as to properties of marriage—A simple error as to the unity, indissolubility or sacramental character of marriage, even if it be the cause of the contract does not vitiate the consent.

Dr. Aymhoe (p. 197) expounds as follows: "Error as to the essential object of the contract vitiates the consent, like ignorance. Error as to the essential properties does not, as long as it remains simply an error of the mind, whether

error of fact or error of law. The person who intends to form a real contract of marriage, although he does not believe in its indissolubility or sacramental character, will be married validly, provided he does not exclude those properties by a positive act of will, even though he would exclude them if he thought of it."

Knowledge of or even conviction of the nullity of the marriage does not vitiate consent, if the person, while entertaining apprehension of nullity, intends to do what he can against it and gives his consent, come what may.

SIMULATION

The internal consent of the will is always supposed to correspond to the words or signs used in the celebration of the marriage. But if one of the parties, or both would exclude, by a positive act of the will, marriage itself or all right to the conjugal act, or any essential property of marriage, the contract would be null.

In the cases of simulation the only remedy is for the guilty party or parties to give a new and real consent. As the nullity is occult (i.e., in the internal forum) the consent may be given privately.

VIOLENCE AND FEAR

Marriage is null when it is contracted because of violence or grave fear, caused by an external agent, unjustly, to free himself from which, one is compelled to choose marriage. No other fear, even if it would give cause to the contract, entails the nullity of marriage.

Violence is the onset of force too great to be resisted, and fear is the perturbation of mind arising from present or future danger. They are really cause and effect. Both the subjective and the objective element are involved.

Ordinary proofs of violence and fear are often wanting. The testimony of interested parties—friends, relatives and

concomitant. Thus a man who does not believe in the sacredness of marriage, though he does not believe in its validity or sacredness, will not be bound by it, provided he does not profess its properties by a positive act. Though he would exclude himself from the thought of it."

of or even conviction of the marriage does not matter, if the person, while apprehending of nullity, in what he can do against it and what may come, does what may.

SIMULATION

External consent of the will is required to correspond to the internal consent used in the celebration of marriage. But if one of the parties would exclude, by a positive act, the will, marriage itself or the conjugal act, or any essential part of marriage, the contract is null.

Cases of simulation are the only ones in which the guilty party or parties do not have real consent. As the consent is simulated (i.e., in the internal consent may be given privately).

COERCION AND FEAR

Marriage is null when it is contracted under violence or grave fear, caused by a natural agent, unjustly, to free from which, one is compelled to marry. No other fear, even if it gives cause to the contract, does not cause nullity of marriage.

When the onset of force is too great, and fear is the perturbing agent arising from present or future danger. They are really cause and effect, both the subjective and the objective are involved.

Every proof of violence and fear is sufficient. The testimony of in-laws — friends, relatives and

parents—is accepted. The testimony of the party concerned, if duly confirmed, is accepted. (Vanderbilt Case, *Ibid.* p. 237) Neither prescription nor prolonged cohabitation, nor solicitation for its continuance will validate a marriage. The renewal of the consent after the fear has been removed and the party has been made aware of the nullity of the consent in the first marriage, can alone avail.

Manifestation of the consent (Canons 1088) requires the presence of the parties personally or by proxy and their verbal assent. This law is not binding under pain of nullity but its violation is grave sin.

Marriages by proxy (Canon 1089) or through an interpreter (Canon 1090) are valid.

CONDITIONAL MARRIAGES (Canon 1092)

Conditional marriages are those made dependent on a condition. There are *voiding* conditions which terminate the contract and *suspensive* conditions which suspend until the condition is realized. To be effective the condition must be an integral part of the contract, not simply an interpretative intention, an error of mind or an accessory clause.

When a condition has been placed to the consent and not withdrawn,

(1) If it concerns the future and is inevitable, e.g., "I will marry you if the sun sets," or if it is impossible, e.g., "I will marry you if the sky falls," or if it is immoral, e.g., "I will marry you, if your sister will kill her child," the condition is regarded as non-existent because it is presumed to be in the nature of a jest, but if it is really an integral though secret part of the contract—in the minds of the parties — a *sine qua non*, as it might be, e.g., in the third instance, validity of the marriage contract is suspended until and if the condition is fulfilled *without* the instigation or participation of either of the parties. Validity then may spring to life, if, during the

suspensive period, consent has not been withdrawn. Several conditional marriages within a suspensive period produce complications.

(2) If the condition is future and is against the substance of marriage, e.g., that there shall be no children, the marriage is null.

(3) If the condition is future and involves that which is honest (licit), it suspends the marriage until the condition is fulfilled, e.g., a condition that the marriage is valid if a parent consents.

(4) If the condition concerns the past or the present, it would be valid or invalid according as the condition exists or does not exist.

The Sacrament in a conditional marriage is conferred when the conditional consent is given. Administration is completed after the consent takes full effect, which, it would seem, may never happen—if the condition is not fulfilled.

Canon 1093 — Although marriage is invalid because of an impediment, the consent that has been given is presumed to stand unless its revocation is proved, the consent being valid but without effect because of the impediment. When the impediment is removed as by dispensation, *in radice*, the original consent is effective.

The form, time and place for celebration of marriage.

These are treated of in Canons 1094—1103—1108-9. The provision of special interest is that only those marriages are valid which are contracted before the parish priest or local bishop and at least two witnesses. Canonists maintain that this provision is not intended to conflict with the principle that in marriage the parties themselves are the ministers of the sacrament and that a priest as priest is not necessary. The priest is, they maintain, present as the necessary representative of the church witnessing in its behalf.

In case of danger of death the presence of the priest may be dispensed with. Even where there is no danger of death, if it is foreseen that the presence of a priest cannot be secured for a month, it may be dispensed with.

In marriage between a Catholic and a non-Catholic all sacred ceremonies are forbidden except that the Bishop in his discretion may permit some, but always to the exclusion of the Mass.

Marriages between Catholics and non-Catholics are to be celebrated outside the Church but the Bishop may dispense from this requirement.

MARRIAGES OF CONSCIENCE OR SECRET MARRIAGES

Canons 1104-1107

These may be permitted by the Bishop for grave and urgent reasons, e.g., where two persons whom everybody believes to be married but who in reality are not married. Secrecy is to be observed at the pleasure of the parties, provided no scandal or grave injury to the sanctity of marriage is involved. The registry of secret marriages is to be kept in the secret archives of the diocese.

INDISSOLUBILITY OF MARRIAGE (Canon 1110)

The contract between the baptized is indissoluble of its nature, if consummated, and it is independent of ecclesiastical legislation, Christianity elevates it to the dignity of a sacrament if both are baptized. Doubt exists as to whether the bond can be sacramental for one party only.

Legitimacy of children (Canon 1114). They are legitimate when they are conceived in or born of a valid marriage but since the 12th century children born of putative marriages (marriages null in fact, but believed at the time to be valid) are accounted legitimate.

In a valid marriage either party may receive Holy Orders, it is held that this does not make the valid marriage null because of its indissolubility but it makes sexual intercourse illegitimate and the issue are regarded by the Church as born of fornication.

Subsequent marriage, real or putative, makes prior born children legitimate.

DISSOLUTION OF MARRIAGE BOND (Canons 1118-1127)

Has the Church received authority to break the marriage bond in certain cases? The code answers as follows:

Canon 1118. Valid marriage ratified (i.e., formally declared) and consummated (by intercourse) can be dissolved by no human power and by no other cause but death.

Canon 1119. Marriage between Roman Catholics only ratified is dissolved by the fact of solemn religious profession and also by dispensation of the Holy See at request of both parties or even of one against the wish of the other. The Pontiff has no authority over the marriage of two infidels until one of them is baptized. Five situations arise: (a) A marriage contracted between two infidels not consummated, the pope may dissolve; (b) A marriage contracted and consummated between two infidels; (c) a marriage contracted and consummated between two infidels who subsequent to the consummation are both baptized but who have not resumed sexual intercourse after baptism; (d) where only one of such parties has been baptized and intercourse has been resumed after the baptism. In the three cases (b., c. and d.) it is doubtful if the Pope has power to dissolve; (e) where both of such parties have been baptized and have resumed intercourse thereafter, the Pope has no power to dissolve.

lid marriage either party religious profession or orders, it is held this null because illegality but it makes sexual intimate and the issue are Church as born of forni-

n marriage, real or putative, in children legitimate.

ANNULMENT OF MARRIAGE Canons 1118-1127)

Church received authority to annul marriage bond in certain cases? answers as follows:

- 1. Valid marriage ratified (solemnly declared) and consummated (intercourse) can be dissolved by the Pope's power and by no other power.
- 2. Marriage between Roman Catholics only ratified is dissolved by the Pope's power. Solemn religious profession dispensation of the Holy See for both parties or even of one party of the other. The Pope's authority over the marriage of Catholics until one of them is baptized. Situations arise: (a) A marriage contracted between two infidels not solemnly declared; the Pope may dissolve; (b) a marriage contracted and consummated between two infidels; (c) a marriage contracted and consummated between a Catholic and an infidel; (d) a marriage contracted and consummated between two Catholics who are both baptized but who have had sexual intercourse after the marriage where only one of such parties has been baptized and intercourse resumed after the baptism. In cases (b., c. and d.) it is doubtful if the Pope has power to dissolve; in (a) and (d) of such parties have been baptized and intercourse resumed the Pope has no power to dis-

There is one case, and one only, where a marriage legitimately contracted and consummated may be dissolved by the act of a party and that is where two infidels have contracted and consummated marriage and thereafter one has been converted and baptized. The baptism of the one gives the Pope jurisdiction over the marriage of the twain. This obtains where the parties are members of a Christian sect (presumably not practicing baptism) and is the result of

THE PAULINE PRIVILEGE (Canon 1120)

This Privilege, also known as the Privilege of Faith or *Casus Apostoli*, it is claimed, was promulgated by St. Paul in I Cor. VII "If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her let her not leave him. . . . But if the unbelieving depart, let him depart."

St. Paul's injunction is expressed in Canon 1120:

"Legitimate marriage between unbaptized persons, even if consummated, is dissolved in favor of the Faith by virtue of the Pauline Privilege."

The Privilege consists in this: if one of the parties has received baptism and the other refuses to be baptized or at least to live peaceably, the baptized party may contract another marriage (presumably this time with a baptized person.) It is provided by Canon 1126 that the act of the baptized party in contracting the second marriage of itself dissolves the first.

The Code now provides for a formal procedure with prescribed interpellations whether the unbaptized party is willing to be converted and to be baptized or at least whether such party is willing to live peaceably without blaspheming God. The Pope may dispense with the appella-

tion, but may not dispense with the requirement of the conversion of the unbaptized party which is also possible. The Pope's dispensation is regarded rather as an interpretation of the divine law. The application of the Pauline Privilege among pagan and polygamous peoples has obvious difficulties. A power in the Christian Church to dissolve a marriage, legitimately and sincerely made between two infidels, because one of them professes to have become a Christian, presents grave moral questions. It is certainly difficult to find support for it in the words of St. Paul, and some of the implications given to them by the Church would certainly carry astonishment to him. It is clear that he ascribed the authority for his words, which the Church holds support the Pauline Privilege, to himself and expressly not to Jesus Christ. — "Thus speak I, not the Lord." (Ibid. V. 12.)

In doubtful cases, the Church favors the Pauline Privilege (Canon 1127.)

LIMITED DIVORCE OR SEPARATION (Canon 1128)

This is granted for "a just cause," e.g., adultery, affiliation with a non-Catholic sect, cruelty, etc., without the right to re-marry.

REVALIDATION OF MARRIAGE (Canons 1133-41)

To revalidate a marriage null because of a diriment impediment, it is necessary that the impediment cease or be dispensed from and that consent be expressly renewed. If the impediment is public renewal of consent must be public; if occult and known to both parties renewal may be private and in secret. If known to only one party, that party alone need renew the consent, the consent of the other persevering.

The renewal of the consent must be a new act of the will with knowledge of the nullity from the beginning.

Revalidation in *radice* (Sanctis in *radice* or revalidation at the root) differs from simple revalidation in that the renewal of the consent is not required, the marriage being regarded as valid from the beginning and retroactive as far as its canonical effects are concerned, e.g., the legitimacy of children. It requires a dispensation from the impediment unless in time it has disappeared, a dispensation from the renewal of the consent and carries the retroactive effects referred to. It applies to cases where a real consent is lacking or there is defect of form or other irregularity.

Only the Pope can grant such a dispensation. The local ordinary alone can grant such a dispensation. It cannot be granted where the consent of one or both parties is wanting.

SECOND MARRIAGES (Canon 1142-3)

These and further marriages are valid but widowhood is recommended for a woman. A woman who has once received the solemn nuptial blessing cannot receive it again.

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Intermarriage of Members of Different Christian Communions

By HOWARD CHANDLER ROBBINS

The term Mixed Marriages (Matrimonia Mixta) is applied by Roman Catholic writers to marriages between Catholics and non-Catholics when the latter have been baptized. The term is also employed in a more general sense to designate unions between Christians and non-Christians. For the purposes of this discussion it will be applied to marriages between members of different communions within the Christian Church.

THE HISTORICAL BACKGROUND

WHEREVER human wedlock is regarded as possessing a sacred character and denotes a conjunction of souls and minds as well as physical union, it becomes apparent that harmony in their religious sentiments is of first importance to those united in marriage. Even where marriage is not regarded as sacramental this harmony is important, since there is likely to be interference by one or both of the churches represented, by one or both of the families, or by relatives and friends. Not only for the sake of their own happiness but also for social reasons, for the sake of the stability of the new family created by their union, it is greatly to be desired that there should be agreement in religious faith on the part of those who marry, and it is essential that there should be mutual respect and forbearance.

This principle was operative in pre-Christian times. Among the Hebrews it was the occasion of drastic reforms which, while bearing hardly upon the individuals concerned, kept the faith of the nation free from the influences of surrounding heathenism. (Ezra 10:3; Nehemiah 13:23-25.) After the advent

of Christ, whose teaching indicated the spiritual character of marriage and invested it with a dignity unknown before, the Christian Church realized with progressive seriousness the implications of His teachings in this connection. At first there was toleration. According to St. Paul marriage with an unbeliever was not ground for separation because the unbelieving partner was regarded as "sanctified" by the believing husband or wife. (I. Corinthians 7:12-14.) Yet it was recognized from the beginning that such unions held peculiar hazards. "Be ye not unequally yoked together with unbelievers" was a general principle the specific application of which to the most intimate form of human fellowship was self-evident.

Change came gradually and slowly. Unions between Christians and non-Christians, tolerated at first, were looked upon by the Church with growing disfavor until with the publication of the Decretum of Gratian in the twelfth century, "All marriages contracted between Catholics and infidels were held to be invalid unless a dispensation for such union had been obtained from the ecclesiastical authority."⁶

Mixed marriages, that is, marriages between baptized members of different communions within the Christian Church, were in a different category. The Eastern Orthodox Church was rigorous in its condemnation of such unions. As early as 692 the Council in Trullo, which the Orthodox church holds an ecumenical one, declared marriages with heretics or schismatics null and void. The great schism between east and west in 1054 produced a new problem, that of the status of members of the Eastern

⁶Catholic Encyclopedia, article Marriages, p. 698.

...with married persons. For many centuries such marriages were not permitted except by dispensation. In 1702, however, Peter the Great issued a manifesto inviting foreigners to Russia, and establishing the principle of religious toleration in so far as foreigners were concerned. Thereafter marriages between members of the Orthodox Church and Roman Catholics or Protestants were permitted in Russia, but only upon condition that no attempt should be made to subvert the belief of the Orthodox husband or wife, and that the children should be educated in the Orthodox Church.*

The rise of Protestantism greatly complicated the problem of mixed marriages. Addressing itself to the problem, the Roman Catholic Council of Trent declared all unions between Catholics and non-Catholics null and void, unless entered into before the ecclesiastical authority. Marriages otherwise contracted were termed clandestine, and were so regarded even though the officiating minister were a bishop of a non-Roman communion and the witnesses a thousand in number. The Roman Catholic Church "did not find it possible, however, to insist on the rigor of this legislation in all countries owing to strong opposition. Indeed, in many countries, it was not found advisable to promulgate the decrees of the Council of Trent at all, and in such countries the impediment of clandestinity did not obtain."** Various con-

*The present status in the Eastern Orthodox Church is summarized as follows by Dr. Frank Gevin:

"It is presupposed that the two people to be married are Christians, for the Church forbids marriage with a non-Christian. Formerly she prohibited any marriage with heretics or schismatics as well. At the beginning of the 19th century she began to allow the marriage of an Orthodox with a Roman, Protestant, or Schismatic. In such a case the Church prescribes that an Orthodox priest perform the sacrament and that a promise shall have been made to bring up the children in the Orthodox Faith. Such mixed marriages are strongly discouraged. There must, of course, be no impediment in the way of either party. They must be of proper age, physically capable of being married, not already married, and there must be no impediment of consanguinity, affinity by marriage, or other relationship."—GREEK ORTHODOX THEOLOGICAL ENCYCLOPEDIA, article Marriage, p. 363.

**The Catholic Encyclopedia, article Marriage, p. 698.

...were done upon... by the presence of... opinion. In 1741 Pope Benedict XIV issued a declaration concerning marriages in Holland and Belgium, in which he declared mixed marriages to be valid, provided they were according to the civil laws, even if the prescriptions of the Council of Trent had not been observed. In 1785 this "Benedictine dispensation" was extended to Ireland, and thereafter to various localities.

Opposition to mixed marriages has not by any means been confined to the Orthodox and Roman Catholic communions. Many Protestant denominations have regarded them with equal disfavor, and in certain instances have directed against them disciplinary measures of equal rigor. For generations the Society of Friends did not allow its members to marry "out of meeting," and members who disobeyed this disciplinary provision were obliged to separate themselves from the Society. In churches of the Presbyterian system the objection was equally strong. The Westminster Confession of Faith, Chapter XXIV, Section II, reads, "it is lawful for all sorts of people to marry who are able with judgment to give their consent; yet it is the duty of Christians to marry only in the Lord. And, therefore, such as profess the true reformed religion should not marry with infidels, Papists, or other idolators: neither should such as are godly be unequally yoked, by marrying with such as are notoriously wicked in their life or maintain damnable heresies."** The position taken by the Church

**In a revised chapter on Marriage, Divorce and Remarriage, which has been submitted to the Presbyterian General Assembly for its consideration, the language above quoted is eliminated and the following substituted:

"Section II. The Scriptures emphasize the need of spiritual compatibility in marriage and teach that believers should marry 'in the Lord.' (a) Therefore the children of believers should be trained to realize the probable evils that result when they are 'unequally yoked together with unbelievers,' (b) and should avoid such alliances. The lack of harmony on the part of parents in the training of their children when they differ in the essentials of the faith, has proved divisive and tends to destroy the happiness of a truly Christian home."

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are forced upon ecclesiastics by the pressure of public opinion. In 1741 Pope Benedict XIV issued a declaration concerning marriages in England and Belgium, in which he declared mixed marriages to be valid, if they were according to the civil law, if the prescriptions of the Council of Trent had not been observed. This "Benedictine dispensation" was applied to Ireland, and thereafter to other localities.

Opposition to mixed marriages has not always means been confined to the Roman Catholic and Roman Catholic communities. Many Protestant denominations have regarded them with equal disfavor. In certain instances have been met with disciplinary measures of great rigor. For generations the Friends did not allow its members to marry "out of meeting," and those who disobeyed this provision were obliged to separate themselves from the Society. In the Presbyterian system the opposition is as equally strong. The Westminster Confession of Faith, Chapter 24, Section II, reads, "it is lawful for a Christian to marry who are not of his own communion; but it is the duty of Christians to marry only those of their own communion. And, therefore, such as are of other religions should not be received into our churches, nor should such as are of other religions be admitted to the Lord's Supper. And, therefore, such as are of other religions should not be received into our churches, nor should such as are of other religions be admitted to the Lord's Supper. And, therefore, such as are of other religions should not be received into our churches, nor should such as are of other religions be admitted to the Lord's Supper."

The chapter on Marriage, Divorce and the like has been submitted to the General Assembly for its consideration, and the above quoted is eliminated and the following substituted:

II. The Scriptures emphasize the spiritual compatibility in marriage and require that believers should marry "in the Lord," and that the children of believers should be trained to realize the probable evils that result when they are "unequally yoked together." (b) and should avoid such unions. The lack of harmony on the part of the parents in the training of their children, which differs in the essentials of the faith, is divisive and tends to destroy the peace of a truly Christian home."

In England, where the Church of England is the established church, the marriage contracted between a Christian on the one hand, and an unbaptized person, a Jew, a Mohammedan or a heathen on the other is held to be valid but irregular.* At the present time, all persons legally qualified to intermarry are entitled to be married according to the rites of the Church of England, although the position of unbaptized persons in this respect has never been made clear. In the Protestant Episcopal Church in this country the question has not been determined by legislation and for the most part the latitude permitted by the Church of England is also observed here.

Prominent in the latest ecclesiastical legislation affecting mixed marriages is the decree *Ne Temere* of the Roman Catholic Church which went into effect on Easter Day, 1908. By this decree all marriages between Catholics and non-Catholics are held to be invalid unless they take place in the presence of an accredited priest and two witnesses. It will be remembered that this decree aroused a storm of opposition, that by a later decree Germany was exempted from the new legislation, and that in Canada and elsewhere popular resentment forced cautious retreats. But the decree remains unrepealed even where it is not enforced, and it continues to menace the stability and endanger the permanence of all matrimonial unions which have been undertaken in disregard of it. Psychological factors are introduced which are disturbing and depressing; the very questioning of the validity of the marriage tells against its tranquility, and tensions are set up from which relief is sometimes sought in infidelity or in desertion.

THE PRESENT SITUATION

It is evident that the problem of mixed marriages is not simple, and that it is not susceptible of easy solution. Religion is

*Phillimore: Canon Law, Second Edition, Vol. I, p. 563.

It is possible for mixed marriages to be successful. Where the differences of religious faith are not fundamental, and where each of the married persons respects the viewpoint of the other, such differences may conceivably augment the stability of the union. In such cases the religious scruples of the member are roused, or action repugnant to reason and conscience is forced upon him by an authority which he does not acknowledge. For example, if one of the partners to a mixed marriage submits to the dictation of such an authority and promises that his children will be brought up in a faith which he does not share, reason and conscience are offended, the seeds of future discord are sowed at the very outset of married life, and the prospect of true marriage, with conjunction of mind and soul, becomes remote. Or if either partner enters upon the union as a propagandist, determined through the intimacies of marriage to subvert the religious faith of the other, disaster is imminent.

Statistics bearing upon the matter are not adequate, but there is reason to suppose that marriages of this sort are highly unstable; furthermore, that in very many cases they lead either to the departure of both partners from the practices of religion or at least to the abandonment of any attempt on their part to provide for the religious education of their children.**

It is possible for mixed marriages to be successful. Where the differences of religious faith are not fundamental, and where each of the married persons respects the viewpoint of the other, such differences may conceivably augment the stability of the union.

**Dr. John A. O'Brien, in a recent essay, comments upon the losses, estimated at half a million, suffered by the Roman Catholic Church in this country during the past year, and in judging the factors of the situation, takes into account the highly conjectural effect of mixed marriages. ("We Lose Half a Million Catholics Last Year," *Eccelesiastical Review*, December, 1908.) This Catholic leakage, leading often to dissensions and irreligion, is profitable to none and wastes all.

...and the difference. Even when differences are fundamental, they are not necessarily insuperable, always provided that there is still mutual love and tolerance, that no attempt is made on the part of either to subvert the faith of the other, and that they determine to bring up their children in such articles of the Christian faith as they hold in common. This, however, requires independence, strength of character, and rare wisdom and patience, and unless these prerequisites are present the strains of attempted adjustments will be found to be too severe for any good and happy solution of their common problem. So great is the importance of religious unity in the home that some pastors advise at the time of the wedding that the two agree upon one church or the other, or upon a third church.

CONCLUSIONS

In the far future the progress toward Christian unity will bring its own solution to the problem. It is inconceivable that the Church of Christ will forever remain distracted and divided. But Christian unity, although the goal of world wide hope and prayer, is still far off, and a present and urgent need is to discover the mind of Christ with respect to the marriages of Christians who, though holding different creeds, are already at one in acknowledging Him as Master and Lord.

...Committee on Marriage and the Home to be clear, and the Committee presents the following for consideration:

1. Where the persons contemplating marriage are members of different communions nearly related in doctrine or polity, they may well be advised by their respective pastors to settle the question before marriage by agreeing to attend together one or other of their churches, or even a third church, and to bring up their children in it.

2. Where only one of the persons is a member of a church of the Protestant group and the religious differences are profound, such persons should be advised to consider the situation with great seriousness, in all its aspects and to reach an agreement before marriage.

3. Where intolerable conditions are imposed by either church in which membership is held, persons contemplating a mixed marriage should be advised not to enter it. The Committee on Marriage and the Home protests earnestly against the requirement by any church that the children of mixed marriages should be pledged to that church.

4. Where conferences in the churches interested in the questions arising from mixed marriages can be arranged, such conferences should be welcomed with a view to safeguarding the sanctity of marriage and the spiritual welfare of the home.