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**OF THE**  
**GENERAL CONVENTION**  
**OF THE**  
**Protestant Episcopal Church**  
**IN THE UNITED STATES OF AMERICA**

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**1937**

**WITH APPENDICES**

**PRINTED FOR THE CONVENTION**

**1937**

revision. Your Commission does not believe that at this time any one of these proposals is of sufficient importance to bring it before Convention. Many of the suggestions are valuable and will undoubtedly be incorporated in any new revision. But no one stands out conspicuously.

The Commission was instructed to investigate and report on the matter of the Foreign Language Prayer Books. The Joint Commission on the Prayer Book in French desired to be continued. They are hopeful that in the near future they may proceed with the publication of the revised book in French, there being need for it especially in Haiti. The Italian books at present in use are adequate to the need. The Bishop of Brazil has seen to the publication of the revised book in Portuguese and the Bishop of Cuba to that of revised book in Spanish. There is no call at present for any revised book in German.

The Commission appends resolutions discharging the Joint Commissions on the Spanish and Italian books.

The Commission regrets to report the resignation from its membership of the Reverend Henry Riley Gummey, distinguished liturgiologist and member of the Commission on Revision throughout its work and of this Commission since its creation. We regret that he has felt compelled to withdraw from the Commission.

For action on above see pages 283 and 343.

## APPENDIX XX.

### REPORT OF THE JOINT COMMISSION ON MARRIAGE AND DIVORCE TO THE GENERAL CONVENTION OF 1937, CINCINNATI, OHIO

Commission on Marriage and Divorce appointed under Resolution of the General Convention of 1934:

RT. REV. HERMAN PAGE, D.D., *Chairman*  
REV. PERCY G. KAMMERER, Ph.D., *Secretary*  
MR. JOHN M. GLENN, *Treasurer*  
RT. REV. PAUL MATTHEWS, D.D.  
RT. REV. WILLIAM J. SCARLETT, LL.D.  
RT. REV. CAMERON J. DAVIS, D.D.  
REV. FRANK H. NELSON, D.D.  
VERY REV. FREDERICK C. GRANT, D.D.  
REV. BURTON S. EASTON, S.T.D., Ph.D.  
REV. HOWARD C. ROBBINS, D.D.  
VERY REV. VESPER O. WARD  
PROFESSOR JOSEPH H. BEALE  
MR. ORIGEN S. SEYMOUR  
MR. ROLAND S. MORRIS

### THE PRESENT CANON

#### CANON 41.

#### *Of the Solemnisation of Holy Matrimony.*

§ 1. Ministers of this Church shall within their Cures give instruction both publicly and privately, on the nature of Holy Matrimony, its responsibilities and the mutual love and forbearance which it requires.

Ministers  
shall give  
instructions.

§ II. Ministers of this Church shall conform to the laws of the State governing the civil contract of marriage, and also to the laws of this Church governing the solemnization of Holy Matrimony.

Legal requirements.

§ III. [i.] No Minister of this Church shall solemnize any marriage before the following conditions have been carefully complied with:

Conditions.

(a) He shall ascertain by due inquiry the right of the parties according to the laws of this Church to contract a marriage.

Due inquiry.

(b) He shall instruct the contracting parties as to the nature of Holy Matrimony, its responsibilities, and the means of grace which God has provided through His Church.

[ii.] There shall be at least two witnesses present at the solemnization of the marriage.

Presence of witnesses required.

[iii.] Every Minister shall without delay formally record in the proper register the name, age and residence of each party. Such record shall be signed by the Minister who solemnizes the marriage, by the married parties, and by at least two witnesses of the marriage.

Marriages to be recorded in Register.

[iv.] No marriage shall be solemnized by a Minister of this Church unless the intention of the contracting parties shall have been signified to the Minister at least three days before the service of solemnization; *Provided*, that for weighty cause a Minister, upon less than the requisite three days' notice, may solemnize the marriage of persons, one of whom is a member of his own congregation, or is well known to the Minister, but in such a case the Minister shall immediately report in writing his action to the Ecclesiastical Authority.

Notice of three days.

§ IV. If one party to a marriage so grievously offend the other that the security of permanence of the home is imperiled it shall be the duty of the offended party to lay the matter before a Minister of the Church; and it shall be the duty of such Minister to labor that the parties may be reconciled.

§ V. No Minister, knowingly after due inquiry, shall solemnize the marriage of any person who has been or is the husband or the wife of any other person then living, from whom he or she has been divorced for any cause arising after marriage. Nor shall it be lawful for any member of this Church to enter upon a marriage when either of the contracting parties is the husband or the wife of any other person then living from whom he or she has been divorced for any cause arising after marriage. But this Canon shall not be held to apply to the innocent party in a divorce for adultery; *Provided*, that before the application for such remarriage a period of not less than one year shall have elapsed after the granting of such divorce; and that satisfactory evidence touching the facts in the

Marriage of a divorced person is prohibited.

Exception. Proviso.

Minister may  
decline to  
officiate.

case, including a copy of the Court's Decree, and Record, if practicable, with proof that the defendant was personally served or appeared in the action, be laid before the Ecclesiastical Authority, and such Ecclesiastical Authority, having taken legal advice thereon, shall have declared in writing that in his judgment the case of the applicant conforms to the requirements of this Canon; and *Provided, further*, that it shall be within the discretion of any Minister to decline to solemnize any marriage.

Impediments  
to marriage.

§ VI. [i.] Any person whose former marriage has been annulled or dissolved by a civil court may apply to the Bishop or to the Ecclesiastical Court constituted by Canon, of the Diocese or Missionary District of the said person's domicile to have the said marriage declared null and void by reason of any of the following impediments to marriage:

1. Consanguinity (whether of the whole or of the half blood) within the following degrees:
  - (a) One may not marry one's ascendant or descendant.
  - (b) One may not marry one's sister.
  - (c) One may not marry the sister or brother of one's ascendant or the descendant of one's brother or sister.
2. Lack of free consent of either party.
3. Mistake as to the identity of either party.
4. Mental deficiency of either party sufficient to prevent the exercise of intelligent choice.
5. Insanity of either party.
6. Failure of either party to have reached the age of puberty.
7. Impotence of either party undisclosed to the other.
8. The existence of venereal disease in either party.
9. Facts which would make the proposed marriage bigamous.

Bishop or  
Ecclesiastical  
Court to  
render  
judgment.

[ii.] The Bishop in such case, after taking legal advice thereon, or the Ecclesiastical Court proceeding in accordance with the canons and acting through the Bishop, shall render judgment in writing to the petitioner. All judgments rendered under this Canon by the Bishop or the Ecclesiastical Court shall be made matters of permanent record in the archives of the Diocese or Missionary District. No such judgment shall be construed as referring in any way to the legitimacy of children or the civil validity of the former relationship.

[iii.] Any person whose former marriage has been annulled or dissolved by a civil court and pronounced null by the Bishop, may be married by a Minister of this Church as if he had never previously been married.

§ VII. [i.] If any Minister of this Church shall have cause to think that a person desirous of Holy Baptism, or of Confirmation, or of receiving the Holy Communion, has been married otherwise than as the word of God and discipline of this Church allow, such Minister, before receiving such person to these ordinances, shall refer the case to the Bishop for his godly judgment thereupon. The Bishop, after due inquiry into the circumstances, and taking into consideration the godly discipline both of justice and of mercy, shall give his judgment thereon in writing. *Provided, however,* that no Minister shall in any case refuse these ordinances to a penitent person in imminent danger of death.

Reference of doubtful cases to the Bishop before admission to the Sacraments.

Proviso.

[ii.] Any persons who have been married by civil authority, or otherwise than as this Church provides may apply to the Bishop or to the Ecclesiastical Court of their domicile for the recognition of communicant status or for the right to apply for Holy Baptism or Confirmation. After due inquiry into all the facts relevant thereto, judgment shall be given in writing to the petitioners by the Bishop or by the Ecclesiastical Court acting through the Bishop. In case of a favorable decision, a Minister of this Church may, at his discretion, bless the parties to the union.

Judgment shall be given in writing.

#### AMENDMENTS PROPOSED BY THE COMMISSION

1. *Resolved*, the House of ..... concurring, that Canon 41, § V. be amended in the sentence before the word *Provided* to read as follows: "But this Canon shall not be held to apply to the innocent party in a divorce following the adultery of one of the contracting parties."

2. *Resolved*, the House of ..... concurring, that Canon 41, § VI., be amended as follows:

To change the present 2. by the addition of the word "legal" so that it will read as follows: "Lack of free or legal consent of either party; and

To change 7. by the addition of the words "or sexual perversion" so that it will read as follows: "Impotence or sexual perversion of either party undisclosed to the other.

3. *Resolved*, the House of ..... concurring, that Canon 41 be amended by the addition of a new section to read as follows:

§ VIII. Any person whose former marriage has been dissolved for any cause by a civil court may, after the expiration of one year from the granting of the divorce, apply to the Bishop of his or her Diocese for permission to marry another person; and nothing in this Canon shall deprive the Bishop of his ecclesiastical power to permit such re-marriage if, in equity and good conscience, he shall choose so to do. However, before such permission is granted by the Bishop, he shall take legal and, if necessary, other advices, including that of the clergyman of the Parish of which the applicant is a member. He shall also inquire into the character and personality of the parties to the previous and the proposed marriage, and must determine whether the spiritual welfare of the parties thereto, and of society, will be served by the proposed marriage.

Your Commission also offers the following Resolution:

*Resolved*, the House of ..... concurring, that the Commission on Marriage and Divorce be continued, with power to add to its numbers, and that it be directed to confer with the leaders of other religious bodies in the hope that a move may be made towards uniformity in the attitude towards marriage and divorce.

## THE REPORT

### IS THE CHURCH LOSING ITS INFLUENCE ON FAMILY LIFE?

One of our Church Weeklies has said that no more important matter is coming before this Convention than that of marriage. This is no exaggerated statement. In his latest book entitled "The Future of Marriage in Western Civilization" Prof. Edward Westermarck has a whole chapter on "The Predicted Disappearance of Marriage". This comes at a time when our best educators are assuring us that those qualities of human character on which civilization must rest are largely determined by the influences which surround a child in the first three years of his life, chiefly those of his father and mother; and social experts are proclaiming that the influences of any fairly decent home are more favorable to the growth of a child than those of any school or institution, no matter how well equipped.

Yet the steady increase of divorce must distress all Christians, who believe that the home is the most basic of all institutions, and who also feel that no home can really fulfill its purpose that is not guided by the Spirit of Christ. Year by year more of us have to face the divorce evil within our own families, or within the circle of our close friends. The worst of the situation, however, from the Christian standpoint, is that the attitude of the Church is increasingly ignored. When the late King Edward abdicated, nothing was more striking than the fact that so many American editorial writers never mentioned the position of the Church.

### HOW SHALL THE CHURCH MEET THIS SITUATION?

The difficulty is not so much to state the problem as to solve it. Your Commission would first emphatically express its conviction that the solution of marital problems is to be found in real spiritual and moral education, and not by passing Canons; and the Commission is glad to realize that it has done much to stimulate the Church to give better education for marriage. However, the Canons have a profound relation to educational processes, and more or less condition them; and it is the matter of Canons with which this discussion is concerned. Almost every one agrees that the present Canon is inadequate, but there is a wide difference of opinion as to the course that should be followed.

*First*, there are those who are always slow to make changes. They see difficulties and dangers and therefore vote to leave things as they are. They usually take an amazingly long time to adopt minor changes in our Canons, such as giving a vote to a Suffragan Bishop. One wonders how long they will take to adopt some rational plan of Clergy Placement. These will vote to leave the Canon as it is.

*Second*, there are those who would stiffen the present Canon by omitting the exception in favor of adultery and never allow re-marriage, or the blessing of the marriage of divorced persons by a clergyman of the Church. The objection to this method is that it has failed. Only fifty years ago it was practically the attitude of our whole western civilization. Even where divorce and re-marriage were recognized by law they were

looked upon with horror. The English Church and some of its Branches have uncompromisingly held this position—the only so-called Catholic Church to do so. Yet its leading layman has recently married a twice divorced woman and Parliament has been forced by public opinion to modify the law which allowed divorce and re-marriage only for adultery.

*Third*, there are those who would extend the principle of annulment as is done in the Eastern Orthodox Churches and in the Church of Rome. Members of this Convention are generally familiar with the extent to which annulment is used. Marriage is first declared indissoluble and then in many cases pronounced null and void. Of course there are cases where the marriage has never been consummated personally, legally, or religiously; but in many others annulment is declared where

- (a) persons have married themselves
- (b) they have been married by the State
- (c) and they have been married by Priest or Minister with the clear religious intention of one or both parties.

To most Anglicans and Protestants this seems nothing but *divorce* under another name. In either case it "puts asunder" those whom, to all appearance and understanding "God hath joined together".

Another difficulty with annulment is that our studies in education and psychology make it clear that the character attributes which wreck marriage have been formed long before marriage; and it will be increasingly difficult to lay down Canon laws that will apply to all reasonable grounds for annulment on the basis of "cause arising before marriage".

*Fourth*, Many, like Bishop McDowell and Dr. Robbins, wish to separate the civil and religious ceremonies, as in many European countries. It is the missionary aspect of this plan that needs much careful consideration. Every clergyman knows that many people with apparently little interest in religion who come to him for marriage are thereby tied more closely to the Church, and later seek membership for themselves and their children.

*Fifth*, there are those who believe that the wisest thing to do is to modify our present Canon so that it will be more workable in difficult cases, and bring to many good men and women that spiritual help and power which we believe it is the function of the Church to give. Such is the opinion of your Commission.

#### THE PROPOSAL OF YOUR COMMISSION

The names of the members of this Commission are printed in this report. They represent many shades of opinion within the Church. We have had the help and advice of all who would give it. The attendance at meetings has been surprisingly large. At the last meeting, which adopted the *resolutions* printed in this report, 10 of the 16 members were present. Those not present were Bishop McDowell, Bishop Matthews, Bishop Davis, Dr. Grant, Dr. Easton, and Prof. Beale. The resolutions were passed by a unanimous vote of those present, with the exception of Dr. Robbins. Since the meeting Bishop Davis and Dr. Grant have written expressing their approval of the proposed changes in the Canon. Bishop McDowell has published an article of disapproval. At this meeting the Chairman was asked to write this report.

Your Commission has given much attention to the subject of Publicity;—and at its request a carefully prepared pamphlet edited and partly

written by Dean Robbins has been sent to every member of the Convention. During the *triennium* we have lost through death the valuable services of the Hon. George W. Wickersham. At our last meeting we accepted with regret the resignation of Bishop McDowell, to take effect in October. Whenever he was able to attend meetings his advice was invaluable.

The first action taken by the Commission was to emphasize the fact that it is *defending* the present Canon. Far from suggesting any steps which would weaken the Church's standard on marriage we believe we are doing something to strengthen it. Because we believe that on the whole it approximately represents the mind of the Church so far as this Convention is likely to agree on legislation, we do not suggest any changes except such as are in line with the accepted principles of the Canon.

\*A minor change which they suggest is an amendment to Section V in the sentence just before the *proviso*. This sentence now reads: "But this Canon shall not be held to apply to an innocent party in a divorce for adultery." They would have it read, "But this Canon shall not be held to apply to the innocent party in a divorce following the adultery of one of the contracting parties."

Another minor change would be in § VI., adding to the grounds of annulment lack of legal consent, and also sexual perversion. There has been much demand for this change. When a divorce has been granted for cruelty or some ground other than adultery, and one of the parties re-marries, our present Canon presumes that the second marriage constitutes adultery. Therefore, in accordance with the spirit of the Canon, the innocent party to the divorce should become automatically free.

The major change proposed is a new § VIII. This addition would extend the present power of the Bishop to deal with special marital problems. Section V of the Canon has long made him the judge in regard to adultery; and the whole Canon as revised at Denver made him a Court to adjust all matters coming under the Canon, provided a Court has not been established by Diocesan Canon. It will also be noted that in addition to taking legal advice the Bishop is expected to take the advice of the clergyman who assumes responsibility for a marriage.

#### THE TEACHING OF CHRIST ABOUT MARRIAGE

It is repeatedly said that neither an individual Bishop nor the Church itself has the power to take any action contrary to Christ's Teaching. Many leaders in the Church assert without hesitation that the teaching of Christ in this matter is perfectly clear: viz., that the re-marriage of any divorced person constitutes adultery and that such re-marriage sanctions and condones a definite sin.

(1) The obvious reply is that we should not be discussing this matter at all if Christ had made his mind perfectly clear.

(2) The pamphlet edited by Dr. Robbins shows that different Churches, the Eastern Orthodox Church, the Roman Church, our own Church and various Protestant Churches, have interpreted His mind in different ways.

(3) The opinion of the leading scholars is contrary to the above views. To quote from Dr. Robbins' pamphlet, "Professor Burton Scott Easton (of the General Theological Seminary) in his commentary on St. Luke

\*See Canon at beginning of report.



takes the ground that Jesus is not laying down a principle of civil law for ordinary society, but stating how the righteous should act." Later Dr. Robbins says "... consequently the directions about divorce in Christ's teachings are as immediately personal as the directions about turning the other cheek. Christ was not discussing what is the best law for a state, or even a Church. He was telling conscientious individuals how to act." Dr. Frederick C. Grant of the Seabury-Western Theological Seminary writes: "Bishop Gore clung steadfastly all his life to the conviction that in this one sole instance Jesus was *legislating*—all the rest of his teaching was *prophetic*. But that would be a curious situation: Christ laying down but one single law for his followers, and that a law concerning divorce and re-marriage. No scholar at the present time, so far as I am aware, shares this view."

There are certain other teachings on which there is unanimity among all Christians:

1. They agree that He clearly taught that the standard and ideal of marriage which God wishes for His children is the life-long union of one man and one woman.
2. They agree that He looks on divorce as a sin—like all other sins. It always registers *failure*—the equivalent of the Hebrew and Greek word for sin.
3. They agree He taught that divorce is caused by *hardness of heart*—which finds expression in contempt, vituperation, anger, lust, dishonesty, selfishness and neglect,—sins which cause endless misery in all human relationships, including marriage.
4. They agree that the outstanding emphasis in His teaching was on the need and power of love, mercy, and above all of forgiveness. In connection with marriage and divorce nothing could be more pertinent than the comment with which He closed the parable of the Lost Sheep—"I say unto you, that likewise joy shall be in heaven over one sinner that repenteth, more than over ninety and nine just persons, which need no repentance." This teaching is what causes many good Christians sore perplexity. They know that Christ came into the world to forgive sinners; but they nowhere find that he withheld forgiveness alone from those who committed adultery or from the divorced who were re-married.

#### CATHOLIC PRACTICE AND MERCY

It is frequently said that hard cases make bad law. Granting that this statement holds good for the civil law every Christian knows that the glory of Christianity lies in dealing with hard cases,—that Christ came to seek and save that which is lost—including those who are lost in the relationship of marriage. The function of the Church is not to maintain the legal standards of society, but rather to fill them with the loving spirit of Christ. The Church has always been haunted and animated by Christ's spirit of mercy. Even St. Paul had to make allowances. In I Cor. 7.15 he writes: "But if the unbelieving depart, let him depart. A brother or a sister is not bound in such cases."

The clause in St. Matthew's Gospel making an exception of adultery in the matter of re-marriage indicates a problem in the early Church, because the manuscripts containing this exception are very ancient. The Eastern Orthodox and Roman Churches felt obliged to make allowance for difficult cases; and our own Church has never felt justified in follow-

ing the logic of its Canon and ex-communicating those who seek her ministrations and sacraments.

### HOW WOULD CHRIST ACT TODAY?

The question that the Church has to answer is—What would Christ do with the many disturbing marital problems of today?

*First*, How would He deal with people reared outside the Church and who know nothing of its laws? Would they be amenable to a discipline of which they are ignorant?

*Second*, How would He treat those inside the Church who are uninstructed and ignorant as to its laws and discipline? The cry goes up on every side that most of our communicants and even our vestrymen are distressingly ignorant of everything pertaining to the Church's life and work. Ignorance, however, is not the worst feature. The fact is the Church is doing an exceedingly poor job in training her children in the Christian qualities of self-control of all passions, honesty, loving-kindness and forgiveness,—all of which are basic in the achievement of a successful marriage as of any other human relationship.

*Third*, What would Christ do with people trained in the Church who have made failures of their marriages? Would He preach to them a doctrine of forgiveness which means the doctrine of a fresh start in life? Or would he condemn all divorced persons to a life of celibacy if they would remain in communion with her?

### WHO SHALL INTERPRET THE MIND OF CHRIST?

If the mind of Christ in this matter of marriage and divorce must be interpreted, to whom shall fall the responsibility for their interpretation? Obviously to the Church itself. To quote from Bishop Gore in his book entitled "The Philosophy of a Good Life", page 176, "In one important matter, the matter of marriage, He (Christ) appears to have laid down an explicit law, as St. Paul, St. Mark and St. Luke report; but in the ordinary sense He is not a legislator . . . He proposed, it appeared, to inspire His Church (in a most realistic sense) with His spirit; and to leave it with the Church to deal with issues as they should arise with the assistance of this divine Paraclete; the agent or representative of God." Bishop Gore here states the traditional catholic conception of the Church. Christ did not write a book. He lived a life. He committed His work to His disciples leaving it to them to interpret Him to the world. Therefore, the Church had to interpret the doctrine of the Master. The Church had to decide what books were to be placed in the Bible. The Church had to determine His teachings in regard to the Sacrament. Christ said nothing about economic conditions, slavery, war or polygamy. He left it to His Church to relate His Gospel to all the affairs of life; and, as a matter of fact, not only the so-called Catholic Churches but also the Protestant Churches have assumed the right and the responsibility of determining the mind of the Master in relation to all the problems of life.

### WHO SHALL JUDGE MARITAL CASES?

In the many difficult problems of divorce and marriage, to whom shall the Church commit the power of *judgment*? In this Church we hesitate to give much authority to anyone. Bishops are obviously held untrustworthy, not only by clergy and laity but, as the discussion of this pro-

posed amendment has shown, even by one another. There are many members of this Convention who are quite dubious about giving much authority to the Presiding Bishop, although everyone is willing to give him heavy responsibilities. We have a National Council most democratically elected, but throughout the Church we find the gravest doubt in regard to its wisdom; and Commissions are appointed to evaluate its work. But Commissions also are highly untrustworthy, as is evident from much of the discussion on the report of this Commission. In Diocesan affairs we dislike to give much real authority to Bishops, Standing Committees, or Executive Councils. However, if there is going to be judgment of any sort we must delegate it to someone; and in this matter of Marriage and Divorce it can be given to one of three groups:

- (a) Duly elected Courts.
- (b) To the clergy.
- (c) To the Bishops.

An obvious procedure seems to establish Diocesan Courts; and even Provincial Courts have been advocated. The difficulty with a Court is two-fold:

*First*, it is unwieldy. A case takes the time of many busy men, who are relatively untrained in dealing with marital matters. A Court was created in the Diocese of Michigan but it was so hard to get it to function that the Convention finally decided to leave matters of marriage in the hands of the Bishop unless people wanted to apply to the Court.

*Second*, Courts are too impersonal. The Hon. Roland S. Morris, long Chancellor of the Diocese of Pennsylvania, is insistent that marital cases need the most personal kind of treatment. He finds that people are ready to talk quite frankly when he talks with them in a personal and fatherly fashion. Before a court of several persons their attitude would be anything but confidential. Experience increasingly proves that the intimate problems of marital life must be dealt with in personal fashion.

Many believe that the matter of judgment should be left with the individual clergyman. Normally he knows conditions and the people better than anyone else. Our proposed Canon indicates that the Bishop should turn to the clergyman for advice; and in the opinion of the writer it might be well if this section of the Canon were made mandatory. However, to allow every clergyman to make decisions would be far more dangerous than to give the power to the Bishop. Indeed, most clergymen would probably wish to have the responsibility shared with the Bishop.

Your Commission believes that the case for the Bishops is a strong one. They are the traditional representatives of the Church, and in theory at least they administer discipline. Under our present Canon this power is theirs. Moreover, Bishops are picked and experienced men. They are democratically elected and are supposed to represent the best leadership in the Church. If they are not competent the failure is that of democracy itself. But generally they are able men of large experience in parish life, who are daily gaining in wisdom through the responsibilities of the Episcopate, which involve the constant exercise of judgment. At the meeting of our Commission the Chairman asked the exceedingly able and experienced lawyers present how they thought the judicial ability of our Bishops compared with that of civil judges who deal with marital cases; and they promptly and unanimously agreed that on the average it would be far better. Some Bishops would doubtless make poor judges, but on the whole there is every reason to believe that they can be trusted not

only for their wisdom, but also because they have sworn to maintain the standards of the Church of Christ, and finally because they are charged to dispense discipline with mercy.

It is said that to give this power to all Diocesan Bishops would lead to hopeless confusion. Our experience with the civil law, however, is to the contrary. Most of the gains that have been made in social and legal procedure have been possible because a State here and there has been ready to take a forward step. One instance of this is the requirement that several days must elapse between the application for a marriage license and its issuance. It would never have been possible to get such a law through Congress, unless first tried by different States. There has been no greater step in legal administration than in our Juvenile Courts. This is because such States as Colorado and Illinois first made experiments. The same is true of Courts of Domestic Relations. They were instituted here and there. Unless various States had passed Child Labor Laws we should have had to wait indefinitely for Congress to act.

#### THE CHURCH'S STANDARD MUST BE MAINTAINED

But many will say, the Church must maintain Christ's standard of marriage. There can be no difference in opinion about this, but there is a difference of opinion as to how far punitive methods are effective in the Church. They are clearly essential in the State. There would be few who would question the need of a police force, prisons and various definite punitive methods. But most Christians believe that the power of the Church lies in the moral realm and that it fulfills its real function by exerting Christian influences wherever it can find an opportunity. The power of ex-communication is rarely exercised.

Many feel that lax laws—so-called—are bound to make for the increase of divorce; but Prof. Westermarck writes as follows: \* "It is a mistake to believe the rates of divorce are proportionate to the facility with which divorce can be obtained according to law". He then goes on to show that there is little or no evidence to the effect that increasing the number of grounds of divorce increases the divorce rate.

Moreover, in the civil law itself, there is a steady and increasing movement from the punitive attitude to the remedial. Surely no one believes that the work of Juvenile Courts and Courts of Domestic Relations has tended to the breakdown of the law. It is generally accepted that they make for the improvement and up-building of law observance. In these courts the guilt of the persons concerned is usually taken for granted, and the emphasis is entirely placed on methods by which people can be rehabilitated and redeemed. The Judge stands in the rôle of a fatherly advisor. He is assisted by highly trained men and women who co-operate in trying to deal with children or adults in a friendly way. The work of these Courts is based on the use of love, which modern knowledge makes clear is the only force capable of redeeming human beings, both young and old. In this movement in our civil law from the *punitive* to the *remedial* we Christians surely believe we see the influence of our Master. Does it not seem desirable therefore that this Church should try to bring its marriage law more in line with what so many Christians feel is the mind of Christ?—more in line with the administration of the civil law and with the practice of the other so-called Catholic Churches. Indeed, it would seem that this Convention has an opportunity to lead the Church

\* The Future of Marriage in Western Civilization—pages 214-215.

of Christ a step forward in dealing with the serious problems of marriage and divorce.

#### A MINORITY REPORT

Dr. Howard C. Robbins objected to the proposed section VIII. (a) on Scriptural grounds, as tending to weaken the witness of the Church to the Christian ideal of marriage, (b) on constitutional grounds, as giving Bishops ecclesiastical power to set aside at their discretion canonical requirements defined by General Convention. He offered as a minority report that the section be introduced by the qualification "within the limitations of this Canon".

HERMAN PAGE,  
*Chairman.*

For action on above see page 288.

### APPENDIX XXI.

#### JOINT COMMISSION TO CONSIDER AND EVALUATE THE ACTIVITIES OF NATIONAL COUNCIL

THE RIGHT REV. IRVING P. JOHNSON, D.D.  
THE RIGHT REV. BENJAMIN M. WASHBURN, D.D.  
THE RIGHT REV. JOHN C. WARD, D.D.

THE REV. HOWARD C. ROBBINS, D.D. (N. Y.)  
THE REV. JOHN GASS, D.D. (N. Y.)  
THE REV. STANLEY C. HUGHES, D.D. (R. I.)

H. C. THEOPOLD (Minn.)  
JAMES H. PERSHING (Colo.)  
THOMAS E. ROBERTSON (Washington, D. C.)

Your Joint Commission held a meeting with the Joint Committee on Status and Work of the Presiding Bishop in New York on September 9, 1937. All the members of the Commission were present except Mr. Theopold of Minnesota. The two Commissions were unanimous in the support of the decisions arrived at by the two Commissions.

The Commission believes that the National Council is a more competent body to determine its own internal arrangements than is such a large group as General Convention, which is not cognizant of details involved in the work of the National Council.

We believe that a personality and not a committee should have the leadership in the Church's life, and consequently that the Presiding Bishop should be the real Executive of the work of the Church in its missionary, religious, educational and social service departments.

In response to a request for greater democratization in the election of members of the National Council, the Commission makes a suggestion which in its judgment will give a freer choice in the selection of its members.

1. The Commission believes that the National Council, as an agent of the Executive as well as the legislative arm of the General Convention, should be directly under the supervision of the Presiding Bishop.