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WITH APPENDICES

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APPENDIX XIX

REPORT OF THE JOINT COMMISSION ON HOLY MATRIMONY
1943

The Joint Commission on Holy Matrimony was appointed in accordance with the following Resolutions of the General Convention of 1940:

"Resolved, That a new Joint Commission on Holy Matrimony consisting of five Bishops, five Presbyters and five Laymen be appointed to consider afresh and in the light of Christian teaching and principles the entire subject of Christian Marriage, together with their implications as to divorce and the remarriage of divorced persons; and be it further

"Resolved, That the Commission be instructed to formulate and present to the next General Convention on the second legislative day the results of its study in a statement as to the essentials of Christian Marriage, together with a suitable canon or canons based thereon."

As directed by these Resolutions, the Commission herewith presents the following report, on the second legislative day of Convention, together with suitable canons based thereon.

The Report and recommendations represent the unanimous opinion of the Commission, with the exception of Bishop Thomas who believes the proposed Canon B should be amended by the addition of an additional section such as Section VII (i) of the present Canon 42.

The Commission organized by the election of the Bishop of Western New York as Chairman, the Rev. Stephen F. Bayne, Jr. as Secretary, and Charles F. Wilson, Esq., as Treasurer. At its first meeting it elected also, as consultants, the Rev. Howard C. Robbins, D.D., professor of Pastoral Theology in the General Theological Seminary, and the Rev. Otis R. Rice, B.D., Chaplain of St. Luke's Hospital, New York City.

It has held four meetings with a gratifying attendance at each, and a sub-committee, appointed to embody the fruit of the Commission's discussions in a tentative report, has held four additional meetings. The problem of meeting expenses has been a serious one. The Treasurer of General Convention has sent us \$300, but the cost of printing material for study, and the travelling expenses of members of the Commission have amounted to a much larger sum which has been partly secured by the generosity of a few individuals, bishops and others, which we gratefully acknowledge. A deficit of \$400 still remains which we ask General Convention to pay.

The Commission has felt it advisable to obtain opinions and suggestions from as wide a circle as possible. It has therefore sought advice from the Seminaries of the Church and in most cases a member or committee of the faculty has responded most helpfully. We also asked each diocesan bishop to appoint a cooperating committee in his diocese to study the problem and to make suggestions to us. Sixty-four such committees were appointed and to each we sent a syllabus and material for study. Early in 1943 we also sent them a tentative and unofficial report with suggested canons for their consideration. For these latter a wide publicity was secured, too, in the church and secular press. The Sub-committee of the Commission which was appointed to draft them has considered carefully the comments evoked by them. The Commission is hopeful that by this procedure its official report represents a wider opinion than merely its own, and that the members

of General Convention, having already given thought to the subject, will be prepared to take action even in a shortened session of Convention.

The approach to the subject which the Commission has taken differs from that of the present Canon in one principal respect. It emphasizes and is based upon the fact that Christian marriage is not only a life-long union but a life-long spiritual union—a union not only of bodies but of personalities, a sacrament of which husband and wife are the ministers each to the other, and indissoluble. It has seemed fitting to us that this should be definitely stated in the Canons, and we have done so in Canon B, 1. The ground for the legislation of the Church is thus given and the Canons are harmonized with the Form for the Solemnization of Matrimony to a degree that the present Canon does not attain. The conception is also embodied in the Statement found in Canon A, II, (iv) which the parties to a marriage are required to sign. While there is nothing in this Statement that is not found or implied in the Office, it is a fact that thus re-stated, the vows gain in force. Moreover the Statement forms an excellent basis for pre-marital instruction.

The Commission believes that this emphasis is the special duty of the Church. For while marriage might be called a "natural sacrament" rather than an ecclesiastical one, it is a fact that the blessing of the Church confers something real and definite and valuable upon those who seek a spiritual union, and a participation in her fellowship is a principal source of grace and strength. The Church is therefore primarily concerned only with such marriages. She must be assured of the spiritual intention of the parties; her legislation as to who may marry and as to who in fact are married must be from the point of view that Christian marriage is a spiritual as well as a physical union.

I.

The Commission presents two Canons, respectively A and B, and recommends that they be substituted for the present Canon 42 and numbered accordingly. The first of these deals with the relationship of the Church to the Family. We have been led to propose this by the conviction that the family is of supreme importance to the discharge of the Church's mission. Not only is it the basic social unit and the most effective of all character-building agencies, but it is also the channel through which the Church's influence is most effectively transmitted to the child. Four points have come to light in our study which seems well-established: first, the child of a united home is much more apt to establish a united home for himself when he grows up; second, maladjusted children and adults are most often traceable to disrupted or loveless family life; third, divorce is rare when husband and wife have both been active in a church; fourth, the drift away from Church of children after Confirmation is more frequent in those cases where both parents have not been active in Church life. It would seem, therefore, that the Church should recognize as a primary duty, the integration of family life around a religious interest. This would mean, in our minds, such things as a united parish program in which parents and children can all take part, the restoration of the family pew, the attendance of parents with their children at Confirmation instructions, a strengthening of the ministry of sponsors, and above all systematic instruction, perhaps through an additional Office of Instruction, upon the duties and responsibilities of membership in a family, and the aids the Church can and does give in their discharge.

Following naturally upon this is the requirement that specific instruction be given to brides and grooms upon the nature of Christian marriage, and

the duty of the Minister to inquire as to the fitness of applicants. In listing impediments to marriage we have made certain changes from the present Canon suggested by experience, and have approached the problem from the point of view of Christian marriage. We have omitted "insanity" as too narrow in its legal definition, and as covered by "lack of sufficient mental capacity," etc.; we have defined what is meant by "facts which would make the proposed marriage bigamous;" and we have included in the list defective intention, as witnessed by secret agreement inconsistent with the essence of Christian marriage, such as an agreement to obtain a divorce if the marriage results unhappily. We have endeavored to list only "diriment impediments" which make a marriage not merely voidable but void *ab initio*, and which can be discovered by inquiry of the Minister. Impediments to Christian marriage which make it voidable, we believe are covered by the provisions of Canon B, III (ii).

II.

Canon B deals with the problems arising from marital failure. The Commission has wished first of all to maintain the conception that Christian marriage is a spiritual union and indissoluble. Where two parties, free and competent to do so, have entered into Christian marriage we feel that the Church cannot rightly recognize its termination for any other cause than death. Hence we have eliminated the so-called "exception clause" of the present Canon. And quite apart from its doubtful authenticity and quite apart from the fact that Christian marriage is indissoluble, it seems to us that to make physical infidelity a sole justification for divorce denies the spiritual nature of Christian marriage. But on the other hand if the parties were not free and competent to attain the spiritual union which is the essence of Christian marriage, we believe the Church is then justified in recognizing a civil judgment that dissolves or annuls the marriage, holding that a Christian marriage has not existed. If a physical defect which prevents physical consummation of the marriage makes the marriage voidable, then, from the point of view of the Church, a spiritual defect which prevents spiritual consummation should make it voidable. No one questions annulment on the ground of insanity or feeble-mindedness, but there are certain abnormalities and defects of character which, while not so discernible before marriage, are nevertheless just as real and insurmountable obstacles to a true marriage as mental incapacity. In essence, Canon B proposes to put into the hands of the diocesan bishops the right to decide when this is the case. They are directed to associate with themselves the pastor, if possible, of the petitioner, a lawyer, and a psychiatrist or physician, and to investigate the case with a view to determining whether or not Christian marriage has in fact been established. To guide them in this inquiry we have stated three sets of grounds on which such a decision may be made. First, the most definite and clearcut impediments as listed in Canon A, II. Secondly, we proceed to the general area of such impediments as psychic impotence, etc., which were in existence at the time of the contract and could effectively prevent the fulfilment of the marriage vows. Thirdly, we go on to deteriorations or incapacities due to factors which, although latent at the time of marriage, are brought into actuality by situations inherent in marriage itself.

The Commission thus follows the path of equity as well as legal justice. We believe, in doing so, we more nearly express the mind of Christ. And while such a discipline puts a grave responsibility upon the bishops, a discipline of equity can hardly be administered otherwise. There are, however, certain provisions in the Canon which will lighten the load and also

restrict the field of responsibility. The Bishop is required to seek advice, legal, medical and pastoral; not that the petitioner must necessarily bare his soul to a group, but that the bishop must, in any event, lay the case before his advisors. And secondly, the Canon is applicable only to those who have been actively connected with a parish, or are desirous of being so connected, and where possible have consulted their pastor before a previous marriage contract was dissolved by the court.

The Commission recognizes the difficulty of administering these Canons. What may well be our most important provision is found in Canon A, III which creates a permanent Commission to gather information as to their administration, and to counsel and advise bishops and other clergy as to procedure. Such a Commission, in our minds, might well issue offices of instruction and syllabi, give suggestions as to methods of integrating family life around the Church, compile case histories, and give suggestions from experience as to procedure. We do not feel that we have presented the best of all possible Canons, though we believe we have laid a foundation which is morally, traditionally and theologically sound. And so we depend upon the Permanent Commission also to bring to General Convention amendments which are the fruit of experience, and which will in time result in a discipline that is acceptable to our Lord.

In conclusion we voice our sincere gratitude to the Joint Commission on Marriage and Divorce for the exhaustive study it gave to this problem during its long existence, and especially do we record our appreciation of the leadership of its Chairman, the late Right Reverend Herman Page, whose vision and effort are largely responsible for awakening the Church to the fact that pre-marital education should have a place of primary importance in her discipline. We are deeply grateful too to our consultants and to the long list of theologians and scholars whose studies of the subject, printed and unprinted, have been of inestimable value to us.

The Joint Commission recommends the adoption of the following resolutions:

1. *Resolved*, The House of concurring, that Canon 42 be stricken out, and that the following Canons numbered respectively 42 and 43, be inserted in the place thereof.
2. *Resolved*, The House of concurring, that General Convention instruct, and it does hereby instruct, its Treasurer to pay to the Treasurer of the Joint Commission on Holy Matrimony the sum of \$400 for the expenses of the Commission.
3. *Resolved*, The House of concurring, that a Sub-Committee of the Liturgical Commission and the permanent Joint Commission on Marriage and the Family draw up an Office of Instruction on Holy Matrimony.

CANON A

OF THE RELATIONSHIP OF THE CHURCH AND THE FAMILY

I. (i) Every Minister in charge of a congregation shall give, or cause to be given, to both adults and children, regular instruction in the relation of the Church and the family; which instruction shall include the duties and responsibilities of membership in a family, the mutual obligations and privileges of spouses and of parents and children, and the Christian doctrine and discipline of marriage, together with the particular ministrations of the Word and Sacraments and the work and worship of the Church of which

the family and its members have need for the fulfilment of the Christian life.

(ii) Every Minister in charge of a congregation shall, in exercising his pastoral ministry, take care to make the family a basic unit and objective of his effort, since the life of the family is, by God's appointment, the fundamental environment within which the personality of the individual is developed and through which the influence of religion may be made a factor in such development.

II. (i) Before solemnizing any marriage, every Minister of this Church shall make due inquiry (a) as to the rights, under the civil law, of the parties concerned to contract a marriage, and (b) as to their rights, under the laws of this Church, to contract a marriage, and (c) as to whether either of the parties has been party to a previous contract dissolved under the provisions of Canon B. He shall examine them, especially, with regard to the following, which are impediments to marriage according to the laws of this Church:

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. Failure of either party to have attained legal marriageable age.

3. Lack of free consent for such reasons as

- (a) Error as to the identity of either party.
- (b) The existence in either party, undisclosed to the other, of such irremediable physical defect as to preclude consummation of the marriage.

4. Lack of sufficient mental capacity in either party to enable such party to understand the nature of the marriage contract, or to undertake it.

5. Previous marriage contract which has not been dissolved by death or annulled in accordance with the law of this Church.

6. Explicit condition contrary to the essence of Christian marriage having reference to the future, such as

- (a) Concurrent agreement inconsistent with the essence of Christian marriage.

(ii) Ministers of this Church shall conform to the laws of the State governing the civil contract of marriage, and also the laws of this Church governing the solemnizing of Holy Matrimony.

(iii) No Minister of this Church shall solemnize a marriage unless at least one party to the proposed marriage has received Holy Baptism.

(iv) Before solemnizing any marriage, every Minister of this Church shall determine that the parties thereto have been instructed in the nature of marriage and the duties and responsibilities thereof, and that they hold to the Christian doctrine of marriage and intend to seek the Church's help to realize that state of life. To this end, before he officiates he shall require them to sign in his presence the following statement:

"We, A.B. and C.D., desiring to receive the blessing of the Church upon our marriage, do solemnly declare that we hold marriage to be a life-long union of husband and wife, for the purpose of mutual fellowship, en-

couragement, and understanding, for the procreation (if it may be) of children, and their physical and spiritual nurture, for the safeguarding and benefit of society. And we do engage ourselves, so far as in us lies, to make our utmost effort to establish this relationship and to seek God's help thereto."

(v) There shall be at least two witnesses present at the solemnization of a marriage.

(vi) Every Minister shall, immediately and without delay, formally record in the proper register the name, age, and residence of each party to a marriage solemnized by him. Such record shall be signed by the Minister who solemnizes the marriage and by the parties and witnesses to said marriage.

(vii) 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 solemnization; Provided that for weighty cause a Minister, upon less than three days' notice, may solemnize the marriage of persons, one of whom is a member of his own congregation or can furnish satisfactory evidence of his responsibility; and, Provided further that in any case the provisions of this Canon be fulfilled. In case the usual notice is waived, the Minister shall immediately report his action, in writing, to the Ecclesiastical Authority.

(viii) Any Minister may, in his discretion, refuse to solemnize any marriage.

III. There shall be a Joint Commission on Marriage and the Family, consisting of three Bishops, three Presbyters, and three laymen, appointed and supported by General Convention, whose responsibility it shall be to counsel and advise Bishops and other Clergy in respect to the provisions of this and the following Canon through such means as they shall choose from time to time. It shall also be the duty of this Commission to assemble for the guidance of the Bishops and other Clergy records of experience in the execution of the provisions of this and the following Canon. The Commission shall report, from time to time, to General Convention with such recommendations and amendments to the Canons as seem advisable as a result of their study.

CANON B

OF THE MARRIAGE BOND

I. It is the doctrine of this Church that marriage is the physical and spiritual union of a man and woman, by means of which the Divine Grace is mediated to each of them and to them together for the establishment of a family and their own spiritual welfare and growth. When such union is contracted by two free persons, mentally and physically competent, it is our Lord's teaching that the two have become one flesh, and that man shall not put asunder what God has joined together. Except as hereinafter provided, no Minister, therefore, shall solemnize the marriage of any person who has previously lived as husband or wife under the civil law, whose spouse is then living; nor shall it be lawful for any member of this Church to enter upon a marriage when either of the contracting parties shall be the husband or wife of any person then living.

II. When such union is imperilled by dissension, it shall be the duty of either or both parties, before contemplating legal action, to lay the matter before a Minister of this Church; and it shall be the duty of such Minister to labor that the parties may be reconciled, in which case it shall be the

duty of such Minister to give to the parties a written statement that such consultation has taken place.

III. (i) Any person whose marriage contract has been annulled or dissolved by a civil court for any cause may apply to the Bishop of his or her domicile for his judgment as to whether the applicant is free to marry in the Church. The Bishop shall then associate with himself at least three advisors, one of whom shall be a Presbyter (where possible the pastor of the parish in which the petitioner has been a member), another one skilled in the law, a third a physician skilled in the care of souls as well as bodies, and with their advice and counsel, shall inquire into the circumstances of the former contract and the characters of the parties thereto.

(ii) If the Bishop finds that the former contract could not be the spiritual union taught by Christ, because of (a) the existence of any of the impediments specified in Canon A, Sec. II, (i), or (b) the existence of abnormalities, defects or deficiencies of character sufficient to prevent the fulfilment of the marriage vows, or (c) the existence of an irremediable mental, moral, or spiritual deterioration or incapacity, the causes of which were latent before the previous contract and exposed by the marital relationship, and that these causes as far as they can be determined are not present in a proposed marriage, he shall grant the applicant's request. In any case, whether he so finds or not, he shall give his judgment in writing to the applicant. If his judgment be favorable, the applicant may marry in the Church, provided that this section shall be applicable only to such persons who, in the judgment of the Bishop, have been faithful members of the Church or are desirous of becoming such, and are earnest seekers after Divine Grace; and provided further that the applicant has, so far as possible, complied with the provisions of Canon B, II.

(iii) Any Minister who officiates at such marriage shall take care to comply with the provisions of Canon A.

(iv) No judgment under this Canon shall be construed as referring in any way to the civil validity of the former relationship, nor to the legitimacy of children born under it.

IV. Every Bishop of this Church shall keep a written record of every judgment which he gives under this Canon. He shall also keep a sealed record of his procedure in arriving at said judgment, including a description of the evidence received and the advice given by his counselors. At the request of the Joint Commission on Marriage and the Family, he may give such case histories to the Commission for their use, but in such a case he must withhold all names contained in the sealed record.

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