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1958

WITH APPENDICES

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APPENDIX 23

REPORT OF THE JOINT COMMISSION
ON HOLY MATRIMONY

On the sixth day of the General Convention held at Honolulu in 1955, the following motion was presented and adopted in the House of Bishops:

"Resolved, The House of Deputies concurring, that the Joint Commission to Report Recommendations as to Amendments to Canons on Holy Matrimony be reconstituted by the appointment of four Bishops, four Presbyters, and four lay persons, and that it be designated as a Joint Commission on Holy Matrimony."

The House of Deputies concurred.

On the ninth day, the House of Deputies adopted the following resolution:

"Resolved, The House of Bishops concurring, that the Joint Commission on Holy Matrimony be instructed to study all canonical provisions relating to Holy Matrimony, hold hearings and take testimony thereon, and report fully thereon to the General Convention of 1958."

The House of Bishops concurred.

On the fifth day, the following resolution was presented in the House of Deputies:

"Resolved, The House of Bishops concurring, that the Joint Commission on Holy Matrimony be requested to draw up a statement on Holy Matrimony in harmony with The Form of Solemnization of Matrimony in The Book of Common Prayer; that this statement include the principle of nullity and how it may be safely applied; that it shall call upon many others, i.e. bishops, scholars, priests, chancellors, etc., to aid in the formulation of this statement which shall be presented to the next General Convention and to the Lambeth Conference."

The House of Bishops concurred, and the resolution was referred to the Joint Commission on Holy Matrimony.

The first meeting of this Joint Commission, as appointed by the Presiding Bishop and the President of the House of Deputies, was convened by Bishop Lawrence at Calvary House, New York City, May 23, 1956. It was organized with Bishop Lawrence as Chairman; Dr. Denney as Vice Chairman; the Rev. Dr. Mabry as Secretary. The names of the other members of this Joint Commission are given at the end of this report.

Acting on the instructions of General Convention, to "study all canonical provisions relating to Holy Matrimony, hold hearings and take testimony thereon," the Joint Commission set up hearings to be held in each Province, assigning the following responsibilities to members of a Province or those nearest, to save travel expense:

Disbursements

Travel, Provincial Synods	\$101.00
Bishop Carruthers: Mimeographing and Mailing Questionnaire	26.46
Travel, Meeting May 23, 1956.....	191.92
Travel, Meeting Nov. 16, 1956.....	218.91
Travel, Meeting Sept. 18, 1957.....	99.17
Travel, Meeting March 26, 1958 (expenses borne by members attending)	
Bishop Carruthers: Mimeographing and Mailing article....	14.52
Office expense	186.00
Bishop Lawrence, reimbursement toward loan.....	67.15
Total	\$905.13
Balance	\$ 00.00

W. APPLETON LAWRENCE.
 RICHARD A. KIRCHHOFFER, *Chairman*.
 THOMAS N. CARRUTHERS.
 STEPHEN F. BAYNE.
 JOHN H. ESQUIROL.
 THEODORE P. FERRIS.
 DONALD G. L. HENNING.
 GREGORY MABRY, *Secretary*.
 JOHN D. DENNEY, *Vice Chairman*.
 ANDREW DILWORTH.
 MRS. WILLIAM H. HANNAH.
 MRS. F. KING VERLEGER.

APPENDIX

The Teaching of the Episcopal Church with Respect to Holy Matrimony

(A Statement adopted by the Joint Commission on Holy Matrimony, March 26, 1958, to accompany Canons 16-18, for presentation and discussion at the Lambeth Conference.)

The doctrine and discipline of Holy Matrimony in the Episcopal Church is contained chiefly in the Book of Common Prayer and in Canons 16, 17 and 18. The form of Solemnization of Matrimony parallels other Anglican forms, and expresses the general line of Anglican doctrine. In particular, the vows exchanged by the two persons are clear statements of what we hold to be Christ's doctrine of marriage—"I take thee . . . to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's holy ordinance; and thereto I plight (or give) thee my troth."

Every person desiring to marry in the Church must also sign the following declaration (Canon 17) which expresses the Church's teaching even more fully:

"We, . . . and . . . , desiring to receive the blessing of Holy Matrimony in the Church, do solemnly declare that we hold marriage to be a lifelong union of husband and wife as it is set forth in the Form of Solemnization of Holy Matrimony in the Book of Common Prayer. We believe it is for the purpose of mutual fellowship, encouragement, 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."

Thus, the teaching of the Episcopal Church follows, in basic structure, classic Western moral theology. The ministers of the marriage are the husband and wife, who freely enter into a lifelong contract into which they are competent to enter, and receive God's blessing through His Church as a social and visible witness that their marriage is begun without impediment or doubt, and both requires and will have, if they seek it, God's gracious help in establishing and fulfilling it.

It may be noted, in passing, that the Episcopal Church apparently breaks some new ground, in its statement of the ends or purposes of marriage and the order in which they are stated. The "procreation (if it may be) of children" is not held to be necessarily the primary end of marriage; it is the second of three such ends stated; and it is clear from this ordering that it is not the doctrine of the Episcopal Church that the procreation of children must necessarily override the other purposes expressed in marriage. This reordering of the purposes of marriage has an important bearing on the moral theology of contraception and family planning and of the due relationship of husband and wife.

Canon 17 sets forth that the minister solemnizing a marriage is required to assume responsibility for establishing the civil and ecclesiastical right of the parties to marry. In particular, he is required to establish that none of nine impediments exist. They include (1) a limited consanguinity (extending only to natural parents, siblings, aunts, uncles, nieces and nephews), (2) the traditional impediments to consent, i.e. mistaken identity, mental deficiency, insanity, non-age, fraud and coercion (including undisclosed sexual perversion or venereal disease as a specific form of fraud), and bigamy, (3) a concurrent contract inconsistent with the marriage vow and, finally, (4) "such defects of personality as to make competent or free consent impossible."

The minister must also ascertain that at least one of the parties has been baptized. He must instruct them personally in the nature of Holy Matrimony, requiring them to sign the declaration quoted above. He must have three days' notice of any marriage save for weighty cause, when he may dispense from this requirement on adequate proof of responsibility, in which case he must immediately report the action to the Ecclesiastical Authority. He may decline, at his discretion, to solemnize any marriage; he may not solemnize any marriage except in accordance with the canons; and he must not solemnize any marriage where either party has been the spouse of anyone else now living, except where the Ecclesiastical Authority has specifically permitted it.

Canon 18 contains the provisions governing such permission. In brief, under this canon, any member of the Episcopal Church in good standing may

apply for judgment as to marital status, or for permission to marry, despite any previous marriage by either party, regardless of whether the previous spouse is still living, and regardless of the nature or cause of the dissolution of the former marriage. The Ecclesiastical Authority, if satisfied that the parties "intend a true Christian marriage" and that at least a year had elapsed since the final decree of divorce or annulment, may, either personally or through a court, examine the case. If any one of the impediments is found to exist or to have existed which "manifestly" establishes that "no marriage bond as the same is recognized by this Church exists," a judgment to that effect may be issued and the marriage may then be solemnized in that jurisdiction, or in any other if the judgment is approved by the Ecclesiastical Authority concerned.

In basic structure, this is "an annulment canon." The impediments listed are, in the main, the familiar ones—fraud, incompetency, coercion, etc.—which are inescapably impediments wherever the freedom and competence of the parties to a marriage are regarded as essential. Consanguinity, although not an impediment of this character, is clearly forbidden by both natural and divine law. Two new impediments appear, however, which deserve mention. One is a "concurrent contract inconsistent with the contract constituting canonical marriage", of which examples might be (1) a mutual agreement not to procreate children even though there was no adequate reason for such action, or (2) a mutual agreement to seek divorce after a trial period of married life. This impediment requires little justification where the existence of such an agreement can be established. It could, perhaps, be taken as an instance of mutual fraud.

The second impediment is the much-discussed "defects of personality such as to make competent or free consent impossible." This ground was developed by the Joint Commission on Holy Matrimony in the draft canon presented in 1946. Although the draft was radically reworked before adoption by the Convention, this impediment was included as presented. It was intended to open new ground, to permit examination of deep-seated emotional disorders and deficiencies as a cause of marital failure. It was the feeling of the Commission in drafting it that freedom and competence to marry were matters profoundly affected not merely by impediments clearly to be established in legal terms, such as insanity or fraud, but also by emotional and psychological impediments which were not susceptible of legal definition at all.

There are no precise tests which can establish such a psychological impediment, (if one exists); and this difficulty has beset both the interpretation and the application of this Canon. Few would deny that such personality defects—in the form of the persistence of infantile patterns of conduct, over-dependence on parents, inability to accept marital responsibilities, and the like—exist. Many more, however, would feel that to establish such defects with certainty is an impossibility (at least in our present stage of psychological knowledge), and that a judgment based on such a ground must necessarily be so subjective and vague as to rob the law of the clarity any honest law requires. Many others, however, feel that it is of great importance for the Church to recognize frankly that such psychological impediments do exist, often manifesting themselves long after the marriage is solemnized, when the tensions of children or of job insecurity and the like take their toll.

Most debated of all the provisions of this canon, however, is the celebrated ambiguity, under which an impediment must be established "to exist or to have existed," in order for a favorable judgment to be given. At first

glance, at least, this ambiguity seemed to cut at the nerve of traditional annulment procedure. On this ground, many bishops will refuse to give favorable judgment except where the impediment can be certainly shown to have existed at the time of marriage. Others have welcomed the flexibility which the phrase grants, since it permits them to deal with personality defects which often are latent at the time of the marriage and only appear later in life. Still others welcome the ambiguity because it permits them, in effect, to apply a doctrine of "spiritual death" (or a variation of it) in place of the traditional, legal, Western procedure of annulment.

Certainly a doctrine of "spiritual death" has a legitimate place in Christian moral theology, although it is not commonly found outside of the Orthodox Churches. It is, however, new in Anglicanism, which has generally followed the "Western" line; and much discussion has been aroused, and much negative criticism as well, because the doctrine seems to some to slip into Canons by ambiguity rather than by frank debate and adoption.

The ambiguity has also given rise to a popular impression that there are two schools of thought among bishops—one loosely called "a legalistic attitude" and the other "a pastoral approach." Actually, no such distinction is valid nor could it be; every judgment under this canon is given by a pastor acting under law, and therefore must of necessity be both pastoral and legal. But the distinction reflects the major difference between those who hold to a strict annulment procedure, and those who prefer a procedure based on a belief in what is traditionally called a doctrine of "spiritual death."

It has been notable that, in practice, there seems to be little difference in the judgments given by bishops, in similar cases, regardless of which school of thought they follow. Comparisons of cases have been made by the Commission, most recently in 1957; and it was clear that applicants would have had much the same answers no matter to which of perhaps 60 or more diocesan bishops they applied.

Other, less celebrated ambiguities also appear in the Canon. The most annoying, apparently, is also the least significant—that is the phrase "in intention lifelong" (Canon 18, Sec. 2 (b)). The interpretation of such a phrase must clearly be governed by the far more sharply defined terms of the pre-marital statement in Canon 17, "a lifelong union of husband and wife as it is set forth in the . . . Book of Common Prayer." Thus, the ambiguity seems to be no more than an infelicity of phrase.

More significant, perhaps, is the difficult phrase, "that no marriage bond as the same is recognized by this Church exists." In one sense, this might seem to make each bishop a sole authority for determining the validity of any marriage. In another sense, it simply begs the question. It may be hoped that future Conventions will work to clarify this sentence or else establish more satisfactory criteria for such a judgment.

The canons do not, at any point, now recognize adultery as a sufficient cause *per se* for either divorce or the remarriage of the "innocent party" following divorce. The reasons for this omission were two-fold. One was the general feeling of the Commission, apparently shared by the Church, that adultery was usually a symptom and only rarely if ever a cause of marital discord. The other was the commonly shared suspicion that the exception in St. Matthew was of most doubtful textual authenticity, and ought not to be recognized in contemporary canon law.

The canons do not bar from the Holy Communion those who divorce. Canon 16, however, states (Section 3 (a)) that the communicant status of

any person married otherwise than as the two following Canons permit is in abeyance until the bishop gives judgment; and further states that such marital irregularity is a barrier to Baptism, Confirmation and the Holy Communion, unless the bishop judges otherwise. Provision is made for the quieting of uneasy consciences, by appeal to the bishop by the persons affected as well as by the clergyman.

Finally, although the great bulk of the three Canons refer to the duties of the ministers and bishops, Canon 17 does specifically enjoin obedience on the laity as well. Not only may their marriage be not blessed, but they may not marry except in accordance with the disciplines the Canons establish. Nor may they approach legal action to dissolve a marriage without first bringing their difficulties to a minister, for his efforts at reconciliation.

The principal provisions of the doctrine and discipline of the Episcopal Church with respect to Holy Matrimony have been outlined, and some indication given as to the more debatable, and debated, sections. From this, it should be clear that there is no reluctance on the part of the Episcopal Church to declare its firm adherence to the traditional and Biblical standards of marriage as Christians understand it. There is a considerable measure of dissatisfaction with the present form of our Canons, for the reasons indicated—chiefly that they are imprecise, offer too much latitude of interpretation, rely too much on subjective judgment, and seem to give away with one hand what they claim with the other.

Further criticism might well be made that they do not deal directly with some of the most pressing marital situations, such as that of the adult convert, who comes later in life and perhaps after one or more unsuccessful marital experiments, to a working faith, or to the still deeper and more troubling situation of the growing lack of any real understanding or expectancy of what marriage is and can be. To call the ignorance of a young couple, who have been drenched in secularism all their life, a "concurrent contract inconsistent with the contract constituting canonical marriage" is probably a correct judgment; but it is one difficult to establish, and failing to meet the actual situation of a great multitude of people in our society. A more direct and sharper attack would be welcomed by many.

So too do many look for second thoughts about baptism as a necessary prerequisite for both parties. Most of us would agree in a distaste for baptism under pressure, or enforced by canonical requirements. Yet it is manifestly unfair to expect the fulfillment of Christian standards from those who are not Christians and indeed may not even wish to be.

There is also no little dissatisfaction with the requirement that the minister must himself establish the freedom of applicants for marriage from any of the impediments listed. It is manifestly impossible for any minister, however gifted, to plumb some of the depths suggested by the impediments mentioned in Canon 17; and there is corresponding hope that the consciences of the clergy may be relieved from so sweeping an obligation.

It is, perhaps, unfair to generalize. Yet, it would be agreed by the great majority of the bishops who administer the discipline of the Church, that the present Canons, imperfect as they are, do permit a positive and redemptive approach to the heavy problems of marriage and divorce in our society; that they do permit approximate justice to be done without corroding our witness to Christian standards; and that, perhaps most important of all, they permit the accumulation of a store of experience which will, in due course, enrich and purify our moral theology in this area. This last is, perhaps, the most important function of any canonical legislation.