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ANGLICAN-
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COMMISSION

Marrage - Mixed

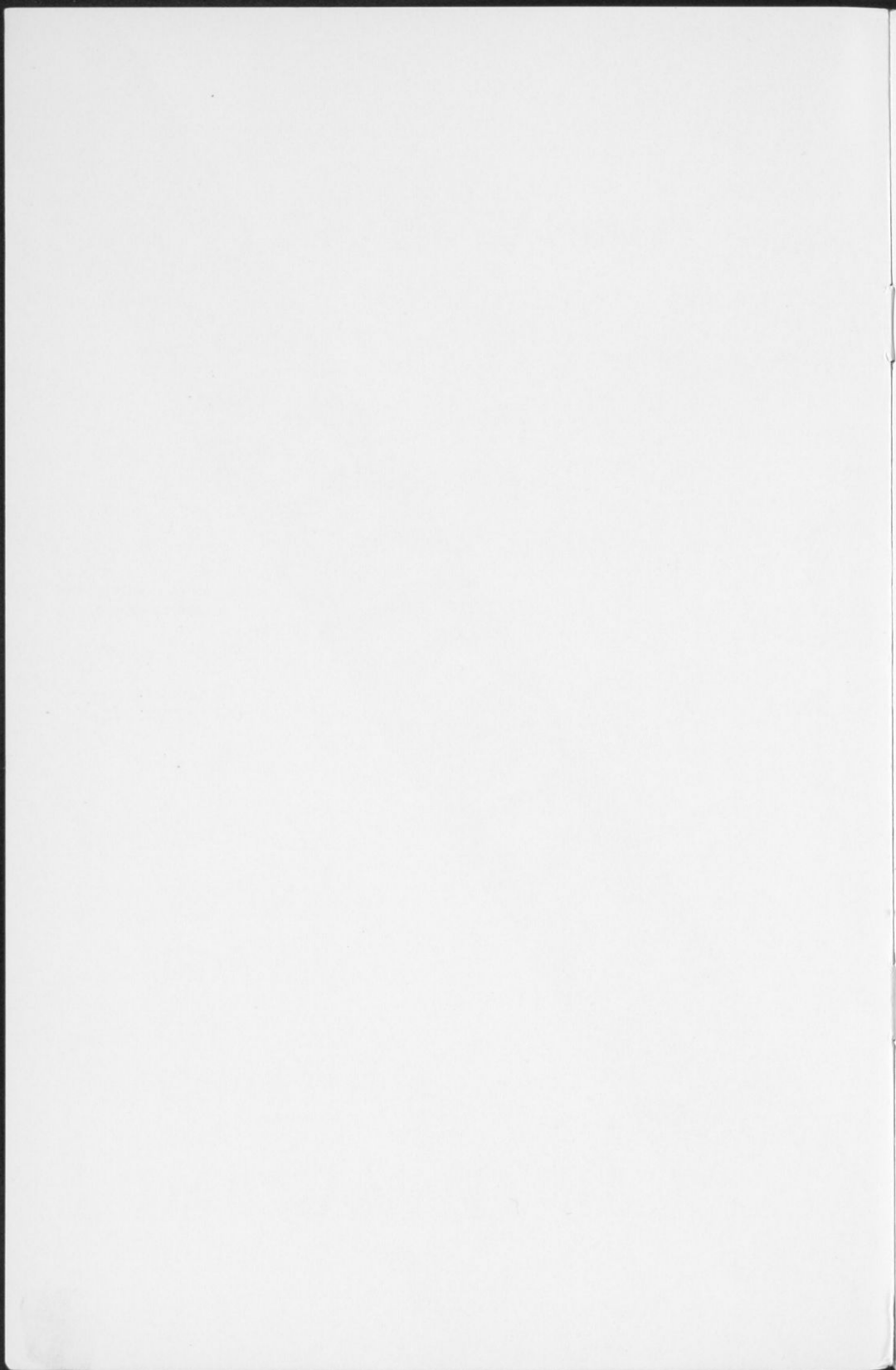
FINAL REPORT

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ON THE
THEOLOGY OF
MARRIAGE
AND ITS
APPLICATION TO
MIXED MARRIAGES



FINAL REPORT

COMMISSION ON THE THEOLOGY OF MARRIAGE AND ITS APPLICATION TO MIXED MARRIAGES

June 27, 1975

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touching most people in many parts of the world it will stimulate further reflection, further clarification. Above all I hope it will help to promote that pastoral collaboration which, following the lead of the Holy See in "Marriage Mixta," it strongly recommends.

JOHN CARDINAL WILLIAMS
The President, Secretariat
for Promoting Christian Unity

I am glad to commend the Report of the Commission set up by the Secretariat for Promoting Christian Unity with the approval of Pope Paul VI and my predecessor, Archbishop Michael Ramsey, in 1967 as a result of their previous work. The Commission's report is the result of eight years of work in which the members of the Commission have shown a calm and fruitful discussion of the subject resulting in a valuable document, unique in this field.

FOREWORDS

There can be no doubt of the value of the Report of the Commission. It is a document which has brought into sharper focus the differences between the Catholic Church and the Anglican Communion. It is a document which has helped to bring about a better understanding of the marriage doctrine and discipline of the two Churches. I warmly welcome the Report.

I have pleasure in commending the Final Report of the Commission which was set up early in the dialogue between the Catholic Church and the Anglican Communion to make a joint study of the theology of marriage with special reference to mixed marriages. No one questions that mixed marriages loom large as a problem in interchurch relations and ecumenical dialogue, since the problems they raise touch the daily lives of Christians everywhere. It is not always so readily recognized that a calm and fruitful discussion of the subject can only take place against a background of thorough understanding of the marriage doctrine and discipline of the communions concerned.

The present document is to be commended for approaching the task in this way—an approach which was made easier for the Commission by the generous help of expert collaborators and consultants.

We must rejoice at the large measure of agreement manifested in the Report, as well as the calm, clear statement of persisting divergences. It is the nature of ecumenical dialogue that the Report of a joint commission does not offer the last word on its subject: in a matter

touching most people in many parts of the world it will stimulate further reflection, further clarification. Above all I hope it will help to promote that pastoral collaboration which, following the lead of the Holy See in "*Matrimonia Mixta*," it strongly recommends.

JOHN CARDINAL WILLEBRANDS
The President, Secretariat
for Promoting Christian Unity.

I am glad to commend the Report of the Commission set up by the Secretariat for Promoting Christian Unity with the approval of Pope Paul VI and my predecessor, Archbishop Michael Ramsey, in 1967 as a result of their previous meeting in Rome. The Commission has taken eight years over its work, and I recognize in its contents a careful and full study of the subject resulting in a valuable document, unique in this field.

There can be few points of contact between the members of the two communions which are fraught with more potential opportunity—either for ecumenical advance, or for discord. Mutual understanding, therefore, can do nothing but good for both Anglicans and Roman Catholics. On that ground I warmly welcome the Report.

There remain, however, practical matters which are to some people concerns of strong principle and to others sometimes mere irritants and sometimes tragedies. So I welcome the suggestions made by the Commission for modifications in Roman Catholic law and practice to ease this situation until there is achieved complete mutuality.

Also I am glad of the recommendations for greater joint pastoral care both before and after inter-church marriages. Co-operation on these occasions would have the added advantage of bringing the clergy of the two churches together at a point which could lead to mutual trust and common concern in other areas of pastoral work to our ecumenical benefit.

It is my hope that the Report will be widely studied and discussed both in the synods of the Anglican Provinces and in the Roman Catholic Episcopal Conferences as well as by the public at large.

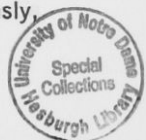
DONALD CANTUAR

INTRODUCTION

The Report which we here present begins with an account of the origin and progress of the joint work which led to its compilation. Hence there is little need for us to do more than express our satisfaction at the spirit of candour and friendliness with which from beginning to end the members of the Commission tackled their work, and our gratitude for the promptness and generosity with which our consultants (see below) gave time and trouble either in writing papers or in attending particular meetings.

Experience however has already suggested that, in commending the Report to the careful and sympathetic study of both our communions, and perhaps to others as well, we may forestall misunderstandings by emphasizing certain features of its structure and purposes.

Section A (paras. 1-14) is narrative in character. It describes the problems of our subject as these presented themselves to us at various stages of our work. Thus the problems may seem here and there (e.g., in the earlier part of para. 9) to be stated rather more sharply than we would have wished at a mature stage of our discussions. It is, obviously,



in sections B, C and D that the mature results of our deliberations are formally set out.

Even in these, brevity may at times have been the enemy of precision or balance. This was less likely to happen in those parts of the Report (and there are happily many) in which we have striven to find mutually acceptable statements where previously divergence was too easily taken for granted; it is more likely to have occurred where, for the sake of completeness and proper perspective, present or recent positions of either side have been summarily described. Thus for example the insistence, in connection with the proposals about canonical form, on the ministerial role of the partners reflects classical western theology of marriage. The total context of the Report amply shows that it was not our intention here to minimize the role of the Church in Christian marriage (the Report would hardly have any *raison d'être* if this were not assumed) nor yet the role of the Church's ordained minister as its authorized witness.

Again, in para. 16, in describing briefly a general contrast and development, the sole intention of the Report is (as recalled in para. 19) to point a contrast of *emphasis* which has its practical importance.

A consultant whose valuable help is not acknowledged in the text is Msgr. R. Brown of Westminster, England, whose comments at the draft stage unfortunately reached us too late to affect the final text. His observations on para. 33 suggest that our intention here could be clarified further. The intention is certainly not to undervalue the specific pastoral purpose of tribunal procedures (which is in fact strongly underlined elsewhere, para. 53—a paragraph which should, as the text says, be read in conjunction with para. 33); our intention is simply to repudiate the suggestion that such pastoral purposes are allowed to justify distortion of the law.

Msgr. Brown's observations on para. 39 prompt two further clarifications: the literature here cited in a footnote is of course given purely by way of example, and its citation is not intended to suggest that there is in process any factitious extension of the grounds for annulment, unrelated to a growing and deepening understanding of the meaning of marriage. Moreover any full discussion of the practice of marriage courts which varies a good deal from country to country would involve a close study of recent decisions (cf para. 43) for which full documentation is available but which would have carried us beyond the scope of the present Report. In this connection too the work of the Pontifical Commission for the Revision of the Code of Canon Law embodied so far in its schema *De Sacramentis* is of primary importance.

The Commission regrets that in drafting its Report it did not have access to the booklet *The Church's Matrimonial Jurisprudence: A State-*

ment of the Current Position, published by the Canon Law Society of Great Britain and Ireland. Readers of paras. 33-55 of the Report will find in this booklet a valuable aid.

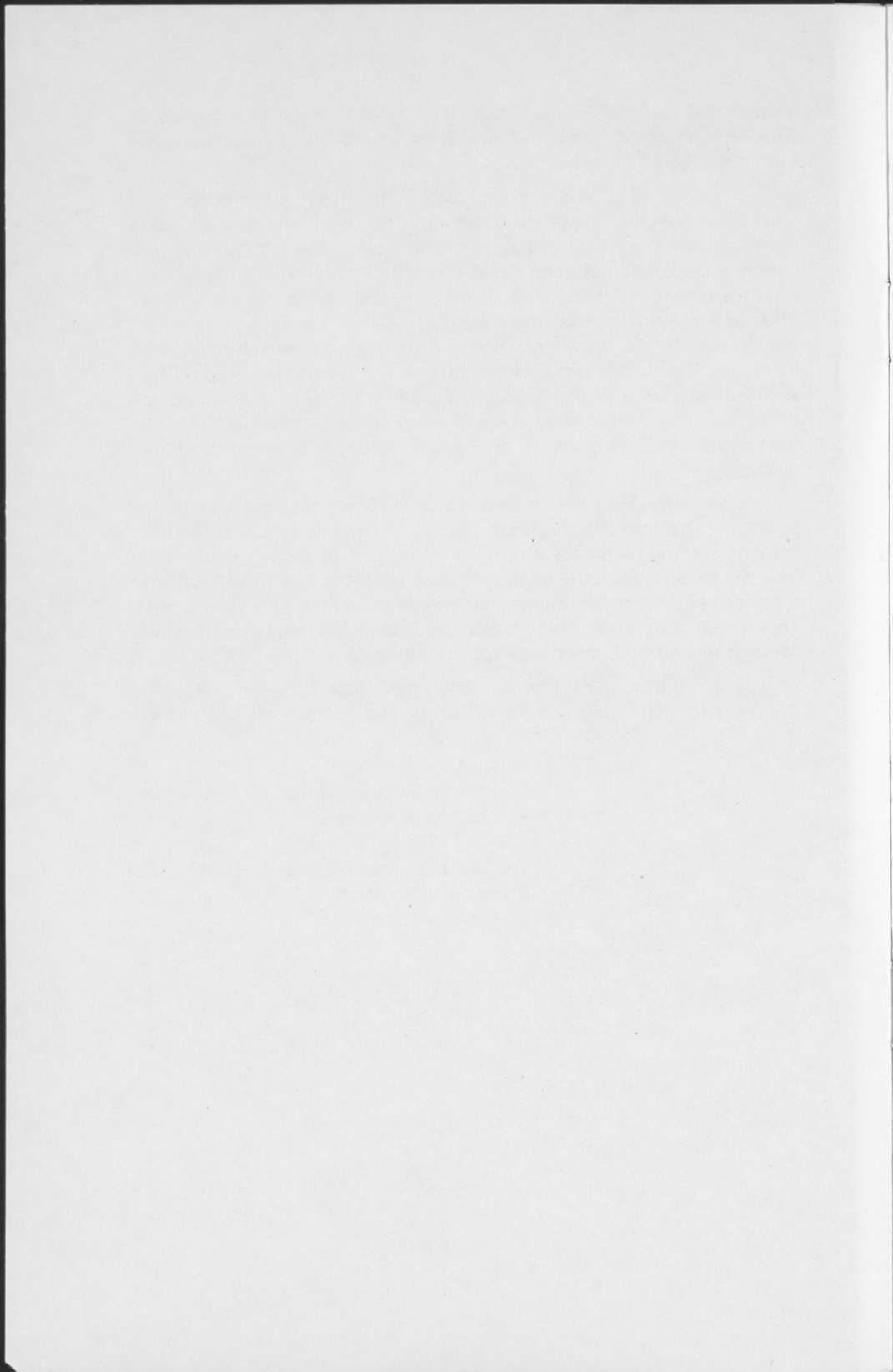
But when all is said, the sections of this Report are not so many treatises. The whole Report is an attempt, by people of many concerns which are all merged in the pastoral, to explore, in the spirit of the Common Declaration of Pope Paul VI and the Archbishop of Canterbury, what we have in common both of doctrine and of disciplinary purpose in a matter which comes home most closely to the lives of men and women and to the health of society. In explaining ourselves to each other, we have made no attempt to obscure differences; but rather, seeing that in the discords which persist over mixed marriages, the differences can themselves too easily obscure the common grounds, we have sought to exhibit and, it may be, to reconcile differences without discord.

If we have seen the ecclesiological differences lying behind the problems of mixed marriages as beyond our power to solve, we have set out practical proposals which the majority of us believe would allow integrity to our traditions, whether shared or distinctive, to co-exist with a better spirit than has marked our relations in this field in the past. They would thus allow also for the development of that joint pastoral concern which is the main hope for the future (paras. 73-77).

It is in this spirit that we offer this Report to our respective Churches for their study and for such action as we hope will soon follow.

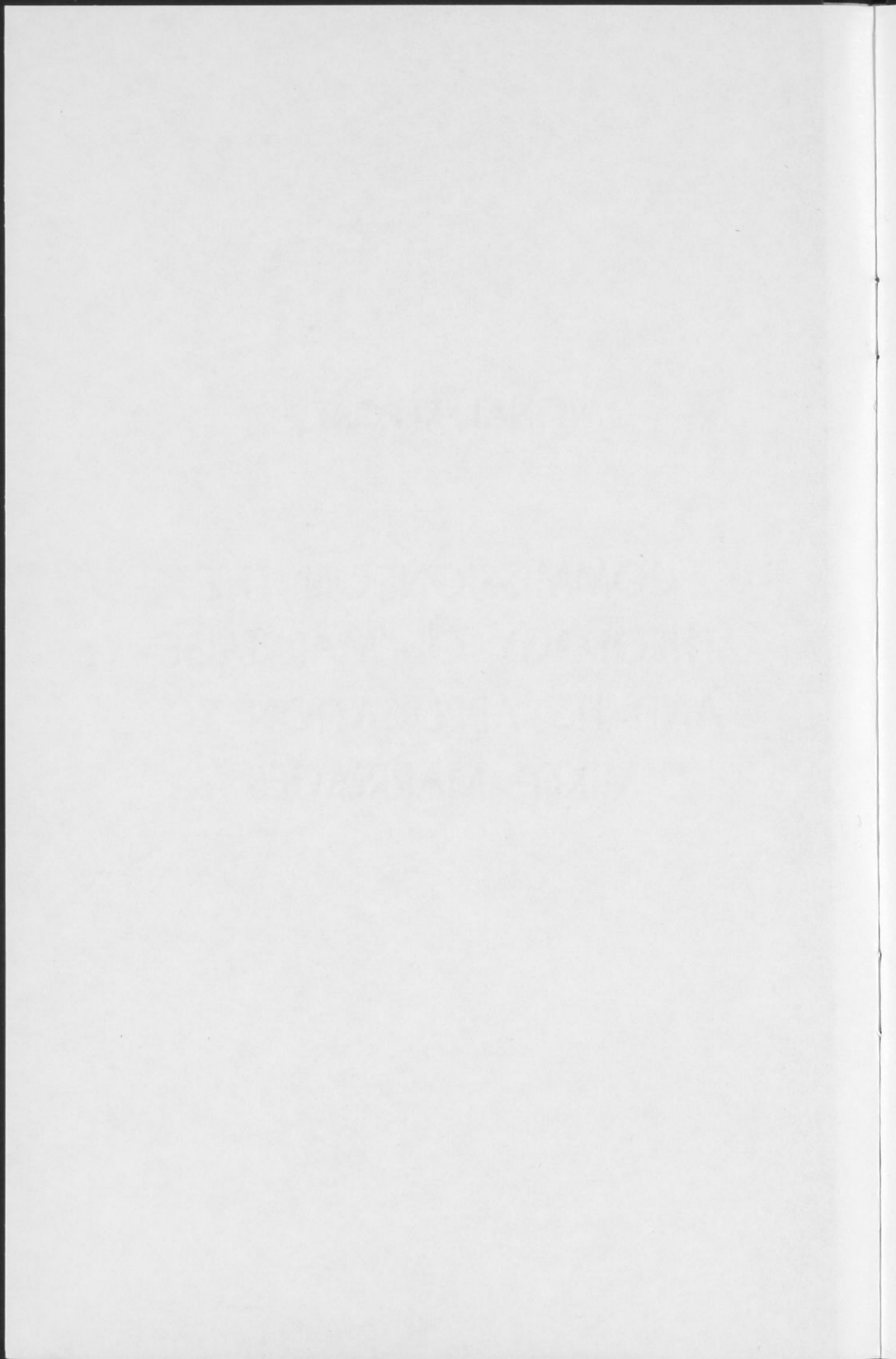
The Most Reverend George O. Simms
Archbishop of Armagh

The Most Reverend Ernest L. Unterkoefler
Bishop of Charleston, S.C.
Co-Chairmen



FINAL REPORT

COMMISSION ON THE
THEOLOGY OF MARRIAGE
AND ITS APPLICATION TO
MIXED MARRIAGES



MEMBERS OF THE COMMISSION

ROMAN CATHOLIC MEMBERS

The Most Rev. Ernest L. Unterkoefler, Bishop of Charleston, S. Carolina, USA. (*Co-Chairman*);

The Rt. Rev. Langton D. Fox, Bishop¹ of Menevia, Wrexham, N. Wales;

The Most Rev. Francis J. Spence, Bishop of Charlottetown, Prince Edward Island, Canada²;

The Rt. Rev. Msgr. Professor P. F. Cremin, DD, IUD, St. Patrick's College, Maynooth, Ireland.

Secretary: The Rt. Rev. Msgr. W. A. Purdy, Vatican Secretariat for Promoting Christian Unity.

ANGLICAN MEMBERS

The Most Rev. George O. Simms, DD, Archbishop of Armagh, and Primate of All Ireland.³ (*Co-Chairman*);

The Rt. Rev. Donald H. V. Hallock, Bishop of Milwaukee, USA (*resigned, on resigning his see, 1974*);

The Rt. Rev. Ralph S. Dean, Bishop of Cariboo, Canada, (*resigned, on resigning his see, 1974*)⁴;

Professor the Rev. Canon G. R. Dunstan, DD, FSA, King's College, London;

The Rev. L. Mason Knox, JCD, Sacred Heart School of Theology, Hales Corners, Wisconsin, USA (*since 1974*);

The Rev. Barnabas Lindars, SSF, DD, Faculty of Divinity, University of Cambridge (*since 1974*);

¹ Auxiliary Bishop at the time of his appointment.

² Auxiliary Bishop to the Military Vicar, Canadian Forces, at the time of his appointment.

³ Archbishop of Dublin at the time of his appointment.

⁴ Replacing (as Anglican Executive Officer) the Most Rev. Edwin Morris, formerly Archbishop of Wales, who was overtaken by illness between appointment and the first meeting of the Commission.

Secretaries: The Rev. Canon J. R. Satterthwaite, Church of England Council on Foreign Relations (until 1971)¹

The Rev. Prebendary Henry Cooper, Advisor to the Archbishop of Canterbury on Roman Catholic Pastoral Matters (since 1971).

CONSULTANTS

At the Fourth Meeting: Dom Henry Wansbrough, OSB, and the Rev. Fr. Michael Sharrat; Lady Oppenheimer² and the Rev. Dr. Barnabas Lindars, SSF.

At the Fifth Meeting: The Rev. Dr. Brian O'Higgins³; The Worshipful Chancellor the Rev. E. Garth Moore.

The following other persons, to whom the Commission is indebted, contributed papers at the request of members of the Commission:

The Rev. Fr. A. M. Ambrozic, "Indissolubility of Marriage in the New Testament: Law or Ideal?" (1973)⁴;

The Rt. Rev. H. G. J. Beck, "Proposed Pastoral Guidelines for Inter-Christian Marriages" (1968);

The Rt. Rev. Bishop B. C. Butler, OSB, "Vatican II's Ecclesiology" (1974);

The Rev. John Coventry, SJ, "Theological Trends: Inter-Church Marriage" (1974)⁵;

The Rev. William J. La Due, "Marriage: Sacramentality, Validity, Indissolubility" (1974);

John Lucas, Esq., "The Doctrine of a Metaphysical *Vinculum*"² (1973);

Professor the Rev. Canon John Macquarrie, "The Nature of the Marriage Bond (*Vinculum Conjugale*)" (1973).²

¹ Subsequently consecrated Bishop of Fulham.

² Written submission published in *Theology* LXXVIII, May 1975.

³ Written submission published in *The Irish Theological Quarterly* XLI, July-Oct. 1974.

⁴ Published in *Studia Canonica* 6, 1972, pp. 269-288.

⁵ Published in *The Way*, April & July 1974.

THE REPORT

SECTION A

PROCEEDINGS OF THE COMMISSION

1. The Commission was established jointly in 1967, on the one part by the Roman Catholic Secretariat for Promoting Christian Unity with the approval of His Holiness Pope Paul VI and on the other part by the Most Reverend and Right Honorable A.M. Ramsey Lord Archbishop of Canterbury on behalf of the Anglican Communion.

2. The problems arising from mixed marriages¹ had been recognized as one of the chief of those "practical questions" referred to in the Joint Declaration made by the Pope and the Archbishop in Rome in March 1966; and when the Anglican/Roman Catholic Joint Preparatory Commission met at Gazzada in January 1967, one of its first acts was to recommend the setting up of a special commission to consider the Theology of Marriage with special reference to Mixed Marriages. The recommendation was immediately accepted on both sides.

3. These events fitted in with other ecumenical developments. Early in 1967, from 26 February to 4 March, a group designated by the same Vatican Secretariat for Promoting Christian Unity had met at Nemi with a group convened by the Faith and Order Department of the World Council of Churches to discuss prepared papers on the pastoral and ecumenical difficulties inherent in marriages between Roman Catholics and other Christians. The Secretariat accepted the need to pursue "bilateral" discussions of the problem with major groups or communions of Churches, with the possibility of continuing relevant exchanges with the WCC as occasion arose.

4. The members of the Commission are named above. Membership on the Roman Catholic side remained unchanged, though illness regrettably prevented the Bishop of Menevia from attending the Fifth Meeting. On the Anglican side, an early illness and two episcopal retirements occasioned the changes which we have recorded. At all our meetings Archbishop Simms and Bishop Unterkoefer presided over alternate sessions.

¹ "Ecumenical marriages" and "inter-Church marriages" are terms in experimental use in some places; we have retained the formal term "mixed marriages" for convenience, without prejudice to others.

5. The Commission has met six times: at St. George's House, Windsor Castle, from 16 to 18 April, 1968; at Pineta Sacchetti, Rome, from 27 to 30 November, 1968; in London, from 22 to 25 November, 1971; at Haywards Heath, at the Priory of Our Lady of Good Counsel, from 9 to 12 April, 1973; at the Divinity Hostel, Dublin, from 1 to 5 April, 1974; and at Casa Cardinale Piazza, Venice, from 23 to 27 June, 1975, when this final report was given unanimous approval.

6. At the first meeting (1968), among the documents used to initiate discussion was a working paper on "Mixed Marriages," prepared by the Secretariat for the colloquy at Nemi, in which one member of the Commission had participated. This occasioned a preliminary survey of our problem in its entirety: the nature of marriage, its sacramentality and indissolubility, and the procedures of our Churches in relation thereto; the mixed marriage, requiring, in both its difficulties and its opportunities, pastoral action from the Church, in some respects juridical in form; hence the law and practice of the Roman Catholic Church relating to "canonical form," to the *cautiones* (as they were then called) concerning the upbringing of children, and to dispensation from the impediment of "mixed religion"; and the necessity of pastoral care, exercised within both Churches and, where possible, jointly between them, in preparation for the mixed marriage and in its continued support in the life of the Church. At the end of this meeting agreement was recorded on "The Fundamental Theological Principles," which, because they have governed our deliberations, in some sense, ever since, are here quoted in full:

THREE FUNDAMENTAL THEOLOGICAL PRINCIPLES

- i. That Holy Baptism itself confers Christian status and is the indestructible bond of union between all Christians and Christ, and so of Christians with one another. This baptismal unity remains firm despite all ecclesiastical division.
- ii. That in Christian marriage the man and the woman themselves make the covenant whereby they enter into marriage as instituted and ordained by God; this new unity, the unity of marriage, is sacramental in virtue of their Christian baptism and is the work of God in Christ.
- iii. That this marriage once made possesses a unity given by God to respect which is a primary duty; this duty creates secondary obligations for the Church in both its pastoral and its legislative capacity. One is the obligation to discourage marriages in which the unity would be so strained or so lacking in vitality as to be both a source of danger to the parties themselves and to be a disfigured sign of or defective witness to the unity of Christ with his Church.

Another is the obligation to concert its pastoral care and legislative provisions to support the unity of the marriage once it is made and to ensure as best it can that these provisions be not even unwittingly divisive.

7. Our Second Meeting (1968) was held at a time when it was known that new legislation was in prospect to replace the Instruction, *Matrimonii Sacramentum*, of 1966, and some hope was entertained that our unanimous Report might influence its content. In fact, upon advice, our Second Report was drafted and presented with this in view, and in accordance with the advice which we had sought the Report was brought to the notice of the relevant Vatican authorities. In particular, while aware on the one side of the theological principles underlying the guarantees for the Roman Catholic upbringing of the children of mixed marriages, and on the other aware that the pastoral and ecumenical consequences of these requirements are disturbing to many people, we could recommend that "no more be asked of the Anglican party than was proposed by the Synod of Bishops in Rome on 24 October 1967, namely that he knows of the obligation in conscience of the Roman Catholic party and at least does not rule out the Roman Catholic baptism and education of the children." This modification was, co-incidentally, we believe, allowed in the new legislation, the Apostolic Letter *Matrimonia Mixta* issued *motu proprio* by Pope Paul VI on 31 March 1970.¹ The other legislative proposal in our Second Report concerned canonical form. Adhering closely to the intention of the Decree of the Sacred Congregation for the Oriental Churches, *Crescens Matrimonium*, dated 22 February 1967², we suggested a similar provision for marriages between Roman Catholics and Anglicans in the following terms (expressly leaving the details to be worked out if the principle were accepted):

The contracting parties are the ministers of Holy Matrimony. When one party is Anglican it seems to us entirely reasonable that the parties should decide between themselves whether they shall contract marriage before a Roman Catholic minister or before an Anglican minister, and whether in a Roman Catholic or an Anglican church. Therefore we would recommend that, on condition that joint pastoral preparation has been given, and freedom to marry established to the satisfaction of the bishop of the Roman Catholic party and of the competent Anglican authority, the marriage may validly and lawfully take place before the duly authorized minister of the Church of either party. Should a minister of the Church of the other party assist in the solemnization, as he might,

¹ A.A.S. 62, 1970, p. 261.

² A.A.S. 59, 1967, p. 166.

on the invitation of the parties and with the concurrence of the local minister, we would hope that he would be assigned an appropriate part of the rite used in that Church and not any addition to it.

Again we urged the importance of good pastoral care to enable the spouses (in the words of the Pastoral Constitution of Vatican II) to "experience the meaning of their oneness and attain to it with growing perfection day by day." (*Gaudium et Spes*, 48)

8. Before our Third Meeting (1971) there was a long interval, occasioned, first, by our waiting for the new legislation, and secondly (its contents having been perceived) for some general picture to be obtained of the diverse interpretations given to it by Episcopal Conferences in the liberty and discretion which it extended to them. We had to recognize that no new legislation could be expected for a considerable time; it was important, therefore, to take the measure of what we had. During this time also the Anglican/Roman Catholic International Commission (ARCIC) was developing its theological study which would, in time, strengthen the ecumenical foundation of our own work—as it did when it published its agreements on the Eucharist (1971) and the Sacred Ministry (1973). The Archbishop of Canterbury, meanwhile, had appointed a small commission to examine the doctrine of marriage and its application to some questions of discipline in the Church of England, and the Report of this commission, *Marriage, Divorce and the Church* (1971) was also before us. Here, therefore, with *Matrimonia Mixta* and the reports of local episcopal direction and local pastoral activity, were ingredients for the agenda of our Third Meeting. From it emerged the pattern of our future work, and, indeed, of this Final Report.

9. We were soon made aware that behind the differences of practice, both pastoral and juridical, lay deeper problems of theology. Behind the requirement of a promise concerning the baptism and upbringing of children, not simply as Christians and therefore members of a Christian Church (an obligation which none of us would dispute) but particularly as Roman Catholics, lay a doctrine of the Church which Roman Catholics cannot abandon and which Anglicans cannot accept. Behind the various means developed in our respective traditions for dealing, juridically and pastorally, with marriages which have broken down or other defective marital situations—of which more will be written explicitly later—there lay the possibility of deep dogmatic differences concerning the strict indissolubility of marriage, whether "natural" or "sacramental"; and this possibility called to be explored. Behind the Roman Catholic requirement of "canonical form" for the valid celebration of a mixed marriage, as for any marriage of a Roman Catholic, although historically the legislation was disciplinary and regulative in intent, there lay in some minds the possibility that its retention

in the new *motu proprio* implied some ecclesiological defensiveness also, some notion that the Anglican priest could not, for reasons concerning Holy Orders, be empowered to perform for a Roman Catholic partner that office in marriage which a priest in communion with the See of Rome could perform. In short, by the time of our Third Meeting our Commission had, on the one hand, achieved a sufficient degree of mutual trust, and, on the other, experienced a sufficient degree of mutual provocation, to seek out and face the material which occasions suspicion and mistrust between our Churches concerning marriage and mixed marriages. Our task henceforth was to examine this, piece by piece, and in this way to work towards a resolution of our difficulties. We hoped, and we formally requested, that the ecclesiological questions would be undertaken for us by ARCIC, which had within itself greater theological competence than we could command. This request could not be met: ARCIC had already an agenda too heavy and a timetable too strict for any such diversion to be entertained. Accordingly, we had to attend to these questions ourselves; and, having attempted them, we were the more convinced that there remained much in them requiring more thorough theological analysis. (v. *infra*. para. 66).

10. For our Fourth Meeting (1973), therefore, we made more extensive provision. We published our Third Report, with the permission of our respective authorities¹, in order that others in our Churches might know and, if willing, comment upon the questions which we had raised. We invited scholars from both Churches to contribute papers on the philosophical and theological aspects of indissolubility, particularly as these had found expression in the terminology of the *vinculum matrimonii*. We invited four consultants to assist us at our meeting, two exegetes and two philosophical theologians, in a concerted effort to encompass at least the major theoretical dimensions of the indissolubility of marriage. We benefited greatly from this assistance, and we record our thanks to the authors of it. As a result we were able to state agreements and disagreements on the methods and results of exegesis of the relevant texts of Holy Scripture.² We were able to re-affirm our earlier agreement in our understanding of marriage as being of its nature a lifelong and exclusive union, and in our requirement of an intention to enter into such a union in everyone contracting a true marriage. At the same time we were able to distinguish more sharply the lines of disagreement among canonists and theologians—lines not co-terminous with those demarcating our Churches—over the propriety of the various responses made to marriages which have broken down or otherwise been found defective. Both the theology of marriage and

¹ *Theology* LXXVI, April 1973, p. 195; *The Tablet*, 227/6926 March 1973,

² See below, para. 32

responses to defective marital situations receive fuller treatment in later sections of this Report. The Fourth Meeting left for the Fifth a further discussion of the question, posed by each Church to the other in relation to its theory and practice, "If this is what you do to enable your Church to recognize (if not actually to solemnize) a new marital union after the termination, otherwise than by death, of a first, how can you still maintain that you hold marriage, of its nature, to be exclusive and indissoluble?"

11. For our Fifth Meeting (1974) we were prepared by the replies received to a Questionary sent to all Roman Catholic Episcopal Conferences, and to all Anglican Primates and Metropolitans, in areas where our two Churches co-exist, and by more papers prepared by consultants as well as by some from among our number.¹ Two consultants gave valued help at the meeting. The yield of the Questionary was not weighty, grateful as we were to our respondents; a wide diversity in the manner and quality of answers given to questions, not always (in hind-sight) framed precisely enough, yielded little information from which valid generalizations or conclusions could be drawn; though encouraging pictures of determined pastoral development emerged here and there.

12. Our discussion at this stage centered mainly on the relation between marriage as grounded in the "natural order," the order of creation, and marriage in the sacramental order, the order of redemption and of sanctifying grace. It had seemed from our very first meeting that we agreed in finding no dichotomy here. Thus the Anglican doctrine, given formal expression in its liturgy, conceives marriage as God's ordinance in the order of creation, taken by Christ and the Church into the sacramental order as representing the covenanted unity of Christ and the Church, and signifying effectively the sanctification of the marriage and its partners within the communion of Christ and the Church.

13. For the Catholic members the impression gained at the first discussion was confirmed that, despite traditional differences of linguistic usage², this account is one with which they can fully agree;

¹ cf. G. R. Dunstan, "Natural and Sacramental Marriage," was printed in *Beyond Tolerance: The Challenge of Mixed Marriage*, ed. Michael Hurley, Geoffrey Chapman 1975, pp. 67-72; and see below, para. 20, note.

² We may quote here, in relation to Anglican use of the word "sacrament" with reference to marriage, what ARCIC wrote of it with reference to ordination, namely that it is "limited by the distinction drawn in the Thirty-nine Articles (Article 25) between the two 'sacraments of the Gospel' and the 'five commonly called sacraments.' Article 25 does not deny these latter the name 'sacrament,' but differentiates between them and the "two sacraments ordained by Christ' described in the Catechism as 'necessary to salvation' for all men." *Ministry and Ordination*, p. 11 n. 4, SPCK 1973.

though they would not immediately understand how it was consistent with a discipline which recognizes subsequent marriage during the lifetime of the previous partners. Similarly discussions about the Catholic discipline of the Pauline privilege and the wider *privilegium fidei* made it necessary for the Anglican members to try to understand how this doctrinal position was consistent with a distinction between the natural and sacramental orders sharp enough to allow the Roman Catholic Church to dissolve a marriage when for lack of valid baptism the marriage does not enjoy the absolute security of a "sacramental" marriage. At the end of the Fifth Meeting provision was made for the drafting of this Final Report, the Commission itself having indicated its content and tendency.

14. At our Sixth Meeting (1975) the Report, which had been sent to members late in 1974, criticized by them and revised, was further scrutinized, amended, accepted by us all and signed. Thus we present this our unanimous Report.

15. The Minutes embodied in the 1977 Order form Council did the heritage in which it was presented, reflected a conception of the Church which was hardly questioned among Roman Catholics, even by the Second Vatican Council. This conception received its latest classical expression in such apostles as Ignatius of Loyola and Thomas Aquinas. It tended to identify the Church, the mystical body of Christ, with that juridical society perfecta, the Roman Catholic communion. It survived to describe the preparatory scheme of Vatican II's treatment of the Church, but the Council's Constitutive Canon document and the Decree on Ecumenism, Vatican II's *Ad Gentes*, both viewed that final development, both in their fresh presentation of the Church as an instrument of salvation, as Commission and members in parity, and in their recognition of the status and authority of the Roman Catholic Church and communion.

16. It is predictable a time will arrive when a revised ecumenicity will be brought a law of canonical legislation with its long established tradition abolished and changed. In the matter of marriage many further developments may be reached before changes can properly be made. There is a time when the relationship of the 1969 instruction *Inter Oecumenicum* and the 1970 Holy Synod's *Inter Oecumenicum* will be seen as historically essential and essential gestures but in canonical changes, rather than developments in ecumenicity. The more detailed proposals, some of which however were disappointed in the latter way in which it seemed that they involved theological reflection.

17. A significant and much discussed change in the ecclesiological language of Vatican II was the notion of the Church as "subsisting in"

11. The first stage of the process is the preparation of the couple. This involves a period of instruction in the Catholic faith, the sacraments, and the responsibilities of marriage. The instruction is given by the priest and the deacon, and is intended to help the couple understand the meaning of marriage and the role of the Church. The instruction is given in a series of sessions, and the couple are encouraged to discuss the material with each other and with their families. The instruction is also intended to help the couple understand the requirements of the sacrament of marriage, and to help them prepare themselves for the sacrament. The instruction is given in a series of sessions, and the couple are encouraged to discuss the material with each other and with their families. The instruction is also intended to help the couple understand the requirements of the sacrament of marriage, and to help them prepare themselves for the sacrament.

12. The second stage of the process is the celebration of the sacrament of marriage. This is the central act of the process, and is the moment when the couple are united in marriage. The sacrament is celebrated in the presence of the priest and the deacon, and is a public act. The couple are joined together in marriage, and the sacrament is celebrated in the presence of the priest and the deacon, and is a public act. The couple are joined together in marriage, and the sacrament is celebrated in the presence of the priest and the deacon, and is a public act. The couple are joined together in marriage, and the sacrament is celebrated in the presence of the priest and the deacon, and is a public act.

13. The third stage of the process is the post-marital period. This is the period immediately following the celebration of the sacrament of marriage, and is a time of adjustment and growth. The couple are encouraged to continue to discuss the material with each other and with their families, and to continue to grow in their faith. The couple are encouraged to continue to discuss the material with each other and with their families, and to continue to grow in their faith. The couple are encouraged to continue to discuss the material with each other and with their families, and to continue to grow in their faith.

14. The fourth stage of the process is the long-term relationship. This is the period of the couple's life together, and is a time of continued growth and adjustment. The couple are encouraged to continue to discuss the material with each other and with their families, and to continue to grow in their faith. The couple are encouraged to continue to discuss the material with each other and with their families, and to continue to grow in their faith.

1. The Catholic Church's teaching on marriage is based on the natural law, and is intended to help the couple understand the meaning of marriage and the role of the Church. The instruction is given in a series of sessions, and the couple are encouraged to discuss the material with each other and with their families. The instruction is also intended to help the couple understand the requirements of the sacrament of marriage, and to help them prepare themselves for the sacrament.

2. The sacrament of marriage is a public act, and is celebrated in the presence of the priest and the deacon. The couple are joined together in marriage, and the sacrament is celebrated in the presence of the priest and the deacon, and is a public act. The couple are joined together in marriage, and the sacrament is celebrated in the presence of the priest and the deacon, and is a public act. The couple are joined together in marriage, and the sacrament is celebrated in the presence of the priest and the deacon, and is a public act.

SECTION B

THE RELEVANT THEOLOGY

OF BAPTISM AND THE CHURCH

15. Though it was accepted from the beginning as a fundamental principle of our discussions "that Holy Baptism itself confers Christian status and is the indestructible bond of union between all Christians and Christ and so of Christians with one another," and that "this baptismal unity remains firm despite all ecclesiastical division," none the less it was quickly evident that the central theological difficulty that underlay Anglican/Roman Catholic tensions about the discipline governing mixed marriages was ecclesiological—it stemmed from divergent conceptions of the Church.

16. The discipline embodied in the 1917 *Codex Iuris Canonici*, and the language in which it was expressed, reflected a conception of the Church which was hardly questioned among Roman Catholics down to the Second Vatican Council. This conception received its latest classical expression in such encyclicals as *Mystici Corporis* and *Humani Generis*; it tended to identify the Church, the mystical body of Christ, with that juridical *societas perfecta*, the Roman Catholic communion. It survived to dominate the preparatory *schema* of Vatican II's treatment of the Church, but the Council's Constitution *Lumen Gentium* and the Decree on Ecumenism, *Unitatis Redintegratio*, both showed significant development, both in their fresh presentation of the Church as sacrament of salvation, as Communion and as pilgrim on earth, and in their assessment of the status and salvific efficacy of non-Roman Catholic Churches and communities.

17. It is predictably a slow and difficult business for a renewed ecclesiology to be brought to bear on canonical legislation with its long-established juridical categories and language. In the matter of marriage, many pastoral considerations have to be weighed before changes can prudently be made. None the less many saw the relaxations of the 1966 Instruction *Matrimonii Sacramentum* and of the 1970 *motu proprio Matrimonia Mixta* not simply as theologically unrelated ecumenical gestures but as canonical changes logically linked with developments in ecclesiology. The many included Anglicans, some of whom however were disappointed at the halting way in which it seemed discipline followed theological advance.

18. A significant and much-discussed change in the ecclesiological language of Vatican II was the account of the Church as "subsisting in"

the Roman Catholic communion.¹ The *relator* at the Council made it clear that the scholastic phrase was deliberately chosen to replace mere identification, in order to harmonize with the very much more positive language used of non-Roman Catholic communions.

19. It would be wrong to minimize the significance of these changes. In historical perspective they loom large. They could hardly have co-existed with the former, static, juridical, "societary" emphasis in the presentation of the Church, and because they reflect a new, dynamic way of thinking of the Church, they are capable of further development. While they do not provide ground for supposing that a Roman Catholic may no longer have an obligation in conscience concerning the Catholic upbringing of his children, they do mean that insistence on this obligation is not to be seen merely as institutional defensiveness, nor as dismissive of other traditions, nor as over-riding all other possible obligations, such as those which arise from the nature of marriage itself: the obligation simply reflects the Church's understanding of itself.

20. So far we have spoken only of Roman Catholic ecclesiology and its implications; but though Anglican ecclesiology is less precisely formulated, makes less exclusive claims and consequently of its nature leaves more room for choice to the conscience of the believer, we were reminded at our Fifth Meeting that there are marriages between Anglicans and other Christians in which the community concerned will be ecclesologically so "seriously deficient that the Anglican will be compelled to insist that the children be baptized and reared as Anglicans."² Some Anglicans indeed would be sufficiently unhappy about certain Roman Catholic doctrines and practices to feel bound to insist on an Anglican upbringing for the children of an Anglican/Roman Catholic marriage, even though they would not impugn baptism administered in the Roman Catholic Church. Members of the Commission, in reporting these views, are not to be understood as identifying themselves with them.

OF MARRIAGE

21. On marriage itself the Commission finds no fundamental difference of doctrine between the two Churches, as regards what marriage of its nature is or the ends which it is ordained to serve. The language of Vatican II in *Gaudium et Spes* (47-52), grounding marriage in the natural order, in the mutual pact or covenant (*pactum, foedus*) of the

¹ *Lumen Gentium* 8; *Unitatis Redintegratio* 4, cf. *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, Vatican City 1973, Vol. III, Pars. I, p. 177

² L. Mason Knox, "How important is it to Anglicans that the children of mixed marriages be brought up as members of their own Communion, and why?" A paper submitted to the Commission at its Fifth Meeting, 1974.

spouses, is entirely at one with the covenantal interpretation of marriage written into the Anglican liturgies. The sacramental nature of marriage is also affirmed, partly in the moral sense of enduring obligation (*sacramentum*) expressed in the marriage vow, partly in the sense of sign (*signum*): a sign to the world of what marriage in the natural order by God's ordinance is and ought to be; a sign to the world and to the Church of Christ's irrevocable covenant with the Church and of the mutual love which finds expression between Him and the Church, and which ought to exist between the Church's members; and a sign to married people, to the world and the Church, that continuance within the covenant is dependent upon the continued forgiving and renewing grace of God; and finally in its being made by Christ into an effective sign of grace when it is celebrated between the baptized. It is from all this, with continuance in the sacramental life of the Church, that Christian marriage takes its specific character and achieves its fulness. Natural marriage had, in the beginning, the full potentiality of being made sacramental in the order of redemption: the sacramental significance was declared as part of the "mystery" (*sacramentum*) dispensed and revealed in the fulness of time by God through his Son and recognized as such by the Apostle; so the language of Ephesians 5, interpreting conjugal love in terms of Christ's love for the Church and vice versa, aptly expresses our common theology of marriage, and is as aptly entrenched in our respective marriage liturgies. This substantial convergence in doctrine, despite differences in the language used to express it, is a welcome fact of our time, too precious to permit us to rest on the polarities suggested by the time-conditioned formulations of the Reformation and Counter-Reformation. On our respective responses to marriages in which the moral unity and the integrity of the sign are together marred more will be written below. The differences in these responses are not such as to deny or impair our full agreement on what marriage in its created and sacramental nature is.

OF RELIANCE ON LAW

22. In a mixed marriage there is a meeting, not only of the two Churches represented by the parties, and not only of the doctrines and traditions of those Churches, but also of two jurisdictions, two societies whose lives are regulated, to different extents, by law. The Roman Catholic Church legislated for marriage comprehensively in the *Codex Iuris Canonici* and subsequent regulations, dividing laws for every aspect of marriage, irrespective of what civil laws may provide (cf. para. 26). This comprehensiveness derived logically from the Catholic Church's awareness of itself as a *societas perfecta*, having a jurisdiction of its own to regulate the internal life of a community which transcends all national and regional jurisdictions throughout the world.

For Roman Catholic Christians, in so far as their life in the Church is concerned, the canon law operates, as we have said above in paragraph 19, as a juridical expression of the Church's doctrine about itself, and of its pastoral responsibility for bringing the faithful to the complete awareness of and response to the redemption once wrought for them by God in Christ: in short, for their renewal in the image of God, for the enjoyment of his presence and his glory eternally. The canonical regulation of marriage, like the dispensation of the sacraments generally, is seen to be part of this whole.

23. In the Churches of the Anglican Communion, law, particularly in respect of marriage, has a much more limited function. The fundamental regulation of marriage—competence to marry, impediments to marriage, prohibited degrees of kindred and affinity, the public acceptance of forms for the contracting or solemnizing of marriage, etc.—is seen to be the function of the law of the State, not of the Church. For this there is a simple historical reason. At the Reformation in England jurisdiction in matrimonial causes continued to be exercised by the Church, now the Church of England, and was not taken over by the State, and the substantive law on marriage was carried over from the common canon law of Western Christendom, modified only in some important particulars, chiefly concerning impediments. When, over two centuries later, the State began to legislate for marriage in its own capacity, at first to guard against clandestinity and its attendant abuse, and then to provide for the dissolution of marriage by civil process, it left the solemnization of marriage as the responsibility of the Church virtually unimpaired (providing only alternatives for marriage before the civil registrar or according to the rites and ceremonies of other religious bodies), although it made the canonical grounds for separation *a mensa et thoro* the basis of its own substantive law for total dissolution. Consequently the Church of England feels no need for comprehensive ecclesiastical or canonical legislation to govern the fundamentals of marriage: it accepts its "own" law back again as enjoying the authority of and administered by the State. And since a similar pattern of relationship spread throughout the common law countries in which the Anglican Communion took its early roots, the emergence of comprehensive codes of canon law for marriage is a rare and late phenomenon.

24. Behind these differences lie others, less tangible but real. Even before the Reformation co-existence between the canon law of the Church and the common law of England was never easy. Not only did they differ in substance; not only had they different sources of ultimate authority and courts of final appeal, the Papacy in the one, the Crown in the other; they differed radically in procedure and even more in that sensitive area of the relation of authority to consent. The common law

tradition was quicker to respond to public opinion, through the interplay of parliamentary legislation, judicial interpretation and the jury system, than was the canonical tradition with its closer involvement with a curial, and predominantly clerical, structure. These facts of history have influenced the unspoken attitude of Anglicans to the proportionate place of law in the government of their Church.

25. The Anglican canon law does indeed state obligations incumbent on the laity as well as the clergy. Yet these obligations are legally enforceable on laymen only in respect of their holding ecclesiastical office, e.g., as churchwarden, or as judge in an ecclesiastical court. In his ordinary Christian living the Anglican accepts the authority of the Church as a moral obligation; the sense of their being a law to keep seldom occurs to him.

26. The Roman Catholic conception of the Church's legislative authority and function was and is considerably different from this; hence also the Roman Catholic's traditional attitude to the Church's law and to his corresponding obligation (though few of these things are exempt from the contemporary discussion of authority in general). He sees the Church as a supra-national institution endowed with power both to teach and to legislate comprehensively for marriage because it is a sacramental act and status. Marriage may be and is the subject of circumscribed agreements with the law of the land, the State's competence in some parts of the matter being recognized; yet marriage for the Roman Catholic could hardly be the subject of such relations between Church law and State law as those described above in para. 23. Though he might feel particular Church regulations to be irksome and even in extreme instances to be an abuse of the Church's authority, he would hardly recognize a general separation of moral obligation from ecclesiastical law such as that described in para. 25.

27. It follows, therefore, that in a mixed marriage an acceptance of ecclesiastical requirements which seems natural to one party might well occasion surprise and even resentment in the other. The Anglican partner would see a wider range of matters which he would think it right that the partners should "work out for themselves" than the Roman Catholic partner, whose disposition is to recognize the authority of his Church in these matters. This difference would inevitably occur whenever questions of Christian conscience arise. We shall point below to the two matters where the difference particularly affects a mixed marriage, namely in the requirement of a promise about the baptism and education of children and the requirement of marriage according to the "canonical form."

SECTION C

DEFECTIVE MARITAL SITUATIONS

THE PROBLEMS

28. We use the phrase "defective marital situations" to cover many types of broken or otherwise defective marriage which together make up a major problem of contemporary society. These situations may arise from known defects in the initial covenant, from defects subsequently discovered, or from various degrees of breakdown in personal relation. At the very outset the problem is personal to those directly involved in such situations—the married partners; this remains true whatever the contributory factors may be—social or psychological tensions, economic stress, spiritual defect or decline, and whatever their ratio to each other. An awareness of the primary personal nature of the problem and of the variety of possible factors at play is necessary for a valid approach to defective marital situations as they are encountered by the pastor. He must be aware of the requirements of Church discipline, but not as something isolated from its theological foundation or from the spiritual needs and anxieties of the persons involved.

29. From this point of view, what our two traditions have in common needs to be stressed at least as much as the divergences in discipline which attract more immediate attention. We have stressed earlier (in paragraph 21) the fertility of the common ground we have on the sacramental nature of marriage. We would see value in developing this further, seeing Christian marriage as contributing to the world's self-understanding, as a sign revealing to the world the real meaning of marriage, and presenting living criteria by which the world is judged for its acquiescence in attitudes to marriage which are not consistent with the dignity, freedom and moral seriousness of full and mature personality.

30. If laws which the Church makes about marriage are to fulfill the time-honoured requirements for law so succinctly stated by Thomas Aquinas (*Ia IIae*, qq. 90-97) they must mirror this theological conception and also serve the pastoral purpose which is linked with it—to make not marriage in the abstract, but marriages, a sacramental sign to the world. Discipline must be appropriate to real marital situations and their defects, without obscuring or damaging this witness to the world, or jeopardizing the common good.

31. We believe that our two traditions are fundamentally at one in recognizing these principles and acknowledging these demands, how-

ever difficult they are to reconcile. But divergence appears when we compare practical solutions. For whereas we may properly derive from Christ's teaching the unchangeable theological principles of marriage which must be upheld, the fashioning of marital discipline, and its just adaptation to changing circumstances, remain always the responsibility of the Church—though always under the control of these principles.

THE RELATION OF DISCIPLINE TO THEOLOGICAL PRINCIPLE

32. We have spoken of principles derived from Christ's teaching. The extent of agreement in this field was outlined at our fourth meeting (above para. 10) and is set down here exactly as our consultants gave it.

"Exegesis of New Testament texts on divorce and remarriage—areas of agreement and disagreement

i. *In general* we agreed that our differences on exegetical questions raised were not confessional, but reflected the varieties of critical opinion which are to be found within both communions.

ii. *Details* We agree

on a text-critical approach

on the priority of Mark's version in this pericope [Mk. 10:1-12; Mt. 19: 1-12, cf Mt. 5:32]

that the exceptive clauses in Matthew are additions to the word of Jesus

that the most probable interpretation of *porneia* is as marriage within the forbidden Jewish degrees, and that this clause is inserted not as a mitigation but to preserve the full rigour of Jesus' words

that Mk.: 10: 10-12 was not originally joined to Mk.: 10: 1-9, but that its authenticity as a word of Jesus is not thereby impugned.

that Jesus' statements on marriage are uncompromising

that Mk.: 10: 1-9 intends to throw into relief the hardness of heart involved in making use of the legislation of Deut: 24 allowing a bill of divorce, and that its direct concern is with the failure of the married couple to stay together, rather than with re-marriage. We disagree, however, in that Henry Wansbrough thinks that Jesus intends to abrogate this permission, Barnabas Lindars that he does not.

that in Mk.: 10: 10-12 Jesus stigmatizes remarriage after divorce as adultery and therefore against the ten commandments.

Thus far we both agree that the views expressed would be endorsed by the great majority of critical scholars of all Christian confessions.

- iii. *Status of the words of Jesus* We agree that the words of Jesus are treated by the evangelists as having force of law, for which reason Mark adds the corollary of verse 12 for the sake of his Roman readers, and Matthew adds his exceptive clauses.

We disagree, however, as to whether Jesus intended his words to be taken as having force of law. Henry Wansbrough regards them as a directive to the disciples which would be normative for the future Christian community, Barnabas Lindars as concerned with bringing people face to face with themselves in the reality of the marriage bond when they contemplate divorce and remarriage. Barnabas Lindars holds that Jesus sets out neither to correct the existing law nor to establish a new law; it is a mistaken undertaking to attempt to construct a law on the basis of Jesus' sayings: rather the sayings of Jesus will continue to stand in judgment on any law.

We consider that Henry Wansbrough's view is consonant with the view of the majority of informed opinion in both communions, while Barnabas Lindars' view represents current tendencies in biblical scholarship which have hardly yet made their full impact on discussion of the questions.

Barnabas Lindars, SSF
Henry Wansbrough, OSB"

Procedures for the Regulation of Defect

33. We must now consider how the Church's discipline is to be related to unchangeable theological principles, particularly in establishing procedures for the regulation of marital defect. We are agreed that the "juridical" and the "pastoral" should never be at odds in the discipline of a Church. "Defective marital situations" may take many different forms and call for many varieties of pastoral solicitude, whether exercised by the parish priest, the theologian or the jurist (cf. *infra. para. 53*). But, from the Roman Catholic point of view, what are here called "procedures for the regulation of defect" (that is, juridical procedures) are *not* examples of pastoral solicitude in the sense that they are devices for easing difficult situations. Whatever may be the motives of the parties for advancing a plea of nullity or petition for dissolution (and obviously these motives will normally be a "defect" in the marital relationship as it is lived, issuing in a desire, unilaterally shared, to be rid of it), not only will the judges of the case begin from the principle "marriage enjoys the favour of the law" (C.I.C. can. 1014) but also their enquiry will be directed towards a canonical "defect"

issuing in annulment or a reason for dissolution, deriving from the Church's teaching and practice concerning marriage and its properties.

34. Catholic teaching is that all marriages are *intrinsically* indissoluble. This means that the marrying parties effect something that they themselves cannot undo and which cannot of itself perish except by the death of a partner. In this sense the Church makes no distinction between natural and sacramental marriage. Similarly all marriages are held to be *extrinsically* indissoluble by any *human* power (C.I.C. can. 1118).

35. Distinctions come in when we turn to the Church's power (mediating God's power) to dissolve *extrinsically*. But first the ground must be cleared by emphasizing the distinction between the dissolution of a valid marriage and a simple declaration of nullity. This latter is a declaration of fact, namely that no marriage has existed, and to speak of it as a dissolution (still more to use such a tendentious phrase as "divorce under another name") is improper.

36. The Church's claim to a vicarious power to dissolve certain marriages undoubtedly involves a distinction at least in degree of firmness between the natural and the sacramental bond. A marriage duly solemnized and physically consummated between two baptized persons, *matrimonium validum ratum et consummatum*, is absolutely indissoluble intrinsically and extrinsically. All such marriages are sacraments (because Christ elevated them to that dignity, canon 1012, para. 1) and from this their essential properties of unity and indissolubility "acquire a particular firmness" (canon 1013, para. 2).

37. The papal practice (documented since the early fifteenth century) of dissolving for an adequate cause, practical and pastoral, a non-consummated marriage is governed by strict procedural rules and seems not to cause great difficulty for most Anglicans.

38. Our discussions suggested that for some Anglicans the same is true of the "Pauline Privilege," by which a marriage between two unbaptized persons may, even after it is consummated, be dissolved if, following the conversion and baptism of one party, the other is unable or unwilling to continue co-habitation peacefully and "without offence to the Creator," (the facts of the case having been confirmed by interrogation). It appears however that other Anglicans regard this as a theologically doubtful pastoral application of St. Paul's teaching I Cor. 7: 12-17. The exercise of the papal prerogative *in favorem fidei*, by which a marriage involving at least one unbaptized person, even if celebrated with a dispensation *disparitatis cultus*, can be dissolved, is seen by many Anglicans as a progressive extension of a claim which is theologically no less doubtful. They point to the fact that the moratorium on such favours declared in recent years—though in fact removed in

December 1973—was in part motivated by doubts about whether the extensions of the privilege had been the result of adequate theological reflection.¹ Above all, the existence of the privilege, however prudently used, seems to them to imply a depreciation of natural marriage which at best is hard to square with the general principles of Catholic marriage doctrine (cf. *supra* para. 11).

39. The Commission has more than once directed its attention to literary evidence² of new Roman Catholic thinking, both by theologians and by canon lawyers, about the fundamental notions of consent, of consummation and of sacramentality. The practical tendency of much of this thinking, were it to influence legislation and the practice of the courts, would be to enlarge the grounds on which nullity might be declared, and to restrict the range of the category *matrimonium ratum et consummatum* within which alone absolute indissolubility applies, thus—obversely—extending the scope both of annulment processes and of dissolution by papal prerogative. Some members of the Commission strongly deprecate much of this thinking and consider it unlikely to have any influence on legislation in the foreseeable future: but all recognize the mounting influence of new thinking about consent upon the practice of the courts.

40. The Anglican understanding of the duty of the Church in the regulation of defective marital situations at some points coincides with the Roman Catholic understanding and at some points differs from it. It begins by distinguishing defective situations of three sorts. The first is where the defect is one for which the only appropriate action is a declaration of nullity, whether the parties seek or want it or not, because the "marriage" is no marriage, but a relationship not permitted by the law. The second is in a marriage, e.g., a non-consummated marriage, voidable at the instance of one or both of the parties, but not void in itself. In both of these situations there is no difference in principle

¹ Cf. an interview granted by Cardinal Seper, President of the Sacred Congregation for the Doctrine of the Faith, to the Executive Co-ordinator of the Canon Law Society of America, 30 April 1971. *CLSA Newsletter*, Sept. 1971, pp. 3f.

² e.g. J. Bernhard, "A propos de l'indissolubilité du mariage chrétien", *Mémoire du Cinquantenaire 1919-1969*, Université de Strasbourg, 1969; J. G. Gerhartz, "L'indissolubilité de mariage et la dissolution du mariage dans la problématique actuelle", *Le Lien Matrimonial*, ed. R. Metz and J. Schlick, Université de Strasbourg, CERDIC, 1970; Denis O'Callaghan, "How far is Christian Marriage Indissoluble?", *The Irish Theological Quarterly*, XL2, April 1973; and recent numbers of *Theological Studies* (Baltimore, Md., for the Theological Faculties of the Society of Jesus in the United States) and of *The Jurist* (Washington, D.C. for the Department of Canon Law in the Catholic University of America), *passim*; *Theologisch-Praktische Quartalschrift*, 1973, pp. 335-346, quoted in *The Tablet* 29 March 5-April 1975, p. 325 f. Maurice Dooley, "Marriage Annulments", *The Furrow*, April 1975, pp. 211-219.

between the Roman Catholic and the Anglican disciplines, because they both derive from the same canon law.

41. The third situation is where there is a breakdown of relationship within a valid marriage, which is brought into cognizance, whether of the law or of the pastoral discipline of the Church, because relief is sought by one or both of the parties from a situation judged no longer tolerable. For these the only relief known to the canon law of the Church of England and, until recently, of the other Churches of the Anglican Communion, is a separation *a mensa et thoro*, without liberty to re-marry during the lifetime of the other spouse. In the Anglican *theological* tradition, however, there have always been those who, accepting as legislative the words of Jesus including the so-called "Matthaeian exception," would have allowed re-marriage after a divorce occasioned by adultery, had the canon law permitted, which it did not. This tradition is still alive today, maintaining the possibility of a discipline, faithful to the words of Jesus, based on the principle of what might be called a modified exceptive indissolubility; that is, on the principle that while marriage is properly indissoluble, the authority of Jesus would allow of exceptions where sin of some sort had invaded or destroyed the marriage bond. This position is maintained in disregard of the exegesis of the critical passages of Scripture generally maintained among New Testament scholars.

42. The introduction of the possibility of divorce and re-marriage by civil process, in the mid-nineteenth century, enabled these "exceptive indissolubilists" to authorize action in accordance with their conviction.¹ The general tendency in modern Anglicanism, however, until the last two decades, has been towards a full indissolubilist position, and resolutions of Lambeth Conferences have declared this unequivocally. At the same time, however, Anglicans found themselves increasingly unable to live with the logical consequences of their own affirmed position; they began to develop expedients to mitigate its rigour.

43. The most general of these is, while refusing the re-marriage of divorced persons by the rites of the Church, to accept their re-marriage before the civil registrar and to receive them as man and wife into the full communicant life of the Church (sometimes after a period of voluntary abstention from sacramental communion) exactly as though they had been married in Church; a service of prayer in church, in varying degrees of elaboration, frequently follows the civil ceremony of marriage. There is considerable unease at the logical and theological oddity of such a compromise. It drives some, resolved to remain "indissolubilist" at all costs, to follow with eager sympathy developments in the practice

¹ They had already done so, of course, since the late seventeenth century in the rare cases of divorce by private Act of Parliament.

of the Roman Catholic courts and in serious discussion outside them which test the bearing of the principle of indissolubility in cases where its strict application might seem to result in injustice or frustrate the pastoral function of the Church.¹

44. The same unease has driven some Churches in the Anglican Communion to abandon the strict principle of indissolubility, and to legislate, by canon in Provincial Synod, for the controlled admission of divorced persons to re-marriage in church during the lifetime of former spouses: Canada, the USA, Australia and New Zealand have already canons of this sort in operation or in process of enactment. There are Anglicans in all these provinces and in others who deeply regret this development, as there are Anglicans who welcome it. The signatories of the Church of England Report, *Marriage, Divorce and the Church* (1971) sought, while adopting an exegetical position which ruled out reliance upon "the Matthaean exception," to secure relief by means designed to safeguard more closely the theological control which ought to be exerted over discipline, and to minimize the hurt done to the Church's essential task of maintaining its witness to the first principles of marriage as stated by our Lord; but their proposals, though welcomed in numerous diocesan synods, and by many in the General Synod, narrowly failed to secure a bare majority of votes in the General Synod and cannot therefore be held to command general consent in the Church itself. The attempt to hold together a first-order principle that a marriage is of its nature indissoluble and a second-order discipline which recognizes or permits re-marriage after divorce rests on two suppositions: the first is a theology of the grace of God which can release, forgive and re-create, even though inevitably the second marriage must be in some sense defective as a "sign" as posited in paragraph 21 above; the second is that the discipline itself, in its private and public processes, must not obscure but rather must re-emphasize what marriage, in its nature, characteristically is. The pursuit of these means still occupies concerned minds in the Churches of the Anglican Communion.

45. Roman Catholics take the point that Anglican discipline regarding the indissolubility of marriage was for long among the strictest of all. They are proportionately disconcerted by developments in theory and discipline within the Anglican Communion (of which an extreme case is the recent canon 18 (Tit. I) of the General Convention of the Episcopal Church in the USA) which appear to them to compromise the Catholic doctrine of indissolubility. Though the Roman Catholic members of the Commission found much of the treatment of marriage in the Report *Marriage, Divorce and the Church* profoundly sensitive, scholarly and edifying, the carefully-considered recommendations of the

¹ cf. *supra* para. 39, *infra* para. 49.

Report concerning the re-marriage of divorced persons led the Commission at its Fourth Meeting to consider the question whether the notion of "irretrievable breakdown" was compatible with any concept of an indissoluble *vinculum*. This discussion cleared up several misconceptions and pointed to several imprecisions of linguistic usage, yet it left the Catholics and some of the Anglicans in the Commission unconvinced that the proposition "marriage is characteristically indissoluble but some marriages turn out to be dissoluble" allowed any meaning to the notion of life-long commitment.¹

46. It may be questioned however whether the contrast between the "unitary" Catholic position and the threefold Anglican approach on this grave contemporary problem (paras. 42, 43, 44) is as clear-cut as it seemed to us at an earlier stage.

47. While the Catholic position remains "unitary" and "solidly indissolubilist" in the sense of maintaining the proposition that *matrimonium validum ratum et consummatum* can be dissolved by no earthly power, there is, as suggested earlier (paragraph 39), considerable new thinking about the terms of this description and hence what marriages truly come within it. Even those Catholics who do not subscribe to this thinking would, however, agree that it does not make the line between nullity and divorce blurred and arbitrary.

48. Is there then a point of reconciliation between these two understandings, the Anglican and the Roman Catholic, of the Church's duty in respect of defective marital situations? First, it is clear that there is no essential difference between their attitudes to what are objectively non-marriages, in which the only proper course (saving the Roman Catholic possibility of rendering the marriage valid, for example, by dispensation from a diriment impediment) is a declaration of nullity by a competent court, leaving the parties as free to marry as though the previous situation had never existed. Anglicans, no less than Roman Catholics, may follow with close attention the academic discussions and complicated tribunal and rotal actions trying to determine what sort of

¹ Incidentally the tripartite conversations between the Roman Catholic Church and the Lutherans and Reformed have led some Catholic theologians to see the analysis of indissolubility and life-long commitment as most fruitfully made in terms of a durable and lasting promise of grace, given by Christ, experienced and continually renewed by the spouses in the reality of the marriage, yet an objective gift for the upbuilding of the Church and the world. When a marriage breaks down "the couple's specific experience no longer corresponds to Christ's gift, but that does not imply that the sign received from Christ has been destroyed; indeed the nature of Christ's involvement with the couple cannot be annulled by the manner in which he is received." (From an unpublished Report of the Third Meeting of the Roman Catholic/Lutheran/Reformed Study Commission on Marriage, Basel, 22-27 October, 1973, pp. 61-3.)

cases properly lie or may be brought within this category for which a declaration of nullity is appropriate; indeed, the same course has been publicly favoured and pursued in some provinces of the Anglican Communion. It is not, however, useful or indeed proper to advance unsubstantiated allegations that this process is simply a granting of divorce under another name; within the given logic, the process is morally justifiable in its own right. The argument of this present report is conducted on the assumption that the process is undertaken in entire good faith in both Churches.

49. There is a further common element in the two traditions. It lies in the fact that the initiative in most cases is taken at the instance of parties seeking relief from a marital situation in which they find severe difficulty, or which they may find intolerable, often though not always with a new marriage in view. (Where no new marriage is contemplated an easier solution is available in a formal separation—though it is to be noted that this in itself marks some departure from the stated will of God that they should “cleave” together, and as such mars the “sign” of their marriage.) Here the Roman Catholic would examine the case objectively to find whether it presents features appropriate to a declaration of nullity, or features which excluded it from the category of *matrimonium validum ratum et consummatum* between baptized persons which alone is intrinsically and extrinsically indissoluble. (cf. paras. 34, 35, 36). The Anglican courses have been described: some Anglicans would adhere as closely as possible to the strict indissolubilist position; others would disclaim the possibility of divorce in itself and of re-marriage after it, but nevertheless accept a *fait accompli* by civil process for all subsequent ecclesiastical purposes; others would frankly accept and even solemnize re-marriage in particular cases after divorce. Now from the Anglican side it is submitted that these processes, Roman Catholic and Anglican alike, are *all* means of pursuing a common end, namely the continuance of the Church’s pastoral responsibility for its members in a situation in which, because of sin, inadequacy or weakness, or for whatever reason, the sign of marriage is *already* marred and in which *no* course *absolutely* consonant with the first order principle of marriage as a life-long union may be available. The Church has a duty to work out such procedures and has done so from the beginning. From this activity we have evidence in the New Testament in the so-called “Matthaean exception” (Matt. 5:32 and 19:9) and the so-called “Pauline privilege” (1 Cor. 7:15) whatever their precise interpretation may be. This recognition of the integrity of the other Church’s attempts need not carry with it unqualified approval of the means in themselves—Roman Catholics may think Anglican admission of re-marriage after divorce too weak, Anglicans may think the logic of Roman Catholic processes too strained. But in the view of the Commission neither attitude of disapproval is of such a degree as seriously to hinder ecumenical

convergence in the two fields which are our immediate concern, the growing together of the Roman Catholic and Anglican Churches, and a more positive pastoral approach to the contracting and support of mixed marriages (cf. *infra* para. 55). Each Church can accept the assurance of the other that it maintains, and has a settled will to maintain, the full Christian doctrine of marriage, as outlined in paragraph 21 above, and that in each Church an intention to accept marriage as a permanent and exclusive union is and will be required of all who seek marriage according to the Church's rites.¹

50. The common ground we have established on the nature, properties and purposes of Christian marriage clearly implies common pastoral aims though not necessarily common methods of achieving those aims.

51. The pastor is aware at once of a responsibility to Christ and the Gospel—a responsibility for integrity of witness—and of a responsibility to the people of God, to enable them to bear their burdens and to live the Christian life in the conditions in which they find themselves. If tension is evident between these two responsibilities, he cannot resolve it by ignoring it, or by paying attention to only one of the responsibilities.

52. Applying these principles to Christian marriage, not as a theological abstraction but as a lived reality, the pastor is aware at once of the tension between the ideal, the sign to the world which is marriage as presented and illuminated by the word of God and the hard realities of a contemporary situation in which social, economic and other factors, opinion and custom, the trends of legislation, all militate perhaps as never before against the embodiment of the ideal and the witness in institutional forms.

53. Saying this we see at once that in this context we cannot simply equate the term pastor with bishop or priest working in a parish: the theologian, the canon lawyer, the official of the marriage court, is pastoral in his concern and in his operation. To scrutinize the notions of sacramentality, of consent, of consummation is not simply to juggle with or stretch the law; it is to face up to both aspects of pastoral responsibility and the tension between them. To seek a resolution of this tension in the theology of forgiving and re-creating grace is a complementary pursuit of the same end.

54. In view of what has been said earlier about the difference between Roman Catholic and Anglican attitudes, it is inevitable that the same awareness of having two pastoral responsibilities (para. 51), with the same need to face up to the inescapable tension between them, should issue in different solutions. It is indispensable to further under-

¹ cf. paras. 34, 43, 44.

standing and convergence that each side should recognize and respect in the other the integrity of responsibility which produces these divergent solutions, even though recognition and respect may not make possible in all cases an acceptance of the solutions.

55. This leads us to say that, in setting this problem of defective marital situations and their pastoral care in the total perspective of the Roman Catholic/Anglican search for unity, one established principle is to be re-called which has underlain all adumbrations of the form that unity might take: it is that any such form of unity must preserve what is integral and acceptable in both our traditions in a variety-in-unity. What is or is not mutually acceptable will emerge in the course of this search. A fact perhaps significant in this context—and in any case one which raises profound questions in itself—is that in the Orthodox Church, whose communion with Rome has been described by Pope Paul VI as “almost perfect,”¹ long established marriage discipline includes the practice of re-marriage in church after divorce.

¹ Speech at a Public Audience during the Week of Prayer for Unity, 20 January 1971: *Osservatore Romano*, 21 Jan. 1971, p. 1, col. 1.

Letter to Patriarch Athenagoras, 8 February 1971, quoted in *Tomos Agapis*, no. 283. (Rome-Istanbul).

Address to Delegates of the Commissions for Ecumenism of the Episcopal Conferences and of Synods of Catholic Oriental Patriarchates, 22 November 1972. Printed in *Information Service* of the Secretariat for Promoting Christian Unity, no. 20, April 1973, p. 23.

SECTION D

MIXED MARRIAGES

THE ROMAN CATHOLIC LEGISLATION

56. It has been said above that the *motu proprio Matrimonia Mixta* represents the latest stage in Roman Catholic modification both of discipline and of its expression. Though mixed marriages are still discouraged and seen only "in some cases" as an ecumenical opportunity and means of unity, yet it is recognized that the rapidly changing conditions of today and the development of thought reflected in such Vatican II documents as *Dignitatis Humanae* and *Unitatis Redintegratio* involves substantial changes in the classical attitudes reflected in the Code of Canon Law. Mixed marriages are seen as a fact of life and an object of pastoral solicitude—solicitude which, where both parties are baptized, is proper to both Churches involved and a proper object of "sincere openness and enlightened confidence" between the respective ministers. The Catholic conviction that marriage between the baptized is necessarily sacramental, now combined with the more positive ecclesiological assessment of other Churches, seems to open up new prospects, especially for marriage with Anglicans, whose special relationship with the Roman Catholic Church was mentioned during the Second Vatican Council and emphasized on important occasions since,¹ besides being supported by important advances towards doctrinal agreement as is evidenced by the Windsor and Canterbury Joint Statements of the Anglican/Roman Catholic International Commission as well as in the theology of marriage outlined above.

57. These new prospects are however affected by the retention, for reasons we have described, of the requirement of promises by the Catholic party as a condition of dispensation to marry an Anglican (*Matrimonia Mixta* 4-5) and by the insistence, also for reasons stated, that the "canonical form" (marriage before an authorized Roman Catholic minister and two witnesses) is necessary for the validity of the marriage. Moreover it may be observed that, in spite of the "special relationship" referred to in the previous paragraph, English-speaking areas of the world are, with certain exceptions, and doubtless for sufficient reasons, among the less ready to avail themselves of the con-

¹ e.g. "Inter eas in quibus traditiones et structurae catholicae ex parte locum specialem tenet Communio anglicana," *Unitatis Redintegratio*, N. 13; cf. words of Pope Paul VI on 25 October 1970, to which the Archbishop of Canterbury responded on 24 January, 1971, quoted in *Theology*, London, SPCK, LXXIV, May 1971, p. 222.

siderable latitude granted to episcopal conferences by the *motu proprio* (Nos. 7, 9, 10). Experience shows that on all these points certain confusions need to be forestalled.

58. First, the use of the phrase "divine law" is attached by the *motu proprio* to the obligations of the Roman Catholic party, it is not attached to the ecclesiastical discipline of promise concerning the obligation, which has been modified considerably during recent years. The divine authority attached to the obligation simply reflects the Catholic doctrine about the Church referred to above (paras. 16 ff.).

59. Secondly, interpretation seems to make it increasingly clear that this obligation is not to be thought of as absolute, i.e., unrelated to any other obligations and rights. We would wish to reaffirm here what was said in our Third Report:

7. In our [First] Report we agree that "the duty to educate children in the Roman Catholic faith is circumscribed by other duties such as that of preserving the unity of the family." In the Apostolic Letter the promise required of the Roman Catholic partner is to provide *pro viribus* for the Roman Catholic education of the children of the marriage. This Latin adverbial phrase is usually translated into English "do all in his power." This English phrase might be and often is adduced to justify the Roman Catholic party acting in a way which disregards the equal rights in conscience of the non-Roman Catholic party, and even to justify the Roman Catholic adopting an attitude or pursuing his purpose in ways which might endanger the marriage. It is recognized that responsible Roman Catholic commentators on the Letter (including many episcopal conferences) do not put this interpretation on the Latin phrase, but rather confirm our first statement quoted above. The Roman Catholic undertaking *pro viribus* is given envisaging the marriage situation with all the *mutual* rights and obligations which the theology of marriage sees as belonging to the married state.

8. The use of the Latin phrase in the official text also marks recognition that, as our Second Report from Rome in 1968 put it: ". . . no dispositions which the Churches can make can wholly determine the future of a marriage." "We acknowledge that as the spouses after their marriage 'experience the meaning of their oneness and attain to it with growing perfection day by day' (*Gaudium et Spes*, 48) they must be encouraged to come to a common mind in deciding questions relative to their conjugal and family life."

It is because these facts have not been sufficiently recognized that the application of this obligation has aroused fear of subjection to pressure whether social, psychological or ecclesiastical, not to mention the impression of mere obstinacy. On neither side have these fears proved

wholly unfounded, and all of us, on both sides, have reason to examine our consciences.

60. The *motu proprio* warns that "no one will be really surprised to find that even the canonical discipline on mixed marriages cannot be uniform," and indeed there are considerable contrasts between the application of the *motu proprio* made by the various episcopal conferences, all of which are accepted by the Holy See. At one extreme there is strong insistence on the Catholic teaching that the sanction for the Roman Catholic obligation is divine, even introducing the expression into written formulae for the promises. This is evidently aimed at making the sense of the obligation as comprehensively felt as possible. At the other extreme there is an equally clear insistence on the limiting force of the phrases *quantum fieri potest* and *pro viribus*, and on the importance of setting decisions within the context of the marriage and of a mutual respect for conscience. Anglicans are somewhat dismayed to find that, among English-speaking conferences whose dispositions are familiar, the only one that seems to come well into the second category is the Canadian.

61. As well as the contrasts just referred to, very various understanding is to be observed of the importance, within the wide category of mixed marriages, of those between committed members of the two different Churches. It is generally agreed that these latter form a small minority of all mixed marriages but sometimes this seems to lead, illogically, to a tacit assumption that they are of little importance or even that regulations or pastoral practice need to take no specific account of them. Difficult as it may be to provide for unidentifiable minorities, it is necessary to do so nevertheless, if respect is to be paid to the realities of personal commitment inherent in the marriage of Christians and to that ecumenical growth to which both Churches are committed.

ON CANONICAL FORM

62. The requirement of "canonical form" for the validity of a marriage has a long history rooted in the medieval problem of clandestine marriages. It is not therefore a discipline which arose out of the divisions within Christianity or out of the ecclesiological teaching of the Roman Catholic Church described earlier, nor does it prejudice the fact that the parties themselves are the ministers of holy matrimony. It may, however, unfortunately, appear to do so. To persons not well versed in ecclesiastical matters (and at weddings the Church encounters these more than perhaps at any other time), the requirement—whatever its justification—suggests, however unfairly, "Roman Catholic intransigence and exclusiveness": it can excite memories, irrelevant in this context, of the declaring invalid of the order and ministries of other

Churches; it can even provoke or aggravate tensions between the families of persons marrying; and in general it may tend to increase irritation at the involvement of the Church with marriage at all. An unreasonable mood may thus be created in which, instead of being seen, as properly it should be, as hallowing marriage and bringing grace to the partners in their responsibilities, the Church too easily appears to be a nuisance, a source of discord. In the interest of ecumenical convergence, the clergy, Anglican as well as Roman Catholic, should consider it a duty through their pastoral presentation to promote true understanding of the nature and intent of the Catholic legislation about the canonical form.

63. Accepting the fact that the Roman Catholic Church judges it better to retain the discipline, yet recognizing, as reluctantly we must, that in its present form it can arouse this kind of resentment, we repeat here a proposal which we have twice, as a commission, submitted unanimously before:

10. Upon Canonical Form, we made concrete recommendations in our Second Report, namely that "on condition that joint pastoral preparation has been given, and freedom to marry established to the satisfaction of the bishop of the Roman Catholic party and of the competent Anglican authority, the marriage may validly and lawfully take place before the duly authorized minister of the Church of either party." Though the Apostolic Letter makes different provisions (*Mat. Mixt. 9*), further reflection would lead us to reiterate our original suggestion, for the following reasons. First, it is preferable for any practice to be brought within the general law rather than be made the object of frequent dispensation. Secondly, to extend the scope of Canonical Form to include Anglican ministers celebrating the Anglican rite would be an ecumenical act of profound significance, giving notable substance to those official utterances which, in various ways, have declared a "special relationship" to exist between our two Churches.

We do this in the hope that, with the development of theological dialogue, the movement towards unity between our Churches may make such progress that this recommendation may be implemented.

THE PROMISE

64. Anglican objections to the requirement of the promise are simply stated. The first is that it rests on a doctrine of the Church which the Anglican cannot accept. That he is under divine obligation first to make on behalf of his children the response of faith to God's love revealed in Christ—that is, to bring them to Christian baptism—and then to enable them to respond themselves to that love—that is,

to build them into the life of the Church of Christ—he readily admits. But he cannot recognize such a distinction between the words “Christian” and “Roman Catholic” in this context of such a force as to justify the requirements of an explicitly *Roman Catholic* baptism and upbringing, and not of an explicitly Christian one. (There is here a difference of doctrine which, in an earlier Report, the Commission asked that ARCIC¹ should explore on our behalf. When the problem was returned to us, as being too far down on ARCIC’s list of commitments for attention in the foreseeable future, we made a serious attempt to work at it ourselves, with the help of papers from one of our members and from a consultant.² These papers were found most valuable by all members of the Commission and they promoted enlightening discussion which we should have been glad to have had time to develop further. We strongly recommend them to readers of this report but it would be beyond the scope of the report to summarise them here; yet it should not be thought that either Church’s ecclesiological position was either inadequately stated or unsympathetically examined. The problem is a fundamental one which, moreover, ranges far beyond the field of marriage, and we must hope that ARCIC will eventually be able to speak adequately on it.)

65. The other objections that Anglicans feel carry us beyond ecclesiology although they are not unrelated to it. The second objection is that the requirements are insensitive to the conviction and conscience of the committed Anglican partner. They consider that it is no answer to this objection to say that in the majority of mixed marriages the non-Roman Catholic partner is religiously indifferent and unattached; such an answer puts a premium on absence of commitment in the sense that a dispensation for marriage to an uncommitted partner would be more easily obtained. It is the committed Anglican whose convictions are ignored who constitutes the problem—and the whole Anglican Communion stands with him.

66. The Roman Catholic would reply to this that there might indeed be concrete examples of insensitiveness and ignoring of conviction in the administration of the regulations. But far from admitting that the regulations were framed in this spirit, he would argue that the more intense the conviction recognized in the Anglican, the more acutely the problem is posed and the greater is the pastoral responsibility to recall the Catholic to a similar sense of commitment. The problem is not indeed thus solved, but a dialogue such as that here reported could have had no meaning except on a basis of mutual respect for conviction.

67. The third objection is that the requirements ask of one partner

¹ Anglican/Roman Catholic International Commission.

² L. Mason Knox, *supra* para. 20, note; and Brian O’Higgins, *supra* p. 3. a unilateral decision in a matter so fundamental to the nature and

essential properties of marriage as to require the achievement of a *joint* decision. Marital unity grows on the discipline and exercise of achieving a common mind on all that most intimately concerns the common life. The requirement of the promise lifts one essential matter out and forecloses it. It requires the Roman Catholic partner either to treat the matter as decided, because of the promise already made, or to be submitted to the extra strain of deciding when concession to the non-Catholic spouse is in breach of the promise, and so of personal integrity. Similarly it puts the other partner to the strain of deciding whether to adhere to his own religious conviction, and so discomfort his spouse, or whether mercifully to abandon it and so disquiet his own conscience. It were better, in the Anglican view, for the obligation concerning children to be stated in terms which treat the partners as equally bound and equally free. Such terms should not be impossible to devise.

68. Roman Catholics would see the imputation that they are removing the Catholic partner's obligation from the context of the marriage as exaggerated, because although the Catholic is reminded of and remains aware of his obligation, the whole tendency of recent modifications of the requirements is to set them in the context of the marriage. This is particularly true of the qualification *quantum fieri potest/pro viribus*. In this sense they would contend that indeed the partners remain "equally bound and equally free," with the exception that lesser demands are made by his Church on the Anglican partner.

69. A welcome reconciling factor may be seen in a recognition of the limiting force of the qualifiers *quantum fieri potest* and *pro viribus*. This of course supposes the persistence of the discipline of the promise, which is, as we have just seen, unwelcome to Anglicans. Before offering any further solution (which not all Roman Catholics on the Commission think is likely to prove possible) we feel that paragraphs 65 and 67 should be clarified still further.

70. Let us suppose a judgment of conscience by the Catholic party which assesses the actual marital situation and decides that, through no fault of his own, perhaps through nobody's fault, perhaps even because of his conscientiousness in pursuing his duty in the matter, he is brought to a point where it is clear that a conflict between the claims of the marriage and the requirements of the Roman Catholic Church is inevitable. Then the Roman Catholic partner can justifiably say "I have in conscience done *quantum fieri potest*—because if I do more I shall certainly be seriously prejudicing the prior claims of the marriage." This remains a judgment of fact about the marital situation, and not a judgment on or repudiation of the Church's right to insist on the obligation. The Church's pastoral practice, sacramental and other, should, consistently, support this interpretation, and support the faithful in continuing the Christian life on this footing.

AN ALTERNATIVE TO THE PROMISE

71. This having been said, the question remains, is there an alternative to the promise, a course by which the Roman Catholic Church can do what its doctrine requires of it in a way which encounters less objection? In the opinion of a majority of the Commission there is. It would be for the Church to require of the Roman Catholic parish priest responsible for the marriage a written assurance to his bishop that he had duly put the Roman Catholic partner in mind of his obligations concerning the baptism and upbringing of the children and, according to opportunity, satisfied himself that the other partner knew what these obligations were. He would not be empowered to exact a promise in the matter from either partner, though he might well ask formally if the obligations were understood. The bishop, if satisfied in other respects, might then issue a dispensation for the marriage on the strength of this assurance. Such a procedure would be more consistent than the present one with the spirit of Vatican II documents on ecumenical relations and religious liberty, and would, it is believed, earn more respect, and so command more attention, from the non-Roman Catholic partner as well as from the Catholic.

72. This procedure is offered in an earnest attempt to make possible a real step forward in charitable relations between the two Churches. It is offered as a deliberate and more desirable alternative to the expedient now all too often adopted, and likely still to be encouraged, namely, in crude terms, to match force with force, that is, to grudge co-operation, to "make difficulties" from the non-Roman side matching in intensity what they feel they have encountered from the Roman. One example is an instruction from an Anglican bishop to his clergy not to assist at a mixed marriage in a Roman Catholic church if the promise has been given. Such a spirit of antagonism is inconsistent with the good which ought to be sought in the solemnizing of a marriage, and with the spirit in which Christians and Churches ought to act together.

PASTORAL CARE

73. The proposals made above for alterations in the law concerning canonical form and the requirement of a promise presuppose a high degree of mutual understanding and trust between our respective Churches, and particularly between the clergy. The clergy have a duty to lead in this matter; and if they are unconvinced themselves they will be unable to convey conviction to others. There is no room for complacency about the degree of understanding and trust prevailing at present, encouraging as the growth is here and there. We are bound, therefore, to return to the imperatives which we wrote into our Third Report designed to promote better joint pastoral preparation and support

for mixed marriages. We began by recalling the words of Pope Paul VI in *Matrimonia Mixta* (words which, unhappily, have in many places received very much less attention than the more controversial provisions of the *motu proprio*):

14. Local Ordinaries and parish priests shall see to it that the Catholic husband or wife and the children born of a mixed marriage do not lack spiritual assistance in fulfilling their duties of conscience. They shall encourage the Catholic husband or wife to keep ever in mind the divine gift of the Catholic faith and to bear witness to it with gentleness and reverence and with a clear conscience (cf. 1 Peter 3:16). They are to aid the married couple to foster the unity of their conjugal and family life, a unity which, in the case of Christians, is based on their baptism too. To these ends it is to be desired that those pastors should establish relationships of sincere openness and enlightened confidence with ministers of other religious communities.

74. This passage, without diluting the pastoral responsibility of the Roman Catholic priest to those of his own flock or the charge which he bears to support them in the obligations arising from their Church allegiance, puts a clear and welcome emphasis on the specific duties imposed by the mixed marriage in which there is well-founded unity as well as possibility of division. Above all it implies that those duties cannot be fully discharged without generous co-operation with the other minister concerned.

75. Pastoral care in these times has its special difficulties, particularly as it involves visiting homes, whether mixed marriage homes or not. It may well be fortunate that the scope for clerical paternalism has much narrowed; it is thus easier to realize that the solution of delicate personal problems involved in mixed marriages (not one of which is exactly like another) is to be found only in the maturing and sensitive growing-together of the family itself, and that any outside assistance, clerical or other, must be no less delicate and sensitive if it is not to be rejected as insufferable interference. Where joint pastoral care is assumed, as it should be, any hint of competitiveness, suspicion or possessiveness will inhibit the necessary sensitiveness from the start.

76. It is not for the Commission to offer a guide to joint pastoral care, which must remain in the fullest sense an experimental and inexact science, or better, an art. But it is not for that reason an activity which can be put aside. The various experiments that have been made in different parts of the world should be sympathetically studied bearing in mind that what serves one national temperament or social pattern may be of little value to another. What will count in the end will be the dedication, wisdom and sensitivity of the individual pastor, whether

working with individual families or with groups of families: this will help to determine whether mixed marriages are to be an occasion of spiritual growth or decay, an ecumenical opportunity or an ecumenical menace.

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