MIXED MARRIAGES: CONVERSATIONS IN THEOLOGY, ECUMENISM, CANON LAW AND PASTORAL PRACTICE

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This paper traces the developments in the Catholic law on mixed marriages beginning with an outline of the canonical provisions that were in force prior to the Second Vatican Council. The impact of the Council teaching on ecumenism and religious freedom became apparent with the promulgation of Matrimonii sacramentum *(1966),* Crescens matrimoniorum *(1967) and* Matrimonia mixta *(1970). These documents put the legislation on mixed marriages on a new footing and provided the basis for the legislation of the 1983 Code of Canon Law. Bishop McAreavey analyses various ecumenical dialogues on mixed marriages: ARCIC, the dialogue between the Lutheran World Federation, the World Alliance of Reformed Churches and the Catholic Church, and ongoing dialogues between the Methodist Church and the Orthodox Church (primarily in the United States) and the Catholic Church. He notes in particular what those discussions have to say on the issue of 'the promises' and canonical form and comments on the provisions of the 1983 Code of Canon Law on mixed marriages. He considers the basis of the commitment required of the Catholic party 'to remove dangers of defecting from the faith' and the commitment 'to do all in his or her power in order that all the children be baptised and brought up in the Catholic faith'. He accepts the view of Fr Navarrete that whereas the former obligation is of divine law the latter obligation goes no further than 'to do his or her best' (*pro viribus *in the Latin phrase). In the final section, he reflects on the pastoral impact of developments in the canon law regarding mixed marriages, noting the statements of the World Gatherings of Interchurch Families in Geneva (1998) and in Rome (2003).*

INTRODUCTION

I would like to thank the Canon Law Society for Great Britain and Ireland and the Ecclesiastical Law Society, co-sponsors of the Lyndwood Lecture, for inviting me to give this lecture. There were times over the past year when I wondered why I had accepted it, because the lifestyle of a diocesan bishop limits the opportunities for serious and systematic study. My present pastoral role influenced my choice of the topic of mixed marriages.[1] I say

[1] The term 'mixed marriage' in this paper refers exclusively to marriages between

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this, not because the topic is contentious at the present time, but because it is an area that impinges directly on the lives of many people, as well as ecumenical relationships, in the divided society of Northern Ireland where I minister.[2]

ECUMENISM OF LIFE

From my perspective, the issue of mixed marriages fits into the 'ecumenism of life', a phrase used by Cardinal Kasper when he addressed the topic of the 'present situation and future of the Ecumenical Movement' in the 2001 Plenary Meeting of the Pontifical Council for Promoting Christian Unity:

> We live still in a transitional period, which will probably last for some time to come ... To the 'ecumenism of love' and the 'ecumenism of truth', both of which naturally remain very important, must be added an 'ecumenism of life'. The churches did not only diverge through discussion; they diverged through the way they lived, through alienation and estrangement. Therefore, they need to come closer to each other again in their lives; they must get accustomed to each other, pray together, work together, live together, bearing the sting of the incompleteness of the *communio* and of the still impossible Eucharistic communion around the Lord's table.[3]

Those who enter mixed marriages carry 'the sting of the incompleteness of the *communio*' more than any other group in our Churches and, while a perfect solution is unattainable short of complete communion between the Churches, the wider Church communities have an important role to play in supporting such couples and their families.

In this lecture, I want to trace the journey that the Catholic Church has made in this area; I will take as my starting-point the canonical position just prior to the Second Vatican Council (in other words, the provisions of the 1917 Code of Canon Law); I wish to trace the progress that has been made by identifying several conversations. The first is the theological discussion that took place within the Vatican Council and in the years

Catholics and other baptised Christians. For a discussion of the historic relationship between the impedient impediment of mixed marriage and the diriment impediment of disparity of worship, cf U Navarrete, 'L'impedimento di "disparitas cultus" (Can 1086)', in *I matrimonii misti* ([Studi giuridici XLVII], Libreria editrice vaticana, Città del Vaticano, 1998) pp 110-116. Navarrete describes this as a symbiotic relationship.

[2] For a consideration of the implications of mixed marriages in the Northern Ireland context, cf John McAreavey, *The Canon Law of Marriage and the Family* (Four Courts Press, Dublin, 1997) pp 239-241. Mixed marriages have created difficulties also within the Republic of Ireland where membership of the minority Protestant Churches has declined substantially after the foundation of the Irish State. For a study of this, cf J J Sexton and R O'Leary, 'Factors affecting population decline in minority religious communities in the Republic of Ireland' in *Building Trust in Ireland* (Blackstaff Press, Belfast, 1996).

[3] Pontifical Council for Promoting Christian Unity, Plenary 2001 (available on Vatican website, www.vatican.va).

following the Council. The second is the series of ecumenical dialogues that took place in the post-conciliar period. The third is the work of the Code Commission that led to the formulation of the 1983 Code of Canon Law. The conversations were not unrelated; in fact, they informed and influenced each other, particularly during the 1970s, and eventually led to significant changes in pastoral practice; I will consider these in the last section of this paper.

THE STATUS QUO ON THE EVE OF THE SECOND VATICAN COUNCIL

The 1917 Code dealt with mixed marriages under the heading of 'impedient impediments'.[4] Canon 1060 stated:

> The Church forbids most severely and in all countries marriage between a Catholic and a heretic, or schismatic. If there is danger of perversion for the catholic party and the offspring, such marriage is also forbidden by the Divine law.[5]

When this impediment was dispensed, the marriage was to be celebrated without sacred rites; however to avoid 'greater evils' the Ordinary was permitted to allow some of the usual Church ceremonies, with the exception of the celebration of Mass (Can 1102, §1).[6] Canon 1103 listed the conditions under which this dispensation might be granted:

> The Church does not dispense from the impediment of mixed religion unless:
>
> 1° there are good and serious reasons;
>
> 2° the non-catholic party promises to remove all danger of perversion of the catholic party, and both parties promise that all their children shall be baptised and brought up as Catholics;
>
> 3° there is moral certainty that the promises will be kept. The promises are, as a rule, to be made in writing.[7]

[4] 'Impedient impediments render a marriage illicit, whereas diriment impediments rendered it invalid' (Can 1036). English translations of the 1917 Code are taken from S Woywood, *The New Canon Law* (Joseph F Wagner (Inc), New York/B Herder, London, 1918).

[5] Severissime Ecclesia ubique prohibit ne matrimonium ineatur inter duas personas baptizatas, quarum altera sit catholica, altera vero sectae haereticae seu schismaticae adscripta; quod si adsit perversionis periculum coniugis catholici et prolis, coniugium ipsa etiam lege divina vetatur.

[6] Sed omnes sacri ritus prohibentur; quod si ex hac prohibitione graviora mala praevideantur, Ordinarius potest aliquam ex consuetis ecclesiasticis caerimoniis, exclusa simper Missae celebratione, permittere.

[7] Ecclesia super impedimento mixtae religionis non dispensat, nisi (1°) urgeant iustae ac graves causae; (2°) cautionem praestiterit coniux acatholicus de amovendo a coniuge catholico perversionis periculo, et uterque coniux de universa prole catholice tantum baptizanda et educanda; (3°) moralis habeatur certitudo de cautionum implemendo; § 2: Cautiones regulariter in scriptis exigantur. Canon 2319 states: 'They are subject to excommunication *latae sententiae* reserved to the Ordinary: 1° who contract marriage before a non-catholic minister, against

Canon 1062 adds that 'the catholic party has the obligation to prudently work for the conversion of the non-catholic'.[8] The marriage was to be contracted 'outside the church' though, again, the Ordinary was permitted to relax this provision if its implementation would lead to 'great evils' (Can 1109, §3).[9] Canon 1064 makes explicit the general attitude of the Legislator, as if it was not already clear: bishops and other pastors of souls 'shall deter the faithful as much as they can from mixed marriages' (1°) and adds that 'if they cannot prevent them altogether they should by all means see to it that they are not contracted against the laws of God and of the Church' (2°). It is no wonder that priests who ministered at this time and who sought dispensations from the canonical provisions for couples wishing to enter mixed marriages approached the diocesan office in fear and trepidation!

SECOND VATICAN COUNCIL

This is not the time for a detailed study of the Second Vatican Council. Let it suffice here to cite a broad historical judgement of the impact of that Council on ecumenism:

> The Decree of the Second Vatican Council on Ecumenism (1964) made concern for reunion a matter of conscience for the whole Church. Of theological significance is the decree's recognition of the ecclesial reality of the Churches and ecclesial communities separated from Rome. In the practical sphere mention should be made to the possibility of concrete joint inter-confessional work ... The Decree on Ecumenism inaugurated a new phase in the history of Church movements for unity.[10]

The Decree on Ecumenism, along with the Declaration on Religious Freedom (*Dignitatis humanae*),[11] and indeed the other documents of the Second

Canon 1603, §1 ...; 2° who contract marriage with the implied or express agreement that all or some of the children shall be educated outside the Catholic Church ...; 3° who knowingly dare to offer their children to non-Catholic ministers for baptism ...; 4° parents or those who take their place, if they knowingly offer children to be educated or brought up in a non-Catholic denomination ...'

[8] Coniux catholicus obligatione tenetur conversionem coniugis acatholici prudenter curandi.

[9] Matrimonia vero inter partem catholicam et partem acatholicam extra ecclesiam celebrentur; quod si Ordinarius prudenter iudicet id servari non posse quin graviora oriantur mala, prudenti eius arbitrio committitur hac super re dispensare, firmo tamen praescripto Canon 1102, §2.

[10] V Conzemius, 'Ecumenism' in Karl Rahner with Cornelius Ernst and Kevin Smyth (eds) *Sacramentum Mundi: An Encyclopedia of Theology* (Burns & Oates, 1968) vol 2 p 199.

[11] Of particular relevance to mixed marriages is the following statement: 'The Vatican Council declares that the human person has a right to religious freedom. Freedom of this kind means that all men should be immune from coercion on the part of individuals, social groups and every human power so that, within due limits, nobody is forced to act against his convictions in religious matters in private or in public, alone or in associations with others' in Flannery (ed) *Vatican II: vol 1, The Conciliar and Post-Conciliar Documents* (new revised edition 1998) p 800 n 2.

Vatican Council, created a radically new context for interchurch relations.[12] This was reflected in the promulgation in the years following the Council of three significant pieces of marriage legislation: the instruction on mixed marriages, *Matrimonii sacramentum*,[13] legislation on marriages between Catholics and Orthodox, *Crescens matrimoniorum*[14] and the Apostolic Letter of Paul VI on mixed marriages, *Matrimonia mixta.*[15]

Matrimonii sacramentum (1966)

In *Matrimonii sacramentum* the Congregation for the Doctrine of the Faith acknowledged that the vision of interchurch relations expressed in the Decree on Ecumenism 'would seem to suggest a mitigation of the rigour of the existing discipline on mixed marriages, not with regard to what is of divine law, but with regard to certain ecclesiastical regulations which our separated brethren find offensive'.[16] The Instruction contains significant changes in canonical discipline: the obligation to ensure the baptism and education in the catholic religion falls solely on the catholic partner;[17] 'the non-catholic party should, with due delicacy, be informed of the catholic teaching on the dignity of marriage ... also of the grave obligation on the catholic party to safeguard, preserve and profess his or her faith and to baptise and educate in it such children as may be born'.[18] The non-catholic spouse 'is to be invited to promise, sincerely and openly, that at the very least he or she will not impede' the fulfilment of this commitment on the part of the catholic spouse (ibid). If the non-catholic spouse feels that such a promise would go against his or her own conscience, the Ordinary should refer the matter to the Holy See.[19] It was left to the Ordinary to determine how the promises of the catholic partner should be made (I, 4). As regards the liturgical form of celebration of mixed marriages, local Ordinaries were permitted to authorise the celebration of mixed marriages with sacred rites and the customary blessings and sermon;[20] it stated that 'there is no reason why the non-catholic minister should not deliver an address of congratulation and encouragement and recite some prayers with the non-Catholics' and added that 'all this needs the approval of the local Ordinary, and care must be taken to avoid the danger of provoking comment'.[21] In the final section, the Instruction abolishes the excommunication incurred, according to Canon 2319, §1, 1°, by those who married before a non-

[12] Pope Paul VI anticipated the results of the Council by extending to local Ordinaries the faculty of dispensing from the impediments of mixed religion and disparity of cult. Cf *Pastorale munus* nn 19-20 *Acta Apostolicae Sedis* 56 (1964) p 8.
[13] Issued by the S.C.D.F. on 18 March 1966. Cf Flannery pp 474-478; cf Latin text in *Acta Apostolicae Sedis* 58 (1966) pp 235-239.
[14] Issued by the SCOC on 22 February 1967. Cf Flannery pp 481-482; cf Latin text in *Acta Apostolicae Sedis* 59 (1967) pp 165-166.
[15] An apostolic letter issued *motu proprio* by Pope Paul VI on 7 January 1970. Cf Flannery pp 508-514; cf Latin text in *Acta Apostolicae Sedis* 62 (1970) pp 257-263.
[16] Flannery p 475.
[17] I 2 Flannery p 476.
[18] I 3 Flannery.
[19] Flannery.
[20] IV Flannery p 477.
[21] V Flannery p 478.

catholic minister and the effect of the abolition was retroactive.[22] The Instruction concludes with a comment that 'the thought and intention behind these regulations is ... to meet the needs of the faithful in our day and to promote cordial relations between Catholics and non-Catholics'.[23]

Crescens matrimoniorum (1967)

The Decree on the Catholic Eastern Churches stated that the obligation of 'Eastern Catholics' when contracting marriage with baptised Eastern non-Catholics, to observe the canonical form was 'only for liceity', adding that 'for their validity, the presence of a sacred minister is sufficient'.[24] *Crescens matrimoniorum* extended this provision to Latin rite Catholics. The effect of this change in the law was that marriages between Orthodox Christians and Catholics, regardless of rite, celebrated before an Orthodox priest were held to be valid.

Matrimonia mixta (1970)

In *Matrimonia mixta* Paul VI observed that increasing communication between people of different religions had led to an increase in the number of mixed marriages. He took the view that 'precisely because they admit differences of religion and are a consequence of division among Christians, [they] do not, except in some cases, help in re-establishing unity among Christians'.[25] He wrote that 'there are many difficulties inherent in a mixed marriage, since a certain division is introduced into the living cell of the Church'; he added that 'in the family itself the fulfilment of the gospel teaching is more difficult because of diversities in matters of religion, especially in regard to those matters which concern Christian worship and the education of children'.[26] For these reasons 'the Church ... discourages the contracting of mixed marriages, for she is most desirous that Catholics be able in matrimony to attain to perfect union of mind and full communion of life'. However since people have a natural right to marry and have children, the Church wished to make arrangements to ensure 'that the principles of divine law be scrupulously observed and the right to contract marriage be respected'.[27]

Paul VI stated that although the Church was relaxing ecclesiastical discipline in particular cases, 'she can never remove the obligation of the catholic party which, by divine law, namely by the plan of salvation instituted by Christ, is imposed according to the various situations'.[28] He stressed that 'the catholic party to a marriage has the duty of preserving his or her own faith; nor is it ever permitted to expose oneself to a proximate danger of losing it. Furthermore, the catholic partner in a mixed marriage is obliged, not only to remain steadfast in the faith, but also, as far as

[22] VII Flannery.
[23] Flannery.
[24] N 18 Flannery pp 447-448.
[25] Flannery p 508.
[26] Flannery.
[27] Flannery p 509.
[28] Flannery p 510.

possible, to see that the children be baptised and brought up in that same faith and receive all those aids to eternal salvation which the Catholic Church provides for her sons and daughters'.[29] He noted that 'the problem of the children's education is a particularly difficult one, in view of the fact that both husband and wife are bound by that responsibility and may by no means ignore it or any of the obligations connected with it'.[30] Finally in the introduction to *Matrimonia mixta*, the Pope acknowledges that in this area the canonical discipline cannot be uniform and must be adapted to the unique circumstances of the married couple and the differing degrees of their ecclesiastical communion.[31]

The norms contained in *Matrimonia mixta* are significant as they provide the framework for subsequent legislation.[32] Norm I states that a mixed marriage may not licitly be contracted without the previous dispensation of the local Ordinary 'since such a marriage is by its nature an obstacle to the full spiritual communion of the married parties'.[33] However, the Church, 'taking into account the nature and circumstances of times, places and persons, is prepared to dispense from ... [the] impediment, provided there is a just cause'.[34] Before the dispensation is granted, the catholic party shall declare that he/she is ready to remove dangers of falling away from the faith. The catholic partner is also gravely bound to do all in his/her power to have all the children baptised and brought up in the Catholic Church.[35] At an opportune time, the non-catholic party must be informed of the promises that the catholic party has to make, so that it is clear that he/she is aware of the promise and obligation on the part of the Catholic.[36]

Bishops' Conferences were authorised to determine how these declarations and promises are to be made. The canonical form is to be used, but 'if serious difficulties stand in the way of observing it, local Ordinaries have the right to dispense from the canonical form in any mixed marriage, as long as there is some public form of ceremony'.[37] Mixed marriages may

[29] Flannery.
[30] Flannery.
[31] Flannery.
[32] For a contemporary judgment of the impact of *Matrimonia mixta*, note the comment taken from the Letter from the Second World Gathering of Interchurch Families to the Pontifical Council for Promoting Christian Unity [2003]: 'The papal *motu proprio Matrimonia mixta* ... brought in legislative changes the positive significance of which was not at first fully appreciated by other Churches. It also put forward a less negative view of mixed marriage. It did so in the characteristically understated way by which the Vatican heralds radical change. It said that "mixed marriages ... do not, except in some cases, help in re-establishing unity among Christians". Most Protestant readers, unschooled in Vatican ways, failed at first to detect the positive smuggled in under cover of the negative'. *Doctrine and Life* 54/3 (March 2004) p 45.
[33] Flannery p 511. This was a major change in canonical legislation; henceforth a marriage celebrated without a dispensation would be illicit, not invalid.
[34] Norm 3 Flannery p 512.
[35] Norm 4 Flannery.
[36] Norm 5 Flannery.
[37] Norm 9 Flannery.

be celebrated, subject to the consent of the local Ordinary, within Mass.[38] Local Ordinaries and parish clergy are asked to help married couples '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.[39]

ECUMENICAL DIALOGUES ON MIXED MARRIAGES

The 1970s marked the beginning of an important series of interchurch conversations on a wide range of issues, including mixed marriages. These included the ARCIC report, 'Anglican-Roman Catholic Marriage' [The report of the Anglican-Roman Catholic International Commission on the Theology of Marriage and its application to Mixed Marriages] (1975);[40] the dialogue between the Lutheran World Federation, the World Alliance of Reformed Churches and the Secretariat for Promoting Christian Unity of the Roman Catholic Church; the results were published in a report entitled 'Theology of marriage and the problems of mixed marriages' (1976).[41] Ongoing dialogues between the Catholic Church and the Methodist Church resulted in the Denver Report (1971),[42] the Dublin Report (1976)[43] and the Honolulu Report (1981).[44] These dialogues were wide-ranging but each dealt with marriage and family issues, including mixed marriages. Among the dialogues that took place between the Orthodox Churches and the Catholic Church I have confined myself to those that took place in the United States and that produced reports in English; they include the following: 'An agreed statement on mixed marriages' issued in New York in 1970;[45] 'An agreed statement on the sanctity of marriage' issued in New York in 1978;[46] 'Joint recommendations on the spiritual formation of marriages between Orthodox and Roman Catholics' issued in New York in 1980;[47] 'An agreed statement on Orthodox-Roman Catholic Marriages', that emerged in 1986 from the Metropolitan New York / New Jersey Orthodox Roman Catholic dialogue[48] and, finally, 'A pastoral statement on marriage' issued by the Joint Committee of Orthodox and Roman Catholic Bishops in the United States (October 3-5 1990, Johnstown, PA).[49]

[38] Norm 11 Flannery p 513.
[39] Norm 14 Flannery pp 513-514.
[40] Published by the Church Information Office, Church House, London, in association with the Catholic Information Office (Infoform), Herts 1976.
[41] Cf Harding Meyer and Lukas Vischer (eds) *Growth in Agreement* (Ecumenical Documents II) (Paulist Press, New York/Ramsey-WCC, Geneva, 1984) pp 279-305. The text is also available in *One in Christ* 14/2 (1978) pp 162-196.
[42] Cf *Growth in Agreement* pp 322-325 nn 69-78a.
[43] Ibid pp 348-350 nn 35-43.
[44] Ibid pp 382-385 nn 48-56.
[45] Joseph A Burgess and Jeffrey Gros (eds) *Building Unity* (Ecumenical Documents IV) (Paulist Press, New York/Mahwah, NJ, 1989) pp 326-327.
[46] Ibid pp 335-338.
[47] Ibid pp 339-341.
[48] Ibid pp 342-353.
[49] Joseph A Burgess and Jeffrey Gros (eds) *Growing Consensus* (Ecumenical Documents V) (Paulist Press, New York/Mahwah, 1995) pp 497-504.

I will give a summary of these conversations, which are substantial, concentrating on two issues, the promises required since the promulgation of *Matrimonia mixta* of the catholic party to a mixed marriage and the requirement that the marriage be celebrated according to canonical form.

ARCIC

Introduction

The ARCIC report states its *raison d'être* in these words:

> 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,[50] what we have in common both of doctrine and of disciplinary purpose in a matter that comes home most closely to the lives of men and women and to the health of society.[51]

Accepting that 'the ecclesiological differences lying behind the problems of mixed marriages as beyond our power to serve', they set out in the report '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'.[52] In the course of their study, the ARCIC members became aware that 'the central theological difficulty that underlay Anglican-Roman Catholic tensions about the discipline governing mixed marriages was ecclesiological'.[53] Given this position, 'many saw the relaxations of the 1966 Instruction *Matrimonii sacramentum* and the 1970 *motu proprio Matrimonia mixta* not simply as theologically unrelated ecumenical gestures but as canonical changes logically linked with developments in ecclesiology'.[54] The awareness of the underlying ecclesiological differences between the two Churches allowed ARCIC members to see the obligation on Roman Catholics entering mixed marriages to have their children baptised and raised as Catholics 'not merely as institutional defensiveness, nor as over-riding all other obligations, such as those which arise from the nature of marriage itself, [but rather as reflecting] the Church's understanding of itself'.[55]

Promises

The final section of the ARCIC Report deals directly with mixed marriages. Referring to the fact that the obligation of the Catholic party (as outlined in *Matrimonia mixta*) is described as one imposed by divine law, it comments

[50] Cf Flannery (ed) *Vatican II,* vol 1: *The Conciliar and Post-Conciliar Documents* pp 479-480.
[51] Introduction.
[52] Ibid.
[53] N 15. Earlier the report states: 'Behind the requirement concerning the baptism and upbringing of children ... as Roman Catholics, lay a doctrine of the Church which Roman Catholics cannot abandon and which Anglicans cannot accept' (n 9).
[54] Ibid n 17.
[55] Ibid n 19.

that 'interpretation makes it increasingly clear that this obligation is not to be thought of as absolute, that is, unrelated to any other obligations and rights'.[56] The report continues:

> In our [First] Report we agreed 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 English phrase (to do all in his power) might be and often is adduced to justify the Roman Catholic party acting in a way that disregards the equal rights of 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 recognised that 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 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.
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> The use of the Latin phrase [*pro viribus*] in the official text also marks recognition that '... 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' (GS 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 recognised that the application of this obligation has aroused fears 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.[57]

In other words, the crucial thing is the interpretation of the *pro viribus* clause. The report acknowledges that there are considerable differences in the ways in which various Bishops' Conferences applied the dispositions of *Matrimonia mixta*:

> On the 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

[56] Ibid n 58.
[57] Ibid n 59.

equally clear insistence on the limiting 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.[58]

Anglican objections and Roman Catholic responses

At this point, the ARCIC Report takes the form of a statement of ecclesial positions and counter-arguments.

> The first is that it [the requirement of promises on the part of the Roman Catholic] 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 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 recognise 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.
>
> The second objection is that the requirements are insensitive to the conviction and conscience of the committed Anglican partner... It is the committed Anglican whose convictions are ignored who constitutes the problem – and the whole Anglican Communion stands with him. The Roman Catholic would reply [that] the more intense the conviction recognised 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 no meaning except on a basis of mutual respect for conviction.
>
> The third objection is that the requirements ask of one partner 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[59] 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

[58] Ibid n 60.

[59] The documents that date from the 1970s do not use the inclusive his/her that is common today. I have not amended the original texts.

> equally bound and equally free. The Roman Catholic view is that the whole tendency of recent modifications is to set (obligations) in the context of the marriage. This is particularly true of the qualifications *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.[60]

Canonical form

On the issue of canonical form, the report referred to a recommendation made in an earlier interim 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 authorised minister of either party'.[61] ARCIC added:

> [T]o 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.[62]

DIALOGUE BETWEEN THE LUTHERAN WORLD FEDERATION, THE WORLD ALLIANCE OF REFORMED CHURCHES AND THE SECRETARIAT FOR PROMOTING CHRISTIAN UNITY

Introduction

The dialogue between the Lutheran World Federation, the World Alliance of Reformed Churches and the Secretariat for Promoting Christian Unity lasted from 1971 till 1977; its final report was published in Venice in 1976.[63] It noted that *Matrimonia mixta* 'open[ed] up new possibilities of understanding the nature of the regulations of the Roman Catholic Church'.[64] The report adverted to the different role attributed to law in the Protestant and Catholic traditions.[65] Since the Catholic regulations on mixed marriages 'are an expression of theology' it is necessary 'to examine

[60] Ibid nn 67-68.
[61] Ibid n 63.
[62] Ibid.
[63] For ease of reference, I will refer to this as the Venice Report.
[64] Theology of Marriage and the Problems of Mixed Marriages in Harding Meyer and Lukas Vischer (eds) *Growth in Agreement* (Ecumenical Documents II) (Paulist Press, New York-Ramsey/World Council of Churches, Geneva, 1984) p 293 n 52. It added: 'This letter shows canon law, as it is no doubt intended, as an expression of Christ's loving care for his people, and the Church's attempt to carry out the love in the daily circumstances of life' (ibid).
[65] 'The Catholic Church sees certain matters against a different horizon from the

their motives and deep roots in relation to the Gospel message and its theological explanation'.[66]

The promises

From this perspective it is clear that the obligations of the catholic party to a mixed marriage are 'seen as a requirement that derives from the nature of faith'.[67] These obligations, however, are conditioned by circumstances, which may escape the control of the Catholic parent. This is why it is stated he is obliged to do all that lies within his power, all that is possible.[68] Commenting directly on the fact that such promises are required of the Catholic partner, the Venice Report states:

> This idea of legal norms in this connection is foreign to the spirituality of the Lutheran and Reformed Churches... These norms seemed to place the first importance upon the fulfilment of the Catholic spouse's obligations to the Catholic Church and, hopefully, upon the fulfilment of similar obligations on the part of the children; whereas it has been possible for Lutheran and Reformed ministers and Churches to give the first priority to the Christian good and growth in grace of husband and wife together as a married couple and so of the whole family.[69]

The canonical form

The report asks whether, in relation to the promises and the requirement of the canonical form, 'the legal norms do not hinder a fully ecumenical solution to the problem of mixed marriages'.[70] The Protestant participants, in conclusion, put two questions to the Catholic members:

> (a) Given the theological agreements that have already been obtained, would it not be desirable to examine very seriously in each country whether a mixed marriage celebrated by a Lutheran or Reformed pastor could not be recognised as valid by the Catholic Church, even in the absence of dispensation from canonical form, especially since this would correspond to the practice of the Lutheran and Reformed Churches? When examining this question, the non-Catholic members stressed it should be borne in mind that the Catholic Church in its relationship with the Orthodox Churches does not make the dispensation from canonical

Lutheran and Reformed Churches. This is particularly true in the field of canon law relating to marriage. This is not only a matter of the function and weight that the Catholic Church on the one hand and the Lutheran and Reformed Churches on the other attribute to such a system. Each of the two sides, quite obviously, sees the juridical system in a different dimension, as belonging to an altogether different plane. The two sides therefore treat canon law in completely different contexts, assess it in different ways, and assign altogether different tasks and functions to it' (ibid p 296 n 64).

[66] Ibid p 296 n 66.
[67] Ibid p 298 n 80.
[68] Ibid.
[69] Ibid p 301.
[70] Ibid.

> form necessary for validity in the event of a mixed marriage, and this notwithstanding the fact that there are still serious differences between the way in which the two Churches understand marriage. (b) ... Would it not be desirable to examine whether the obligation of the Catholic partner of a mixed marriage to baptise and educate his children in the Catholic faith could not be safeguarded in a more pastoral and also more ecumenical manner than by exacting a formal promise?[71]

The Venice report affirmed the value of their dialogue and the partial progress made and asked that the 'dialogue not be brought to a close, but ... be continued and made more effective at various levels'.[72]

METHODIST-ROMAN CATHOLIC DIALOGUES

The reports arising from the various Methodist-Roman Catholic dialogues[73] are less extensive than ARCIC and the Venice Report. However, they address the issue of mixed marriages in the context of wider discussions on marriage and other topics. The Denver Report states:

> We are not unmindful of the difficulties, which can occur when the Church allegiance and doctrine of two parties differ, and both are deeply committed to their different Christian traditions. This conflict must be seen in the context of the right to marry, the inviolability of conscience, the joint obligation of the parents for the care and education of their children, other mutual rights and obligations in marriage and the teaching and self-understanding of the Churches involved.[74]

The report welcomed the promulgation of *Matrimonia mixta* and goes on to make a pertinent comment:

> While recent changes in the legislation of the Roman Catholic Church are seen as an ecumenical advance, we are nevertheless conscious of the fact that the conflict and agony in such marriages have not been created by the positive law, nor will they be resolved by positive law. The difficulties inherent in interchurch marriages should compel us not only to work with greater zeal for fuller ecclesial unity, but also to do everything possible to help the partners of such marriages to use them as means of grace and of ecumenical growth.[75]

The Dublin Report (1976) also made an astute pastoral observation:

> [Interchurch marriages] are in fact a problem to those marrying only if they belong to the small minority within a minority, that is, those who are not only Church members but also take the responsibilities of

[71] Ibid p 304 n 105. They referred to a similar suggestion made in ARCIC n 71.
[72] Ibid p 303 n 101.
[73] Cf footnotes 31-33.
[74] *Growth in Agreement* (Ecumenical Documents II) p 323 n 73.
[75] Ibid pp 323-324 n 74.

> membership seriously. Consequently those who do belong to different Churches and who seek guidance concerning interchurch marriage should be welcomed for their faithful concern and not chided for posing a problem, especially since they can hardly be held responsible for the division between our Churches which is the underlying cause of the problem.[76]

ORTHODOX-ROMAN CATHOLIC DIALOGUES[77]

Introduction

The situation regarding mixed marriages between members of the Orthodox Church historically gave rise to real difficulties and the 1970 'agreed statement' noted that 'both Churches still discourage such marriages'.[78]

Canonical form

This statement recommended that 'the Catholic Church, as a normative practice, allow the Catholic party of a proposed marriage with an Orthodox to be married with the Orthodox priest officiating', adding that 'this procedure should ... take place only after consultation with both parties'.[79] In fact, an Orthodox Christian who marries a Roman Catholic in a Roman Catholic ceremony 'is usually separated from the participation in the sacraments of the Orthodox Church'.[80] There is a procedure to rectify this:

> In order to rectify the canonical situation of the Orthodox partner, current discipline requires that the marriage be regularised in the Orthodox Church. Any form of regularisation should avoid giving the impression that the marriage, which has taken place in the Roman Catholic Church does not have a fundamental sacramental character. Nor should it imply that a 'new' ceremony is taking place. The goal is to reintegrate the Orthodox communicant into the full life of his/her own Church and to restore him/her to full canonical standing within the Church.[81]

The situation appears to be fluid; for example, one 'agreed statement'

[76] Ibid p 349 n 40.
[77] The agreements to which I refer were all reached in the United States of America. As such, they may not represent the full range of views between the Orthodox Churches and the Roman Catholic Church. The 'Agreed statement on Orthodox-Roman Catholic marriages' (New York/New Jersey, 1986) states: 'Specific attention can be given to the relationship of the Churches in the Americas. The situation here offers some distinct advantages. The political, ethnic and cultural differences which, in the old countries, often nourished mistrust, and even hatred, are disappearing'. *Building Unity* (Ecumenical Documents IV) p 345.
[78] 'An agreed statement on mixed marriages' *Building Unity* (New York, 1970) p 326.
[79] *Building Unity* p 327.
[80] 'Agreed statement on Orthodox-Roman Catholic marriage' *Building Unity* (New York/New Jersey, 1986) p 349.
[81] Ibid pp 349-350.

observes that 'the Orthodox Church accepts as sacramental only those marriages sanctified in the liturgical life of the Church blessed by an Orthodox priest';[82] another – in the same year – states:

> While most Orthodox ecclesiastical provinces require that the marriage [between an Orthodox and a Roman Catholic] take place in the Orthodox Church only, recent synodal decisions of ... the Patriarchate of Moscow and the Church of Poland recognise the validity of the sacrament of marriage performed by Roman Catholic priests provided that the Orthodox Patriarch gives his permission.[83]

The promises

One of the striking features of the various dialogues between Orthodox Christians and Roman Catholics is the emphasis on 'the spiritual formation of children'; in fact, the 1980 New York statement is entitled 'Joint recommendations on the spiritual formation of children of marriages between Orthodox and Roman Catholics'.[84] The dilemma faced by parents who are convinced members of their respective Churches is sharply put:

> Today each of our Churches insists that the children of such marriages be raised within its own community, on the grounds that this is in the child's spiritual welfare, thus presuming that one of the parents will relinquish the chief responsibility to the other. Yet if the purpose of the general law is indeed the child's spiritual welfare, its application should be guided by a prudent judgement concerning what is better for the child in the concrete situation.[85]

This report is in no doubt that the best solution is one that involves both parents:

> Decisions, including the initial and very important one of the children's Church membership, rest with both husband and wife and should take into account the good of the children, the strength of religious conviction of the parents and other relatives, the demands of their consciences, the unity and stability of the family, and other aspects of the specific context. In some cases, when it appears certain that only one of the partners will fulfil his or her responsibility, it seems clear that the children should be raised in that partner's Church. In other cases, however, the children's spiritual formation may include a fuller participation in the life and traditions of both Churches, respecting, however, the canonical order of each Church. Here particularly the decision of the children's Church membership is more difficult to make. Yet we believe that this decision can be made in good conscience. This is possible because of the proximity of doctrine and practice of our

[82] 'An agreed statement on the sanctity of marriage' (New York, 1986) ibid p 337.
[83] 'Agreed statement on Orthodox-Roman Catholic marriages' *Building Unity* (New York/New Jersey, 1986) p 347.
[84] Ibid pp 339-341.
[85] Ibid p 340.

> Churches which enables each to see the other precisely as *Church*, as the locus for the communion of men and women with God and with each other through Jesus Christ in the Holy Spirit.[86]

Two options are rejected: first, the practice of raising some children in one religion and some in the other is described as 'wrong' as 'it divides the family, fails to reflect the theology of either Church, and could easily lead to an attitude of indifference'.[87] The option of 'neglecting to baptise and catechise children under the presumption that they will "decide for themselves" when they are older' is also rejected on the grounds that 'such a procedure very often results in those children having only a weak and confused faith and spiritual life'.[88] This report agreed that the two Churches 'work toward eliminating ... the formal promises to baptise and educate the children to a particular Church as an absolute requirement for Orthodox-Roman Catholic marriages'.[89]

CODE OF CANON LAW (1983)

The task of drafting a new Code of Canon Law in regard to mixed marriages began with *Matrimonii sacramentum*, *Crescens matrimoniorum* and *Matrimonia mixta*, documents that were drafted in the aftermath of the Second Vatican Council. Unlike the previous Code, Chapter VI of the Book IV, Title VII (on marriage) draws together all the provisions dealing with mixed marriage (Canons 1124-1129). I will focus here only on three canons: Canons 1124, 1125 and 1126.[90]

[86] Ibid pp 340-341. Note that the solution found here is based on ecclesiology. This 'solution' is echoed also in 'A pastoral statement on marriage [Joint committee of Orthodox and Roman Catholic Bishops in the United States, October 3-5, 1990, Johnstown, PA] in Joseph A Burgess and Jeffrey Gros (eds) *Growing Consensus* (Ecumenical Documents V), (Paulist Press, New York/Mahwah, 1995) p 502: 'Decisions, including the initial one of the children's church membership, rest with both husband and wife. The decisions should take into account the good of the children, the strength of the religious convictions of the parents and other relatives, the demands of parents' consciences, the unity and stability of the family, and other specific concerns. In some cases, when it appears probable that only one of the partners will fulfil his or her responsibility, it seems desirable that the children should be raised in that partner's church. In other cases, the children's spiritual formation may include a fuller participation in the life and tradition of both churches, respecting always each church's canonical order. In these cases, the decision regarding the children's church membership is more difficult to make. Yet we are convinced that it is possible to make this decision in good conscience because of the proximity of our churches' doctrine and practice which enables each, to a high degree, to see the other precisely as Church, as the locus for the communion of the faithful with God and with each other through Jesus Christ in the Holy Spirit'.

[87] 'Agreed statement on Orthodox-Roman Catholic marriages' in *Building Unity* (New York/New Jersey, 1986) p 350.

[88] Ibid.

[89] Ibid p 351.

[90] The equivalent canons in the Code of Canons of the Eastern Churches are Canons 813-816. Cf also Title XVIII, Ecumenism or fostering the unity of Christians (Canons 902-908).

Canon 1124 states:

> Without the express permission of the competent authority, marriage is prohibited between two baptised persons, one of whom was baptised in the Catholic Church or received into it after baptism and has not defected from it by a formal act, the other of whom belongs to a Church or ecclesial community not in full communion with the Catholic Church.[91]

The Code Commission began its work in 1969 and continued during the 1970s, a period, as we have seen, of intense ecumenical discussion.[92] A change of attitude in Church teaching regarding mixed marriage was also reflected in *Evangelii nuntiandi*.[93] The most significant difference is that mixed religion is no longer an impediment and is a simple prohibition that requires, not a dispensation, but permission from the local Ordinary.[94]

Canon 1125 states:

> The local Ordinary can grant this permission if there is a just and reasonable cause. He is not to grant it unless the following conditions are fulfilled:
>
> 1° the catholic party is to declare that he or she is prepared to remove dangers of defecting from the faith, and is to make a sincere promise to do all in his or her power in order that all the children be baptised and brought up in the catholic Church;
>
> 2° the other party is to be informed in good time of these promises to be made by the catholic party, so that it is certain that he or she is truly aware of the promise and of the obligation of the catholic party;
>
> 3° both parties are to be instructed about the purposes and essential properties of marriage, which are not to be excluded by either contractant.

Commentary

Permission for a mixed marriage can be granted for 'a just and reasonable cause', such as the sincere desire to marry.[95] Assuming that there is 'a just

[91] For a detailed analysis of the work of the Code Commission on this canon, cf *Communicationes* 9 (1977) pp 353-359.

[92] For a detailed analysis of the development of the canonical text from *Matrimonia mixta* to the Code of Canon Law, cf M Bucciero, *I matrimonii misti: aspetti storici, canonici e pastorali*, (Millennium Romae 1997) pp 74-92.

[93] 'And such a family becomes the evangeliser of many other families and of the neighbourhood of which it forms part. Families resulting from a mixed marriage also have the duty of proclaiming Christ to the children in the fullness of the consequences of a common baptism; they have moreover the difficult task of becoming builders of unity'. Cf Flannery (ed) *Vatican Council II: More Post-Conciliar Documents*, (Dominican Publications, Dublin, 1982) p 747 n 71.

[94] Permission differs from dispensation inasmuch as it is 'according to the law' and may be presumed when the competent authority cannot be approached. Cf G Lobo The Christian and Canon Law in J Hite and DJ Ward, *Readings, Cases, Materials in Canon Law* (Revised edition, The Liturgical Press, St John's Abbey, Collegeville MN, 1990) p 41.

[95] I Gramunt, J Hervada, L A Wauck, *Canons and Commentaries on Marriage* (The Liturgical Press, Collegeville, Minnesota 1987) p 72.

and reasonable cause', the local Ordinary is not to grant permission unless certain conditions are fulfilled. These conditions, though important, are not required for the validity of the marriage.[96]

The conditions laid down for the granting of the permission are those stated in *Matrimonia mixta*, n. 4: first, that the catholic party is to remove the dangers of defecting from the faith and, secondly, that he/she is to promise to do all in his or her power to have all the children baptised and brought up in the catholic faith. The 1993 Ecumenical Directory interprets this as follows:

> In carrying out this duty of transmitting the catholic faith to the children, the catholic parent will do so with respect for the religious freedom and conscience of the other parent and with due regard for the unity and permanence of the marriage and for the maintenance of the communion of the family. If, notwithstanding the catholic's best efforts, the children are not baptised and brought up in the Catholic Church, the catholic parent does not fall subject to the censure of Canon Law. At the same time, his/her obligations do not cease. It continues to make its demands, which could be met, for example, by playing an active part in contributing to the Christian atmosphere of the home; doing all that is possible by word and example to enable the other members of the family to appreciate the specific values of the catholic tradition; taking whatever steps are necessary to be well informed about his/her own faith so as to be able to explain and discuss it with them; praying with the family for the grace of Christian unity as the Lord wills it.[97]

Örsy comments that 'the law mandates the catholic to do no more and no less for the catholic baptism and education of the children than is feasible and fitting without doing violence to the right hierarchy of values which together make up the fabric of a happy union'.[98]

Since the promulgation of *Matrimonia mixta*, it is the custom in most

[96] Cf *Communicationes* 9 (1977) p 356. Cf also E Caparros, M Thériault, J Thorn, *Code of Canon Law Annotated* (Wilson & Lafleur Limitée, Montréal, 1993) p 713.
[97] Pontifical Council for Promoting Christian Unity, *Directory for the application of principles and norms of ecumenism* (1993) n 151.
[98] Michael Glazier, *Marriage and Canon Law*, (Wilmington, Delaware, 1986) p 187. Örsy adds: 'The law assumes that the Catholic is intensely committed to his faith and to his church; in real life it may happen that the non-Catholic is the one who is more dedicated to Christian beliefs and practices. If so, the balance must shift from the ideal which cannot be reached to the concrete good that can be obtained. The Catholic should be humble enough to admit that acting on his religious strength, *vires*, the child would learn less about Christian life than by letting the non-Catholic take care of his education'. Siegle, while insisting on the divine law obligation of Catholics entering mixed marriages observes that 'the obligation is imposed upon the catholic only in the degree to which this is concretely possible'. He adds: 'The catholic baptism and the education of the children is to be undertaken "as far as possible". In other words, the Catholic promises "to do all in his or her power" because no one is bound to do the impossible'. *Marriage According to the New Code of Canon Law* (Alba House, New York) pp 151-152.

English dioceses for the local Ordinary to delegate to parish priests authority to grant permission for mixed marriages.[99]

Canon 1127 states:

> §1 The provisions of Can.1108 are to be observed in regard to the form to be used in a mixed marriage. If, however, the catholic party contracts marriage with a non-catholic of oriental rite, the canonical form of marriage is to be observed for lawfulness only; for validity, however, the intervention of a sacred minister is required, while observing the other requirements of law.
>
> §2 If there are grave difficulties in the way of observing the canonical form, the local Ordinary of the catholic party has the right to dispense from it in individual cases, having however consulted the Ordinary of the place of the celebration of the marriage; for validity, however, some public form of celebration is required. It is for the Bishops' Conference to establish norms whereby this dispensation may be granted in a uniform manner.
>
> §3 It is forbidden to have, either before or after the canonical celebration in accordance with §1, another religious celebration of the same marriage for the purpose of giving or renewing matrimonial consent. Likewise, there is not to be a religious celebration in which the catholic assistant and non-catholic minister, each performing his own rite, together ask for the consent of the parties.[100]

Commentary

The requirement that a marriage involving a Catholic must be celebrated according to the canonical form holds, in principle, for mixed marriages. The law makes an exception for a marriage involving an Orthodox Christian; the canonical form is required only for lawfulness, subject to the requirement that a 'sacred minister' officiate at the marriage. In other words, the 'sacred minister' of the Orthodox Church is given the same standing as a 'qualified witness' of the Catholic Church.

With regard to mixed marriages with members of other denominations, an element of flexibility is built into the law: 'If there are grave difficulties in the way of observing the canonical form, the local Ordinary of the catholic party can dispense from it in individual cases (Canon 1127 §2).[101] Örsy gives two examples of 'grave difficulties': objections based on the religious

[99] For example, *Pastoral Guidelines and Faculties* issued in the diocese of Hallam (1991) state: 'Deans (within their deaneries) and parish priests (within their parishes) may give permission for a mixed marriage to take place. The conditions of Canon 1125 must always be fulfilled' (7.3). The faculty granted to deans and parish priests also includes the power to dispense from the disparity of worship 'insofar as it may be necessary'.

[100] For a detailed analysis of the work of the Code Commission on this canon, cf *Communicationes* 34 (2002) pp 62-76.

[101] L Chiappetta, *Il Codice di Diritto Canonico*, vol. II (Edizioni Dehoniane, Napoli,1988) p 257 n 3785.

convictions of the non-Catholic and his family and civic disadvantages that may follow from a catholic wedding.[102] The Irish Bishops' Conference, in its *Directory on Mixed Marriages* (1983), stated that 'in common with other Episcopal Conferences, the Bishops of Ireland wish to avoid narrow legalism in regard to what constitutes "serious difficulties", adding that 'the ecumenical climate varies considerably from place to place'.[103]

SYSTEMATIC REFLECTION ON SOME QUESTIONS

Having sketched the history of ecumenical discussions on mixed marriages and the canonical developments that culminated in the provisions of the Code of Canon Law, I want to comment briefly on several issues: first, the source and nature of the obligations of the catholic party to a mixed marriage; secondly, the concept of 'divine law' in mixed marriage legislation; and, thirdly, the role of canon law in relations between the Churches.

(i) Source of obligations

The present canon law on mixed marriages makes no mention of divine law; by contrast the 1917 Code[104] cited this as the basis of the ban on mixed marriages and *Matrimonia mixta*[105] cited it as the basis of the obligations of the catholic party entering a mixed marriage. The term 'divine law' is used in the present Code, though much less than in the 1917 Code.[106] In the absence of any such reference in this context, the question arises: how are the obligations of the catholic party in a mixed marriage to be understood? Where do they come from? Catholic theologians insist that the obligation of Christians to remain in communion with the Church is a consequence of the nature of the Church as communion.[107] Moreover to be a member of the Church is 'to be caught up in the mission and in the unique sense of responsibility it entails'.[108] The specific vocation of parents is expressed in the Rite of Baptism for Children; parents (and godparents) are addressed as follows:

[102] Örsy, op cit p 191.
[103] N 12.3 p 26.
[104] Code of Canon Law 1917, Canon 1060.
[105] Cf introduction, Flannery, op cit vol I p 510.
[106] An explanation is given in another ecumenical dialogue: 'Greater awareness of the historicity of the Church in conjunction with a new understanding of its eschatological nature requires that in our day the concepts of *ius divinum* and *ius humanum* be thought through anew. In both concepts the word *ius* is employed in a merely analogical sense. *Ius divinum* can never adequately be distinguished from *ius humanum*. We have the *ius divinum* always only as mediated through particular human forms. These mediating forms must be understood not only as the product of a sociological process of growth, but because of the pneumatic nature of the Church, they can be experienced as a fruit of the Spirit'. Lutheran-Roman Catholic Conversations [Malta Report/1972] in *Growth in Agreement* (Ecumenical Documents II), p 175 n 31.
[107] Cf J-MR Tillard, *Church of Churches* (A Michael Glazier Book, The Liturgical Press, Collegeville, Minnesota, 1992) pp 2-53. This duty is also clearly stated in Canon 209 §1.
[108] L Walsh, *The Sacraments of Initiation* (Geoffrey Chapman, London, 1988) p 52. This duty is clearly stated in Canon 211.

> On your part, you must make it your constant care to bring them up in the practice of the faith. See that the divine life which God gives them is kept safe from the poison of sin, to grow always stronger in their hearts.[109]

I have argued that the obligations of a Catholic entering a mixed marriage, which are expressed in the declarations referred to in Canon 1125, 1°, derive from the nature of Christian marriage and parenthood; as such, these obligations hold for all Christian spouses and parents. The Irish Bishops' Conference emphasises this point by including in the Pre-nuptial Enquiry Form – for use in all instances – questions that were previously only put to Catholics entering mixed marriages. This, they wrote, 'is to ensure that these criteria and expectations govern the marriages of all Catholics'.[110]

(ii) Divine law

The obligations of a Catholic entering a mixed marriage are twofold: first, he/she must declare that he/she 'is prepared to remove the dangers of defecting from the faith' and, secondly, he/she is to promise 'to do all in his or her power in order that all the children be baptised and brought up in the catholic Church' (Canon 1125, 1°). Fr Navarrete, former professor of matrimonial law in the Pontifical Gregorian University (Rome), points to a distinction between these obligations: the obligation of a Catholic not to enter a specific marriage if to do so would endanger his/her faith is of divine law; the obligation however to have the children of the marriage baptised and raised in the Catholic Church is an obligation simply to do his/her best in that regard.[111] According to Navarrete, the post-conciliar documents assume that a Catholic proposing to enter a marriage in which he/she will not be able to have the children baptised or raised in the catholic faith is not forbidden by divine law from contracting marriage.[112] As things stand, this is not a juridical issue but a moral one, especially for the Catholic who feels that he/she must choose between marriage with the person he/she loves and sacrificing the right to hand on the catholic faith to children who may be born from a marriage. There are couples who decide

[109] N 56. This point is reinforced in the blessing of fathers: 'God is the giver of all life, human and divine. May he bless the fathers of these children. With their wives they will be the first teachers of their children in the ways of faith. May they always be the best of teachers, bearing witness to the faith by what they say and do ...' (n 70).

[110] *Pre-Nuptial Enquiry: Pastoral Guidelines* (Veritas, Irish Episcopal Conference, 1991) p 11. The questions are as follows: 6. Do you accept that marriage has been instituted by God and made a sacrament by Christ? 7. Are you resolved to remain steadfast in your Catholic faith and to practise it regularly? 8. Do you promise to do what you can within the unity of your partnership to have all the children of your marriage baptised and brought up in the Catholic faith?

[111] U Navarrete, *L'impedimento di 'disparitas cultus'* in, *I matrimonii misti*, p 121.

[112] Navarrete, ibid p 122. CJ Errázuriz, in a review of *I matrimonii misti*, takes a contrary view; he argues that, notwithstanding the changes in the canon law, a Catholic is forbidden by divine law from entering a marriage in which he/she will have to sacrifice the right to hand on his/her faith to his/her children ('Sul fondamento della disciplina circa i matrimonii misti' in *Ius Ecclesiae* 11 (1999) p 522.

that the compromise involved in a mixed marriage is one that they cannot in conscience make and who, consequently, decide not to marry.

The existence of the impediment of disparity of worship (Canon 1086) acknowledges the possibility that, faced with a proposed marriage of a Catholic with a non-baptised person – and particularly in circumstances that render it difficult or impossible for a Catholic to practise his/her faith or to hand it on – a local Ordinary might, for pastoral reasons, place faith-values above the right to marry and refuse to dispense from the impediment.[113] In pastoral terms, each situation must be judged on its merits. In all mixed marriage situations, couples need effective pre-marriage preparation in order to discern whether they can build a sufficiently united relationship, given their respective views and attitudes and also the cultural and family context in which they find themselves. This is why 'the other party is to be informed in good time of [the] promises to be made by the catholic party, so that it is certain that he or she is truly aware of the promise and of the obligation of the catholic party' (Canon 1125, 2°).

(iii) The role of canon law

Since the obligation to maintain communion with the Church arises from the nature of Christian initiation and since Christian faith is missionary by nature, it follows that the same obligations arise for each baptised party entering marriage. And yet, the ecumenical dialogues refer to a disparity in the ways in which the Churches deal with mixed marriages. As the ARCIC report states, 'in a mixed marriage there is a meeting, not only of two Churches represented by the parties, but also of two jurisdictions [and] two societies whose lives are regulated, to different extents, by law'. It proceeds:

> For Roman Catholics, insofar as their life in the Church is concerned, the canon law operates ... 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... The canonical regulation of marriage, like the dispensation of the sacraments generally, is seen to be part of this whole...
>
> In the Churches of the Anglican Communion law, particularly in respect to marriage, has a more limited function... In his ordinary Christian living the Anglican accepts the authority of the Church as a

[113] Cf the instruction, *Erga Migrantes Caritas Christi,* issued by the Pontifical Council for the pastoral care of Migrants or Immigrant People, 3 May, 2004, n 63: 'With regard to marriage between Catholics and non-Christian migrants, this should be discouraged, though to a varying degree, depending on the religion of each partner, with exceptions in special cases in accordance with the norms of *CIC* and *CCEO*. It should in fact be remembered that, in the words of Pope John Paul II, "in families where both parents are Catholic, it is easier for them to share their common faith with their children. While acknowledging with gratitude interfaith marriages which succeed in nourishing the faith of both spouses and children, the Synod encourages pastoral efforts to promote marriages between people of the same faith". *Ecclesia in Oceania* 2002 n 45'.

> moral obligation; the sense of there being a law to keep seldom occurs to him... 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 recognise the authority of his Church in these matters.[114]

The Western Church, in the words of Corecco, 'has always sought to define the binding value of doctrinal truth by the operative concreteness of the juridical norm, incarnating the whole moral and operational potential charge of theological truth in the juridical system'.[115] In other words, the purpose of canonical regulation, even – or perhaps particularly – in matters as personal as mixed marriages is a sign of the desire of the Catholic Church to bring home to her members the implications of their own faith and their responsibilities as Christian parents. The canon law does not so much create the obligations as make explicit dimensions of personal faith and ecclesial membership that they might not immediately grasp. This understanding of the role of canon law in Catholic Church culture might lead one to question whether the Catholic members of ARCIC were right to say that the Anglican Church makes 'lesser demands' on its members than the Catholic Church does of its members.[116] Surely it is more a case of the Anglican Church allowing its members to discern in their consciences what they should do in precise circumstances, whereas the Catholic Church – to cite Corecco – 'is more concerned with pedagogy and morality than mysticism' (in contrast with the Orthodox tradition).[117]

DEVELOPMENTS IN PASTORAL PRACTICE IN REGARD TO MIXED MARRIAGES

In the final section of this paper, I will consider how the ecumenical dialogues outlined above and the changes in canon law have impacted on pastoral practice. Above all, one can say that improvements in relations between the different Churches and ecclesial communities have provided a better climate in which to consider and deal with the issue of mixed marriages. Other factors such as the mutual recognition of baptism between the Churches have also helped.[118] On-going dialogue on the issue of mixed marriages has also helped by providing a forum for communication at local level.[119] The formation of 'mixed marriage associations' both at local and

[114] *Anglican-Roman Catholic Marriage*, nn 9, 22, 23, 25, 27. For a systematic treatment of this theme, cf E Corecco, *The Theology of Canon Law: A Methodological Question* (Duquesne University Press, Pittsburgh, Pennsylvania, 1992). Whether this remains as true of Catholics today as it was in the 1970s is a moot point.
[115] Ibid p 77. The recently published Lambeth Commission on Communion (the *Windsor Report 2004*) is, in my view, evidence that the Anglican Church wishes to reclaim this element of 'the genius of the Western Church'.
[116] N 68.
[117] Op cit p 77.
[118] Cf World Council of Churches, *Mutual Recognition of Baptism in Interchurch Agreements* (Faith and Order Paper 90, Geneva 1978).
[119] Since 1975 'the Inter-Church Standing Committee on Mixed Marriages' has provided such a forum in Ireland.

at world level has provided support for couples entering mixed marriages and has also kept the difficulties faced by such couples and their families before the Churches. Two World Gatherings of Interchurch Families have been held, the first in Geneva in 1998[120] and the second in Rome in 2003.[121] What is striking about the reflections of these gatherings is the sense that couples in mixed marriages have that they are pioneers in the journey towards greater Church unity; there is also a palpable sense of the pain involved in such a journey.[122] In a letter to the second World Gathering, Cardinal Kasper called on Catholics to observe the norms of their Church regarding Eucharistic sharing. He wrote:

> Faithfulness to the guidelines set forth [in the 1993 Ecumenical Directory], especially pertaining to Eucharistic sharing, will at times mean that you will feel more intensely the pain of division. The pain arises not from the current norms, but from the fact that the separation of Christians has not yet been overcome.[123]

It is clear from these remarks of Cardinal Kasper that the issue of Eucharistic sharing remains a painful one. This is a reminder of the fact, noted in the ARCIC dialogue on mixed marriage, that behind the difference of practice, both pastoral and juridical, lay 'deeper problems of theology'.[124] One might highlight in particular differences of ecclesiology, such as those that came to the surface with the publication of *Dominus Jesus* by the Congregation for the Doctrine of the Faith in 2000.[125] It is also the case that the different degrees of communion between the Catholic Church and the Orthodox Churches, on the one hand, and the Churches of the Reformation, on the other, are reflected in the provisions of Canon 1127 on the canonical form to be used in mixed marriages.

Notwithstanding this, it would be wrong to ignore a significant development in Britain and Ireland. *One Bread One Body*, that was issued jointly in 1998 by the Bishops' Conferences of England and Wales, Ireland, and Scotland, permits Eucharistic sharing on the occasion of the celebration of a mixed

[120] For the statements issued, cf *Interchurch Families,* Journal of the Association of Interchurch Families 7/1 (January 1999), p 7. The Association's website: www.interchurchfamilies.org.

[121] For the statement issued, cf *Doctrine and Life* 54 (2004), pp 43-4; a 'letter from the Second World Gathering of Interchurch Families to the Pontifical Council for Promoting Christian Unity' is available (ibid pp 44-47).

[122] The letter to the Pontifical Council, referred to above, states: 'As we grow into our unity as a couple and family, we begin and continue to share in the life and worship of each other's church communities. We develop a love and understanding not only of one another, but also of the Churches that have given each of us our religious and spiritual identity, and we share that love and understanding with our children. In this way interchurch families can become both a sign of unity and a means to grow towards it. We believe that interchurch families can form a connective tissue helping in a small way to bring our Churches together in the one Body of Christ'. Cf *Doctrine and Life* 54/3 (2004) pp 46-7).

[123] *Ecumenical News*, Message of Cardinal Walter Kasper to the 2nd International Gathering of the Association of Interchurch Families, Mondo Migliore (Castel Gandolfo), July 24-28 2003.

[124] N 9.

[125] *Acta Apostolicae Sedis* 92 (2000) pp 742-765.

marriage, providing that the normal conditions laid down in Canon Law are fulfilled.[126] *One Bread One Body* restricts Eucharistic sharing to such 'one-off' occasions and indeed to the person marrying the catholic spouse.[127] However the distance travelled from the pre-Vatican II provisions to *One Bread One Body* is truly remarkable.

CONCLUSION

It is clear from this study that, ecumenically, the Churches are living in a time of flux. Since it is in the nature of law to favour certainty and stability, it has been suggested that canon law could be an obstacle to ecumenism.[128] Robert Ombres suggests that, faced with this tension between stability and change, 'the best a canon lawyer can do is to weigh the values involved and see how the law can be adjusted to the legitimate postulates of the life of Christian bodies', and he adds that 'anyone doing this "weighing" and "adjusting" should be as competent in ecclesiology as in canon law'.[129] What is proposed to canonists here applies to the whole Church.

Finally, since difficulties in the area of mixed marriages reflect 'deeper problems of theology',[130] it is incumbent on the Churches to foster unity on a wide range of issues and to do nothing that would create new difficulties in relations between them. The 'increase of fellowship in a reform which is continuous' – in the words of Pope John Paul II[131] – will lead to an easing of the problems faced by couples who prepare to enter, or who have entered, mixed marriages, even if these difficulties will not disappear entirely until the Church reaches that unity for which Christ prayed (John 17:21).

[126] 'What do we mean by a "unique occasion" in the life of a family or an individual? We are thinking of an occasion which of its nature is unrepeatable, a "one-off" situation at a given moment, which will not come again. This may well be associated with the most significant moments of a person's life, for example, at the moments of Christian initiation (Baptism, Confirmation, First Communion), Marriage, Ordination and death' (n 109).

[127] 'The decision whether the bride or groom who is not a Catholic may be admitted to Eucharistic communion must always be made in keeping with the general norms regarding the conditions for such admission, "taking into account the particular situation of the reception of the sacrament of Christian marriage by two baptised Christians". As we stated earlier, the sharing together of the sacraments of baptism and marriage creates a sacred bond between husband and wife, and places the couple in a new relationship with the Catholic Church. The spouse who is not a Catholic remains, however, someone who is not in full communion with the Catholic Church, and for this reason the *Directory* stresses that "Eucharistic sharing can only be exceptional". Even when the bride or groom is indeed admitted to Holy Communion at a Nuptial Mass, it is not envisaged that this be extended to relatives and other guests not in full communion with the Catholic Church' (n 111).

[128] B F Griffin, 'The challenge of ecumenism for canonists' in *Canon Law Society of America Proceedings* 55 (1993) pp 17-38.

[129] N Doe, M Hill and R Ombres (eds) 'Ecclesiology, ecumenism and canon law' in *English Canon Law* (Essays in honour of Bishop Eric Kemp) (University of Wales Press, Cardiff, 1998) p 56.

[130] *Anglican-Roman Catholic Marriage* n 9.

[131] *Ut unum sint* n 17. Robert Ombres has pointed out (op cit) that the Latin version of this phrase – *crescens in continua reformatione communio* – is even more powerful.