

CONFIDENTIAL

A./R.C.C.M.22

NOT FOR PUBLICATION

FOURTH REPORT OF THE ANGLICAN/ROMAN CATHOLIC COMMISSION ON THE
THEOLOGY OF MARRIAGE AND ITS APPLICATION TO MIXED MARRIAGES

The Commission met for the fourth time at the Priory of Our Lady of Good Counsel at Hayward's Heath, Sussex, England, from 9th to 13th April 1973.

There were present:

Bishop E.L. Unterkoefer (Co-Chairman), Bishop Langton D. Fox, Bishop F.J. Spence, Professor P.F. Cremin (members), Canon W.A. Purdy (Secretary), Dom Henry Wansbrough, O.S.B. and Fr. Michael Sharratt (Consultants).

Archbishop G.O. Simms (Co-Chairman), Archbishop R. Dean, Bishop D.H.V. Hallock, Professor G.R. Dunstan (members), Prebendary H. Cooper (Secretary), Lady Oppenheimer and Brother Barnabas Lindars, S.S.F. (Consultants).

It was decided not to try to publish a Report on this occasion and the attached summaries of the findings at the end of the discussions are for private circulation only.

Position papers had been circulated beforehand on the New Testament Evidences by Fr. Henry Wansbrough, O.S.B. of Ampleforth and by Fr. A.M. Ambrozic of Toronto and on the Nature of the Vinculum by Lady Oppenheimer, Fr. Sharratt of Ushaw, Dr. John McQuarrie and Mr. John Lucas of Oxford.

The presence of consultants raised the level of discussion greatly and the contribution of the two exegetes, Fr. Wansbrough and Bro. Lindars was especially valuable, revealing wide areas of agreement.

There was a contribution on the Roman view of Nullity (Below, C.).

It was agreed to send out a Questionnaire to all the Anglican Provinces and to all the Episcopal Conferences of the Roman Catholic Church and an agreed text for this is still under discussion.

A tentative programme was drafted for the 1974 meeting, which would deal with remaining questions both theological and practical. It was envisaged that this would lead to a final meeting in 1975 at which a full Report could be made and Recommendations advanced. The meeting next year was to be in England, near London, beginning on 1 April, with the Anglicans as hosts.

(Signed) W.A.P.

H.C.

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

1. 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.

2. Details We agree

on a text-critical approach

on the priority of Mark's version in this pericope

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

that the most probable interpretation of porneia is as marriage within the Jewish forbidden 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 remarriage. We disagree, however, in that H.W. thinks that Jesus intends to abrogate this permission, B.L. that he does not.

that in Mk 10. 10-12 Jesus stigmatises 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.

3. 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 venel? 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. H.W. regards them as a directive to the disciples which would be normative for the future Christian community, B.L. as concerned with bringing people face to face with themselves in the reality of the marriage bond when they contemplate divorce and remarriage. B.L. 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 H.W.'s view is consonant with the view of the majority of informed opinion in both communions, while B.L.'s view represents current tendencies in biblical scholarship which have hardly yet made their full impact on discussion of the questions.

Barnabas Lindars, S.S.F.
Henry Wansbrough, O.S.B.

Discussion of indissoluble vinculum

1. The work of the second day took up the question which the Commission had set itself in the third meeting, namely: is the notion of the irretrievable breakdown of marriage compatible with the concept of an indissoluble vinculum? In preparation for this discussion papers had been circulated to members prior to the meeting. The authors of the papers were Professor John Macquarrie, Mr. J.R. Lucas, Lady Oppenheimer and Fr. Michael Sharratt.

2. The topic investigated in the papers and in the meeting can most usefully be discussed by exploring the question: what does it mean to commit oneself to a life-long union in marriage? The consultants agreed that marriage is a life-long union and that the intention to make it such is essentially required of everyone contracting a true marriage. Where disagreement comes is in the response to marriages which have broken down. This disagreement is not to be equated with confessional allegiance; two Anglican contributors (Macquarrie and Lucas) and the Roman Catholic (Sharratt) presented papers which argued in favour of interpreting indissolubility strictly; one Anglican (Lady Oppenheimer) presented a contrasting view to be found in the Report Marriage, Divorce and the Church, of which she was a signatory.

3. In the view of Fr. Sharratt, who spoke to the subject, it is not clear that a middle way can be found between saying

- (1) Marriage is indissoluble but in certain cases is in fact dissoluble, and
- (2) Marriage is dissoluble.

The middle way which holds that marriage is characteristically indissoluble but in certain cases turns out to be dissoluble leaves it unclear what it is to commit oneself to a life-long union. This difficulty was felt by the Roman Catholics present to be of the greatest importance.

4. Fr. Sharratt recommended that, in discussion of this central difficulty, the terms "metaphysical" or "ontological" should not be used partly because they are not in fact commonly used by Roman Catholics to describe the bond of marriage, but mainly because their use can lead to an obscuring of issues. He suggested that this terminology had led the Report Marriage, Divorce and the Church into misdirecting some of its efforts into querying the metaphysical status of the bond whereas, in his opinion, the point at issue is best discussed in terms of the meaning of life-long commitment and the obligations arising therefrom.

5. The view of Lady Oppenheimer, who also spoke to the subject, is that it is indeed difficult to find a way of speaking of "indissolubility" when divorce is not utterly rules out, but that

(5. (contd.) such a way can be found: marriage is characteristically indissoluble although some marriages turn out to be dissoluble. This middle way enables the Church to respond to marital breakdown in a way consonant with the teaching of Jesus.

6. Accepting that the point at issue is the meaning of commitment to a life-long union and of the obligations arising therefrom, Lady Oppenheimer believes that if this characteristic indissolubility of marriage were clearly grasped, the acknowledgement of irretrievable breakdown of marriage for what it is would not need to undermine the norm of indissolubility which all wish to emphasise. One's knowledge that a hand can be amputated does not lead one to look on one's hand as dispensable. No more need the reality of divorce oblige one to concede that marriage is properly to be described as "dissoluble".

Both Lady Oppenheimer and Fr. Sharratt were able, on many points, to refer to fuller developments of their views in the papers they had circulated to members; discussion was also greatly helped by reference to Appendix V "Vows" of Marriage, Divorce and the Church of which Lady Oppenheimer is co-author.

7. One way of summarising the contrast between the two main views which emerged in discussion is the following. On the one view the obligations arising from the marriage vows are sometimes no longer capable of fulfilment; so a particular marriage with its obligations can be held to be dissoluble. On the other view the original commitment is still held to bind the partners even when in practice the only obligation capable of effective fulfilment is that expressed in the phrase "forsaking all others". This view would claim that this hard doctrine is implicit in the commitment "for better for worse till death us do part". This second view was put forward by a number of those present, including all the Roman Catholics. All considered this important and unresolved contrast to merit further investigation.

8. This discussion relates properly to the exegetical discussion of the previous Session. It is common ground that the language of "indissolubility", and of "mutual commitment to a life-long union in marriage", are attempts to express what the Church believes to be the intention and will of God concerning the very nature of marriage, as revealed in Scripture and confirmed by the unequivocal word of Jesus. The difference shown between the two exegetical positions in the first Session reflects itself in the two sorts of legislative possibilities envisaged by strict "indissolubilists" and "non-indissolubilists"

respectively. These differences do not coincide exactly with confessional boundaries.

9. There has been an unbroken "indissolubilist" tradition, alongside of the other, in the Church of England since the Reformation. Evidence of its ascendancy over the other in the twentieth century is seen in Resolution 1 of the Convocation of Canterbury in 1938¹ re-affirmed in 1957; though in what sense the word "indissoluble" is to be read in the Regulations of 1957, which authorized the admission of persons married after civil divorce to the sacraments, is under debate.

10. The Roman Catholic Church is solidly indissolubilist with regard to the consummated marriage of baptized Christians. Its legislation is based on the traditional belief that "Jesus intended his words to be taken as having the force of law"; that they were "a directive to the disciples which would be normative for the future Christian community." (Wansbrough, para. 3 supra). Accordingly it cannot admit the possibility of laws which would permit the faithful to do, with the sanction of the Church, what Jesus by implication forbade. In plain terms it could not permit the re-marriage of Christians during the lifetime of a third person with whom either had lived in a valid and consummated marital union.

11. In the Churches of the Anglican Communion there is no such unitary position, and therefore their discipline cannot be so summarily described. Three approaches may be instanced.

(a) There are to be found in all or most Churches members who would adhere to the position of the Roman Catholic Church as just described, and who oppose any attempt to establish a discipline at variance with it. Some of these Anglicans follow with close and sympathetic attention movements in the practice of the Roman Catholic courts and in serious discussion outside them to test the bearing of the principle of indissolubility in cases where its strict application might prima facie result in injustice or frustrate the pastoral function of the Church.² Their sympathies are thus engaged because they are troubled in conscience at some of the attitudes and actions to which their belief in strict indissolubility leads them, but they are unable to abandon their belief. (b) Other Anglicans, too, accept as legislative the words of Jesus as recorded, and without regard to academically accepted canons of critical discrimination; so

1. Quoted in Marriage, Divorce and the Church, 3rd impr. 1972, p. 167, App. 9. See also the Report of our 1st (Windsor) meeting, para. 6.

2. An examination of the theory and practice of the courts from a theological as well as a canonical point of view should engage the early attention of the Commission.

(11 contd)

within the legislative words of Jesus they find, in the Matthean recensions, the principle of "exception". These, therefore, would believe it possible to legislate, in fidelity to the word of Jesus, on the principle of what might be called a modified or exceptive indissolubility; that is, on the principle that marriage is properly indissoluble, but the authority of Jesus would allow of exceptions where sin of some sort had invaded or destroyed the marriage bond. The position held by the authors of Marriage, Divorce and the Church corresponds with neither of these other two.

12 (c) That Report, though written without the benefit of such exegetical help as the Anglican/Roman Catholic Commission has enjoyed, assumes that the word of Jesus is declaratory of the creative will of God for marriage in its true nature; as such it must govern the Church in its presentation of marriage, in liturgy, in teaching, in moral and pastoral direction, and in discipline. All legislative provision for the entering upon marriage must be governed by it. Since, however, the word of Jesus is held not to be legislative in character, no direct rules may be read in it, or out of it, to govern defective situations - cases in which, "for the hardness of men's hearts" or for other reasons, Christian spouses abandon or wander in their common pursuit of that perfection in unity to which they are committed. The Church has to work out its rules by moral reasoning. The rules must be governed by the word of Jesus in the sense that, in providing for defective situations, they must not obscure the Church's witness to what marriage, in its nature, characteristically is. Thus, if a theology of the grace of God which could release, forgive and restore enabled the Church to grant re-marriage within its liturgical and communicant life, the practice must be so governed as not to obscure the truth that marriage is characteristically exclusive and life-long. This position distinguishes between first-order principles accepted from God on the word of Christ, and second-order rules which the Church is in duty bound to devise; it does not claim for the second the absoluteness proper to the first, nor attribute to the first the element of contingency inherent in the second.

13. Behind the question of indissolubility stands another: What effects or constitutes an indissoluble marriage? The definition quoted from the Codex Iuris Canonica can. 1118, matrimonium validum ratum et consummatum, presupposes competence to inter-marry, Christian baptism, valid solemnization, and consummation carnali copula subsequata. Each of these

(13 contd.)

conditions invites examination. Reference was made in our third Report, para. 5, to the historical fact that competence to inter-marry had been variously determined by the Church at different times, e.g. first in the expansion and then in the contraction of the impediments of spiritual affinity. At present there is no serious inter-confessional difference in issue here, except over the major one of the impediment of an existing marriage bond. Some Churches in the Anglican Communion, like ECUSA, base their discipline, details of which the Commission hopes to study at its next meeting, on the concept of nullity. The Anglican Church in Canada, on the other hand, now has canonical provision for re-marriage after what is openly accepted as divorce. Appendix 7 in Marriage, Divorce and the Church summarized information from the Anglican Communion available at the time of writing.

14. The link between validity and the Tridentine canonical form has already engaged the attention of the Commission; further examination of it is deferred until we have examined the ecclesiological questions which lie behind it, as denoted in our third Report, para. 2.

15. Notice was taken by the Commission of theological discussion in reputable journals, like Theological Studies and The Jurist, and in some Schools of Canon Law³, of the relation of Holy Baptism and consummation to the sacramentality and completeness of marriage. Granted that, in our present culture, it is possible for two baptized Roman Catholics to enter into marriage without an informed faith in the essentials of the Christian dispensation, God, Christ and the Church, it is asked whether, without such faith, their marriage can be truly described as sacramental? Similar questions are asked about consummation: is it entire and complete after one post-marital act of intercourse, and so finally determinative of the indissolubility of the valid marriage of baptized Christians? or does it grow into completion as the spouses grow into that personal unity ("one flesh") to which their marriage has committed them - and does the question of indissolubility, therefore, remain undecided until "consummation" in this

3. e.g. at Strasbourg. See J. Bernhard, "A propos de l'indissolubilité du mariage chrétien", in Memorial du Cinquantenaire 1919-1969, Université de Strasbourg, 1969; and J.G. Gerhartz, "L'indissolubilité du mariage et la dissolution du mariage dans la problématique actuelle", Le Lien Matrimonial, ed. R. Metz & J. Schlick, Université de Strasbourg, CERDIC, 1970. "How far is Christian Marriage Indissoluble?" The Irish Theological Quarterly. Vol. XL, No.2, April 1973 by Denis O'Callaghan.

(15 contd.)

sense has been achieved? These questions were properly raised in the Commission because their discussion is an evident fact in the life of the Roman Catholic Church and is being followed with sympathy outside it. Caution was advised, however, against giving undue weight to such opinions: they enjoy no higher status than that of arguments open to discussion, and no expectation should be entertained that legislation would be markedly influenced by them in the foreseeable future.

M. Sharratt and
G.R. Dunstan

Summary of Roman Catholic teaching on nullity of marriage

1. In "Gaudium et Spes" marriage is described as follows: "The intimate partnership of married life and love has been established by the Creator and qualified by His laws. It is rooted in the conjugal covenant of irrevocable personal consent." (Gaudium et Spes 48)

2. Marriage begins with a free and specific act of consent, by which there is established a unique, interpersonal relationship commonly called a bond, granting certain rights and accepting certain obligations.

3. In Catholic belief, marriage of baptized persons is one of the sacraments. Christ entrusted to the Church responsibility for safeguarding the integrity of the sacraments. Thus, the Church has the responsibility of safeguarding Christian marriage.

4. The authority of the Church over Christian marriage includes the following:-

- i) the articulation of the nature and essential properties of marriage as established by God and taught by Christ;
- ii) the power to constitute impediments (to safeguard the sanctity of marriage);
- iii) the right to determine the form essential for the valid exchange of consent and consequent validity of the marriage;
- iv) the prerogative to dissolve the bond (or marriage) in certain exceptional cases, namely non-consummated marriage, and the Pauline and Petrine privileges.

5. Once a marriage has been entered into, it is presumed to be a valid one. If a person should consider it to be invalid, he may petition the proper authority for a determination of his status. The Church has the right and the duty to judge the status of a particular marriage, and, if it finds it to be invalid, to declare the marriage null and void.

6. A marriage is said to be a valid marriage if it is a true marriage, as distinct from an invalid or null marriage, that is, one which while appearing to be a marriage, is in fact not really a marriage at all.

7. The invalidity or nullity of an invalid marriage is due to some obstacle or defect arising from the nature of the case or from a law made by the Church. The obstacle can arise by way of:
a) à diriment impediment, b) defect of consent, or
c) non-fulfilment of the canonical form or solemnities required by the Church for a valid marriage (that is, normally, that the marriage be contracted before a duly authorized priest and two witnesses).

8. The diriment impediments, which invalidate a marriage, may be of divine law, natural or positive, which means that, having regard to the nature of marriage, the particular person is incapable of entering into a valid marriage. Such would be impotence or the inability to have sexual intercourse, or the existence of the bond of a previous valid marriage (the impediment of "ligamen" or bond). Or the diriment impediments may be of ecclesiastical law only, which means that the Church as the competent authority makes something an invalidating factor, e.g., the forbidden degrees of consanguinity or affinity, or the fact that one party to the marriage is not baptized while the other party is a Catholic.

9. Defects of consent include absence of the use of reason, ignorance or insufficient knowledge of the meaning of marriage, positive exclusion of one of the essential properties of marriage, and psychological deficiency which renders the person incapable of giving and accepting the essential rights and assuming the essential obligations of marriage.

Bishop Spence
Mgr. Cremin

Draft of Agenda for the meeting in April 1974 prepared by
Bishop Langton Fox and provisionally approved by the Commission

DAY ONE

Morning How important is it to Anglicans and to Roman Catholics that the children of mixed marriages be brought up as members of their own communion, and why?

Paper by Roman Catholic Ecclesiologist on the Roman Catholic position.

Paper by Anglican Ecclesiologist on the Anglican position.

Papers to be circulated beforehand and at the meeting each to present his own and comment on the other.

Afternoon Paper by Roman Catholic Canonist on the juridical consequences of the Roman Catholic position, with special reference to its reconciliation with the principle of religious liberty.

Reply by Anglican Moral Theologian

DAY TWO

All Day Review of the response to the Questionnaire sent to Anglican Provinces and Roman Catholic Episcopal Conferences - on Roman Catholic practice with regard to 'Matrimonia Mixta' with special reference to the interpretation of 'pro viribus'; Anglican re-actions to this: Anglican practice concerning nullity and Roman Catholic practice with regard to the admission of persons in good conscience to Holy Communion after a second marriage during the lifetime of the first partner: the extent to which Roman Catholic tribunals take cognizance of the notion of psychological consummation.

DAY THREE

Morning What is the difference between a natural and a sacramental marriage? Is a natural, non-sacramental marriage possible for christians? Does the Church claim to establish and change diriment impediments? If so, on what grounds?

Paper by Roman Catholic

Paper by Anglican

Afternoon Continuance of unfinished discussions
Discussion of formulation of final report and recommendations at next meeting.