

MIXED MARRIAGES

(Chapter 5 of Understanding the Synod by Peter Hebblethwaite, S.J., Gill & Son, 1968)

The Background

Mixed marriages are at once a question of great intricacy, a deep human problem and an ecumenical stumbling-block. To understand what the Synod was invited to do, one has to go back a little.

Mixed marriages were discussed at the Council on 19 and 20 November 1964. The time was short, the atmosphere unfavourable. Fourteen Fathers spoke and another thirteen had wanted to but were not called.¹ The discussion was inconclusive and it ended with a motion or votum in which, by a comfortable majority, the whole question was entrusted to the Holy Father 'so that he may make the necessary provisions, with the help of the appropriate bodies.' The bishops were invited to send in their comments within a month.

However, nothing public happened until 18 March 1966, just five days before the visit of Dr. Michael Ramsey to Rome, when an Instruction was published. The form of the document was puzzling. What the Council Fathers had asked for and expected was a motu proprio signed by the Pope: what they got was an instructio signed by Cardinal Ottaviani and Archbishop Parente. Moreover, the change of status was reflected in the document itself which continued to refer to 'Our predecessor of happy memory, John XXIII! There had clearly been some hasty work just before publication. Some deduced that the document would have to be regarded as provisional and the Instruction itself said that if its provisions were 'confirmed by experience,' they would be incorporated into the revised Code of Canon Law.

Though far from satisfying the separated brethren, the Instruction did show a certain willingness to meet them one quarter of the way. It allowed a mixed marriage to be celebrated at Mass and permitted the 'non-Catholic minister' to add a few 'congratulatory or hortatory words after the religious ceremony.' Many Anglicans, for example, did not hide their displeasure that the main problem had not been touched: canonical form (marriage before a Catholic priest and two witnesses) was insisted on for the validity and liceity of any marriage involving a Catholic.² And though the 'promises' (cautiones) to bring up the children as Catholics needed no longer to be given in writing, they were still required. However, if the non-Catholic party could not, on grounds of conscience, give this assurance, then the case could be referred to the Holy See.

The Questions before the Synod

The document before the Synod on mixed marriages was different in character from the other four. It consisted of eight questions with the arguments for and against fairly set down. The Secretariat for Christian Unity had worked on it, in collaboration with Cardinal Marella's Commission.

The first two suggestions were simply that a new terminology should be introduced which would distinguish marriage between a Catholic and a non-baptised person from marriage between a Catholic and a baptized person. A marriage between two Christians could be called 'inter-confessional marriage' or 'unequal marriage' (Matrimonium dispar). However clumsy this terminology, it would stress what is common rather than what divides, and language can help to modify attitudes. A characteristically Latin objection, noted by the document, was that 'in the usage of the enemies of the Church, "confessional" is opposed to "lay" and it was invented by them to usurp the place of "Christian".'

The third question was on the promises. In order to grant a dispensation, is it enough for the competent authority to be morally sure of two things: first that the Catholic party is in no danger of failing in his own faith and is prepared to do all that he can to have the children baptized and educated as Catholics; and secondly that the non-Catholic party should know the obligation in conscience of his partner and should at least not exclude the baptism and education of the children in the Catholic Church? The argument against this position was simply that traditionally the Church has asked for more. The argument in favour was neatly stated: 'To impose more as a general norm would be to ask too much and would perhaps not sufficiently take into account the conscience of the non-Catholic party: to demand less would be equivalent to neglecting the Church's duty of teaching and preserving the integrity of faith.'

The next series of questions was on the requirements of canonical form. The suggestion was advanced that Catholics would be held to the requirement of canonical form when they married each other, but would be held to it only for liceity when they married a non-Catholic. This would imply the recognition of the validity of marriages celebrated outside the Catholic Church which involved a Catholic, even though they would still be regarded as illicit. The argument in favour pointed out that 'some public form, according to the custom of different places, could be fixed or acknowledged'; but this was countered by the suggestion that the Church would often be unable to determine which marriages were valid and which not. Not an insuperable problem, replied the hidden interlocutor, and in any case there is a great pastoral need to do something about the many marriages which have already been celebrated in a canonically invalid way. Technically these marriages 'do not exist' in canon law, but 'humanly' it is difficult to believe that the partners are merely 'living in sin.' 'The modern mentality,' says the text, 'is that the scope of laws and precepts should be reduced to those things which are strictly necessary for life in society.'

Supposing, however, that the requirement of canonical form is retained in general, should the local bishop be empowered to dispense from it so that it would not, as at present, have to be referred to the Holy See? In most cases, the bishop has to provide the Holy See with information in the light of which it can judge. Could he not reach the decision himself and thus remove a burden from the Roman Congregations and Tribunals (since that is what 'the Holy See' means in practice)? The answer to this common-sense solution was two-fold. To avoid discrepancies between what happened in one part of the Church and another, 'all decisions in so serious a matter should come from a single authority, i.e. the Holy See.' It was also suggested that decisions of local bishops carry less weight, that they have less experience in these matters and could be subjected to pressures from the parties concerned. (Psychologically, this was not a good argument to put to the bishops of the Synod, and it may have helped them to reject it.)

The last two questions were less weighty. The Instruction of March 1966 allowed mixed marriages to be celebrated within Mass. This well-meaning measure, however, had caused pain when a Protestant with a 'high' sacramental theology was unable to receive communion. Having the marriage within the Mass had, in the experience of some, accentuated divisions on the day when they could expect to be most closely united. Others, who do not share a 'high' view of the sacraments, had been irked at having to assist at a ceremony which did not correspond to their own religious convictions. The suggestion was therefore that a special rite outside the Mass should be used when there was a possibility of offence being taken.

Finally, special and increased pastoral care was recommended for the mixedly married and their families, if possible in liaison with the other Christian minister. The reason was not hard to find: 'Every

pastor knows that such families require special treatment to help them to find spiritual unity in their conjugal and family life by means of a deeper life of faith and service in their respective communities. It would also bring together pastors in an ecumenical situation in which they could learn 'sincerity, honesty and confidence in each other.' There was only one reason against and it was indicative of a certain mentality: 'Indiscreet pastoral action could lead others to conclude that the Catholic Church now favours mixed marriages.' So might one argue that the existence of lifebelts encourages people to fall into the sea.

Cardinal Marella's Relatio

Cardinal Marella presented this document after the coffee break on 16 October. His treatment of it caused surprise and perplexity. There was a notable difference in tone between the Questions and his Report. Members of the Secretariat for Christian Unity were dismayed and emphasised that although they had collaborated on the Questions, they had had no hand in the preparation of the Report. The main differences were as follows.

The Report uses a lengthy series of texts from Old and New Testaments to explain why the Church has always considered mixed marriages to be dangerous. Though it concedes that they cannot be applied directly to marriage with other Christians, it nevertheless makes use of them. Now the Mixed Commission, which included members of the Secretariat for Christian Unity, had specifically rejected the use of these texts on the grounds that they belonged to a different thought-world and that, in any case, texts on marriage between Jew (or Christian) and pagan could not be applied in any sense to marriages between two baptized Christians. It does not help to introduce the Old Testament texts which compare the marriage of a Jew and Gentile to prostitution. No texts were used in the Questions. Why had they been re-introduced into the Report?

There was more. Whereas the starting-point of the conciliar discussions had been the rights of persons, the Report took as its starting-point the 'rights of the Church' understood in rather an abstract way. Moreover, what had been stated neutrally and in a non-partisan way in the Questions, was presented unilaterally in the Report, as though the questions were already resolved. This was particularly true on the two vital questions of canonical form and the promises. The spirit of the reform of canon law, as had been made plain in the debate only a fortnight before, was that there should be the possibility of adaptation within a framework. The Report plumped for uniform legislation. Further, objectivity was abandoned with the innuendo that 'some' who allege that modern man lays more stress on personal responsibility, 'go so far as to deny that the Church has any authority to legislate for the contracting of marriage.' No one responsible has ever asserted this. What has been questioned is the wisdom of present legislation - but that is another matter.

The discrepancy between the Questions and the Report did not go unnoticed or unchallenged. On the morning that Cardinal Marella presented the Report, Cardinal Darmajuwana, Archbishop of Semarang, Indonesia, said that it was difficult to know whether they were supposed to be discussing the Questions or the Report, since they were so different in spirit. He would prefer to set aside the Report and discuss the Questions. Which he proceeded to do. And the Synod followed his example. The episode illustrated the need for constant vigilance.

The Reports from the Episcopal Conferences

The discussion began on 16 October and went on until the 31st. More than in any of the other topics discussed at the Synod, it was essentially a matter of reporting what the Episcopal Conferences

rather than presenting individual views.

The striking thing which the discussion brought home was the diversity of situations. Missionaries have problems of their own, Archbishop Zoa from the Cameroons was worried by polygamy and the difficulty of presenting the ideal of Christian marriage (16 October). Bishop Taguchi from Japan said that the present discipline makes some parents in his country reluctant to have their children baptised, especially their daughters (17 October). From nearby Korea, Bishop Kim stressed the positive value of mixed marriages with pagans 'insofar as the Catholic party can have a good influence on the other' (18 October). Cardinal Duval from Algiers made the same point: 'Marriages with non-Christians often foster relationships between the Catholics and the non-baptised, and they made known to non-Christians the spiritual and moral riches of Christianity' (18 October). Fr. Schuette, of the Divine Word Missionaries (S.V.D.), asked what was the value of promises given by the father in matriarchal societies.

The diversity found in missionary situations is paralleled in Europe and America. In Latin countries, mixed marriage usually means marriage with a 'foreigner.' Some Protestant bodies have a long tradition of serious preparation for marriage and it would not be difficult to regard their 'rite' as valid, provided they held the principles of the unity and indissolubility of marriage. But there are, also, in the U.S.A. 'ministers of religion', legally qualified to assist at marriages, but somewhat cavalier in their attitude to unity and indissolubility.

The diversity of situations was an argument in favour of decentralisation which the Synod eventually recommended for the dispensation from canonical form. There was a strong minority view that the requirement of canonical form should be abolished altogether. Originally imposed by the Council of Trent, its chief object was to avert the harm which came from clandestine marriages. Clandestine marriages are less of a problem now that the State takes an interest in marriages, and the practical effect of the legislation today is to invalidate marriages between a Catholic and a non-Catholic celebrated in another Christian Church. The present legislation, therefore, seems to betray a lack of ecumenical spirit: do not two baptised Christians who marry confer the sacrament on each other? Bishop Cahill of Cairns, Australia, spoke of the 'Scandal' caused by the high number of technically invalid marriages. But with a number of other Conferences (including the Scottish) the Australian wanted to retain canonical form for liceity. This position, which did not carry the Synod, was summed up by Cardinal Alfrink:

Since the Catholic Church has entered upon relations with the separated brethren, the problem of mixed marriages needs sensitive attention and fraternal solutions in which the conscience of both the Catholic and the non-Catholic party are treated with the greatest reverence. However, there is probably no single rule which would provide a satisfactory solution for all the difficulties. The problem of mixed marriages has first of all a theological aspect in the duty of the Catholic party - a duty stemming from the divine command - to preserve his faith and to bring up his children in this faith. Then there is the pastoral aspect: the Church is concerned that those who marry should find their human happiness in walking together along the way of the Lord. In the third place there is a juridical aspect, and the juridical regulations should be a help to the theological and pastoral considerations and should never take precedence over them.

Canonical form has not always and everywhere been the same: the Council of Trent prescribed canonical form, not on account of mixed marriages but because of 'clandestine' marriages. The problem of mixed marriages must be seen now in the light of the conciliar documents On the Church, On Ecumenism, and On Religious

Freedom.

Here are the proposals of the Episcopal Conference. The canonical impediment could be abrogated. In mixed marriages canonical form could be required only for liceity. The Holy See or the local ordinary should be able to dispense from the canonical form. A fourth solution might be envisaged in which both the impediment and the requirement of canonical form would be abolished. If that is unacceptable, our Conference proposes the following norm: the canonical form would be prescribed only for the liceity of marriage (18 October).

The Synod was faced with a labyrinth of options and hypothetical situations. That is why, for all its pastoral spirit, it may be said to have done no more than inch its way forward. The consensus, clearer in the voting than in the interventions, was to retain the requirement of canonical form but to transfer the power of dispensation to the bishops, or, more commonly, to the Episcopal Conferences. Cardinal Suenens tried to answer the difficulty that to insist on the form was anti-ecumenical in spirit: 'This stand of the Church has provided an occasion for dialogue on the sacraments of baptism and marriage.' Others wanted to retain the form as a bulwark against 'desacralisation.' This was the view, for example, of Cardinal McCann and the South African hierarchy: 'In the past, marriage was regarded as a sacred rite having certain civil effects; today it is too often regarded as a civil rite entailing some religious effects' (17 October). Insistence on the form ensures that some sort of pastoral care will be possible.

It also enables both parties to be made aware of the Catholic's duty in conscience to baptise and bring up the children as Catholics. This duty always remains and cannot be dispensed. The dispensation sought is a dispensation to marry, not, on the Catholic side, a dispensation from this obligation. The Synod was opposed to exacting promises from the non-Catholic partner, but required the 'moral certainty' (which can be arrived at in various ways) that he would 'at least not exclude the Catholic baptism and education of his children.' What if, though, on conscientious grounds, he cannot give this minimum assurance? No one quite knows the answer to this question. The jurisprudence which was being evolved by the Congregation for the Doctrine of Faith since the Instruction of March 1966, had dealt with such cases by dispensing from the canonical form and allowing the marriage to take place before the non-Catholic minister. This seems to be a way of saying by implication: very well, you have a right to marry, but this should not be regarded as a Catholic marriage.

Cardinal Bea's intervention was awaited with considerable interest, since the question of mixed marriages has come up at the various meetings of his Secretariat with other Christian bodies. It was expected that his intervention would reflect this experience of dialogue, and some members of his Secretariat were disappointed when he followed the majority view and favoured the retention of the form for both liceity and validity, with power to dispense granted to the Episcopal Conference. But a more careful reading of his intervention suggested that he was taking into account the views expressed at the Synod and going along with them, rather than expressing his own views. He did, however, remind the Synod that the children 'belong' to both parents who should share the responsibility for their Christian education, and he restated the dilemma: 'The impediment should be retained because it serves as a warning of the dangers of mixed marriages, but we should not continue to demand from the Catholic party what could endanger the peace and unity of the family.' In two other ways he subtly parted company with Cardinal Marella's relatio. He said that the Secretariat had worked on the Questions which had presented the pros and cons; and he said not a word about the relatic. Secondly, he noted that we should look to present needs and not to the past for solutions to this problem: the relatio cited a lengthy list of nineteenth-century precedents to illustrate the point that only the 'substance' of the promises was required.

Cardinal Bea's intervention was the last but one on mixed marriages. It would be as well to recall what he had said after the publication of the March 1966 Instruction:

One has to say frankly that in a sense no solution will ever be able to give full satisfaction: the case of mixed marriages reveals the whole paradox of the separation of Christians. They inevitably suffer the repercussions of this separation. The only true solution is the unity of Christians. While this is lacking, the difficulty and the cross will remain and will call for much patience and charity.

These words still remain true. They were echoed by Dr. Carson Blake, General Secretary of the World Council of Churches, who passed through Rome during the discussion and gave a lecture at the Gregorian University. Asked specifically about mixed marriages, he replied that he realized the difficulties and did not expect much immediate progress. He would be content, he added, if discussions continued. There can be no doubt that they will.

The Manifestation of Opinion

To understand the voting on mixed marriages one has to remember the rules for determining the 'mind of the Synod.' A two-thirds majority was required - in this case 124. However, a placet iuxta modum vote counts as a placet, since an amendment could only modify a proposal if it went generally in the direction of the proposal; if it went clean contrary to it, it could be discarded (and the erring bishop ought really to have voted non placet).

(1) Whether the terminology now in use (mixed marriage, impediment of mixed religion, impediment of disparity of worship) should be retained? Placet 116; non placet 64; (null 1).

(2) Whether it is opportune to introduce new terminology such as 'inter-confessional marriage,' 'unequal marriage,' or some other? Placet 29; non placet 110; placet iuxta modum 41.

(3) Whether for dispensation from the impediment it is enough for the competent authority to have moral certainty that the Catholic party is exposed to no danger of losing the faith and is ready to do everything in his power to ensure the Catholic baptism and education of the children? Placet 137; non placet 6; placet iuxta modum 42.

(3b) Whether for dispensation from the impediment it is enough for the competent authority to have moral certainty that the non-Catholic party is aware of the obligation in conscience and at least does not exclude the Catholic baptism and education of the children? Placet 92; non placet 13; placet iuxta modum 72; (null 10).

(4) Whether the canonical impediment should be done away with? Placet 28; non placet 128; placet iuxta modum 29 (null 2).

(5) Whether the canonical impediment can be eliminated in such a way as to have the following norm: Catholics, who for the validity of their marriage are obliged to the form when they contract among themselves, are held to it only for lawfulness if they marry non-Catholics? Placet 33; non placet 125; placet iuxta modum 28 (null 1).

(6) Whether, retaining the canonical form for the validity of marriage, local ordinaries should be empowered to dispense from it in particular cases, according to their own conscience and prudence, in such a way that the use of this right would no longer be reserved to the Holy See. Placet 105; non placet 13; placet iuxta modum 68 (null 1).

(Many amendments suggested that the right should be vested in Episcopal Conferences rather than individual bishops.)

(7) Since a mixed marriage, like any other marriage, can be celebrated at Mass or with a special ceremony outside of Mass, should not pastors of souls, with due regard to the freedom of the contracting parties, be concerned with recommending one or the other of these liturgical forms according to the spiritual background of the parties? Placet 153; non placet 5; placet iuxta modum 27 (null 2).

(8) Whether we should not increase our pastoral care in connection with mixed marriages, not only in previous catechetical instruction of the contracting parties, but likewise through special assistance on the part of pastors for families which have arisen from mixed marriages? Placet 171; non placet 0; placet iuxta modum 16.

NOTES

- 1Cf. Civiltà Cattolica, 116 (1965), III, 484, n.8.
2Cf. John G. Williams, Mixed Marriages between Anglican and Roman Catholic, Foreword by the Archbishop of Canterbury, London 1967.
La Stampa, 26 March 1966.

Circulated by C.F.R. to Anglican members of the Anglican/Roman Catholic Sub-Commission on Mixed Marriages, Windsor, 16th - 18th April 1968.